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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0171]

Gypsy Moth Generally Infested Areas; Addition of Areas in Virginia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by adding the Cities of Roanoke and Salem and the Counties of Craig, Giles, and Roanoke in Virginia to the list of generally infested areas based on the detection of infestations of gypsy moth in those areas. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the spread of gypsy moth to noninfested areas of the United States.

DATES: Effective on March 27, 2007, we are adopting as a final rule the interim rule published at 71 FR 66829–66830 on November 17, 2006.

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

SUPPLEMENTARY INFORMATION:

Background

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

In an interim rule [1] effective and published in the **Federal Register** on November 17, 2006 (71 FR 66829–66830, Docket No. APHIS–2006–0171), we amended the regulations by adding the Cities of Roanoke and Salem and the Counties of Craig, Giles, and Roanoke in Virginia to the list of generally infested areas in § 301.45–3.

Comments on the interim rule were required to be received on or before January 16, 2007. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 71 FR 66829–66830 on November 17, 2006.

Done in Washington, DC, this 21st day of March 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–5568 Filed 3–26–07; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the interim rule, go to *http://www.regulations.gov,* click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0171, then click ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 358

[Docket No. RM07–6–001; Order No. 690–A]

Order on Clarification and Rehearing

Issued March 21, 2007.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: This order responds to four requests for clarification or, in the alternative, rehearing of the interim rule which the Federal Energy Regulatory Commission issued on January 9, 2007. The Commission issued the interim rule in response to the decision of the United States Court of Appeals for the District of Columbia vacating and remanding the standards of conduct rule, Order No. 2004, as applicable to interstate natural gas pipelines, in *National Fuel Gas Supply Corporation* v. *FERC*, 468 F.3d 831 (D.C. Cir. 2006).

In this order, the Commission grants clarification that the standards of conduct for natural gas transmission providers under the interim rule apply only to natural gas transmission providers that are affiliated with a marketing or brokering entity that conducts transportation transactions on such natural gas transmission provider's pipeline. The Commission also grants clarification that the definition for a marketing or brokering entity for a natural gas transmission provider is identical to the definition under the pre-Order No. 2004 standards of conduct. With regards to the other issues for which clarification or rehearing is sought, the Commission will defer consideration of these matters in this proceeding and address them contemporaneously with the rulemaking proceeding in Docket No. RM07–1–000.

EFFECTIVE DATE: This rule is effective on March 27, 2007.

FOR FURTHER INFORMATION CONTACT:

Stuart Fischer, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–8517, E-mail: *stuart.fischer@ferc.gov*.

Deme Anas, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–8178, E-mail: *demetra.anas@ferc.gov*.

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

Standards of Conduct for Transmission Providers

I. Introduction

1. On January 9, 2007, the Commission issued an interim rule promulgating interim standards of conduct regulations that govern the relationship between natural gas transmission providers and their marketing affiliates.[1] The Commission issued the interim rule to respond to the decision of the United States Court of Appeals for the District of Columbia concerning the Standards of Conduct for Transmission Providers under Order No. 2004.[2] The purpose of the interim rule was to repromulgate the standards of conduct not challenged in the *National Fuel* appeal in the interim while the Commission considered how to respond to the court's decision on a permanent basis. Subsequently, on January 18, 2007, the Commission issued a Notice of Proposed Rulemaking (NOPR) in which the Commission proposed making the provisions of the interim rule permanent, as well as proposing other changes to the standards of conduct for natural gas and electric transmission providers.[3] The Commission invited comments on the proposals in the NOPR, and comments are due on March 30, 2007.[4]

2. Four petitioners, the Interstate Natural Gas Association of America (INGAA), CenterPoint Energy Gas Transmission Company (CenterPoint), the National Fuel Companies (National Fuel) and Spectra Energy Transmission, LLC (Spectra) (petitioners or four petitioners), filed requests for clarification or, in the alternative, rehearing of the interim rule.[5] INGAA and CenterPoint seek expedited consideration so that a decision is issued prior to the comment deadline for the NOPR. As discussed below, the Commission grants clarification that the standards of conduct for natural gas transmission providers under the interim rule apply only to natural gas transmission providers that are affiliated with a marketing or brokering entity that conducts transportation transactions on such natural gas transmission provider's pipeline, and that the definition for ''marketing or brokering'' is consistent with the definition of that term under the natural gas transmission standards of conduct prior to Order No. 2004. The Commission will amend the regulatory text accordingly to reflect these clarifications. With regards to the other issues for which clarification or rehearing is sought, the Commission will address those issues contemporaneously with the rulemaking proceeding in Docket No. RM07–1–000.

II. The D.C. Circuit's Decision in National Fuel

3. In *National Fuel*, the court found that the Commission did not support the standards of conduct's expansive definition of energy affiliates, vacated Order Nos. 2004, 2004–A, 2004–B, 2004–C and 2004–D (collectively referred to as Order No. 2004) as applied to natural gas pipelines, and remanded the orders to the Commission.[6] Specifically, the court rejected the Commission's extension of the standards of conduct beyond pipelines' relationships with their marketing affiliates to govern pipelines' relationships with numerous non-marketing affiliates, such as producers, gatherers, and local distribution companies (non-marketing energy affiliates), as well as extending the standards of conduct to affiliates that do not ship on their affiliated pipelines.[7] In light of these findings, the court found moot the other issues raised on appeal.[8]

III. The Interim Rule

4. In the interim rule, the Commission repromulgated the standards of conduct not challenged in the *National Fuel* appeal and adopted or revised other provisions of the standards of conduct that had been the subject of the appeal, while the Commission considers how to respond to the court's decision on a permanent basis.[9] The Commission intended the interim rule to eliminate any uncertainty about how the standards of conduct apply to natural gas transmission providers while the Commission developed a final rule.[10] The Commission adhered to both the letter and the spirit of the court's decision in *National Fuel* by fashioning an interim rule under which the standards of conduct do not apply to the relationship between natural gas transmission providers and non-marketing energy affiliates, which is the aspect of the standards of conduct that the court found infirm.[11]

5. Although the DC Circuit did not consider petitioners' other issues on appeal, under the interim rule the Commission treated each of those issues as if the court had also overturned those sections. Specifically, for natural gas transmission providers, the interim rule: (1) Omitted restrictions on shared risk management employees [12] and (2) revised the requirement for logging waivers of tariff provisions so that it was identical to the Order No. 497 requirements.[13] The Commission also incorporated modifications consistent with petitioners' appeals of two issues discussed in the preamble of Order No. 2004, but not codified in regulatory text.

[1] *Standards of Conduct for Transmission Providers,* Order No. 690, 72 FR 2427 (Jan. 19, 2007); FERC Stats. & Regs. ¶ 31,327 (2007). (Interim Rule). The Commission issued an errata notice on January 22, 2007 that made corrections to paragraph 18 and the regulatory text.

[2] *Standards of Conduct for Transmission Providers,* Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g*, Order No. 2004–A, III FERC Stats. & Regs. ¶ 31,161 (2004), 107 FERC ¶ 61,032 (2004), *order on reh'g*, Order No. 2004–B, III FERC Stats. & Regs. ¶ 31,166 (2004), 108 FERC ¶ 61,118 (2004), *order on reh'g*, Order No. 2004–C, 109 FERC ¶ 61,325 (2004), *order on reh'g*, Order No. 2004–D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines*, *National Fuel Gas Supply Corporation* v. *FERC*, 468 F.3d 831 (D.C. Cir. 2006) (*National Fuel*).

[3] *Standards of Conduct for Transmission Providers*, 72 FR 3958 (Jan. 29, 2007), FERC Stats. & Regs. ¶ 32,611 (2007).

[4] On March 1, 2007, the Commission issued an order extending the deadline for submitting initial comments by 15 days to March 30, 2007 and extending the deadline for submitting reply comments an additional 10 days to April 30, 2007.

[5] CenterPoint incorporated by reference INGAA's filing.

[6] *National Fuel*, slip op. at 4. Order No. 2004 was not appealed as it applies to electric utility transmission providers.

[7] *Id.*, slip op. at 25.

[8] *Id.*, slip op. at 4.

[9] Interim Rule at P 2.

[10] *Id.*

[11] *Id.* at P 5 and 7.

[12] Section 358.4(a)(6) of the Commission's regulations states that ''Transmission Providers are permitted to share risk management employees that are not engaged in Transmission Functions or sales or commodity Functions with their Marketing and Energy Affiliates.'' 18 CFR 358.4(a)(6). The interim rule modified this provision by adding a second sentence that states, ''This provision does not apply to natural gas transmission providers.''

[13] Section 358.5(c)(4) of the Commission's regulations states that ''The Transmission Provider must maintain a written log, available for Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of the tariff. The information contained in this log is to be posted on the OASIS or Internet web site within 24 hours of when a Transmission Provider exercises its discretion under any terms of the tariff.'' 18 CFR 358.5(c)(4). The interim rule changed 18 CFR 358.5(c)(4) by renumbering it as 18 CFR 358.5(c)(4)(i) and added a new provision in 18 CFR 358.5(c)(4)(ii) as follows: ''[N]atural gas Transmission Providers must maintain a written log of waivers that the natural gas Transmission Provider grants with respect to tariff provisions that provide for such discretionary waivers and provide the log to any person requesting it within 24 hours of the request.'' 18 CFR 358.5(c)(4)(ii).

Specifically, the interim rule stated that: (1) Natural gas transmission providers could treat lawyers as permissibly shared employees; and (2) newly certificated natural gas pipeline transmission providers would not be required to observe the standards of conduct until they commence transmission services.[14]

6. The Commission issued the interim rule consistent with the three factors articulated in *Mid-Tex Electric Cooperative, Inc.* v. *FERC* (*Mid-Tex*)[15] for issuing an interim rule without prior notice and comment under the Administrative Procedure Act.[16] First, the Commission stressed that the interim rule was not intended to serve as a permanent rule and that it was commencing a rulemaking proceeding through the issuance of a NOPR (issued nine days after the interim rule).[17] Second, the interim rule followed the court's opinion in *National Fuel* because, for natural gas pipelines, it eliminated the provisions of Order No. 2004 that were subject to appeal and instead adopted provisions originally promulgated in Order No. 497, which was upheld in relevant part by the court in *Tenneco Gas* v. *FERC.*[18] Third, the Commission issued the interim rule to avoid regulatory confusion. When the Commission adopted Order No. 2004, it rescinded the standards of conduct promulgated by Order No. 497. Because *National Fuel* vacated Order No. 2004 as applied to natural gas transmission providers, without the interim rule there would have been no existing regulations governing the relationship between natural gas transmission providers and their marketing affiliates. Such a situation would not have been in the public interest because the standards of conduct have for almost two decades played an important role in the Commission's program to ensure non-discriminatory access by pipeline customers to competitive natural gas markets.[19]

IV. Petitions for Clarification and Rehearing

7. Petitioners filed requests for clarification or rehearing on five issues. First, the four petitioners seek clarification or rehearing as to whether the interim rule limits the application of the standards of conduct to natural gas transmission providers that are affiliated with a marketing or brokering entity that conducts transportation transactions on such natural gas transmission provider's pipeline. The four petitioners contend that under Order No. 497, a natural gas transmission provider was not subject to the standards of conduct if its marketing affiliate did not engage in transportation transactions on its pipeline. INGAA states that if the Commission intended the interim rule to return to the pre-Order No. 2004 standards of conduct requirements for natural gas pipelines, this condition must be included or the interim rule should not have been issued without notice or comment. All four petitioners request that § 358.1 of the interim rule be amended to include the language from the prior standards of conduct in former § 161.1, which limited the application of the standards of conduct to natural gas transmission providers which conduct transportation transactions with its marketing or brokering affiliates.[20]

8. Second, the petitioners assert that the Commission erred in defining marketing affiliate in § 358.3(k) of the Commission's regulations. INGAA contends that the definition of ''Marketing Affiliate'' in § 358.3(k) should treat natural gas pipeline transmission providers separately from electric transmission providers: for natural gas transmission providers, the definition of marketing affiliate should reference the definition of ''marketing or brokering'' in § 358.3(l). For electric transmission providers, the definition of marketing affiliate should reference the definition of ''marketing, sales, or brokering'' in § 358.3(e). This change, INGAA contends, would make clear that § 358.3(e)'s definition of ''marketing, sales or brokering'' is not relevant to identifying the marketing affiliates of natural gas transmission providers. INGAA asserts that sales of electric energy were not part of the definition of ''marketing or brokering'' under the former natural gas standards of conduct under Order No. 497, and thus should not apply to natural gas transmission providers under the interim rule. All four petitioners support an identical language change to the definition of marketing affiliate in § 358.3(k) to clarify this point.

9. Third, the four petitioners contend that § 358.1(e) of the Commission's regulations promulgated in the interim rule has the unintended consequence of including more entities as marketing affiliates than under the prior gas standards of conduct.[21] Specifically, INGAA and National Fuel contend that an entity that falls under one of the exceptions to the definition of an energy affiliate under § 358.3(d)(6) of the Commission's regulations could now be considered to be classified as a marketing affiliate of a gas pipeline.

10. Fourth, the four petitioners contend that the Commission erred by amending § 358.4(a)(6) of the Commission's regulations to remove, for natural gas transmission providers, the exception allowing transmission providers to share risk management employees with marketing and energy affiliates provided that the risk managers are not engaged in transmission functions or sales or commodity functions. INGAA contends it appealed this issue to the D.C. Circuit on the grounds that the Commission had imposed too many restrictions on the sharing of risk management personnel. As such, the four petitioners contend that the Commission should add a provision that expressly permits natural gas transmission providers to share risk management employees with their marketing affiliates.

11. Finally, the four petitioners request that the Commission clarify the effect of restoring the language of former § 161.3(k) of the Commission's regulations, requiring natural gas transmission providers to maintain a waiver log, in new § 358.5(c)(4)(ii) of the Commission's regulations. Specifically, they assert that the current provision (as well as the prior provision in § 161.3(k))

[14] Former 18 CFR 161.3(k); Interim Rule at P 22.

[15] *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 822 F.2d 1123 (DC Cir. 1987).

[16] Interim Rule at P 3–6.

[17] *Id.* at P 6.

[18] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,820 (June 1, 1988); Order No. 497–A, *order on reh'g,* 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,868 (Dec. 15, 1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (Dec. 28, 1990), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,908 (Dec. 13, 1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (Jan. 2, 1992), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,934 (Dec. 20, 1991), *reh'g denied,* 57 FR 5815 (Feb. 18, 1992), 58 FERC ¶ 61,139 (Feb. 10, 1992); *Tenneco Gas* v. *FERC* (*affirmed in part and remanded in part*), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (Dec. 14, 1992), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,958 (Dec. 4, 1992); Order No. 497–E, *order on reh'g and extending sunset date*, 59 FR 243 (Jan. 4, 1994), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,987 (Dec. 23, 1993); Order No. 497–F, *order denying reh'g and granting clarification*, 59 FR 15336 (Apr. 1, 1994), 66 FERC ¶ 61,347 (Mar. 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,996 (June 17, 1994).

[19] Interim Rule at P 6.

[20] Former 18 CFR 161.1 stated that ''This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157, and subparts B or G or part 284 and is affiliated in any way with a natural gas marketing or brokering entity and conducts transportation transactions with its marketing or brokering affiliate.''

[21] Section 358.1(e) of the Commission's regulations states that the standards of conduct do not govern the relationship between a natural gas transmission provider and its energy affiliate. 18 CFR 358.1(e).

apply only to granting waivers under the tariff and does not apply to acts of discretion under the tariff. INGAA requests that the Commission clarify that a pipeline will be in compliance with the interim rule if the pipeline logs waivers, but not every act of discretion, in a situation when (1) a pipeline tariff expressly permits the pipeline to waive a specific tariff requirement; and (2) the pipeline waives a tariff requirement.

V. Commission Determination

12. As noted earlier, the Commission's intent in promulgating the interim rule with respect to natural gas transmission providers was to restore the pre-Order No. 2004 standards of conduct in order to avoid a regulatory gap once the D.C. Circuit issued its decision in *National Fuel* vacating Order No. 2004 as applied to natural gas transmission providers. The interim rule was intended to be a temporary measure while the Commission promulgated permanent regulations in light of *National Fuel,* a process the Commission started in the NOPR in Docket No. RM07–1–000. The Commission did not intend for the interim rule to create any new standards of conduct obligations or new exceptions for natural gas transmission providers that were not in place prior to Order No. 2004.

13. As such, the Commission will grant clarification to revise the standards of conduct regulations under the interim rule to reflect the prior standards of conduct for natural gas transmission providers under Order No. 497. Specifically, the Commission agrees with the requests to: (a) Revise § 358.1 to include the language from former § 161.1 limiting the standards of conduct to natural gas transmission providers that conduct transmission transactions with their marketing or brokering affiliates; and (b) revise the definition of ''marketing affiliate'' in § 358.3(k) to tie it to the definition of ''marketing and brokering'' for natural gas transmission provider in § 358.3(l) (which uses the definition under Order No. 497). With respect to entities covered by the standards of conduct, these clarifications reflect the Commission's intent that the scope of the interim rule track the scope of the standards of conduct requirements for natural gas transmission providers in Order No. 497.

14. Accordingly, the standards of conduct will not govern the relationship of a natural gas transmission provider and its affiliate that engages in marketing or brokering activities (as defined in § 358.3(l)) if that affiliate does not conduct transportation transactions on that natural gas transmission provider's pipeline. Also the standards of conduct do not govern the relationship between a natural gas transmission provider and its electric affiliate that engages in electric marketing, sales or brokering activities (as defined in § 358.3(e)) as long as that electric affiliate does not (i) Engage in natural gas marketing activities under § 358.3(l) and (ii) conduct transportation transactions on the affiliated natural gas transmission provider's pipeline.

15. The Commission intends to address the remainder of the issues raised by the four petitioners contemporaneously with the rulemaking proceeding in Docket No. RM07–1–000. Unlike the requests for which the Commission is granting clarification, the four petitioners' remaining requests do not seek to have the Commission restore the language of the standards of conduct for natural gas transmission providers as it existed prior to Order No. 2004. Instead, the four petitioners' remaining requests seek rehearing by asserting that certain provisions in Order No. 2004 which the court had vacated should be applicable to them or by seeking interpretations of language that the Commission restored from Order No. 497. As such, the consideration of such issues goes beyond the scope of what the Commission intended in the interim rule, namely, to restore the rules in place prior to *National Fuel* until the current rulemaking proceeding is completed. The Commission believes that consideration of the remaining issues with the rulemaking proceeding in Docket No. RM07–1–000 will lead to a more efficient disposition of the four petitioners' remaining contentions, because they relate to which provisions of Order No. 2004 should be retained and how they should be interpreted. Again, the Commission affirms that the clarifications made to the standards of conduct for natural gas transmission providers in the interim rule were not intended to create new standards of conduct requirements beyond the requirements prior to Order No. 2004.

VI. Document Availability

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

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

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

VII. Effective Date

19. These revisions in this order on clarification and rehearing are effective on March 27, 2007.

List of Subjects in 18 CFR Part 358

Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Philis J. Posey,

Acting Secretary.

■ In consideration of the foregoing, the Commission amends part 358, Chapter I, Title 18, *Code of Federal Regulations,* to read as follows:

PART 358—STANDARDS OF CONDUCT

■ 1. The authority citation for part 358 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In § 358.1, paragraph (a) is revised to read as follows:

§ 358.1 Applicability.

(a) This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter and is affiliated in any way with a marketing or brokering entity and conducts transportation transactions with its marketing or brokering affiliate.

* * * * *

■ 3. In § 358.3, paragraph (k) is revised to read as follows:

§ 358.3 Definitions.

* * * * *

(k) *Marketing Affiliate* means an Affiliate as that term is defined in § 358.3(b) or a unit that—

(1) With respect to a natural gas pipeline Transmission Provider, engages in ''marketing and brokering'' activities

as those terms are defined at § 358.3(l); and

(2) With respect to an electric Transmission Provider, engages in marketing, sales or brokering activities as those terms are defined at § 358.3(e).

* * * * *

[FR Doc. E7–5497 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215, 225, and 253

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to update references within the DFARS text.

EFFECTIVE DATE: March 27, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS text as follows:

- *Sections 215.404–71–3 and 215.404–71–4*. Removes obsolete cross-references, and adds a reference to the TreasuryDirect Web site for interest rate information.
- *Section 225.7014*. Updates a cross-reference.
- *Section 225.7401*. Updates the section to provide a more specific description of the Procedures, Guidance, and Information (PGI) text referenced in paragraph (a).
- *Part 253*. Adds a reference to the DoD Forms Management Program Web site.

List of Subjects in 48 CFR Parts 215, 225, and 253

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 215, 225, and 253 are amended as follows:

■ 1. The authority citation for 48 CFR parts 215, 225, and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

215.404–71–3 [Amended]

■ 2. Section 215.404–71–3 is amended in paragraph (b)(7), in the first sentence, by removing ''(see 230.7101–1(a))'' and adding in its place ''(see *http://www.treasurydirect.gov/govt/rates/tcir/tcir_opdirsemi.htm*)''.

215.404–71–4 [Amended]

■ 3. Section 215.404–71–4 is amended in paragraph (e)(2) by removing ''(see 230.7001)''.

PART 225—FOREIGN ACQUISITION

225.7014 [Amended]

■ 4. Section 225.7014 is amended by removing ''236.274(a)'' and adding in its place ''236.273(a)''.

■ 5. Section 225.7401 is amended by revising the section heading and paragraph (a) to read as follows:

225.7401 Contracts requiring performance or delivery in a foreign country.

(a) If an acquisition requires performance of work in a foreign country by contractor personnel other than host country personnel, or delivery of items to a Unified Combatant Command designated operational area, follow the procedures at PGI 225.7401(a).

* * * * *

PART 253—FORMS

■ 6. Subpart 253.3 is added to read as follows:

Subpart 253.3—Illustration of Forms

253.303 Agency forms.

DoD forms are available at *http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm*.

[FR Doc. E7–5476 Filed 3–26–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AF34

Defense Federal Acquisition Regulation Supplement; Prohibition on Acquisition from Communist Chinese Military Companies (DFARS Case 2006–D007)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1211 of the National Defense Authorization Act for Fiscal Year 2006. Section 1211 prohibits DoD from acquiring United States Munitions List items from Communist Chinese military companies.

EFFECTIVE DATE: March 27, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2006–D007.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 71 FR 53045 on September 8, 2006, to implement Section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163). Section 1211 prohibits DoD from acquiring goods or services, through a contract or a subcontract with a Communist Chinese military company, if the goods or services being acquired are on the munitions list of the International Trafficking in Arms Regulations (the United States Munitions List (USML) at 22 CFR Part 121).

One source submitted comments on the interim rule. That source recommended addition of an exception to the policy that, before issuance of a solicitation, the requirements activity must notify the contracting officer whether the items to be acquired are on the USML. The exception would apply to items that include critical military technology, since those items are already subject to controls that limit

issuance of the solicitation and the associated technical data package to United States and Canadian firms.

DoD does not agree with the recommended change. A company located in the United States or Canada could fall within the definition of a Communist Chinese military company if it is owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China. Also, the prohibition applies to subcontracts as well as contracts. An item of critical military technology could contain a subcontracted component that is not subject to the same controls as the end item, but is on the USML. Therefore, the contracting officer needs the specified notification from the requirements activity to identify all USML items and to ensure that the clause at DFARS 252.225–7007 is included in solicitations and contracts for those items.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule affects only those entities that are a part of the industrial base of the People's Republic of China or that are owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Parts 225 and 252, which was published at 71 FR 53045 on September 8, 2006, is adopted as a final rule without change.

[FR Doc. E7–5480 Filed 3–26–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 232 and 252

RIN 0750–AF28

Defense Federal Acquisition Regulation Supplement; Electronic Submission and Processing of Payment Requests (DFARS Case 2005–D009)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update policy addressing requirements for DoD contractors to submit payment requests in electronic form. The rule clarifies the situations under which DoD will grant exceptions to requirements for electronic submission of payment requests.

EFFECTIVE DATE: March 27, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. John McPherson, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0296; facsimile (703) 602–0350. Please cite DFARS Case 2005–D009.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS Subpart 232.70 and the corresponding contract clause at 252.232–7003 to clarify the situations under which DoD will grant exceptions to requirements for electronic submission of payment requests.

DoD published a proposed rule at 71 FR 14149 on March 21, 2006. Two sources submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment:* One respondent recommended expansion of the DFARS text that permits the administrative contracting officer to authorize submission of a non-electronic payment request, to also provide this authority to the procuring contracting officer. The respondent stated that the expansion is necessary to identify authorized officials for contracts that are not administered by the Defense Contract Management Agency.

DoD Response: DoD agrees that this authority belongs to the contracting officer administering the contract. However, there may be several contracting officers providing administrative support for a contract. Therefore, DoD has revised the rule to make this approval the responsibility of the contracting officer administering the contract for payment.

2. *Comment:* One respondent stated there should be a distinction between the requirement for contractors to submit payment requests in electronic form and the requirement for DoD procurement officials to process supporting documents in electronic form.

DoD Response: It is DoD policy for all required documentation to be submitted and processed in electronic form to facilitate the payment process. DoD believes the DFARS rule implements this policy and has made no related changes regarding this requirement in the final rule.

3. *Comment:* One respondent recommended limiting the alternative payment request methods to conventional mail or facsimile. The respondent pointed out that each new alternative method of submission requires the establishment of business rules to properly monitor payment requests and to ensure timely payment. In addition, submission by methods such as e-mail will require the printing and scanning of documents and will increase the workload of the payment office.

DoD Response: The final rule includes changes that limit the alternative payment request methods to conventional mail or facsimile. DoD recognizes that the Defense Finance and Accounting Service (DFAS) has established procedures with adequate controls for the paper and facsimile submission process to ensure prevention of duplicate payments and to provide an adequate audit trail. E-mail submission is not viable at this time, because DFAS presently does not have procedures in place to process such submissions and to maintain sufficient process control.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is designed to avoid any such impact by permitting alternative means of requesting payment when submission of electronic payment

requests would be unduly burdensome to a contractor.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 232 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

■ 2. Section 232.7002 is revised to read as follows:

232.7002 Policy.

(a) Contractors shall submit payment requests in electronic form, except for—

(1) Purchases paid for with a Governmentwide commercial purchase card;

(2) Awards made to foreign vendors for work performed outside the United States;

(3) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified information or national security;

(4) Contracts awarded by deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(8), or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies;

(5) Purchases to support unusual or compelling needs of the type described in FAR 6.302–2;

(6) Cases in which DoD is unable to receive payment requests in electronic form; or

(7) Cases in which the contracting officer administering the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the contractor.

(b) DoD officials receiving payment requests in electronic form shall process the payment requests in electronic form. Any supporting documentation necessary for payment, such as receiving reports, contracts, contract modifications, and required certifications, also shall be processed in electronic form. Scanned documents are acceptable forms for processing supporting documentation.

(c) When payment requests will not be submitted in electronic form—

(1) Payment requests shall be submitted by facsimile or conventional mail. The contracting officer shall consult with the payment office and the contract administration office regarding the method of payment request to be used; and

(2) Section G of the contract shall specify the method of payment request.

232.7003 [Amended]

■ 3. Section 232.7003 is amended in paragraph (a)(3) by removing ''*http://www.dod.mil/dfas/*'' and adding in its place ''*http://www.dod.mil/dfas/contractorpay/electroniccommerce.html*''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.232–7003 is amended as follows:

■ a. By revising the clause date and paragraphs (b)(3)(ii) and (c);

■ b. By redesignating paragraph (d) as paragraph (e); and

■ c. By adding a new paragraph (d) to read as follows:

252.232–7003 Electronic Submission of Payment Requests.

* * * * *

ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (MAR 2007)

* * * * *

(b) * * *

(3) * * *

(ii) EDI implementation guides are available on the Internet at *http://www.dod.mil/dfas/contractorpay/electroniccommerce.html.*

* * * * *

(c) The Contractor may submit a payment request in non-electronic form only when—

(1) DoD is unable to receive a payment request in electronic form; or

(2) The Contracting Officer administering the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the Contractor. In such cases, the Contractor shall include a copy of the Contracting Officer's determination with each request for payment.

(d) The Contractor shall submit any non-electronic payment requests using the method or methods specified in Section G of the contract.

* * * * *

[FR Doc. E7–5478 Filed 3–26–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AF49

Defense Federal Acquisition Regulation Supplement; Free Trade Agreements—Guatemala and Bahrain (DFARS Case 2006–D028)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the United States-Bahrain Free Trade Agreement and the Dominican Republic-Central America-United States Free Trade Agreement with respect to Guatemala. The Free Trade Agreements waive the applicability of the Buy American Act for some foreign supplies and construction materials and specify procurement procedures designed to ensure fairness.

EFFECTIVE DATE: March 27, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2006–D028.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 71 FR 58541 on October 4, 2006, to implement the Dominican Republic-Central America-United States Free Trade Agreement, with respect to Guatemala, and the United States-Bahrain Free Trade Agreement. The rule amended the appropriate DFARS provisions and clauses to reflect the addition of Guatemala and Bahrain as Free Trade Agreement countries.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under

Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule opens up DoD procurement to the products of Guatemala and Bahrain, DoD does not believe there will be a significant economic impact on U.S. small businesses. DoD applies the trade agreements to only those non-defense items listed at DFARS 225.401–70, and procurements that are set aside for small businesses are exempt from application of the trade agreements.

C. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provisions at DFARS 252.225–7020 and 252.225–7035, currently approved under Office of Management and Budget Control Number 0704–0229. The impact, however, is negligible.

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Part 252, which was published at 71 FR 58541 on October 4, 2006, is adopted as a final rule without change.

[FR Doc. E7–5479 Filed 3–26–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AF57

Defense Federal Acquisition Regulation Supplement; New Designated Countries (DFARS Case 2006–D062)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the Dominican Republic-Central America-United States Free Trade Agreement with respect to the Dominican Republic. The rule also adds Bulgaria and Romania to the list of countries covered by the World Trade Organization Government Procurement Agreement.

DATES: *Effective date:* March 27, 2007.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before May 29, 2007, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D062, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2006–D062 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS clauses relating to trade agreements to implement the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR) with respect to the Dominican Republic. Congress approved the CAFTA–DR in the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Public Law 109–53). The CAFTA–DR waives the applicability of the Buy American Act for some foreign supplies and construction materials and specifies procurement procedures designed to ensure fairness.

The rule adds the Dominican Republic to the definitions of ''designated country'' and ''Free Trade Agreement country.'' In addition, the rule removes the Dominican Republic from the list of Caribbean Basin countries, because, in accordance with Section 201(a)(3) of Public Law 109–53, when the CAFTA–DR enters into force with respect to a country, that country is no longer designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act.

The rule also adds Bulgaria and Romania to the list of World Trade Organization Government Procurement Agreement countries, based upon direction from the United States Trade Representative.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule opens up DoD procurement to the products of Bulgaria, the Dominican Republic, and Romania, DoD does not believe there will be a significant economic impact on U.S. small businesses. DoD applies the trade agreements to only those non-defense items listed at DFARS 225.401–70, and procurements that are set aside for small businesses are exempt from application of the trade agreements. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D062.

C. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provisions at DFARS 252.225–7020 and 252.225–7035, currently approved under Office of Management and Budget Control Number 0704–0229. The impact, however, is negligible.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements the Dominican Republic-Central America-United States Free Trade Agreement with respect to the Dominican Republic, which became effective on March 1, 2007. The rule also implements the addition of Bulgaria and Romania to the countries covered by the World Trade Organization Government Procurement Agreement, which became effective on

January 1, 2007. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

252.212–7001 [Amended]

■ 2. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read ''(MAR 2007)'';

■ b. In paragraph (b)(9) by removing ''(NOV 2006)'' and adding in its place ''(MAR 2007)''; and

■ c. In paragraph (b)(12)(i) by removing ''(OCT 2006)'' and adding in its place ''(MAR 2007)''.

■ 3. Section 252.225–7021 is amended by revising the clause date and paragraphs (a)(3)(i), (ii), and (iv) to read as follows:

252.225–7021 Trade Agreements.

* * * * *

TRADE AGREEMENTS (MAR 2007)

(a) * * *

(3) * * *

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

* * * * *

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

* * * * *

■ 4. Section 252.225–7036 is amended by revising the clause date and paragraph (a)(6) to read as follows:

252.225–7036 Buy American Act—Free Trade Agreements—Balance of Payments Program.

* * * * *

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM (MAR 2007)

(a) * * *

(6) *Free Trade Agreement country* means Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore;

* * * * *

■ 5. Section 252.225–7045 is amended as follows:

■ a. By revising the clause date; and

■ b. In paragraph (a), in the definition of ''Designated country'' by revising paragraphs (1), (2), and (4) to read as follows:

252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (MAR 2007)

(a) * * *

Designated country means—

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

* * * * *

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

* * * * *

[FR Doc. E7–5475 Filed 3–26–07; 8:45 am]

BILLING CODE 5001–08–P

Proposed Rules

Federal Register
Vol. 72, No. 58
Tuesday, March 27, 2007

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN 0560–AH55

Guaranteed Loans—Number of Days of Interest Paid on Loss Claims

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to clarify and simplify the number of days' interest that may be paid on loss claims. The liquidation provisions currently provides a timeframe for the interest payment based upon ''the date of the decision to liquidate'' which is often difficult to determine. In addition, the Agency is clarifying the application for payment after liquidation and the guaranteed lender's responsibility for future recoveries.

DATES: Comments concerning this proposed rule must be submitted by May 29, 2007 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments should reference the volume, date and page number of this issue of the **Federal Register**. Comments may be submitted by any of the following methods:

E-mail: Send comments to *Marilyn.Meese@wdc.usda.gov*.

Fax: Submit comments by facsimile transmission to (202) 690–1196.

Mail: Submit comments to Branch Chief, Guaranteed Loan Servicing and Inventory Property Branch, Loan Servicing and Property Management Division, FSA, USDA, 1400 Independence Avenue, STOP 0523, Washington, DC 20250–0523.

Hand Delivery or Courier: USDA FSA DAFLP LSPMD Suite 500, 1250 Maryland Avenue, SW., Washington, DC 20024.

Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Marilyn Z. Meese, Senior Loan Officer, Farm Service Agency; telephone: (202) 690–4002; Facsimile: (202) 690–1196; E-mail; *Marilyn.Meese@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Discussion of the Proposed Rule

This rule proposes changes to the FSA guaranteed farm loan program. FSA guaranteed loans provide conventional agricultural lenders with up to a 95 percent guarantee of the principal loan amount, and accrued interest. The lender is responsible for servicing a borrower's account for the life of the loan. When a borrower cannot fully repay the guaranteed loan, the lender submits a loss claim request to the Agency for payment of the guaranteed percentage of the unpaid debt, if any, after liquidation of the collateral. There has been confusion for both lenders and FSA personnel on how to compute the number of days' interest that may be paid on loss claims. The number of days should not exceed 210 days from the payment due date. As originally envisioned and stated in paragraph 355 of FSA Handbook 2–FLP, Guaranteed Loan Making and Servicing, the lender was to reach a decision to either restructure the loan or liquidate it within 120 days after the payment due date. It is common for bank regulators to require lenders to place a loan on a non-accrual basis if it is 90 days in default. A decision regarding the credit is typically made during this time period. The loan defaults at 30 days past due and 90 additional days equals 120 days. FSA then pays interest an additional 90 days from this decision to liquidate. As a result FSA can pay the lender interest for up to 210 days from the payment due date. If liquidation is estimated to take more than 90 days, the lender is to submit an estimated loss claim. Whether or not an estimated loss claim is filed, however, interest will only be paid for another 90 days, for a maximum of 210 days. The proposed changes incorporate these timeframes into the regulation. As a result, determinations of the maximum interest payable will be made consistently.

In order to both clarify and simplify this issue the proposed rule will allow for a maximum of 210 days of accrued interest from the payment due date as a general rule. The proposed rule places renewed emphasis on the expected actions of the lenders and FSA personnel. All lenders within 150 days of the payment due date must prepare a liquidation plan under proposed § 762.149(b). Preferred (PLP) lenders currently prepare the plan under their FSA-approved Credit Management Systems, but need not submit them. The reference to 150 days will replace the current language, ''within 30 days of the decision to liquidate,'' for consistency with other changes being proposed in this rule. Lenders also must file estimated and final loss claims on all accounts in a timely manner.

The new rule will require a zero dollar estimated loss claim to be filed if the lender expects no loss. This will effectively establish in the Agency's financial records that a loss is not expected but the account is in liquidation. This change would allow better monitoring and record-keeping by FSA. The estimated loss claim need not be filed if the account has already been completely liquidated within the 150 days. In that case, the lender would file only the final loss claim. A final loss claim also needs to be completed for any loan. This will close out the loan on the Agency's financial records as to any remaining liability to the lender. In some cases it is possible that the final loss claim could be for zero dollars. In addition, if the loss claim processing exceeds 40 days as a result of the Agency's failure to take action on the claim the Agency will pay additional interest to the lender after the 40 days. This change is intended as an incentive to Agency personnel to promptly process claims and avoid extra cost to the lender.

The Agency is providing clarification that the payment of a loss claim to the lender does not automatically relieve the borrower from any liability for the debt owed the lender or the lender of responsibility for any future recoveries. After payment of a loss claim by the Agency, the lender will continue to have the responsibility to collect the entire loan balance. The lender will pursue aggressive collection of the debt after payment of the final loss claim unless the Agency has approved of a lender's request for release of liability of the borrower pursuant to 7 CFR part 762. FSA also will continue to seek reimbursement for its payment from the

borrower under § 762.149(m), but the borrower will never pay more than its outstanding debt. In § 762.148(d), the Agency is proposing to remove the provision that the date the borrower files for Chapter 7 bankruptcy is the date of the decision to liquidate for purposes of calculating liquidation time frames. These cases will follow the same maximum interest policy as other cases. If the loan account has been past due prior to the Chapter 7 bankruptcy filing those days will count towards the liquidation timeframes.

Finally, the Agency is amending § 762.149(i)(1) by stating that as long as a loan is accruing interest, the sale proceeds from the liquidation of assets will be applied to principal first. This practice reduces the interest accrual on the defaulted loan, resulting in a smaller loss payment. Since principal was advanced for the collateral it is consistent practice to first reduce the principal when the collateral is sold.

Executive Order 12866

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Agency certifies that this rule will not have a significant economic effect on a substantial number of small entities. This rule does require actions on the part of the subject program's borrowers or lenders. Borrowers may be individuals or entities. No distinction is made between small and large entities. The Agency will bear most of the burden under the proposed regulations. The Agency anticipates that the proposed rule will require submission of no additional information, further justifying the conclusion that a Regulatory Flexibility Analysis is not required. The Agency, therefore, concludes that it is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, Public Law 96–535, as amended (5 U.S.C. 601).

Environmental Evaluation

The environmental impacts of this proposed rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA completed an environmental evaluation and concluded that the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except that lender servicing under this rule will apply to loans guaranteed prior to the effective date of the rule to the extent permitted by existing contracts; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before requesting judicial review.

Executive Order 12372

For reasons contained in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

Unfunded Mandates

This rule contains no Federal mandates, as defined by title II of Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any 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. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Paperwork Reduction Act

The amendments to 7 CFR part 762 contained in this rule require no revisions to the information collection requirements that were approved by OMB under control number 0560–0155.

Federal Assistance Programs

These changes affect the following FSA programs listed in the Catalog of Federal Domestic Assistance:

10.406—Farm Operating Loans
10.407—Farm Ownership Loans

List of Subject in 7 CFR part 762

Agriculture, Banks, Credit, Loan Programs—agriculture.

Accordingly, 7 CFR part 762 is amended as follows:

PART 762—GUARANTEED FARM LOANS

1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989

§ 762.148 [Amended]

2. Amend § 762.148(d)(1) by removing the second sentence.

3. In § 762.149, revise paragraphs (b)(1) introductory text, (b)(1)(v), (d) introductory text, (d)(2), (i)(1) and (i)(5), to read as follows:

§ 762.149 Liquidation.

* * * * *

(b) * * *

(1) Within 150 days after the payment due date, all lenders will prepare a liquidation plan. Standard eligible and CLP lenders will submit a written liquidation plan to the Agency which includes:

* * * * *

(v) An estimated loss claim must be filed no later than 150 days past the payment due date unless the account has been completely liquidated and then a final loss claim must be filed.

* * * * *

(d) *Estimated loss claims.* An estimated loss claim must be submitted by all lenders no later than 150 days after the payment due date unless the account has been completely liquidated and then a final loss claim must be filed. The estimated loss will be based on the following:

* * * * *

(2) The lender will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. The Agency will not pay interest beyond 210 days from the payment due date. If the lender estimates that there will be no loss after considering the costs of liquidation, an estimated loss of zero will be submitted and interest accrual will cease upon the approval of the estimated loss and never later than 210 days from the payment due date. The following exceptions apply:

(i) In the case of a Chapter 7 bankruptcy, in cases where the lender filed an estimated loss claim, the Agency will pay the lender interest which accrues during and up to 45 days after the discharge on the portion of the

chattel only secured debt that was estimated to be secured but upon final liquidation was found to be unsecured, and up to 90 days after the date of discharge on the portion of real estate secured debt that was estimated to be secured but was found to be unsecured upon final disposition.

(ii) The Agency will pay the lender interest which accrues during and up to 90 days after the time period the lender in unable to dispose of acquired property due to state imposed redemption rights on any unsecured portion of the loan during the redemption period, if an estimated loss claim was paid by the Agency during the liquidation action.

* * * * *

(i) *Final loss claims.* (1) Lenders must submit a final loss claim when the security has been liquidated and all proceeds have been received and applied to the account. All proceeds shall be applied to principal first and then toward accrued interest if the interest is still accruing. The application of the loss claim payment to the account does not automatically release the borrower of liability for any portion of the borrower's debt to the lender. The lender will continue to be responsible for collecting the full amount of the debt and sharing these future recoveries with the Agency in accordance with paragraph (j) of this section.

* * * * *

(5) The Agency will notify the lender of any discrepancies in the final loss claim or, approve or reject the claim within 40 days. Failure to do so will result in additional interest being paid to the lender for the number of days over 40 taken to process the claim.

* * * * *

Signed at Washington, DC, on March 9, 2007.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. E7–5511 Filed 3–26–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 584

[OTS–2007–0007]

RIN 1550–AC10

Permissible Activities of Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to revise its regulations, at 12 CFR 584.2 and 584.2–2, to expand the permissible activities of savings and loan holding companies (SLHCs) to the full extent permitted under the Home Owners' Loan Act (HOLA). In addition, OTS proposes to amend 12 CFR 584.4 to conform the regulation to the statute that it is intended to implement by replacing the absolute prohibition on certain SLHC transactions that is currently in the regulation with a prior approval requirement. The proposed regulation sets forth standards that OTS will use to evaluate applications submitted pursuant to the application requirement.

DATES: Comments must be received by April 26, 2007.

ADDRESSES: You may submit comments, identified by OTS–2007–0007, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* select ''Office of Thrift Supervision'' from the agency drop-down menu, then click submit. Select Docket ID ''OTS–2007–0007'' to submit or view public comments and to view supporting and related materials for this interim rule. The ''User Tips'' link at the top of the page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office Of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2007–0007.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, OTS–2007–0007.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Viewing Comments Electronically: Go to *http://www.regulations.gov*, select ''Office of Thrift Supervision'' from the agency drop-down menu, then click ''Submit.'' Select Docket ID ''OTS–2007–0007'' to view public comments for this notice of proposed rulemaking.

View Comments On-Site: You may inspect comments in the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT: Donald W. Dwyer, Director, Applications, Examination and Supervision-Operations, (202) 906–6414; or Kevin A. Corcoran, (202) 906–6962, Deputy Chief Counsel for Business Transactions, Office of Chief Counsel; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Holding Company Activities

A. Background

Under section 10(c)(9) of the HOLA,[1] SLHCs[2] generally are permitted to engage only in activities that are permissible for financial holding companies under section 4(k) of the Bank Holding Company Act,[3] or activities that are listed in section 10(c)(2) of the HOLA.[4] The activities listed in section 10(c)(2) of the HOLA include certain specific activities.[5] In

[1] 12 U.S.C. 1467a(c)(9).

[2] An SLHC generally is any company that directly or indirectly controls a savings association, or that controls any other company that is a savings and loan holding company. *See* 12 CFR 583.20 and 12 U.S.C. 1467a(a)(1)(D).

[3] 12 U.S.C. 1843(k).

[4] 12 U.S.C. 1467a(c)(2). SLHCs that were SLHCs on May 4, 1999, and meet certain other requirements, are excepted from the activities limitations of section 10(c)(9) of the HOLA. See 12 U.S.C. 1467a(c)(9)(C). The following discussion of activities limitations applies only to SLHCs that are not excepted from the activities limitations of section 10(c)(9).

[5] These activities include furnishing or performing management services for a savings association subsidiary of such company (section 10(c)(2)(A)); conducting an insurance agency or escrow business (section 10(c)(2)(B)); holding, managing, or liquidating assets owned or acquired from a savings association subsidiary of such company (section 10(c)(2)(C)); holding or managing properties used or occupied by a savings association subsidiary of such company (section 10(c)(2)(D)); acting as trustee under a deed of trust (section 10(c)(2)(E)); and purchasing, holding or disposing of stock acquired in a qualified stock

addition, section 10(c)(2)(F) sets forth two lists of activities in which all SLHCs may engage. Section 10(c)(2)(F)(ii) permits SLHCs to engage in activities in which multiple savings associations were authorized by regulation to engage directly on March 5, 1987.[6] Section 10(c)(2)(F)(i) permits SLHCs to engage in activities:

> which the Board of Governors of the Federal Reserve System, by regulation, has determined to be permissible for bank holding companies under section 1843(c) of this title, unless the Director, by regulation, prohibits or limits any such activity for savings and loan holding companies.* * *[7]

As authorized by the statute, OTS has limited the activities permitted for SLHCs under section 10(c)(2)(F)(i) of the HOLA. Although SLHCs potentially could engage in all activities that the Board of Governors of the Federal Reserve System (FRB) has permitted under its regulations for bank holding companies under section 4(c) of the Bank Holding Company Act (BHCA), OTS regulations implementing section 10(c)(2)(F)(i) limit the activities that are permissible under this authority to activities that the FRB has permitted for bank holding companies under regulations implementing section 4(c)(8) of the BHCA, specifically 12 CFR 225.24 and 12 CFR 225.28.[8] Section 225.28 is a list of non-banking activities that the FRB approved pursuant to section 4(c)(8) of the BHCA.[9] Section 225.24 sets forth a regulatory procedure under which the FRB has approved non-banking activities, under the authority of section 4(c)(8) of the BHCA.[10]

In summary, the OTS Holding Company Regulations implementing section 10(c)(2)(F)(i) of HOLA provide authority for SLHCs to only engage in activities that the FRB has permitted under section 4(c)(8) of the BHCA, and do not provide authority for SLHCs to engage in activities listed in other subsections of section 4(c) of the BHCA.[11]

Certain activities described in other subsections of section 4(c) are already permissible for SLHCs under other authority. For example, section 4(c)(1) of the BHCA permits bank holding companies to, among other things, hold or operate properties used wholly or substantially by any banking subsidiary of such bank holding company, and to liquidate assets acquired from a bank subsidiary.[12] SLHCs may engage in these activities (with regard to savings association subsidiaries) without prior OTS approval, under sections 10(c)(2)(D) and (C) of the HOLA.

Other activities described in other subsections of section 4(c) are generally not currently permissible for SLHCs to engage in. For example, the foreign activities that the FRB has authorized by regulation for bank holding companies pursuant to section 4(c)(9) of the BHCA[13] are not currently permissible for SLHCs.[14]

Current authority for non-grandfathered SLHCs to engage in non-thrift activities is summarized in the following table.

Statutory source of authority	HOLA sec. 10(c)(2)(A)–(E) and (G)	HOLA sec. 10(c)(2)(F)(i)	HOLA sec. 10(c)(2)(F)(ii)	HOLA sec. 10(c)(9)
Description	Specific activities	Activities permitted for bank holding companies under section 4(c)(8) of BHCA.	Activities FHLBB permitted for multiple SLHCs as of March 5, 1987.	Activities permissible for financial holding companies under section 4(k)(4) of the BHCA.
OTS Regulation Cite	12 CFR 584.2(b)	12 CFR 584.2–2	12 CFR 584.2–1	None.

B. Proposed Regulatory Changes

OTS believes that it is appropriate to consider whether to continue to limit the activities that OTS authorizes under section 10(c)(2)(F)(i) of HOLA to activities that the FRB has authorized under section 4(c)(8) of the BHCA. The existing regulations have not changed substantively since they were first promulgated in 1987.[15]

The regulatory scheme for SLHCs has changed significantly since the regulations were first promulgated. In 1987, most SLHCs were excepted from activities restrictions. Until the passage of the Gramm-Leach-Bliley Act[16] (GLB Act) in 1999, SLHCs that controlled only one savings association were excepted from activities limitations, provided that the subsidiary savings association met the qualified thrift lender test (QTL test).[17] In addition, SLHCs that controlled more than one savings association were excepted from activities limitations, provided that the SLHC acquired all or all but one of its savings association subsidiaries in certain types of supervisory transactions, and all the subsidiary savings associations met the QTL test.[18]

issuance under section 10(q) of the HOLA (section 10(c)(2)(G)).

[6] 12 U.S.C. 1467a(c)(2)(F)(ii). These activities are listed at 12 CFR 584.2–1(2006).

[7] 12 U.S.C. 1467a(c)(2)(F)(i). Section 10(c)(2)(F)(i) of the HOLA originally was enacted as part of the Competitive Equality Banking Act of 1987 (Pub. L. 100–86, 101 Stat. 552 (Aug. 10, 1987)) and amended section 408(c) of the National Housing Act. The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Pub. L. 101–73 103 Stat. 184 (Aug. 9, 1989)) moved section 408 of the NHA to section 10 of the HOLA.

[8] See 12 CFR 584.2(b)(6)(i) and 584.2–2(a) (2006).

[9] 12 U.S.C. 1843(c)(8). When the Federal Home Loan Bank Board (FHLBB) originally promulgated regulations implementing the section 10(c)(2)(F)(i) provision, it limited the activities to those permitted under section 4(c)(8). 53 FR 312 (Jan. 6, 1988). Although the FHLBB did not state why it did not authorize SLHCs to engage in activities the FRB approved under other subsections of section 4(c), the FHLBB stated that, based on its subsequent experience, it may ''expand the list of permissible nonbanking activities for S&L holding companies to include those activities approved by the FRB under other provisions of section 4(c) of the BHC Act.'' 53 FR 319 (Jan. 6, 1988).

[10] Activities that the FRB previously approved under this section are set forth at 12 CFR 225.86(a)(2)(2006).

[11] Section 10(c)(9) of HOLA, which, as described above, is a separate source of authority for SLHCs to engage in activities, permits SLHCs to engage in any activity permissible for financial holding companies pursuant to section 4(k) of the BHCA. While the financial holding company activities are generally broader than the bank holding company activities described in section 4(c) of the BHCA, section 4(k) does not include all of the activities described in the various subsections of section 4(c) (such as the foreign activities described in subsection 4(c)(9)). However, section 4(k)(4)(F) of the BHCA permits financial holding companies to engage in section 4(c)(8) activities, and section 4(k)(4)(G) permits financial holding companies to engage, in the United States, in certain activities that the FRB has permitted under section 4(c)(13). *See* 12 CFR 225.86(b)(2006).

[12] See 12 U.S.C. 1843(c)(1)(A) and (D).

[13] See 12 CFR part 211, subpart B (2006).

[14] Activities described in certain other subsections of section 4(c) of the BHCA are not applicable to SLHCs, even if OTS amends the Holding Company Regulations as proposed, because the provisions relate to shares acquired by a bank holding company prior to May 9, 1956 (the date of the enactment of the BHCA) (12 U.S.C. 1843(c)(10)) and companies that became bank holding companies as a result of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1843(c)(12)).

[15] When OTS recodified the former regulations of the FHLBB in 1989, OTS did not change the provisions of the Holding Company Regulations that implemented section 10(c)(2)(F)(i). 54 FR 49411, 49711 (Nov. 30, 1989).

[16] Pub. L. 106–102, 113 Stat. 338, section 401.

[17] See section 10(c)(3) of HOLA. The QTL test is set forth at section 10(m) of HOLA, 12 U.S.C. 1467a(m).

[18] Id.

Accordingly, the limitation of permissible activities to those the FRB had approved under section 4(c)(8) of the BHCA was relevant only to a small number of SLHCs.

The GLB Act, however, provided that, notwithstanding the previously existing exemption at section 10(c)(3), which had significantly limited the number of SLHCs subject to activities restrictions, all new SLHCs would be, with limited exceptions,[19] subject to activities restrictions. Accordingly, for several years, all new SLHC structures have been subject to activities limitations. Rather than affecting only a small minority of SLHCs, the regulatory limitation in question is now applicable to every new SLHC structure.

In addition, for many years, bank holding companies have been permitted to engage in the activities described in section 4(c) of the BHCA, consistent with the regulations of the FRB. OTS is not aware of any safety and soundness or other reason why SLHCs should not be permitted to engage in the same activities.

Finally, in 1987, few SLHCs had foreign operations. Since then, however, many foreign entities have acquired, or have expressed interest in acquiring, a savings association. To the extent that sections 4(c)(9) and 4(c)(13) of the BHCA, and regulations that the FRB has promulgated thereunder, authorize bank holding companies with foreign operations to engage in certain activities, it would appear appropriate to provide the same authority to SLHCs.

The regulations limiting the section 4(c) activities to those authorized under section 4(c)(8) are 12 CFR 584.2(b)(6) and 584.2–2(a). OTS proposes to revise these regulations to replace the references to 12 CFR 225.24 and 225.28 with general references to regulations promulgated by the FRB under the authority of section 4(c) of the BHCA. These changes would enable SLHCs to engage in activities that the FRB has permitted under any regulation that the FRB has promulgated under section 4(c) of the BHCA.

Section 10(c)(4) of the HOLA generally requires prior OTS approval with respect to the activities described in section 10(c)(2)(F)(i) of the HOLA. Certain of these activities are already permitted under OTS regulations without prior OTS approval, or are permitted under FRB regulations without prior FRB approval. Accordingly, in order to avoid imposing additional restrictions on currently permissible activities, and provide for parity between bank holding companies and SLHCs to the extent possible, OTS proposes to state in the regulation that activities that are authorized under section 10(c)(2)(F)(i) of HOLA, but are also permissible under other provisions of section 10(c) of the HOLA or under FRB regulations without prior FRB approval are preapproved.

II. Approval Requirement for Certain Acquisitions by SLHCs

Section 10(e)(1)(A)(iii) of HOLA includes two different restrictions on the activities of SLHCs. First, the statute prohibits SLHCs from directly or indirectly acquiring, without OTS approval, more than five percent of the voting shares of a savings association that is not a subsidiary of the acquiring SLHC, or more than five percent of the voting shares of a SLHC that is not a subsidiary of the acquiring SLHC.[20]

Second, the statute prohibits multiple SLHCs from acquiring or retaining more than five percent of the voting shares of any company not a subsidiary that is engaged in any business activity other than the activities specified in section 10(c)(2) of HOLA.

The Holding Company Regulations, at 12 CFR 584.4, implement these statutory requirements. Section 584.4, however, has not been amended since OTS recodified the FHLBB regulations in 1989,[21] and therefore, no longer accurately reflects the provisions of the statute. Specifically, the American Homeownership and Economic Opportunity Act of 2000[22] (AHEO Act) amended section 10(e)(1)(A)(iii) to replace the former absolute prohibition on SLHCs acquiring more than five percent of the voting shares of a savings association or SLHC not a subsidiary of the acquiring SLHC (subject to the exceptions noted above), with a regulatory approval requirement.[23] The regulation continues to contain an absolute prohibition, without providing for a regulatory approval requirement. Accordingly, OTS proposes to amend the regulation to make it consistent with the statute.

In addition, although the AHEO Act established a regulatory approval requirement for the acquisitions in question, the statute did not establish approval standards for applications submitted as a result of the approval requirement. OTS proposes to amend the regulation to set forth approval standards for applications submitted under section 10(e)(1)(A)(iii) and 584.4.

When OTS recommended that Congress amend section 10(e)(1)(A)(iii) to eliminate the prohibition on SLHCs acquiring more than five percent of the voting shares of a non-subsidiary savings association or SLHC, OTS noted that the prohibition was inconsistent with the rules applicable to bank holding companies. Section 3(a) of the BHCA allows bank holding companies to acquire more than five percent of the voting shares of non-subsidiary banks, with FRB approval.[24] In addition, bank holding companies, including those that control savings associations, are permitted, with prior FRB approval, to acquire voting stock of savings associations (including, but not limited to, non-controlling investments exceeding five percent).[25]

Given that OTS sought the amendment to section 10(e)(1)(A)(iii) to provide SLHCs parity with bank holding companies, OTS believes that it is appropriate to look to the requirements applicable to bank holding companies in similar situations in establishing approval criteria. In this regard, section 3(c) of the BHCA sets forth the standards for bank holding company acquisitions under section 3(a). The statute requires that the FRB: (i) Not approve an acquisition if it has certain anticompetitive effects; (ii) consider the financial and managerial resources and future prospects of the companies and banks involved, and the convenience and needs of the community to be served; (iii) not approve an application if the company fails to provide adequate assurance that it will make available such information as the FRB determines appropriate to determine and enforce compliance with applicable requirements; and (iv) in the case of a foreign bank, not approve an application if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis in the bank's home country.[26]

These approval standards are, in all material respects, identical to the approval standards for acquisitions by SLHCs under section 10(e)(2) of the HOLA and OTS regulations thereunder at 12 CFR 574.7(c). Accordingly, OTS proposes to amend section 584.4 to

[19] The exceptions include the ''grandfathering'' exception, at section 10(c)(9)(C), discussed earlier, the reorganization exception, set forth at section 10(c)(9)(D), and the family trust exception, set forth at section 10(c)(9)(E).

[20] 12 U.S.C. 1467a(e)(1)(A)(iii). The statute establishes eight exceptions from the approval requirement. See 12 U.S.C. 1467a(e)(1)(A)(iii)(I)-(VIII).

[21] 54 FR 49411, 49712.

[22] Pub. L. 106–569 (Dec. 27, 2000), at section 1202, 114 Stat. 3032.

[23] The AHEO amendments left in place the absolute prohibition relating to multiple SLHCs.

[24] *See also,* 12 CFR 225.11(c)(2006).

[25] *See* 12 CFR 225.24 and 12 CFR 225.28(b)(4)(2006).

[26] 12 U.S.C. 1842(c).

cross-reference the standards in section 10(e)(2) of HOLA and 12 CFR 574.7(c).

In addition, the Community Reinvestment Act (CRA) requires that OTS take into account a savings association's CRA record in reviewing any application for a deposit facility.[27] The CRA defines an ''application for a deposit facility'' as including, among other things, the ''acquisition of shares in, or the assets of, a regulated financial institution requiring approval under [section 10(e) of the HOLA].''[28] The OTS regulations implementing the CRA include a corresponding requirement.[29] Accordingly, OTS believes that it is appropriate to consider the CRA record of any depository institution subsidiary of the acquiring SLHC when considering an application under section 10(e)(1)(A)(iii) and 12 CFR 584.4.

Given that CRA performance of any subsidiary depository institution of the acquiring SLHC would be a factor in OTS's consideration of applications under 584.4, OTS believes it is appropriate to obtain public comment in connection with such applications. Accordingly, the proposed regulation includes a cross-reference to the public notice and comment procedures in 12 CFR part 516.

Finally, in light of the amendments to 584.4 proposed above, OTS proposes to reorganize 584.4 as set forth herein. The additional proposed changes would not affect the substance of the regulation.

III. Findings and Certifications

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, OTS may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. OTS is requesting comment on a proposed information collection. OTS also gives notice that the proposed collection of information was submitted to OMB for review and approval (44 U.S.C. 3507(d)). At the end of the comment period, the comments and recommendations received will be analyzed to determine whether the information collection should be modified. Any material modifications will be submitted to OMB for review and approval. All comments will become a matter of public record.

Send comments, referring to the collection by title of the proposal or by ''SLHC Activities (1550–NEW),'' to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 - 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov,* (202) 906–6467, or facsimile number (202) 906–6518, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agency's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

In this proposed rule, OTS is soliciting comments concerning the following information collection.

Title: Savings and Loan Holding Companies Activities.

OMB Control Number: 1550–NEW.

Type of Review: New collection.

Frequency of Response: On occasion.

Affected Public: Savings and loan holding companies.

Abstract: The proposed expansion of permissible activities for SLHCs under section 10(c)(2)(F)(i) of HOLA will result in the collection of additional information. Section 10(c)(4) of HOLA requires SLHCs to obtain OTS approval prior to commencing any activity described in section 10(c)(2)(F)(i) of HOLA. Additionally, the amendment of 12 CFR 584.4 to conform with the statute by including an approval process for covered acquisitions is a new collection of information.

Estimated Number of Respondents: 4.

Estimated Burden Hours per Response: 2 hours.

Estimated Total Burden: 8 hours.

Rule section	Subject	Number of respondents	Number of responses per respondent	Average annual burden hours per response	Annual disclosure & recordkeeping burden
584.2–2	Application to engage in certain activities	2	1	2	4
584.4	Application by SLHC to acquire non-controlling interest exceeding five percent of non-subsidiary savings association or SLHC.	2	1	2	4

B. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

In accordance with section 605(b) of the Regulatory Flexibility Act (RFA), the Director of OTS has certified that this

[27] 12 U.S.C. 2903(a)(2).

[28] 12 U.S.C. 2902(3)(E). Although the statutory reference is to section 408(e) of the National Housing Act, which was repealed in FIRREA, OTS has interpreted the provision as referring to the successor provision, section 10(e) of the HOLA.

[29] *See* 12 CFR 563e.29(a)(5).

proposed rule will not have a significant impact on a substantial number of small entities within the meaning of the RFA. 5 U.S.C. 603.

D. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. 2 U.S.C. 1532. OTS has determined that this proposed rule would not have such an impact. Rather, the rule would provide that nonexempt SLHCs have broader authority to engage in activities than are specified under current regulations. Accordingly, OTS has not prepared a budgetary impact statement for this rule or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

For the reasons stated in the preamble, the Office of Thrift Supervision proposes to amend 12 CFR part 584 as follows:

PART 584—SAVINGS AND LOAN HOLDING COMPANIES

1. Revise the part heading for part 584 to read as shown above.

2. The authority citation for part 584 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

3. Revise § 584.2(b)(6)(i) to read as follows:

584.2 Prohibited activities.

* * * * *

(b) * * *

(6) * * *

(i) That the Board of Governors of the Federal Reserve System has permitted for bank holding companies pursuant to regulations promulgated under section 4(c) of the Bank Holding Company Act; or

* * * * *

4. Amend § 584.2–2(a) by revising the first sentence and adding a new sentence at the end to read as follows:

(a) *General.* For purposes of § 584.2(b)(6)(i) of this part, the services and activities permissible for bank holding companies pursuant to regulations that the Board of Governors of the Federal Reserve System has promulgated pursuant to section 4(c) of the Bank Holding Company Act are permissible for savings and loan holding companies, or subsidiaries thereof that are neither savings associations nor service corporation subsidiaries of subsidiary savings associations: * * *

Activities that are permissible under other provisions of section 10(c) of the HOLA without prior OTS notice or approval, and activities that are permissible without prior notice or approval under regulations that the Board of Governors of the Federal Reserve System has promulgated pursuant to section 4(c) of the Bank Holding Company Act are preapproved.

5. Revise § 584.4 to read as follows:

§ 584.4 Certain acquisitions by savings and loan holding companies.

(a) *Acquisitions by a savings and loan holding company of more than five percent of a non-subsidiary savings association or savings and loan holding company.* No savings and loan holding company, directly or indirectly, or through one or more subsidiaries or through one or more transactions, shall, without prior written OTS approval, acquire by purchase or otherwise, or retain, more than five percent of the voting stock or shares of a savings association not a subsidiary, or of a savings and loan holding company not a subsidiary. A savings and loan holding company seeking approval of an acquisition under this section must file an application under 12 CFR part 516, subpart A. Applications filed under this section are subject to the publication, public comment, and meeting provisions of 12 CFR part 516, subparts B, C, and D. OTS will review applications filed under this section under the review standards set forth for savings and loan holding company applications in section 10(e)(2) of the HOLA, § 574.7(c) of this chapter, and § 563e.29(a) of this chapter.

(b) *Certain acquisitions by multiple savings and loan holding companies.*

No multiple savings and loan holding company (other than a savings and loan holding company described in § 584.2a(a)(1)(ii) of this part) may, directly or indirectly, or through one or more subsidiaries or through one or more transactions, acquire or retain more than five percent of the voting shares of any company that is not a subsidiary that is engaged in any business activity other than those specified in § 584.2(b) of this part.

(c) *Exception for certain acquisitions of voting shares of savings associations and savings and loan holding companies.* Paragraphs (a) and (b) of this section do not apply to voting shares of a savings association or of a savings and loan holding company—

(1) Held as a *bona fide* fiduciary (whether with or without the sole discretion to vote such shares);

(2) Held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(3) Held in an account solely for trading purposes or over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(4) Acquired in securing or collecting a debt previously contracted in good faith, for two years after the date of acquisition or for such additional time (not exceeding three years) as the Office may permit if, in the Office's judgment, such an extension would not be detrimental to the public interest;

(5) Acquired under section 13(k)(1)(A)(i) of the Federal Deposit Insurance Act (or section 408(m) of the National Housing Act as in effect immediately prior to the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989);

(6) Held by any insurance companies as defined in section 2(a)(17) of the Investment Company Act of 1940: *Provided*, That all shares held by all insurance company affiliates of such savings association or savings and loan holding company may not, in the aggregate, exceed five percent of all outstanding shares or of the voting power of the savings association or savings and loan holding company, and such shares are not acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company; and

(7) Acquired pursuant to a qualified stock issuance if such a purchase is approved pursuant to § 574.8 of this chapter.

The aggregate amount of shares held under this subparagraph (c) (other than pursuant to subparagraphs (c)(1), (c)(2), (c)(3), (c)(4) and (c)(6)) may not exceed 15 percent of all outstanding shares or the voting power of a savings association or savings and loan holding company.

(d) *Acquisitions of uninsured institutions.* No savings and loan holding company may, directly or indirectly, or through one or more subsidiaries or through one or more transactions, acquire control of an uninsured institution or retain, for more than one year after the date any savings association subsidiary becomes uninsured, control of such association.

Dated: March 20, 2007.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E7–5453 Filed 3–26–07; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR PARTS 748 and 749

RIN 3133–AD24

Records Preservation Program and Appendices—Record Retention Guidelines; Catastrophic Act Preparedness Guidelines

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA proposes to amend its regulations to address a federally-insured credit union's obligation to maintain a records preservation program. The proposed rule draws from existing guidance to clarify requirements for preserving vital records and to suggest important items for consideration in restoring vital member services. NCUA believes the revised language and new appendix will facilitate the recovery of essential operations after a catastrophic act resulting in continued member confidence in the credit union system. The agency also proposes to amend its regulations to clarify the meaning of catastrophic act.

DATES: Comments must be received on or before May 11, 2007.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs. html*. Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Proposed Rule Parts 748 and 749,'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6540 or send an e-mail to *OGCMail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Andrew Healey, Program Officer, Division of Supervision, Office of Examination and Insurance, at (703) 518–6360 or Linda K. Dent, Staff Attorney, Office of General Counsel, at (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

Lessons learned from previous catastrophic acts, including the dramatic effects of the Katrina and Rita hurricanes, indicate the importance of preserving vital records and swiftly restoring vital member services. In particular, NCUA's review of events in the hurricanes' aftermath demonstrates the need for advance planning and preparation in successfully responding to a catastrophic act.

Challenges such as providing members with access to funds and account information, loss of, or lack of, access to facilities, and locating and communicating with staff were some of the immediate issues credit unions faced. Fortunately, affected credit unions did not face these challenges alone. Help came from NCUA, other credit unions, trade organizations, and service providers. For example, NCUA operated a call center to assist credit union members in contacting their institutions. Agency field staff checked on credit union facilities, helped locate staff, assisted credit unions with equipment needs, and helped credit unions restore share and loan data where necessary. Other credit unions mobilized to send needed cash, provided operating space, made staff available, and sent needed equipment to affected credit unions. Trade organizations served as a clearinghouse to match those with resources with those in need. Shared branch facilities signed on institutions enabling them to service displaced members.

In reviewing these experiences, the Board determined credit unions, which had considered potential threats and identified critical functions necessary for the retrieval of vital records, were able to address anticipated challenges and unforeseen difficulties and restore vital member services. These institutions were able to provide members with access to their funds and handle member inquiries in a relatively short time period. The proposed amendments draw from these experiences to identify program elements the Board considers essential to restoring vital records and member services.

Many of these elements are covered in previous NCUA guidance issued to federally-insured credit unions (FICUs) on disaster recovery planning. Despite the existence of this guidance, the Board is concerned that some credit unions may not be maintaining sufficient plans and safeguards to respond to events causing the destruction of vital records or catastrophic acts. The Board believes this proposal is necessary to ensure credit unions address these critical issues in the paramount interest of maintaining services to members and confidence in the credit union system if a catastrophic act occurs.

Proposed Changes

The proposed changes specifically address the Board's concerns regarding restoration of vital member records and services. The proposed changes establish minimum standards for preserving vital records and include recommendations concerning restoring member services considered vital to a credit union's continued operation.

Part 748

The Board proposes to revise the definition of catastrophic act to clarify that any event causing an interruption in vital member services for more than two business days is a qualifying event.

Part 749

Several of the proposed changes pertain to format and grammar and are made to clarify the rule's language. For example, the Board proposes to eliminate the question format currently used in the section headings and replace these with language simply describing each section's contents. Section 749.1 includes two changes of note. Changes to the vital records definition clarify that share, deposit, and loan balances for each member's account should be available as of the most recent business day, while a financial report of the credit union's asset and liability accounts and bank reconcilements should be available as of the most recent month's end. All other vital records should be updated as changes occur. A new paragraph (d) is added requiring

credit unions to maintain certain emergency contact information.

The definition of a vital records center remains the same, essentially a fixed site in a geographic area different from the credit union's primary site and that is unlikely to be negatively affected by the same catastrophic act whether natural or otherwise, for example, a power grid failure. The Board proposes to add a phrase which clarifies the back-up site may be another federally-insured credit union. The Board also proposes to add a sentence to the end of this section to address the importance of having any equipment or software necessary to access the vital records at the center.

The proposed rule also includes recommendations on restoring vital member services for a credit union. Specifically, § 749.0 suggests a credit union should complement its plans for safeguarding and reconstructing vital records by establishing a method for restoring vital member services in the event of a catastrophic act. Similarly, § 749.2 recommends that procedures for maintaining duplicate vital records should include a method for using these records to restore vital member services.

Appendix B—Catastrophic Act Preparedness Guidelines

NCUA has issued considerable guidance relative to disaster preparedness which parallels preparation for a catastrophic act as set forth below:

Letter to Credit Unions 01–CU–21 Disaster Recovery and Business Resumption Contingency Plans; *Letter to Credit Unions 03–CU–07* FFIEC Release of Information Technology Examination Handbook; *Risk Alert 06–Risk–01* Disaster Planning and Response; *Letter to Credit Unions 06–CU–06* Influenza Pandemic Preparedness; *Letter to Credit Unions 06–CU–10* NCUA's Information System and Technology Program—Business Continuity Planning Questionnaire; *Letter to Credit Unions 06–CU–11* Interagency Guidance Lessons Learned By Institutions Affected by Hurricane Katrina; and *Letter to Credit Unions 06–CU–12* Disaster Preparedness & Response Examination Procedures.

The Board recognizes credit unions generally engage in some form of planning for responses to catastrophic acts and have access to existing guidance. The Board is specifically interested in commenters' feedback on the usefulness and/or need of including a new appendix providing recommended information credit unions could use in preparing for a catastrophic act.

Regulatory Procedures

NCUA Interpretive Ruling and Policy Statement 87–2

The comment period for this proposal has been shortened to 45 days. The NCUA Board believes it is important to expedite the rulemaking process in this matter to allow for its completion prior to the height of the approaching hurricane season.

Paperwork Reduction Act

The proposed changes involve information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), NCUA is submitting a copy of this proposed rule as part of an information collection package to the Office of Management and Budget (OMB) for its review.

The proposed rulemaking amends an existing requirement for a records preservation program by requiring the program be in writing and include emergency contact information for designated persons.

The Board believes these requirements will not create an undue burden on credit unions as it expects credit unions will document existing plans and practices. The Board estimates 8,405 respondents will take an average of one hour to comply with these requirements. Additionally, 15 respondents representing newly-chartered credit unions will take an average of seven hours to develop a written records preservation program. The total annual collection burden is estimated to be approximately 8,510 hours.

The Paperwork Reduction Act and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board invites comment on: (1) Whether the paperwork requirements are necessary; (2) the accuracy of NCUA's estimates on the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements.

Comments should be sent to: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503; Attention: Mark Menchik, Desk Officer for NCUA. Please send NCUA a copy of any comments submitted to OMB.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NCUA on the proposed regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small entities. 5 U.S.C. 601–612. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2.

The NCUA has determined and certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not required. NCUA solicits comment on this analysis and welcomes any information that would suggest a different conclusion.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntary complies with the executive order. This proposed rule, if adopted, will not have substantial direct effects on the states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

Treasury and General Government Appropriations Act, 1999

NCUA has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR Part 748

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 749

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 15, 2007.

Mary Rupp,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 748 as follows:

PART 748—SECURITY PROGRAM, REPORT OF SUSPECTED CRIMES, SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS AND BANK SECRECY ACT COMPLIANCE

1. The authority citation for parts 748 and 749 continues to read as follows:

Authority: 12 U.S.C. 1766(a) and 1786(q); 15 U.S.C. 6801 and 6805(b); 31 U.S.C. 5311 and 5318.

2. Amend § 748.1 by revising the second sentence of paragraph (b) to read as follows:

§ 748.1 Filing of reports.

* * * * *

(b) * * * A catastrophic act is any event, natural or otherwise, resulting in physical destruction or damage to the credit union or an interruption in vital member services projected to last more than 2 business days. * * *

* * * * *

PART 749—RECORDS PRESERVATION PROGRAM AND APPENDICES—RECORD RETENTION GUIDELINES; CATASTROPHIC ACT PREPAREDNESS GUIDELINES

1. The authority citation for part 749 continues to read as follows:

Authority: 12 U.S.C. 1766, 1783 and 1789; 15 U.S.C. 7001(d).

2. Amend part 749 by revising the part heading to read as set forth above.

3. Revise § 749.0 to read as follows:

§ 749.0 Purpose and scope.

(a) This part describes the obligations of all federally-insured credit unions to maintain a records preservation program to identify, store and reconstruct vital records in the event that the credit union's records are destroyed and provides recommendations for restoring vital member services. All credit unions must have a written program that includes plans for safeguarding records and reconstructing vital records. To complement these plans, it is recommended a credit union develop a method for restoring vital member services in the event of a catastrophic act. Additionally, the regulation establishes flexibility in the format credit unions may use for maintaining writings, records or information required by other NCUA regulations.

(b) Appendix A to this part provides guidance concerning the appropriate length of time credit unions should retain various types of operational records. Appendix B to this part also provides guidance for developing a program for responding to a catastrophic act to ensure duplicate vital records can be used for restoration of vital member services.

4. Revise § 749.1 to read as follows:

§ 749.1 Definitions.

For purposes of this part:

Vital member services mean informational account inquiries, share withdrawals and deposits, and loan payments and disbursements.

Vital records refer to the following records:

(a) A list of share, deposit, and loan balances for each member's account as of the most recent business day that:

(1) Shows each balance individually identified by a name or number;

(2) Lists multiple loans of one account separately; and

(3) Contains information sufficient to enable the credit union to locate each member, such as address and telephone number.

(b) A financial report, which lists all of the credit union's asset and liability accounts and bank reconcilements, current as of the most recent month-end.

(c) A list of the credit union's accounts at financial institutions, insurance policies, and investments along with related contact information, current as of the most recent month-end.

(d) Emergency contact information for employees, officials, regulatory offices, and vendors used to support vital records.

5. Revise § 749.2 to read as follows:

§ 749.2 Vital records preservation program.

The board of directors of a credit union is responsible for establishing a vital records preservation program within 6 months after its insurance certificate is issued. The program must be in writing and contain procedures for maintaining duplicate vital records at a vital records center. The procedures must include: designated staff responsible for vital records preservation, a schedule for the storage and destruction of records, and a records preservation log detailing for each record stored, its name, storage location, storage date, and name of the person sending the record for storage. It is recommended credit unions include in these procedures a method for using duplicate records to restore vital member services in the event of catastrophic act. Credit unions which have some or all of their records maintained by an off-site data processor are considered to be in compliance for the storage of those records if the service agreement specifies the data processor safeguards against the simultaneous destruction of production and back-up information.

6. Revise § 749.3 to read as follows:

§ 749.3 Vital records center.

A vital records center is defined as a storage facility, which may include another federally-insured credit union, at any location far enough from the credit union's offices to avoid the simultaneous loss of both sets of records in the event of a catastrophic act. A credit union must maintain or contract with a third party to maintain any equipment or software for its vital records center necessary to access records.

7. Revise § 749.4 to read as follows:

§ 749.4 Format for vital records preservation.

Preserved records may be in any format that can be used to reconstruct the credit union's records. The format used must accurately reflect the information in the record, remain accessible to all persons entitled to access by statute, regulation or rule of law, and be capable of reproduction by transmission, printing, or otherwise.

8. Revise § 749.5 to read as follows:

§ 749.5 Format for records required by other NCUA regulations.

Where NCUA regulations require credit unions to retain certain writings, records or information, credit unions may use any format that accurately reflects the information in the record, is accessible to all persons entitled to access by statute, regulation or rule of law, and is capable of being reproduced by transmission, printing, or otherwise. The credit union must maintain the necessary equipment or software to permit an examiner to access the records during the examination process.

9. Add new Appendix B to Part 749 to read as follows:

Appendix B to Part 749—Catastrophic Act Preparedness Guidelines

Credit unions often look to NCUA for guidance on preparing for a catastrophic act. While NCUA has minimal regulation in this area [1], as an aid to credit unions it is

[1] See 12 CFR 748.1(b) concerning a FICU's reporting of any catastrophic act that occurs at its office to its regional director and 12 CFR 749.3 concerning the location of a FICU's vital records center to avoid the simultaneous loss of both sets of records in the event of disaster.

publishing this appendix of suggested guidelines. It is recommended that all credit unions develop a program to prepare for a catastrophic act. The program should be developed with oversight and approval of the board of directors. It is recommended the program address the following five elements:

(1) A business impact analysis to evaluate potential threats;

(2) A risk assessment to determine critical systems and necessary resources;

(3) A written plan addressing:

(i) Persons with authority to enact the plan;

(ii) Preservation and ability to restore vital records;

(iii) A method for restoring of vital member services through identification of alternate operating location(s) or mediums to provide services, such as telephone centers, shared service centers, agreements with other credit unions, or other appropriate methods;

(iv) Communication methods for employees and members;

(v) Notification of regulators as addressed in 12 CFR 748.1(b);

(vi) Training and documentation of training to ensure all employees and volunteer officials are aware of procedures to follow in the event of destruction of vital records or loss of vital member services; and

(vii) Testing procedures, including a means for documenting the testing results.

(4) Internal controls for reviewing the plan at least annually and for revising the plan as circumstances warrant, for example, to address changes in the credit union's operations; and

(5) Annual testing.

[FR Doc. E7–5070 Filed 3–26–07; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 292

[Docket No. RM07–11–000]

Applicability of Federal Power Act Section 215 to Qualifying Small Power Production and Cogeneration Facilities

March 16, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing qualifying small power production and cogeneration facilities, to eliminate the exemption from the requirements of section 215 of the Federal Power Act. From a reliability perspective, there does not appear to be a meaningful distinction between QF and non-QF generators that would warrant exemption of QFs from mandatory Reliability Standards.

DATES: Comments are due April 17, 2007.

ADDRESSES: You may submit comments, identified by Docket No. RM07–11–000, by one of the following methods:

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

FOR FURTHER INFORMATION CONTACT:

Paul Singh (Technical Information), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8576.

Samuel Higginbottom (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8561.

SUPPLEMENTARY INFORMATION:

Introduction

1. The Commission is proposing to amend the exemptions available to qualifying facilities (QFs) so that they would no longer be exempt from newly-added section 215 of the Federal Power Act (FPA).[1] From a reliability perspective, there does not appear to be a meaningful distinction between QF and non-QF generators that would warrant exemption of QFs from mandatory Reliability Standards. The benefit of this proposal will be increased reliability of the North American Bulk-Power System.

Background

2. On August 8, 2005, the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005 (EPAct 2005), was enacted into law.[2] EPAct 2005 adds a new section 215 to the Federal Power Act (FPA),[3] which requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight.

3. On February 3, 2006, the Commission issued Order No. 672, which implements newly-added section 215 and provides specific processes for the certification of an entity as the ERO, the development and approval of mandatory Reliability Standards, and the compliance with and enforcement of approved Reliability Standards.[4] On April 4, 2006, North American Electric Reliability Corporation (NERC) made two filings: (1) An application for certification of NERC as the ERO; and (2) a petition for Commission approval of Reliability Standards, with eight regional differences and a glossary of terms. On July 20, 2006, the Commission issued an order certifying NERC as the ERO.[5] On October 20, 2006, the Commission issued a Notice of Proposed Rulemaking proposing to approve 83 of 107 proposed Reliability Standards.[6]

4. In response to the Reliability NOPR, Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC) filed comments pointing out that QFs are exempt from section 215 by virtue of section 292.601(c) of the Commission's regulations.[7] CAC/EPUC suggest that the Commission intentionally exempted QFs from section 215. CAC/EPUC explain that in Order No. 671 issued on February 2, 2006,[8] the Commission stated that it saw no reason to exempt QFs from the newly added FPA sections 220, 221 and 222,[9] and explicitly excluded those sections of the FPA from the QF exemptions contained in section 292.601 of its regulations, while making no similar mention of section 215.

5. Section 215(b) grants the Commission jurisdiction over ''all users, owners, and operators of the bulk-power system'' for ''purposes of approving

[1] 16 U.S.C. 824o.

[2] Energy Policy Act of 2005, Pub. L. No 109–58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005).

[3] 16 U.S.C. 824o.

[4] *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards,* Order No. 672, 71 FR 8662 (Feb. 17, 2006), FERC Stats. & Regs. ¶ 31,204 (2006), *order on reh'g,* Order No. 672–A, 71 FR 19814 (Apr. 18, 2006), FERC Stats. & Regs. ¶ 31,212 (2006).

[5] *North American Electric Reliability Corporation,* 116 FERC ¶ 61,062 (2006).

[6] *Mandatory Reliability Standards for the Bulk-Power Market,* 72 FR 64770 (Oct. 20, 2006), FERC Stats. & Regs. ¶ 32,608 (2006) (Reliability NOPR).

[7] 18 CFR 292.601(c).

[8] *Revised Regulations Governing Small Power Production and Cogeneration Facilities,* Order No. 671, 71 FR 7852 (Feb. 2, 2006), FERC Stats. & Regs. ¶ 31,203 (2006), *order on rehearing,* Order No. 771–A, 71 FERC 30583 (May 22, 2006), FERC Stats. & Regs. ¶ 31.219 (2006).

[9] 16 U.S.C. 824t–v.

reliability standards. . . . and enforcing compliance with [section 215]'', and further provides that ''[a]ll users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.'' [10] Given the statutory directive that all users, owners and operators of the bulk-power system must comply with the reliability standards that take effect under section 215, it may no longer be appropriate to allow QFs a continued exemption from compliance with the newly-adopted mandatory and enforceable Reliability Standards that apply to generator owners and operators.[11] Moreover, from a reliability perspective, there would seem to be no meaningful distinction between QF and non-QF generators that would warrant exemption of QFs from the newly-adopted mandatory Reliability Standards. Indeed, QF generators would seem to affect the reliability of the Bulk-Power System as much as non-QF generators, and so QF generators should be subject to the newly-adopted mandatory Reliability Standards. In this regard, we note that while many QFs are small facilities, others are quite large. We see no justification for large facilities to be exempt from the newly-adopted mandatory and enforceable Reliability Standards. Accordingly, we are proposing to amend § 292.601(c)(3) to add section 215 to the list of FPA sections from which QFs are not exempt.

6. The threshold for applicability of the Reliability Standards to generating units is 20 MVA (gross nameplate rating) for an individual generating unit, or 75 MVA (gross nameplate rating) in aggregate for a generating plant.[12] In addition, the Reliability Standards are applicable to: any generator, regardless of size that is a blackstart unit material to and designated as part of a transmission operator entity's restoration plan; or any generator, regardless of size, that is material to the reliability of the bulk-power system; the determination to include an otherwise exempt facility would be made on a facility-by-facility basis by the ERO or Regional Entity. However, an entity that disagrees with NERC's determination to place it in the compliance registry may submit a challenge in writing to NERC and, if still not satisfied, may lodge an appeal with the Commission. Therefore, a small entity may appeal to the Commission if it believes it should not be required to comply with the Reliability Standards. According to the Energy Information Administration (EIA), the total universe of qualifying facilities is 3,265 entities. Of these, 2,423 entities are below 20 MW (which, as noted above, roughly corresponds to the 20 MVA standard for applicability of the reliability standards), which leaves 842 entities that could be potentially impacted by the reliability standards. Of these 842 entities, only 745 are listed by EIA as being interconnected to the grid. Thus, out of a total of 3265 QFs, only 745, or 23 percent of all QFs would meet the generally applicable threshold of 20 MVA (although some other QFs may be specified as either blackstart units material to and designated as part of a transmission operator entity's restoration plan or as generators material to the reliability of the bulk-power system). In sum, while there would seem to be no basis to exempt all QFs from the mandatory and enforceable Reliability Standards, as a result of the threshold for applicability of the Reliability Standards to generating units, and based on EIA data, it appears that less than a quarter of all QFs will, in fact, be affected by our proposal to eliminate the QF exemption from the requirements of section 215 of the FPA.

Information Collection Statement

7. The Paperwork Reduction Act (PRA) [13] requires each Federal agency to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons, or continuing a collection for which the Office of Management and Budget (OMB) approval and validity of the control number are about to expire.[14] The PRA defines the phrase ''collection of information'' to be the ''obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States; or (ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes.'' [15] OMB regulations require approval of certain information collection requirements imposed by agency rules.[16]

8. As noted above, the Commission is proposing to amend the exemption available to qualifying facilities from the requirements of section 215 of the FPA. Because the Commission is not proposing information collections in this rulemaking, it is not subject to OMB review under the PRA. However, the Commission will submit for informational purposes only a copy of this rulemaking to OMB.

Environmental Analysis

9. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[17] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. As explained above, this proposed rule carries out the intent of legislation, specifically section 215 of the FPA. It lifts an exemption and thus makes section 215 of the FPA applicable to QFs; it does not substantially change the effect of the legislation. Accordingly, no environmental consideration is necessary.[18]

Regulatory Flexibility Act Analysis

10. The Regulatory Flexibility Act of 1980 (RFA) [19] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. The total universe of qualifying facilities is 3,265 entities. Of these, 2,423 entities are below 20 MW (the threshold for applicability of the Reliability Standards is 20 MVA for an individual generating unit, or 75 MVA in aggregate for a generating plant [20]) which leaves 842 entities that could be potentially impacted by the reliability standards. Of these 842 entities, only 745 are listed as being interconnected to the grid. Accordingly, we estimate that out of a total of 3265 QFs, only 745, or 23 per cent of all QFs would likely be affected by the change in regulations proposed here. Thus, most, if not all, QFs affected by this rule do not fall

[10] 16 U.S.C. 824o(b). Section 215(b) also states that entities described in section 201(f), entities that are otherwise exempt from Part II of the FPA unless a provision is specifically applicable to those entities, are subject to section 215. *Id.*

[11] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242 (2007) (issued concurrently with this NOPR).

[12] *Id.* A 20 MVA threshold corresponds to 20 MW, if a unit is operating at a unity power factor.

[13] 44 U.S.C. 3501–3520.

[14] 44 U.S.C. 3502(3)(A)(i), 44 U.S.C. 3507(a)(3).

[15] 44 U.S.C. 3502(3)(A).

[16] 5 CFR 1320.11.

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

[18] 18 CFR 380.4(a)(2)(ii).

[19] 5 U.S.C. 601–12.

[20] The 20 MVA threshold corresponds to 20 MW, if a unit is operating at a unity power factor.

within the definition of small entities,[21] nor do they meet the threshold criteria for applicability of the RFA to electric utilities established by the Small Business Administration, which is based on a size standard of 4 million MWh.[22]

Comment Procedures

11. The Commission invites interested persons to submit comments on the change proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due April 16, 2007. Comments must refer to Docket No. RM07–11–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments and reply comments may be filed either in electronic or paper format.

12. Comments and reply comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments and reply comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC, 20426.

13. All comments and reply comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments and reply comments on other commenters.

Document Availability

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

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

16. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or (202) 502–8222 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659 (e-mail at *public.referenceroom@ferc.gov*).

List of Subjects in 18 CFR Part 292

Electric power, Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Philis J. Posey,

Acting Secretary.

In consideration of the foregoing, the Commission proposes to amend part 292, Chapter I, Title 18, *Code of Federal Regulations,* to read as follows.

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

1. The authority citation for part 292 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 292.601 paragraph (c)(3) is revised to read as follows:

§ 292.601 Exemption to qualifying facilities from the Federal Power Act.

* * * * *

(c) * * *

(3) Sections 202(c), 210, 211, 212, 213, 214, 215, 220, 221 and 222;

* * * * *

[FR Doc. E7–5285 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

[21] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. See 15 U.S.C. 632.

[22] The Small Business Size Standard component of the North American Industry Classification System (NAICS) defines a small utility as one that, including its affiliates, is primarily engaged in generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 million MWh. 13 CFR 121.201.

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 244

RIN 0750–AF61

Defense Federal Acquisition Regulation Supplement; Closeout of Contract Files (DFARS Case 2006–D045)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove text addressing DoD procedures for closeout of contract files. The text proposed for removal will be relocated to the DFARS companion resource, Procedures, Guidance, and Information.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before May 29, 2007, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D045, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2006–D045 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Deborah Tronic, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Tronic, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule revises DFARS 204.804 to remove text addressing DoD procedures for closeout of contract files. The text will be relocated to the DFARS companion resource, Procedures, Guidance, and Information (PGI). The proposed rule also amends DFARS 244.304 to clarify an existing reference to corresponding PGI text.

Additional information on PGI is available at *http://www.acq.osd.mil/dpap/dars/pgi/index.htm.*

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule pertains to administrative procedures for contract closeout functions performed by the Government. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D045.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 204 and 244

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Parts 204 and 244 as follows:

1. The authority citation for 48 CFR parts 204 and 244 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.804 is revised to read as follows:

204.804 Closeout of contract files.

Contracting officers shall close out contracts in accordance with the procedures at PGI 204.804. The closeout date for file purposes shall be determined and documented by the procuring contracting officer.

204.804–1 and 204.804–2 [Removed]

3. Sections 204.804–1 and 204.804–2 are removed.

PART 244–SUBCONTRACTING POLICIES AND PROCEDURES

4. Section 244.304 is amended in paragraph (b) by revising the second sentence to read as follows:

244.304 Surveillance.

(b) * * * See PGI 244.304(b) for guidance on how weaknesses may arise and may be discovered.

[FR Doc. E7–5473 Filed 3–26–07; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register

Vol. 72, No. 58

Tuesday, March 27, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0177]

Notice of Request for Extension of Approval of an Information Collection; District of Columbia Plant Health Certificate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the interstate movement of plants and plant products from the District of Columbia.

DATES: We will consider all comments that we receive on or before May 29, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0177 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0177, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0177.

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

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

FOR FURTHER INFORMATION CONTACT: For information on an information collection associated with the regulations for the interstate movement of plants and plant products from the District of Columbia, contact Mr. Jonathan Jones, Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 734–5038. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: District of Columbia Plant Health Certificate.

OMB Number: 0579–0166.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) is responsible for facilitating the interstate movement of agricultural products and commodities in ways that will reduce the risk of disseminating plant pests and noxious weeds.

The regulations in 7 CFR part 302, ''District of Columbia; Movement of Plants and Plant Products,'' set out procedures for the inspection and certification of plants and plant products moving interstate from the District of Columbia. The regulations provide that, whenever inspection and documentation of plants or plant products are required by Federal or State laws or regulations prior to the interstate movement of those plants or plant products, APHIS will provide those services. APHIS, rather than the District of Columbia, provides those services because the District of Columbia, unlike most States, has no official plant protection service. The form APHIS uses to certify the plant pest status of plants or plant products to be moved interstate from the District of Columbia is the District of Columbia Plant Health Certificate (PPQ Form 571).

We are asking the Office of Management and Budget (OMB) to approve our use of this form for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.2 hours per response.

Respondents: Shippers and growers of plants and plant materials.

Estimated annual number of respondents: 2.

Estimated annual number of responses per respondent: 50.

Estimated annual number of responses: 100.

Estimated total annual burden on respondents: 20 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 21st day of March 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–5571 Filed 3–26–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0038]

Availability of an Environmental Assessment for a Field Release of Tobacco Genetically Engineered To Produce Antibodies

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared an environmental assessment for a proposed field release involving a transgenic tobacco line that has been genetically engineered to produce an antimicrobial antibody that binds to a bacterium (*Streptococcus mutans*) associated with tooth decay in humans. The purpose of this field release is to generate plant biomass from which the antibody will be extracted after harvest. The environmental assessment is available to the public for review and comment.

DATES: We will consider all comments received on or before April 26, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0038 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instruction for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0038, Regulatory Analysis and Development, PPD APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0038.

Reading Room: You may read the environmental assessment and any comments we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming. The environmental assessment is available on the Internet at *http://aphis.usda.gov/brs/aphisdocs/05_35401r_ea.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Dr. Margaret Jones, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–4880. To obtain copies of the environmental assessment, contact Ms. Cynthia Eck at (301) 734–0667; e-mail: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release in the environment of a regulated article.

On December 21, 2005, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 05–354–01r) from Planet Biotechnology, Inc., of Hayward, CA, for a field trial using a line of transgenic tobacco. Permit application 05–354–01r describes a transgenic tobacco line (*Nicotiana tabacum* L.), designated as H8–105, that produces a chimeric antimicrobial antibody (trade name CaroRx™) that binds to the bacterium *Streptococcus mutans,* which is associated with tooth decay in humans. Expression of the gene sequence is controlled by the cauliflower mosaic virus (CaMV) promoter and terminated by NOS from *Agrobacterium tumefaciens* and utilizes the selectable marker NPTII from *Escherichia coli.* Constructs were inserted into the recipient organisms via a disarmed *Agrobacterium tumefaciens* vector system. The antibodies generated from this planting will be extracted after harvest.

The subject tobacco is considered a regulated article under the regulations in 7 CFR part 340 because it has been genetically engineered using the recombinant DNA technique using a vector derived from *Agrobacterium tumefaciens.*

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risks associated with the proposed release of these transgenic tobacco plants, an environmental assessment (EA) has been prepared. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The EA may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this notice.) In addition, copies may be obtained by calling or writing to the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 21st day of March 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–5570 Filed 3–26–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–816]

Corrosion–Resistant Carbon Steel Flat Products from Korea: Notice of Initiation of Antidumping Duty New Shipper Review for the period August 1, 2006, through January 31, 2007

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 27, 2007.

SUMMARY: The Department of Commerce (''the Department'') has received a request to conduct a new shipper review of the antidumping duty (''AD'') order on corrosion–resistant carbon steel flat products from Korea (''CORE Korea''). In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214, we are initiating an AD new shipper review for Haewon MSC Co., Ltd. (''Haewon''). On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct U.S. Customs and Border Protection to collect a bond or other security in lieu of a cash deposit in new shipper reviews. Therefore, the posting of a bond under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of subject merchandise manufactured and exported by Haewon must continue to pay a cash deposit of estimated antidumping duties on each entry of subject merchandise at the current all–others rate of 17.70 percent.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, or Victoria Cho, at (202) 482–4161 or (202) 482–5075, respectively; AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 2007, the Department received a timely request from Haewon, in accordance with 19 CFR 351.214(c), for a new shipper review of the AD order on CORE Korea, which has a August anniversary month.[1]

As required by 19 CFR 351.214(b)(2)(i) and (iii)(A), Haewon certified that it did not export subject merchandise to the United States during the period of investigation (''POI''), and that it has never been affiliated with any exporter or producer which exported subject merchandise during the POI.[2] Pursuant to 19 CFR 351.214(b)(2)(iv), the company submitted documentation establishing the date of the sale of subject merchandise to an unaffiliated customer in the United States, date of shipment, quantity, volume, and price of the shipment, and lack of subsequent shipments.[3]

Initiation of Review

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214, and based on information on the record, we are initiating an AD new shipper review for Haewon. The standard period of review in a new shipper review initiated following the semiannual anniversary month is the six months preceding the semiannual anniversary month.[4] We intend to issue the preliminary results of this new shipper review not later than 180 days after initiation of this review and issue final results of this review no later than 90 days after the date on which the preliminary results are issued. *See* 19 CFR 351.214(i).

New Shipper Review Proceeding	Period to be Reviewed
Haewon	08/01/2006 - 01/31/2007

Dated: March 21, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–5580 Filed 3–26–07; 8:45 am]

BILLING CODE 3510–DS–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') has submitted a public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ms. Angela Roberts, at (202) 606–6822, (*aroberts@cns.gov*); (TTY/TDD) at (202) 606–5256 between the hours of 9 a.m. and 4 p.m. Eastern Time, Monday through Friday.

DATES: Comments may be submitted, identified by the title of the information collection activity, by any of the following two methods listed in the address section, within 30 days from the date of publication in this **Federal Register**.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, by any of the following two methods:

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

[1] *See Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea*, 58 FR 44159 (August 19, 1993).

[2] *See* submission from Haewon MSC Co., Ltd., regarding Request for New Shipper Review, Case A-580-816, dated February 28, 2007.

[3] Id.

[4] *See Certain Pasta From Italy: Initiation of New Shipper Antidumping Duty Administrative Review*, 62 FR 8927 (February 27, 1997).

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice, regarding modification of the Project Progress Report was published in the **Federal Register** on January 17, 2007. This comment period ended on March 19, 2007. A total of 10 responses were received, some of which contained multiple comments, representing a total of 31 individuals. The summary of comments received is as follows:

In Summary:

(a) Six comments supported the suggested changes and noted that the proposed revisions will make reporting easier and more streamlined.

(b) One comment suggested that the semi-annual ''Data Demographic'' section be retained, and that the proposed annual Data Supplemental Sheet (known as the Project Profile and Volunteer Activity) be eliminated. The Corporation believes that its proposal will result in more streamlined reporting and greater data accuracy, since all projects would report activities and outputs within the same time period. This is currently not the case, due to the fact that grantees submit Project Progress Reports according to their own grant cycle.

(c) Four comments were beyond the scope of this information collection. They included one observation that overall burden has increased at the local level due to the greater emphasis on outcome-based programming. The emphasis on quantifiable outputs and outcomes transcends the Corporation and applies to all federal agencies under the Government Performance and Results Act (GPRA) and as such, the Corporation lacks discretion to implement changes resulting in lack of outcome performance. Another comment requested that deadline for report submission be increased from the current 30 days after the close of the 6-month period to 45 days after the close of the 6-month period. The due dates of reports after the close of the reporting period is determined by Corporation policy that applies to all of the agency's programs. The standard is currently 30 days. The Senior Corps will share this request for a 45-day due date with the agency-wide Compliance Working Group for consideration.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: National Senior Service Corps (Senior Corps) Project Progress Report.

OMB Number: 3045–0033.

Agency Number: CNCS Form 1020.

Affected Public: Sponsors of Senior Corps grants.

Total Respondents: 1,350.

Frequency: Semi-annual.

Average Time Per Respondent: 8 hours annually based on reporting semi-annually without Data Demographics and reporting Data Supplement annually.

Estimated Total Burden Hours: 10,800.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $2,000.

Description: The Corporation seeks to renew and revise the current OMB approved Progress Report. When revised, the Progress Report will: (a) Eliminate all quarterly submissions of the PPR; (b) change the submission frequency of narrative and work plan sections to 100 percent semi-annual and; (c) eliminate the ''Data Demographic'' section of the PPR; and (d) change the submission frequency of the ''Data Supplemental'' section from biennial to annual. The revised PPR will be used in the same manner as the existing PPR to report progress toward accomplishing work plan goals and objectives, reporting volunteer and service outputs; reporting actual outcomes related to self-nominated performance measures meeting challenges encountered, describing significant activities, and requesting technical assistance. These proposed modifications will continue to ensure that the information collection captures appropriate data for the Corporation's required performance measurement and other reporting.

The Project Progress Report (PPR) was designed to assure that Senior Corps grantees address and fulfill legislated program purposes, meet agency program management and grant requirements, and assess progress toward work plan objectives agreed upon in the granting of the award.

Dated: March 21, 2007.

Tess Scannell,

Director, Senior Corps.

[FR Doc. E7–5585 Filed 3–26–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Sunshine Act; Notice of Partially-Closed Meeting

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs); DoD.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the following meeting notice is announced. In accordance with section 10(a)(2) of Public Law.

NAME OF COMMITTEE: Defense Health Board (DHB).

DATES: April 10, 2007 (Closed Session). April 11, 2007 (Open Session).

TIMES: 8:30 a.m.–12 p.m. (April 10, 2007). 1 p.m.–4 p.m. (April 10, 2007). 9 a.m.–12 p.m. (April 11, 2007). 2 p.m.–4 p.m. (April 11, 2007).

LOCATION:

April 10, 2007, Executive Board Room, Walter Reed Army Institute of Research, 503 Robert Grant Avenue, Building 503, Silver Spring, Maryland 20910–7500.

April 11, 2007, Walter Reed Army Medical Center, 6900 Georgia Avenue, NW., Washington, DC 20307.

PURPOSE OF THE MEETING: The purpose of the meeting is to address and deliberate pending and new Board issues and provide briefing for Board members on topics to ongoing Board business.

AGENDA: The Defense Health Board will receive briefings in classified session relating to biological warfare countermeasures on the April 10, 2007. On April 11, 2007 during the morning session, the Board will receive updates on the activities Defense Health Board subcommittees; The Mental Health Task Force and The Task Force on the Future of the Military Health Care. In the afternoon at 2 p.m., The Board will deliberate in open session the draft findings and recommendations of the Independent Review Group To Report On Rehabilitative Care And Administrative Processes At Walter Reed Army Medical Center And National Naval Medical Center, a Defense Health Board subcommittee. The Board will also receive a briefing on

and will discuss the military vaccination program.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, in the interest of national security, the Department of Defense has determined that the meeting on April 10, 2007 will be closed to the public. The Under Secretary of Defense (Personnel and Readiness), in consultation with the Officer of the DoD General Counsel, has determined in writing that the public interest requires that session on April 10, 2007 meeting be closed to public because they will concern matters listed in section 552b(c)(1) of title 5, United States Code. Specifically the information presented meets criteria established by an executive order to be kept secret in the interest of national defense and foreign policy.

The Board will also conduct an administrative session on the afternoon of April 10, 2007 following the closed session. A preparatory session will be held on April 11, 2007 from 1 to 2 p.m. The administrative and preparatory sessions are closed to the public.

Any member of the public wishing to provide input to the Defense Health Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statement should be not longer than two type-written pages and must address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Interested persons may submit a written statement for consideration by the Defense Health Board. Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address detailed below, at any point. However, if a written statement is not received at least 10 calendar days prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Defense Health Board until the next open meeting.

The Designated Federal Officer will review all timely submissions with the Defense Health Board Chairperson, and ensure they are provided to members of the Defense Health Board before the meeting that is subject to this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

Designated Federal Officer, in consultation with the Defense Health Board Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Defense Health Board.

FOR FURTHER INFORMATION CONTACT: Colonel Roger L. Gibson, Executive Secretary, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Room 810, Falls Church, Virginia 22041–3206, (703) 681–3279, Ext. 123, (*roger.gibson@ha.osd.mil*). Additional information and meeting registration is available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb*. The public is encouraged to register to facilitate access the open location at Walter Reed Army Medical Center.

Dated: March 19, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–1491 Filed 3–23–07; 10:50 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Sunshine Act; Defense Task Force on Sexual Assault in the Military Services

AGENCY: Office of the Assistant Secretary of Defense (Personnel and Readiness); DoD.

ACTION: Notice of meeting cancellation.

SUMMARY: On March 12, 2007 (72 FR 10988), the Department of Defense announced a meeting on Defense Task Force on Sexual Assault in the Military Services. Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150 and 160, the following meeting cancellation notice is announced:

NAME OF COMMITTEE: Defense Task Force on Sexual Assault in the Military Services (hereafter referred to as the Task Force).

DATE: March 19, 2007 through March 21, 2007.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Marshall Hall, National Defense University; Fort McNair, Washington, DC 20319–5066.

PURPOSE OF THE MEETING: The purpose of the administrative and preparatory working meeting is to: (a) Discuss administrative matters of the Task Force; (b) receive administrative information from the Department of Defense; and (c) received background information from the Task staff, in preparation of the Task Force's first public meeting.

The administrative working meeting at Marshall Hall from 8:30 a.m. to 12 p.m. on Monday, March 19, 2007, was cancelled on March 15, 2007 and is to be rescheduled to a later to be determined date.

The preparatory working meetings at Marshall Hall from (a) 1:30 p.m. to 5 p.m. on Monday March 19, 2007; and (b) 8:30 a.m. to 12 p.m., and 1:30 p.m. to 5 p.m. on Tuesday and Wednesday March 20 and 21, 2007, were cancelled on March 15, 2007 and are to be rescheduled to a later to be determined date.

The decision to cancel the meeting was too close in time, March 15, 2007, to the start date, March 19, 2007, of the scheduled March 19, 2007 through March 21, 2007 meetings for the publication of a forward looking Notice of cancellation in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Lieutenant Shaka Thorne, U.S. Navy, Designated Federal Officer, Defense Task Force on Sexual Assault in Military Services, 2850 Eisenhower Ave., Suite 100, Alexandria, Virginia 22314. Telephone: (703) 325–6640, Fax: (703) 325–6710/6711, DSN# 221, *shaka.thorne@wso.whs.mil*

Dated: March 20, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–1493 Filed 3–23–07; 11:16 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[OMB Control Number 0704–0359]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Contract Financing

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C.

Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through December 31, 2007. DoD proposes that OMB extend its approval for use for three additional years.

DATES: DoD will consider all comments received by May 29, 2007.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0359, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include OMB Control Number 0704–0359 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. John McPherson, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. John McPherson, (703) 602–0296. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfars/index.htm.* Paper copies are available from Mr. John McPherson, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing, and related clause at DFARS 252.232–7007, Limitation of Government's Obligation; OMB Control Number 0704–0359.

Needs and Uses: This information collection requires contractors that are awarded incrementally funded, fixed-price DoD contracts to notify the Government when the work under the contract will, within 90 days, reach the point at which the amount payable by the Government (including any termination costs) approximates 85 percent of the funds currently allotted to the contract. This information will be used to determine what course of action the Government will take (*e.g.*, allot additional funds for continued performance, terminate the contract, or terminate certain contract line items).

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 800.

Number of Respondents: 800.

Responses per Respondent: 1.

Annual Responses: 800.

Average Burden per Response: 1 hour.

Frequency: On occasion.

Summary of Information Collection

This information collection includes requirements related to contract financing and payment in DFARS Part 232, Contract Financing, and the related clause at DFARS 252.232–7007, Limitation of Government's Obligation. DFARS Subpart 232.7, Contract Funding, limits the use of incrementally funded fixed-price contracts to situations where (1) the contract is for severable services, does not exceed one year in length, and is incrementally funded using funds available as of the date the funds are obligated; or (2) the contract uses funds available from two or more fiscal years and is funded with research and development appropriations, or Congress has otherwise authorized incremental funding. The clause at DFARS 252.232–7007 identifies procedures for incrementally funding the contract and requires the contractor to provide the Government with written notice when the work will reach the point at which the amount payable by the Government, including any termination costs, approximates 85 percent of the funds currently allotted to the contract.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E7–5477 Filed 3–26–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop, and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice, as is necessary, to facilitate high educational standards and cost effective operations. The BOV MCU will be focusing primarily on Professional Military Education in the Marine Corps. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Monday, April 16, 2007, from 8 a.m. to 4 p.m. and on Tuesday, April 17, 2007, from 8 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the Hooper Room at Marine Corps University, 2076 South Street, Quantico, VA 22134.

FOR FURTHER INFORMATION CONTACT: Mary Lanzillotta, Executive Secretary, Marine Corps University Board of Visitors, 2076 South Street, Quantico, VA 22134, telephone number 703–784–4037.

M. A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–5584 Filed 3–26–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority for a RRTC on Vocational Rehabilitation.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority on vocational rehabilitation under the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute

on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2007 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before April 26, 2007.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6030, Potomac Center Plaza, Washington, DC 20204–2700. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 245–7462.

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**.

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments on this notice of proposed priority in room 6030, 550 12th Street, SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice of proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or using additional priorities or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either: (1) Awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom*.

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html*.

Through the implementation of the NFI and the Plan, NIDRR seeks to—(1) Improve the quality and utility of disability and rehabilitation research; (2) Foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) Determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) Identify research gaps; (5) Identify mechanisms of integrating research and practice; and (6) Disseminate findings.

Rehabilitation Research and Training Centers (RRTCs)

RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC*.

General Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Priority

Background

Approximately 56 percent of working-age individuals with disabilities are employed, including 42 percent of those with severe disabilities, compared to the 88 percent of working-age individuals who do not have a disability who are employed (U.S. Census Bureau, 2002). The rate of employment among individuals with disabilities varies by type of disabling condition and severity of disability (U.S. Census Bureau, 2002).

As authorized under title I of the Rehabilitation Act of 1973, as amended, the Vocational Rehabilitation (VR) program, which is administered by the Rehabilitation Services Administration (RSA), has been providing employment services to individuals with disabilities

for more than eight decades. With agencies in every State and Territory, the VR program annually achieves more than 200,000 employment outcomes for individuals with disabilities, as the term employment outcome is defined in 34 CFR 361.5(b)(16).

The VR program exists within a complex and dynamic network of Federal and State policies and programs that provide employment services to individuals with disabilities with the purpose of obtaining employment outcomes and increasing earnings from employment. At the Federal level, these efforts include, but are not limited to, the Social Security Administration's Ticket to Work Program and other related work incentive and benefits planning initiatives, and the Department of Labor's ''one-stop'' career center program, which is part of the array of programs authorized under the Workforce Investment Act. At the State level, programs that provide employment services to individuals with disabilities include State developmental disability agencies and State mental health agencies. These and other State level agencies often use funds provided by the Centers for Medicare and Medicaid Services (CMS) through Medicaid waiver programs and Medicaid infrastructure grants, and may benefit from CMS Medicaid buy in provisions. Services to individuals are either delivered directly by State and local government agencies or by community non-governmental organizations (community NGOs). The differing arrangements and funding of State programs and the interaction of State, Federal and other programs and funding sources create a variety of complex employment service delivery structures for individuals with disabilities.

A strategic partnership between RSA and NIDRR, both of which are located in the Department's Office of Special Education and Rehabilitative Services, provides an opportunity to develop systematic knowledge of the variations in these complex and dynamic State-level structures, and the VR program's role and position within them. This new knowledge will provide the VR program with an empirical context in which services and service delivery systems and mechanisms can be designed to optimize VR outcomes and the employment of individuals with disabilities.

New knowledge about the VR program and how it relates to other employment policies and programs for individuals with disabilities will also provide an empirical context within which high-quality research on the employment status of individuals with disabilities can be conducted. NIDRR aims to sponsor research that will increase the number of validated interventions to enhance employment outcomes among individuals with disabilities (NIDRR Long Range Plan, 2005–2009). Without adequate knowledge of the complex and dynamic environment of policies and programs in which employment interventions are delivered to individuals with disabilities, research on those interventions is likely to lack validity and real-world applicability.

In addition to detailed information about the structure of disability employment services, service providers and researchers also require information about successful practices for prioritizing and providing services to individuals with the most significant disabilities. Section 101(a)(5) of the Rehabilitation Act requires that individuals with the most significant disabilities be selected first for VR services. Interpretation and implementation of this statutory requirement varies widely across the States. Research is needed to identify best practices for prioritizing the delivery of VR services to individuals with the most significant disabilities.

New knowledge about successful practices for serving individuals with the most significant disabilities is also needed. Individuals with developmental disabilities and mental illness have been identified as subpopulations that have particularly low rates of employment (U.S. Census Bureau, 2002). Identification of best practices for serving and placing individuals with these conditions will inform service delivery practice, and create intervention-related hypotheses that can be evaluated through rigorous research.

References

National Institute on Disability and Rehabilitation Research (2005). NIDRR Long-Range Plan: 2005–2009. See *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

U.S. Census Bureau (2002). Survey of Income and Program Participation. Table 5: Disability Status, Employment, and Annual Earnings: Individuals 21 to 64 Years Old: 2002. See *http://www.census.gov/hhes/www/disability/sipp/disable02.html.*

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the funding of a Rehabilitation Research and Training Center (RRTC) on Vocational Rehabilitation (VR) Services. The RRTC must conduct research on the complex employment service delivery structures for individuals with disabilities, investigate ''best VR practices'' in certain critical areas, and provide training and technical assistance in order to improve VR services and employment outcomes among individuals with disabilities. Under this priority, the RRTC must contribute to the following outcomes:

(a) A foundation of available knowledge about the VR program's characteristics and outcomes. The RRTC must contribute to this outcome by conducting a literature review and creating a synthesis of previous research on the system-level characteristics of the VR program, and outcomes associated with those characteristics. This review and synthesis will inform the subsequent research, training, and evaluation efforts of the RRTC.

(b) Increased knowledge about the broad constellation of Federal and State policies and programs through which employment services are delivered to individuals with disabilities, and the characteristics of individuals with disabilities who are receiving those services. The RRTC must contribute to this outcome by researching and providing a detailed State-by-State description of the larger employment services network and the role of the VR program within it. This research must identify and describe key characteristics of Federal, State and local government entities and community non-governmental organizations that either directly deliver or directly purchase employment services for individuals with disabilities.

(c) Increased knowledge of the structure and operations of VR service delivery practices at the State level. The RRTC must contribute to this outcome by researching and providing a detailed description of the key characteristics of each State's VR system. These characteristics should include, but not be limited to, VR service delivery structure and practices, patterns of resource allocation, patterns of internal and external provision of services, the extent to which the VR agency uses cooperative agreements with other agencies to deliver services, operational definitions of ''individuals with the most significant disabilities,'' characteristics of clients, employment outcomes and settings, the level of integration of work settings, the extent of use of home-based employment, and means of addressing transportation barriers. This research must describe elements internal to each State's VR agency or agencies, and provide a base upon which future researchers can analyze the operational consequences

and outcomes of different internal arrangements and agency decisions.

(d) Increased knowledge of ''best VR practices'' for prioritizing and providing services to individuals with the most significant disabilities. The RRTC must contribute to this outcome by conducting research on the extent to which individuals with the most significant disabilities are given priority for services from their respective State VR programs, and identifying best practices among the State VR programs in ensuring that individuals with the most significant disabilities receive services on a priority basis. Collection and analysis of data for this research must be coordinated with and informed by research on the disability employment service and VR structures described in paragraphs (b) and (c) of this priority. This coordination will allow ''best practices'' findings to be properly contextualized, and therefore more likely to be successfully applied in other States or agencies.

(e) Increased knowledge of ''best VR practices'' for individuals with developmental disabilities (DD) and individuals with mental illness (MI). The RRTC must contribute to this outcome by conducting research on best practices for placing or retaining individuals with DD and individuals with MI in jobs. Collection and analysis of data for this best practices research must be coordinated with and informed by research on the disability employment service and VR structures described in paragraphs (b) and (c) of this priority. This coordination will allow ''best practices'' findings to be properly contextualized, and therefore more likely to be successfully applied in other States or agencies.

(f) Enhancement of the knowledge base of State and Federal administrators of the VR program and other employment programs for individuals with disabilities, through disseminating research results and providing training and technical assistance based on the new knowledge about the disability employment service structures described in paragraphs (b) and (c) of this priority, and ''best practices'' knowledge described in paragraphs (d) and (e) of this priority.

In addition, this RRTC must:

- Collaborate with RSA's technical assistance mechanisms to effectively disseminate best practices materials developed in the research component of this RRTC.
- Coordinate its research, dissemination, training, and technical assistance efforts with grantees in NIDRR's Employment domain, as appropriate.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

Summary of potential costs and benefits: The potential costs associated with this proposed priority are minimal while the benefits are significant.

The benefits of the Rehabilitation Research and Training Centers have been well established over the years in that similar projects have been completed successfully. This proposed priority will generate new knowledge and technologies through research, development, dissemination, utilization, and technical assistance projects.

Another benefit of this proposed priority is that the establishment of a new RRTC conducting research projects will support the President's NFI and will improve the lives of persons with disabilities. This RRTC will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

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 Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers Program.)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: March 22, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–5590 Filed 3–26–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Management; Request for Public Comment on Department of Energy Contractor Employee Pension and Medical Benefits Challenge

ACTION: Request for public comments.

SUMMARY: The Department of Energy (DOE) is seeking public comments and/or recommendations on how to address the challenge it faces due to increasing costs and liabilities associated with contractor employee pension and medical benefits. Under the Department's unique Management and Operating (M&O) and other site management contracts, DOE reimburses its contractors for allowable costs incurred in providing employee pension and medical benefits to current employees and retirees who are eligible to participate in the contractors' pension and medical benefit plans. DOE has established a Web site for the public to submit comments and/or recommendations on how it should address the financial challenge it faces on contractor employee pension and medical benefits.

DATES: Comments are due on or before May 11, 2007.

ADDRESSES: Interested parties may submit comments electronically, via traditional mail service, or by facsimile to the addresses identified below. The Internet address for the Web site is *http://management.energy.gov/request_for_comments.htm.* E-mail comments to *contractorpensions@hq.doe.gov.* Transmit submissions by facsimile to Stephanie Weakley, Director, Office of Resource Management, at 202–287–1305. Public comments and other information received from the public will be posted on this Web site. To the extent your comments contain proprietary or business sensitive information, please so indicate and include a redacted version of your comments.

FOR FURTHER INFORMATION CONTACT: Stephanie Weakley, Office of

Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–287–1645.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Department's unique Management and Operating (M&O) and other site management contracts, DOE reimburses its contractors for allowable costs incurred in providing employee pension and medical benefits to current employees and retirees who are eligible to participate in the contractors' pension and medical benefit plans. DOE intends to continue its approach to reimbursing costs incurred by its contractors for these benefits consistent with Government-wide rules on cost allowability; however, DOE believes an examination of its policies and practices is appropriate to ensure prudent fiscal management of taxpayer dollars.

In FY 2006, DOE reimbursed 46 contractors a total of $1.077 billion for contractor employee pension and medical benefits—more than a 226 percent increase since FY 2000. In addition, the Department in its FY 2006 financial statement reported $11.9 billion in accrued unfunded liabilities for contractor employee pension and medical benefits—a 68 percent increase since FY 2000. Costs and liabilities associated with these benefits are projected to grow over the next several years at a rate that significantly exceeds likely increases in the Department's budget.

To address these rising costs and liabilities, on April 27, 2006, DOE issued Department of Energy Notice 351.1, Contractor Employee Pension and Medical Benefits Policy. This Notice updated and revised the Department's policy concerning reimbursement of M&O and 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.

II. Challenge Presented by Increasing Departmental Obligations to Reimburse Contractor Employee Benefits

The Department of Energy is faced with the growing challenge of determining how to best balance its responsibility for funding important national missions, including energy and nuclear security, scientific discovery and innovation and environmental clean-up—with providing contractors sufficient flexibility to offer benefits that will attract and retain highly qualified workers and to treat incumbent contractor employees, retirees and dependents fairly.

A. Background

The Department of Energy relies on contractors to manage and operate its specialized scientific, engineering, production and clean-up sites and facilities. DOE is the only Federal agency that uses these unique M&O contracts to conduct its missions.

The Department obligates approximately 80 percent of its estimated annual $24 billion budget to 46 major cost-reimbursement contracts for management of DOE sites and facilities in 20 states. Pension and post retirement benefit programs sponsored by contractors include 45 contractor defined benefit pension plans, 37 contractor defined contribution pension plans, 23 contractor life insurance plans, and approximately 260 contractor medical benefit plans. These benefits are provided to approximately 100,000 active employees and 100,000 retirees, dependents and beneficiaries. Although DOE reimburses its contractors for certain costs associated with contractor employee benefits, DOE contractors employ their own workforces and sponsor and serve as fiduciaries for all benefit plans.

Most DOE M&O and site management contractors provide defined benefit plans that are supplemented by defined contribution plans and generously subsidized medical benefit plans. According to Department of Energy market comparisons, on average, the pension benefits received by DOE contractor employees are higher than the benefits earned by Federal or private sector employees. In addition, on average, DOE contractor employees contribute less for their medical benefit costs than Federal employees or private sector workers.

The scope of DOE's obligations for contractor employee benefit costs is significant and growing. In FY 2006, the Department's accrued unfunded liabilities associated with contractor employee pension and medical benefits were $11.9 billion. In FY 2006, DOE reimbursed its contractors $1.077 billion for pension and medical benefit plans.

Costs and liabilities for these benefits are projected to grow at a rate that significantly exceeds projected increases in the Department's budget. Absent actions to control benefit escalation, contractor benefit cost reimbursements will continue to increase. Further, the volatility and unpredictability of contractor benefit cost reimbursements will continue to make it difficult for the Department to plan and execute budgets. The Pension Protection Act of 2006 generally accelerates required contributions to defined benefit pension plans and is expected to increase the amount that DOE reimburses contractors for pension benefits over the next 5 to 7 years.

B. Description of DOE Notice 351.1

In April 2006, the Department of Energy issued Notice 351.1 to address concerns about contractor employee pension and medical benefits. However, due to concerns raised about the policy, in June 2006, it was suspended pending consultation with stakeholders.

The goals of the Notice were to improve the Department's stewardship of taxpayer dollars by mitigating the cost growth associated with benefit liabilities, moderating the volatility and improving the predictability of the Department's cost reimbursement obligations for benefits, ensuring that costs for contractor employee pension and medical benefits are more consistent with market trends, and ensuring fairness to incumbent contractor employees.

The major provisions of the Notice included continuing to reimburse contractors for costs for current and retired contractor employee pension and medical plans under existing contract provisions; requiring market-based defined contribution pension plans and market-based medical plans for new employees, except where to do so would be inconsistent with the terms of a collective bargaining agreement; requiring the Secretary of Energy to approve the costs of contractor proposed benefit augmentations; and separately assessing the value of pension and medical benefits to ensure that both are market-based. The policy also provided for the continuation of pension and medical benefit commitments made by contractors through collective bargaining agreements.

Issued in Washington, DC on March 19, 2007.

Ingrid A.C. Kolb,

Director of Management, U.S. Department of Energy.

[FR Doc. E7–5545 Filed 3–26–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–354–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 21, 2007.

Take notice that on March 16, 2007, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1-A, the following tariff sheets to become effective April 16, 2007:

Third Revised Sheet No. 424
Second Revised Sheet No. 480C
Second Revised Sheet No. 482C
Second Revised Sheet No. 483C
Second Revised Sheet No. 485C

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5523 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC07–66–000, ES07–26–000, EL07–45–000]

Entergy Gulf States, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Texas, Inc.; Notice of Filing

March 21, 2007.

Take notice that on March 13, 2007, Entergy Services, Inc. as agent for Entergy Gulf States, Inc. (EGS), Entergy Gulf States Louisiana, L.L.C. (EGS–LA), and Entergy Texas, Inc. (EGS–TX), (collectively Applicants) filed an application for authorization to implement a proposed jurisdictional separation plan, which will result in restructuring of EGS, into two separate utilities, EGS–LA and EGS–TX, pursuant to sections 203 and 204 of the Federal Power Act.

The Applicants also request a declaratory order finding that certain subtransactions during the steps of the jurisdictional separation will not constitute payment of dividends out of capital account in violation of the Federal Power Act section 305(a).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Comment Date: 5 p.m. Eastern Time on April 12, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5516 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–48–000]

Entergy Services, Inc.; Notice for Petition of Declaratory Order

March 21, 2007.

Take notice that on March 15, 2007, Entergy Services, Inc. on behalf of Entergy Operating Companies filed a petition for declaratory order, pursuant to section 207 of the Commission's Rules and Regulation, 18 CFR 385.207.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the

''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 16, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5519 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–352–000]

Guardian Pipeline, L.L.C; Notice of Proposed Changes in Ferc Gas Tariff

March 21, 2007.

Take notice that on March 15, 2007, Guardian Pipeline, L.L.C (Guardian) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on April 15, 2007:

Eighth Revised Sheet No. 6
Third Revised Sheet No. 75
Sixth Revised Sheet No. 103

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5521 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–150–003]

Hardy Storage Company, LLC; Notice of Compliance Filing

March 21, 2007.

Take notice that on March 19, 2007, Hardy Storage Company, LLC (Hardy) tendered a filing to place its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of April 1, 2007.

Original Sheet No. 10
Original Sheet No. 13
Original Sheet No. 22
Original Sheet No. 23

Hardy states that copies of its filing are being served to its firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 26, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5512 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–146–005]

Independent Energy Producers Association v. Independent System Operator Corporation; Notice of Compliance Filing

March 21, 2007.

Take notice that on March 15, 2007, The California Independent System Operator Corporation filed a compliance filing pursuant to the Commission Order issued on February 13, 2007, 118 FERC ¶ 61,096.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies

of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 5, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5517 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–357–000]

Liberty Gas Storage LLC; Notice of Proposed Changes in FERC Gas Tariff

March 21, 2007.

Take notice that on March 16, 2007, Liberty Gas Storage LLC (Liberty) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets attached to the filing, with an effective date of April 15, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5526 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–92–003]

Liberty Gas Storage, LLC; Notice of Compliance Filing

March 21, 2007.

Take notice that on March 16, 2007, Liberty Gas Storage, LLC, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets attached to the filing, with an effective date of April 15, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 28, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5513 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–101–000]

National Fuel Gas Supply Corporation; Notice of Application

March 21, 2007.

Take notice that on March 13, 2007, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed an application in Docket No. CP07–101–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by sale, the Owls Nest Storage Field located in Elk County, Pennsylvania. In addition, National Fuel requests authorization to abandon by sale, the base gas in that field, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel states that due to the magnitude of expenditures required to maintain performance of the facilities comprising the Owls Nest Storage Field, compared to the minor contribution of the facilities to its system wide deliverability and capacity, National Fuel proposes to abandon its storage operations at the Owls Nest field, abandon the facilities by sale to an entity that would use the facilities for the production and gathering of natural gas, and sell the recoverable base gas. National Fuel states that, at this time, the purchasing party is unknown and proposes to notify the Commission of the purchaser's identity within ten days following the execution of a Purchase and Sale Agreement for the facilities. National Fuel states that it will not

replace its existing storage capabilities through additions to existing facilities, and will instead, meet its existing storage requirements through more efficient operations of its remaining storage fields. In addition, National Fuel states that it does not propose the abandonment of service to any customer as a result of the sale, nor are any new or expanded services proposed, nor any construction or expansion of National Fuel's facilities proposed in connection with the sale.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or Telephone: 202–502–6652; Toll-free: 1–866–208–3676; or for TTY, contact (202) 502–8659.

Any initial questions regarding this application should be directed to David W. Reitz, Deputy General Counsel for National Fuel, 6363 Main Street, Williamsville, New York 14221, at (716) 857–7949.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceeding for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 11, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5514 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–355–000]

Natural Gas Pipeline Company of America; Notice of Tariff Filing

March 21, 2007.

Take notice that on March 16, 2007, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 Original Sheet No. 414A.06, to become effective January 17, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5524 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–311–001]

Northern Border Pipeline Company; Notice of Gas Tariff Filing

March 21, 2007.

Take notice that on March 19, 2007, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets attached to the filing, to become effective April 1, 2007.

Northern Border states that the purpose of this filing is to substitute certain tariff sheets that Northern Border filed on February 27, 2007 at Docket No. RP07–311–000 to reflect a change in the name of the operator of Northern Border to TransCanada Northern Border Inc.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5520 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–107–000]

Northern Natural Gas Company; Notice of Application

March 20, 2007.

Take notice that on March 16, 2007, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP07–107–000, an application pursuant to section 7 of the Natural Gas Act (NGA) to expand the certificated storage boundary at the Cunningham Storage Field located in Pratt and Kingman counties, Kansas all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Any questions regarding this application may be directed to Michael T. Loeffler, Director of Certificates for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, (402) 398–7103 or Bret Fritch, Senior Regulatory Analyst, at (402) 398–7140.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 10, 2007.

Philis Posey,

Acting Secretary.

[FR Doc. E7–5515 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–356–000]

Northern Natural Gas Company; Notice of Request for Limited Waiver of Tariff Provisions

March 21, 2007.

Take notice that on March 16, 2007, Northern Natural Gas Company (Northern) tendered for filing its petition for a limited waiver of its FERC Gas Tariff in order to allow Northern to resolve two separate items related to imbalance resolution.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time April 6, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5525 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–353–000]

Stingray Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

March 21, 2007.

Take notice that on March 15, 2007, Stingray Pipeline Company, L.L.C. (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 300. Stingray states that the tariff sheet is being filed to resolve an issue that currently exists in its Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5522 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–47–000]

People of State of Illinois, ex rel., Illinois Attorney General Lisa Madigan, Complainant v. Exelon Generation Co., LLC, Constellation Energy Commodities Group, Inc., Dynegy Power Marketing, Inc., J.P. Morgan Ventures Energy Corporation, Ameren Energy Marketing Company, American Electric Power Service Corporation, Conectiv Energy Supply, Inc., DTE Energy Trading, Inc., Edison Mission Marketing & Trading, Inc., Energy America, LLC, FPL Energy Power Marketing, Inc., J. Aron & Company, Morgan Stanley Capital Group, Inc., PPL EnergyPlus, LLC, Sempra Energy Trading Corp., WPS Energy Services, Inc., Respondents; Notice of Complaint

March 21, 2007.

Take notice that on March 16, 2007, pursuant to sections 205, 206 and 222 of the Federal Power Act, 16 U.S.C. 824d, 824e and 824v, and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, the People of the State of Illinois, *ex rel.* Illinois Attorney General Lisa Madigan (complainant) filed a formal amended complaint against Exelon Generation Co., LLC, Constellation Energy Commodities Group, Inc., Dynegy Power Marketing, Inc., J.P. Morgan Ventures Energy Corporation, Ameren Energy Marketing Company, American Electric Power Service Corporation, Conectiv Energy Supply, Inc., DTE Energy Trading, Inc., Edison Mission Marketing & Trading, Inc., Energy America, LLC, FPL Energy Power Marketing, Inc., J. Aron & Company, Morgan Stanley Capital Group, Inc., PPL EnergyPlus, LLC, Sempra Energy Trading Corp. and WPS Energy Services, Inc., (collectively respondents) requesting that the Commission investigate evidence of price manipulation in the Illinois

auction, require refunds for sales at rates that are not just and reasonable, and direct certain wholesale electricity suppliers to show cause why their market-based rate authority should not be revoked.

The Complainant states that copies of the public version of the complaint have been served on the respondents, Commonwealth Edison, Ameren, and the Illinois Commerce Commission. The Complainant also states a non-public version of the complaint was served on the Illinois Commerce Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 16, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5518 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 21, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–2915–002.
Applicants: Indeck-Olean Limited Partnership.
Description: Indeck-Olean Limited Partnership submits its Triennial Market Power update filed pursuant to FERC's 3/16/04 letter order.
Filed Date: 03/16/2007.
Accession Number: 20070321–0055.
Comment Date: 5 p.m. Eastern Time on Friday, April 06, 2007.

Docket Numbers: ER00–2885–015; ER06–864–007; ER06–1543–005; ER01–2765–014; ER02–1582–013; ER02–1785–010; ER02–2102–014; ER97–2414–010; ER03–1283–008.
Applicants: Cedar Brakes I, L.L.C.; Bear Energy LP; Brush Cogeneration Partners; Cedar Brakes II, L.L.C.; Mohawk River Funding IV, L.L.C.; Thermo Cogeneration Partnership L.P.; Utility contract Funding, L.L.C.; Lowell Cogeneration Company Limited Partnership; Vineland Energy LLC.
Description: Bear Energy, LP and its Affiliates notify the FERC that it has entered into an energy management agreement with Milford Power Co, LLC in accordance with Order 652.
Filed Date: 03/19/2007.
Accession Number: 20070321–0056.
Comment Date: 5 p.m. Eastern Time on Monday, April 09, 2007.

Docket Numbers: ER98–2259–005.
Applicants: LSP Energy Limited Partnership.
Description: LSP Energy Limited Partnership submits its updated triennial market power analysis pursuant to the requirements of FERC's 5/14/98 Order.
Filed Date: 03/19/2007.
Accession Number: 20070321–0054.
Comment Date: 5 p.m. Eastern Time on Monday, April 09, 2007.

Docket Numbers: ER01–1385–028; ER01–3155–019; ER04–230–029; EL01–45–027.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits its Tenth Quarterly Report regarding effort to efficiently utilize combined cycle units in the NYISO markets.
Filed Date: 03/15/2007.
Accession Number: 20070315–5035.
Comment Date: 5 p.m. Eastern Time on Thursday, April 05, 2007.

Docket Numbers: ER07–570–001.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc submits a minor amendment/addition to the proposed revisions to Attachment F to its Open Access Transmission Tariff.
Filed Date: 03/16/2007.
Accession Number: 20070321–0057.
Comment Date: 5 p.m. Eastern Time on Friday, April 06, 2007.

Docket Numbers: ER07–637–000.
Applicants: Entergy Gulf States, Inc.; Calcasieu Power, LLC.
Description: American Electric Power Service Corporation submits a Unit Power Agreement under which AEP Generating Co proposes to sell all of the capacity and associated energy, & ancillary services from MW Lawrenceburg generating plant.
Filed Date: 03/16/2007.
Accession Number: 20070321–0062.
Comment Date: 5 p.m. Eastern Time on Friday, April 06, 2007.

Docket Numbers: ER07–r638–000.
Applicants: Maine Public Service Company.
Description: Maine Public Service Company submits an informational filing setting forth the changed loss factor effective 3/1/07 together with back-up materials.
Filed Date: 03/15/2007.
Accession Number: 20070321–0063.
Comment Date: 5 p.m. Eastern Time on Thursday, April 05, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–17–001.
Applicants: AEP Generating Company.
Description: AEP Generating Company submits an amended application under section 204 of the FPA for authorization to issue securities.
Filed Date: 03/20/2007.
Accession Number: 20070320–5017.
Comment Date: 5 p.m. Eastern Time on Friday, March 30, 2007.

Docket Numbers: ES07–27–000.
Applicants: Detroit Edison Company.
Description: The Detroit Edison Company's application for an order authorizing short-term securities bearing final maturity dates not to exceed one year after issue, in an aggregate principal amount not to exceed $1.0 billion.
Filed Date: 03/19/2007.
Accession Number: 20070321–0058.
Comment Date: 5 p.m. Eastern Time on Monday, April 09, 2007.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR06–1–007.

Applicants: North American Electric Reliability Corporation.

Description: North American Electric Reliability Corporation submits a compliance filing in response to the Commission's 1/18/07 and 3/9/07 Order.

Filed Date: 03/19/2007.

Accession Number: 20070319–5027.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 18, 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 5:00 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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5533 Filed 3–26–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0120; FRL–8288–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings (Renewal), EPA ICR Number 1765.04, OMB Control Number 2060–0353

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 collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before April 26, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OAR–2003–0120, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center (EPA/DC), Air and Radiation Docket Information Center, 1200 Pennsylvania Avenue, NW.; Mail Code: 6102T, Washington, DC 20460, and (2) OMB at: 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: Warren Johnson, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (E143–03), Natural Resources and Commerce Group, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5124; fax number: (919) 541–3470; e-mail address: *Johnson.warren@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 January 25, 2007 (72 FR 3387), 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 number EPA–HQ–OAR–2003–0120, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings (Renewal).

ICR Numbers: EPA ICR Number 1765.04, OMB Control Number 2060–0353.

ICR Status: This ICR is scheduled to expire on March 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,

and 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 EPA is required under section 183(e) of the Clean Air Act to regulate volatile organic compound emissions from the use of consumer and commercial products. Pursuant to section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Automobile refinish coatings were included on the list, and the standards for such coatings are codified at 40 CFR part 59, subpart B. The reports required under the standards enable EPA to identify all coating and coating component manufacturers and importers in the United States and to determine which coatings and coating components are subject to the standards, based on dates of manufacture.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3.5 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.

Respondents/Affected Entities: Manufacturers and importers of automobile refinish coatings and coating components.

Estimated Number of Respondents: 4.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 14.

Estimated Total Annual Cost: $940 including $0 in capital or O&M costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: March 12, 2007.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E7–4927 Filed 3–26–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–0243; FRL–8292–2]

Board of Scientific Counselors, Ecological Research Program Mid-Cycle Review Meetings—Spring 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of three meetings of the Board of Scientific Counselors (BOSC) Eco Mid-Cycle Subcommittee.

DATES: The first meeting (a teleconference call) will be held on Thursday, April 26, 2007, from 12 p.m. to 2 p.m. The second meeting (a teleconference call) will be held on Tuesday, May 8, from 12 p.m. to 2 p.m. The third meeting (face-to-face meeting) will be held on Wednesday, May 23, 2007 from 9:30 a.m. to 3 p.m. All times noted are eastern time. The meetings may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meetings will be accepted up to 1 business day before each meeting.

ADDRESSES: Participation in the conference calls will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the calls from Heather Drumm, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. The face to face meeting will be held at the Newport Harbor Hotel and Marina, 49 America's Cup Avenue, Newport, Rhode Island 02840. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0243, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2007–0243.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2007–0243.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Ecological Mid-Cycle Subcommittee Meeting—Spring 2007 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2007–0243.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2007–0243. Note: this is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0243. 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.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Board of Scientific Counselors, Ecological Mid-Cycle Subcommittee Meeting—Spring 2007 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Heather Drumm, Mail Drop 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1300 Pennsylvania Ave., NW., Washington, DC 20460; via phone/voice mail at: (202) 564–8239; via fax at: (202) 565–2911; or via e-mail at: *drumm.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at either meeting may contact Heather Drumm, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meetings include, but are not limited to: *Teleconference #1:* the objectives of the review; an overview of ORD's ecological research program; a summary of major changes in the ecological research program since 2005; *Teleconference #2:* an update on the revised Ecological Multi-Year Plan; *face-to-face meeting:* the ecological research program's progress in response to recommendations from its 2005 BOSC review and other activities, subcommittee discussions. The meetings are open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Heather Drumm at (202) 564–8239 or *drumm.heather@epa.gov.* To request accommodation of a disability, please contact Heather Drumm, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 19, 2007.

Rebecca Calderon,

Acting Director, Office of Science Policy.

[FR Doc. E7–5581 Filed 3–26–07; 8:45 am]

BILLING CODE 6560–50–P

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 April 20, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. First Guaranty Bancshares, Inc., Hammond, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of First Guaranty Bank, Hammond, Louisiana.

2. Independent Bancshares, Inc. Employee Stock Ownership Plan, to become a bank holding company by retaining 25.76 percent of the voting shares of Independent Bancshares, Inc., and Community Spirit Bank, all of Red Bay, Alabama, and Spirit Bancshares, Inc., and Spirit Bank, both of Belmont, Mississippi.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. BOK Financial Corporation, Tulsa, Oklahoma; to acquire, through its subsidiary BOKF Merger Corporation Number Twelve, Tulsa, Oklahoma, 100 percent of the voting shares of Worth Bancorporation, Inc., and thereby indirectly acquire voting shares of Worth National Bank, both in Lake Worth, Texas. Immediately thereafter, BOKF Merger Corporation Number Twelve, Tulsa, Oklahoma, will merge into Worth Bancorporation, Inc., Lake Worth, Texas.

Board of Governors of the Federal Reserve System, March 22, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–5553 Filed 3–27–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; The Board of Scientific Counselors Meeting (BSC), National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention announces the following meeting of the aforementioned committee:

Time and Date: 9 a.m.–3 p.m., May 10, 2007.

Place: Holiday Inn on the Hill, 415 New Jersey Avenue, NW., Washington, DC 20001.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation, the Director, CDC, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The BSC shall provide guidance to the Director, NIOSH, on research and prevention programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, and systematically documenting findings and disseminating results. The Board shall evaluate the degree to which the activities of NIOSH: (1) Conform to appropriate scientific

standards; (2) address current, relevant needs; and (3) produce intended results.

Matters to be Discussed: Agenda items include a report from the Director of NIOSH, Firefighter Fatality Investigation and Prevention Program review, Training Grant Program review, Noise-induced Hearing Loss Program review, and closing remarks.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Roger Rosa, Executive Secretary, BSC, NIOSH, CDC, 200 Independence Avenue, SW., Room 715H, Washington, DC 20201, telephone (202) 205–7856, fax (202) 260–4464.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 20, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–5583 Filed 3–26–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request; Proposed Projects

Title: DHHS/ACF/ASPE/DOL Enhanced Services for the Hard-to-Employ Demonstration and Evaluation: Kansas and Missouri 36-Month Data Collection

OMB No.: New Collection

Description: The Enhanced Services for the Hard-to-Employ Demonstration and Evaluation Project (HtE) seeks to learn what services improve the employment prospects of low-income persons who face serious obstacles to steady work. The project is sponsored by the Office of Planning, Research and Evaluation (OPRE) within the Administration for Children and Families (ACF) and the Office of the Assistant Secretary for Planning and Evaluation (ASPE), both within the U.S. Department of Health and Human Services (HHS), and the U.S. Department of Labor (DOL).

The HtE project is a multi-year, multi-site evaluation that employs an experimental longitudinal research design to test four strategies aimed at promoting employment among hard-to-employ populations. The four strategies include; (1) Intensive care management and job services project for Rhode Island Medicaid recipients with serious depression; (2) job readiness training, worksite placements, job coaching, job development and other training opportunities for recent parolees in New York City; (3) pre-employment services and transitional employment for long-term participants receiving Temporary Assistance for Needy Families (TANF), and (4) two-generational Early Head Start (EHS) services providing enhanced self-sufficiency services for parents, parent skills training, and high-quality child care for children in low-income families in Kansas and Missouri.

The purpose of this document is to request public comment on the proposed 36-month parent survey and direct child assessments in Kansas and Missouri. The research team plans to collect parent-reported survey assessing parents' employment, education and economic outcomes, child outcomes, as well as aspects of parental psychological well-being, parenting, family functioning and routines, and child care use. This data collection effort will also include direct assessments of young children's cognitive, socioemotional and behavioral development.

The follow-up survey and direct child assessments at the 36-month follow-up in Kansas and Missouri will be used for the following purposes: To study the extent to which EHS services with enhanced self-sufficiency services (enhanced EHS services) affect employment, earnings, income, and welfare dependence of low-income parents with young children; to study the impacts of enhanced EHS services on child well-being and school readiness; to examine the impacts of enhanced EHS services on key aspects of parental psychological well-being, parenting, family functioning and routines, and child care that might account for the effects of the intervention on young children; to collect data on a wider range of outcome measures than is available through welfare, Medicaid, Food Stamps, Social Security, and Unemployment Insurance records.

The 36-month data collection effort draws heavily from the 15-month survey and direct child assessments conduced in this site. Materials for the survey and direct child assessments for the 15-month data collection effort were previously submitted to OMB and were approved (OMB Control No. 0970–026).

Respondents: The target population of the HtE project in Kansas and Missouri is low-income pregnant women and families with infants and toddlers.

The respondents to the 36-month data collection effort will be all participants in the program and the control groups of the HtE project in Kansas and Missouri. Parents will be responding to a survey. Children between the ages of 2 and 7 years old at the 36-month follow-up will be asked to participate in direct child assessments aimed at understanding their emotional, behavioral, and cognitive development and school readiness.

The annual burden estimates are detailed below, and the substantive content of each component will be detailed in the supporting statement attached to the forthcoming 30-day notice.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
KS/MO 36-month parent survey	610	1	.75	457.50
KS/MO 36-month direct child assessments	610	1	.50	305.00

Estimated Total Annual Burden Hours: 762.50.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW.,

Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 20, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–1481 Filed 3–26–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0098]

Agency Information Collection Activities; Proposed Collection; Comment Request; Focus Groups as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on focus groups as used by FDA to gauge public opinion.

DATES: Submit written or electronic comments on the collection of information by May 29, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Focus Groups as Used by FDA (OMB Control Number 0910–0497)—Extension

Focus groups provide an important role in gathering information because they allow for a more in-depth understanding of consumers' attitudes, beliefs, motivations, and feelings than do quantitative studies. Focus groups serve the narrowly defined need for direct and informal opinion on a specific topic and as a qualitative research tool have three major purposes:

- To obtain consumer information that is useful for developing variables and measures for quantitative studies,
- To better understand consumers' attitudes and emotions in response to topics and concepts, and
- To further explore findings obtained from quantitative studies.

FDA will use focus group findings to test and refine their ideas, but will generally conduct further research before making important decisions such as adopting new policies and allocating or redirecting significant resources to support these policies.

FDA estimates the burden for completing the forms for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Center	Subject	No. of Focus Groups per Study	No. of Focus Groups Sessions Conducted Annually	No. of Participants per Group	Hours of Duration for Each Group (Includes Screening)	Total Hours
Center for Biologics Evaluation and Research	May use focus groups when appropriate	1	5	9	1.58	71

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

FDA Center	Subject	No. of Focus Groups per Study	No. of Focus Groups Sessions Conducted Annually	No. of Participants per Group	Hours of Duration for Each Group (Includes Screening)	Total Hours
Center for Drug Evaluation and Research	Varies (e.g., direct-to-consumer Rx drug promotion, physician labeling of Rx drugs, medication guides, over-the-counter drug labeling, risk communication)	10	200	9	1.58	2,844
Center for Devices and Radiological Health	Varies (e.g., FDA Seal of Approval, patient labeling, tampons, online sales of medical products, latex gloves)	4	16	9	2.08	300
Center for Food Safety and Applied Nutrition	Varies (e.g., food safety, nutrition, dietary supplements, and consumer education)	8	40	9	1.58	569
Center for Veterinary Medicine	Varies (e.g., animal nutrition, supplements, labeling of animal Rx)	5	25	9	2.08	468
Total		28	286	9	1.78	4,252

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Annually, FDA projects about 28 focus group studies using 186 focus groups lasting an average of 1.78 hours each. FDA has allowed burden for unplanned focus groups to be completed so as not to restrict the agency's ability to gather information on public sentiment for its proposals in its regulatory as well as other programs.

Dated: March 16, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–5505 Filed 3–26–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0252]

Determination of Regulatory Review Period for Purposes of Patent Extension; A180

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for A180 and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Submit written comments and petitions 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 FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA approved for marketing the animal drug product A180 (danofloxacin mesylate). A180 is indicated for treatment of bovine respiratory disease associated with *Mannheimia* (*Pasteurella*) *haemolytica* and *Pasteurella multocida* in beef cattle. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for A180 (U.S. Patent No. 4,861,779) from Pfizer, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 16, 2003, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of A180 represented the first permitted commercial marketing or use

of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for A180 is 5,365 days. Of this time, 5,314 days occurred during the testing phase of the regulatory review period, while 51 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act involving this animal drug product became effective*: January 14, 1988. The applicant claims January 20, 1988, as the date the investigational new animal drug application (INAD) became effective. However, FDA records indicate that the date of FDA's letter assigning a number to the INAD was January 14, 1988, which is considered to be the effective date for the INAD.

2. *The date the application was initially submitted with respect to the animal drug product under section 512(b) of the Federal Food, Drug, and Cosmetic Act*: August 1, 2002. FDA has verified the applicant's claim that the new animal drug Application (NADA) for A180 (NADA 141–207) was initially submitted on August 1, 2002.

3. *The date the application was approved*: September 20, 2002. The applicant claims September 24, 2002, as the date NADA 141–207 was approved. However, FDA records indicate that the date of approval was September 20, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 29, 2007. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 24, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions are to be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, 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. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 12, 2007.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E7–5504 Filed 3–26–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0090]

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 Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 13, 2007, from 8 a.m. to 5 p.m.

Addresses: Electronic comments should be submitted to *http://www.fda.gov/dockets/ecomments*. Select ''2007N–0090'' and follow the prompts to submit your statement. Written comments should be submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, by close of business on May 30, 2007. All comments will be posted without change, including any personal information provided. Comments received on or before May 30, 2007, will be provided to the committee before or at the meeting.

Location: Hilton Silver Spring, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301–589–5200.

Contact Person: Cathy A. Groupe, 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: *Cathy.Groupe@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512536. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the efficacy and safety of new drug application (NDA) 21–888, proposed tradename Zimulti (rimonabant), 20 milligrams tablets, Sanofi-Aventis, as an adjunct to diet and exercise for obesity management in patients with a body mass index equal to or greater than 30 kilograms (kg) per square meter, or a body mass index equal to or greater than 27 kg per square meter if accompanied by at least one cardiovascular risk factor.

FDA intends to make background material available to the public no later than 1 business day before the meeting. If FDA is unable to post 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 May 30, 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 May 22, 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 on or before May 21, 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 Cathy Groupe at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 20, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7–5506 Filed 3–26–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0083]

Draft Guidance for Industry and Food and Drug Administration Staff; Modifications to Devices Subject to Premarket Approval—The Premarket Approval Supplement Decision-Making Process; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Modifications to Devices Subject to Premarket Approval (PMA)—The PMA Supplement Decision-Making Process.'' This draft guidance is intended to help the regulated industry determine whether submitting a PMA supplement or other notification to FDA is required for class III devices subject to PMA. This draft guidance is not final nor is it in effect at this time.

DATES: Submit written or electronic comments on this draft guidance by June 25, 2007.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Modifications to Devices Subject to Premarket Approval (PMA)—The PMA Supplement Decision-Making Process'' 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*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

For general questions: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4010.

For questions about the 30-day notice program or regarding manufacturing site changes: Christy Foreman, Center for Devices and Radiological Health (HFZ–340), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 240–276–0120.

For biologics issues: Leonard Wilson, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance is intended to help the regulated industry determine whether submitting a PMA supplement or other notification to FDA is required for class III devices subject to PMA. FDA developed this draft guidance to address modifications to device design, device labeling, and the device manufacturing process. This guidance also can be applied when a legally marketed class III device is the subject of a recall or field corrective action and the manufacturer needs to change the device to assure its safety and effectiveness. This draft guidance is intended to apply to the device portion of combination products such as drug/device or biologic/device combinations.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on modifications to devices subject to PMA applications. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive ''Modifications to Devices Subject to Premarket Approval (PMA)—The PMA Supplement Decision-Making Process,'' 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 1584 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. 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 draft 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 PRA). The collections of information addressed in the draft guidance document have been approved by OMB in accordance with the PRA under the regulations governing PMA applications (21 CFR part 814, OMB control number 0910–0231).

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: March 16, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–5572 Filed 3–26–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Independent Evaluation of the Substance Abuse Prevention and Treatment Block Grant Program—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), Division of State and Community Assistance administers the Substance Abuse Prevention and Treatment Block Grant (SAPT BG) in collaboration with the Center for Substance Abuse Prevention (CSAP), Division of State Programs. The Substance Abuse Prevention and Treatment Block Grant is funded by Congress to provide monies to States, Territories, and one Native American Tribe for the purpose of planning, carrying out, and evaluating activities to prevent and treat substance abuse and other allowable activities. The SAPT BG constitutes approximately 40 percent of all States budgets for substance abuse prevention and treatment services and activities, and is the primary Federal source of funding. States have flexibility in determining how funds should be allocated, but there are specific set-aside and maintenance of effort requirements that must be met in order to receive funding. These requirements, introduced by both the ADAMHA Reorganization Act of 1992 and the Children's Health Act of 2000, are listed below:

TABLE 1.—SAPT BG SET-ASIDE PROVISIONS [a]

Category	Set-aside provision
Prevention and treatment activities regarding alcohol.	Not less than 35 percent of SAPT BG funding.*
Prevention and treatment activities regarding other drugs.	Not less than 35 percent of SAPT BG funding.*
Primary prevention programs	Not less than 20 percent of SAPT BG funding.
Pregnant women and women with dependent children.	Not less than amount equal to expenditure in FY1994.
Tuberculosis services	No set amount but services must be provided to receive SAPT BG funds.
HIV services [b]	No more than 5 percent increase over State allotment for HIV services in FY 1991.
Prohibition of sale of tobacco to individuals under age of 18 (Synar amendment).	State must enforce law against sale of tobacco to underage individuals to receive SAPT BG funds—noncompliance leads to a 10 percent reduction in funds the first applicable fiscal year; 20 percent, the second year; 30 percent, the third year; and 40 percent, the fourth year.
Maintenance of effort (MOE) for State expenditures.	State will maintain funding at no less than the average level of expenditures for the 2 years preceding the fiscal year for which the State is applying.
Administrative expenses	Limited to 5 percent of SAPT BG funding.

[a] These set-asides shown in this table were included in the 1992 SAPT BG authorizing legislation 42 U.S.C. 300x–21 to 42 U.S.C. 300x–62). In the Children's Health Act of 2000 (Pub. L. 106–310) Sec. 3303(a)(1)), however, the set-asides marked with asterisks were removed.

[b] For designated States whose rate of AIDS cases is 10 or more per 100,000 individuals as confirmed by the Centers for Disease Control and Prevention.

In addition to the set-asides, the SAPT BG Program has identified 17 goals which must be met by States in order to receive this Federal funding:

TABLE 2.—FEDERAL GOALS FOR THE SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT

GOAL #1: Continuum of substance abuse treatment services.	The State shall expend block grant funds to maintain a continuum of substance abuse treatment services that meet these needs for the services identified by the state (see 42 U.S.C. 300x–21(b) and 45 CFR 96.122(f)(g)).
GOAL #2: Spending on primary prevention programs.	The State agrees to spend not less than 20 percent on primary prevention programs for individuals who do not require treatment for substance abuse, specifying the activities proposed for each of the six strategies (see 42 U.S.C. 300x–22(b)(1) and 45 CFR 96.124(b)(1)).

TABLE 2.—FEDERAL GOALS FOR THE SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT—Continued

GOAL #3: Spending on services for pregnant women and children.	The State agrees to expend not less than an amount equal to the amount expended by the State for FY 1994 to establish new programs or expand the capacity of existing programs to make available treatment services designed for pregnant women and children with dependent children; and, directly or through arrangements with other public or nonprofit entities, to make available prenatal care to women receiving such treatment services, and, while the women are receiving services, child care (see 42 U.S.C. 300x–22(c)(1) and 45 CFR 96.124(c)(e)).
GOAL #4: Treatment for intravenous drug abusers.	The State agrees to provide treatment to intravenous drug abusers that fulfills the 90 percent capacity reporting, 14–120 day performance requirement, interim services, outreach activities and monitoring requirements (see 42 U.S.C. 300x–23 and 45 CFR 96.126).
GOAL #5: Tuberculosis services for people in substance abuse treatment.	The State agrees, directly or through arrangements with other public or nonprofit private entities, to routinely make available tuberculosis services to each individual receiving treatment for substance abuse and to monitor such service delivery (see 42 U.S.C. 300x–24 and 45 CFR 96.127).
GOAL #6: Early intervention services for HIV for people in substance abuse treatment.	Designated States agree to provide treatment for persons with substance abuse problems with an emphasis on making available within existing programs early intervention services for HIV in areas of the state that have the greatest need for such services and to monitor such service delivery (see 42 U.S.C. 300x–24(b) and 45 CFR 96.128).
GOAL #7: Group homes for recovering substance abusers.	Designated States agree to provide for and encourage the development of group homes for recovering substance abusers through the operation of a revolving loan fund (see 42 U.S.C. 300x–25 and 45 CFR 96.129).
GOAL #8: State efforts to reduce the availability of tobacco products.	The State agrees to continue to have in effect a State law that makes it unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18; and, to enforce such laws in a manner than can reasonably be expected to reduce the extent to which tobacco products are available to individuals under age 18 (see 42 U.S.C. 300x–26 and 45 CFR 96.130).
GOAL #9: Preferential admission of pregnant women to substance abuse treatment.	The State agrees to ensure that each pregnant woman be given preference in admission to treatment facilities; and, when the facility has insufficient capacity, to ensure that the pregnant woman be referred to the State, which will refer the woman to a facility that does have the capacity to admit the woman, or if no such facility has the capacity to admit the woman, will make available interim services within 48 hours (see 42 U.S.C. 300x–27 and 45 CFR 96.131).
GOAL #10: Improved process for referring individuals to substance abuse treatment.	The State agrees to improve the process in the State for referring individuals to the treatment modality that is most appropriate for the individual (see 42 U.S.C. 300x–28 and 45 CFR 96.132(a)).
GOAL #11: Continuing education for employees at substance abuse prevention and/or treatment facilities.	The State agrees to provide continuing education for the employees of facilities which provide prevention activities or treatment services (or both) (see 42 U.S.C. 300x–28(b) and 45 CFR 96.132(b)).
GOAL #12: Coordination of services	The State agrees to coordinate prevention activities and treatment services with the provision of other appropriate services (see 42 U.S.C. 300x–28(c) and 45 CFR 96.132(c)).
GOAL #13: Needs assessment by State and locality.	The State agrees to submit an assessment of the need for both treatment and prevention in the State for authorized activities, both by locality and by the State in general (see 42 U.S.C. 300x–29 and 45 CFR 96.133).
GOAL #14: Ensuring that needles and syringes are not provided for illegal drug use.	The State agrees to ensure that no program funded through the block grant will use funds to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs (see 42 U.S.C. 300x–31(a)(1)(F) and 45 CFR 96.135(a)(6)).
GOAL #15: Improving the quality and appropriateness of treatment services.	The State agrees to assess and improve, through independent peer review, the quality and appropriateness of treatment services delivered by provider that receive funds from the block grant (see 42 U.S.C. 300x–53(a) and 45 CFR 96.136).
GOAL #16: Protecting patient records from inappropriate disclosure.	The State agrees to ensure that the State has in effect a system to protect patient records from inappropriate disclosure (see 42 U.S.C. 300x–53(b), 45 CFR 6.132(e), and 42 CFR part 2).
GOAL #17: Compliance with 42 CFR part 54 Charitable Choice Provisions and Regulations.	The State agrees to ensure that the State has in effect a system to comply with 42 CFR part 54 (see 42 CFR 54.8(c)(4) and 54.8(b)) Charitable Choice Provisions and Regulations).

SOURCE: Performance Partnership Grant Branch, Division of State and Community Assistance, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, ''Uniform Application, FY 2007, Substance Abuse Prevention and Treatment Block Grant (42 U.S.C. 300x–21 through 300x–64),'' Rockville, MD, 2004.

The FY 2003 Office of Management and Budget (OMB) Program Assessment Rating Tool (PART) assessment of the SAPT BG Program rated the program as ''Ineffective.'' The SAPT BG received high scores on three of four PART areas rated, including Program Purpose and Design, Strategic Planning, and Program Management. However, the scores could have been even higher in these areas if data were available to document that the resources were reaching the intended beneficiaries or the program had ambitious targets and long-term measures. In the fourth area, Program Results/Accountability, where a low rating was achieved, it was found that ''no independent evaluation of the program has been completed'' to establish that the SAPT BG Program is effective and fulfilling its legislative mandates.

In direct response to this OMB finding, a contract was developed and awarded in FY 2003 to conduct an Evaluability Assessment (EA) to determine the feasibility of conducting an independent evaluation of the SAPT BG Program, and subsequently, to fund such an evaluation effort. EA is a recognized program evaluation methodology which involves collaboration with multiple stakeholders and development of a program logic model used to plan formal evaluations of large and/or

complex programs, such as the SAPT BG program. The findings of the EA were used as a foundation in the development and awarding of a multi-year contract in FY 2004 to conduct an independent, comprehensive evaluation of the SAPT BG Program.

As noted in the OMB PART Assessment, the legislative intent of the SAPT BG is to provide funding to states by formula to plan, carry out, and evaluate activities to prevent and treat substance abuse. Therefore, the evaluation is designed to examine the system-level activities, outputs, and outcomes associated with the program in relation to its goals.

In this evaluation, a multi-method evaluation approach is being used to examine Federal and State performance with regard to the SAPT BG and its identified goals. This approach emphasizes a qualitative and quantitative examination of both the SAPT BG process (e.g., activities and outputs in the logic model) and system-level outcomes whereby Federal and State stakeholder perspectives on the SAPT BG, as captured through semi-structured interviews and surveys, are corroborated and compared to the considerable amount of already-collected source documents and data provided by States, CSAT, and CSAP (e.g., BGAS applications, Treatment Episode Data Set (TEDS), National Survey on Drug Use and Health (NSDUH), the Minimum Data Set (MDS), Technical Review Reports, State Prevention and Synar System Reports).

The purpose of the evaluation is to determine the extent to which States and the Federal Government are implementing the SAPT BG according to the authorizing legislation. The evaluation will cover the following domains: the State SAPT BG planning process, Federal review of SAPT BG applications and implementation reports, Federal technical assistance, State SAPT BG implementation, Federal oversight and management, State SAPT BG reporting, and State-level outcomes. The results of this evaluation will not only document the effectiveness of the Program in supporting the Substance Abuse Prevention and Treatment system, they will also help guide CSAT and CSAP and the States to improve the methods by which they implement the SAPT BG, including the capacity to collect, analyze, and interpret the National Outcome Measures (NOMS). As a separate, parallel SAMHSA initiative, the NOMS project began after the SAPT BG Evaluation contract inception and was not used in the SAPT BG EA or the development of the evaluation framework and logic model. However, selected NOMS items that relate to the evaluation framework and logic model will be examined in the independent evaluation. These selected NOMS items include:

- Increase in number of persons reporting a reduction in 30-day drug/alcohol use
- Increase in number of persons employed or in school
- Reduction in number of drug or alcohol-related arrests
- Increase in number of persons in stable housing situations (reduction in homelessness)
- Increase in access to services measured by unduplicated counts of persons served and numbers served compared to those in need
- Increase in number of persons receiving evidence-based services.

In addition, the evaluators will attempt to collect information on system-wide client perception of care. Statistical tests for association between outcome measures and a number of independent variables will be conducted. Examples of independent variables include, but are not limited to, level of funding, level of the SSA within State government, degree of SSA partnership with other State agencies and community organizations, and amount of State-funded support available for research and training activities.

In addition to information about the selected NOMS domains, the evaluation will also examine systemic measures related to infrastructure. Infrastructure refers to the resources, systems, and policies that support the nation's public substance abuse prevention and treatment system, and is a potential contributor to significant State behavioral health system outcomes. Examples of infrastructure include staff training, policy changes, and service availability.

Because this is the first-ever comprehensive evaluation of the Program, the data collection activities are more extensive (and time intensive) than would be expected of a Program that has been regularly evaluated. These data will serve as a baseline for future evaluations.

The two primary data collection strategies will include open-ended interviews and web-based surveys. Interviews will be conducted with Federal staff involved in the administration of the SAPT BG and State staff from all States and Territories involved in their State's implementation of the SAPT BG program. Two web-based surveys will be administered to all individuals who formally participate in monitoring the SAPT BG as part of the Technical Review or State Prevention and Synar System Review Teams.

The interview protocol for Federal staff includes 79 questions (mostly open-ended), and, on average, should take 90 minutes to complete. The interview protocol for the State staff includes 99 questions (again, mostly open-ended), and should take, on average, 3 hours to complete. Both the Federal staff interviews and the State staff interviews will be conducted as in-person interviews. While the Federal staff will each be interviewed individually, a single group State staff interview will be conducted for all relevant State staff. State Substance Abuse Authority Directors will be asked to select those State staff who they believe are most knowledgeable about the SAPT BG for participation in the interviews. It is anticipated that, at a minimum, the State Planner, the State Data Analyst, the State Prevention Lead, the State Treatment Lead, one additional State staff member, and the State SSA Director will participate.

The two web-based surveys will be distributed to the two current sets of formal reviewers for the SAPT BG: Technical Reviewers and State Prevention and Synar System Reviewers. The web-based surveys are designed so that each stakeholder group receives survey questions designed to capture their specific knowledge of and experience with the SAPT BG. The Technical Reviewer survey contains 47 questions and the State Prevention and Synar System Reviewer survey has 27 questions. Each survey should take approximately 1 hour or less to complete. Reviewers will submit their responses to the survey online over a 3-week period.

Table 3 summarizes the estimated annual total burden hours for the in-person and web-based surveys for the Federal and State staff stakeholders, Technical Reviewers, Synar Reviewers, and SPSA.

TABLE 3.—ESTIMATED ANNUALIZED BURDEN

Respondents	Number of respondents	Response per respondent	Average hours per interview	Estimated total burden (hours)
In-person Interviews:				
State Substance Abuse Prevention and Treatment Agency Commissioner	60	1	3	180
State Planners	60	1	3	180
State Data Analysts	60	1	3	180
State Prevention Lead	60	1	3	180
State Treatment Lead	60	1	3	180
Additional State Staff	60	1	3	180
Federal SAPT Block Grant Staff	35	1	1.5	52.5
Subtotal	395			1132.5
Web-based Interviews:				
Technical Reviewers	15	1	1	15
State Prevention and Synar System Reviewers	30	1	1	30
Subtotal	45			45
Total	440			1177.5

This **Federal Register** Notice is focused on the interviews and surveys that will be administered to the SAPT BG stakeholders as those methods of data collection require OMB approval. It is anticipated that in future independent evaluations of the SAPT BG Program focus will be given to the NOMS and their implications for program performance and goals.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 20, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–5582 Filed 3–26–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1689–DR]

California; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–1689–DR), dated March 13, 2007, and related determinations.

EFFECTIVE DATE: March 13, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 13, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of California resulting from a severe freeze during the period of January 11–17, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Disaster Unemployment Assistance and Food Commodities in the designated areas and any other forms of assistance under the Stafford Act that you deem appropriate. If Public Assistance, Hazard Mitigation, and the Other Needs Assistance program under Section 408 of the Stafford Act are later requested and warranted, Federal funding will be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, under Executive Order 12148, as amended, Justo Hernandez, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster:

Fresno, Imperial, Kern, Los Angeles, Monterey, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare, and Ventura Counties for Disaster Unemployment Assistance and Food Commodities.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–5529 Filed 3–26–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1686–DR]

Georgia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1686–DR), dated March 3, 2007, and related determinations.

EFFECTIVE DATE: March 16, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 3, 2007:

Warren, Webster, and Wilkinson Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–5528 Filed 3–26–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3274–EM]

Indiana; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Indiana (FEMA–3274–EM), dated March 12, 2007, and related determinations.

EFFECTIVE DATE: March 12, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 12, 2007, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Indiana resulting from the record snow and near record snow during the period of February 12–14, 2007, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures, including snow removal, under the Public Assistance program to save lives and to protect property and public health and safety. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. This emergency assistance will be provided for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provide under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs in the designated areas. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, Department of Homeland Security, under Executive Order 12148, as amended, Richard J. Hinrichs, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared emergency:

Benton, Blackford, Boone, Carroll, Cass, Clinton, Delaware, Elkhart, Fountain, Fulton, Grant, Hamilton, Henry, Jasper, Jay, Kosciusko, Lake, Madison, Marion, Marshall, Miami, Montgomery, Newton, Noble, Parke, Pulaski, Putnam, Randolph, Tippecanoe, Tipton, Vermillion, Wabash, Warren, and White Counties for emergency protective measures (Category B), including snow removal, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–5530 Filed 3–26–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1688–DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1688–DR), dated March 14, 2007, and related determinations.

EFFECTIVE DATE: March 14, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 14, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from severe winter storms during the period of February 23 to March 2, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert

T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, under Executive Order 12148, as amended, Carlos Mitchell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

Benton, Black Hawk, Boone, Bremer, Buchanan, Butler, Calhoun, Cedar, Chickasaw, Clinton, Des Moines, Fayette, Floyd, Franklin, Greene, Grundy, Hamilton, Hardin, Henry, Howard, Humboldt, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Lee, Linn, Louisa, Marion, Marshall, Mitchell, Muscatine, Pocahontas, Poweshiek, Story, Tama, Van Buren, Wapello, Washington, Winnebago, Winneshiek, Worth, and Wright Counties for Public Assistance, including direct Federal assistance, as warranted.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–5531 Filed 3–26–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1683–DR]

Oregon; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oregon (FEMA–1683–DR), dated February 22, 2007, and related determinations.

EFFECTIVE DATE: March 16, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oregon is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 22, 2007:

Wasco County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–5527 Filed 3–26–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Generic Clearance of Customer Service Surveys; OMB Control No. 1615–0077.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 29, 2007.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd Floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, add the OMB Control Number 1615–0077 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Generic Clearance of Customer Service Surveys.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File OMB–9. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. Individuals complete the customer service survey so that USCIS can determine the kind and quality of services customers want and expect, their level of satisfaction with existing services, and the type of services which they project may be required within a 3 to 5 year time frame.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 34,200 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17,100 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., 3rd Floor, Suite 3008, Washington, DC 20529; 202–272–8377.

Dated: March 22, 2007.

Richard Sloan,

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7–5537 Filed 3–26–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before April 26, 2007.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, California/Nevada Operations Office (CNO), 2800 Cottage Way, Room W–2606, Sacramento, California 95825 (*telephone:* 916–414–6464; *fax:* 916–414–6486). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist, at the above CNO address, (*telephone:* 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

Permit No. TE–141832

Applicant: Oregon State University, Corvallis, Oregon.

The applicant requests a permit to take (capture, handle, and release) the shortnose sucker (*Deltistes luxatus*) and Lost River sucker (*Chasmistes brevirostris*) in conjunction with surveys and demographic studies in Klamath County, Oregon for the purpose of enhancing their survival.

Permit No. TE–139634

Applicant: Thomas S. Liddicoat, San Diego, California.

The applicant requests a permit to take (capture, and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–139628

Applicant: Garcia and Associates, San Francisco, California.

The permittee requests an amendment to take (harass by survey, capture, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–141359

Applicant: Stephen M. Stringer, Folsom, California.

The applicant requests a permit to take (capture, and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–141366

Applicant: Department of Transportation, Eureka, California.

The applicant requests a permit to take (survey, capture, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys for the purpose of enhancing their survival throughout the range of the species in Del Norte, Humboldt, and Mendocino Counties, California.

Permit No. TE–020548

Applicant: U.S. Geological Survey Biological Resources Division, Vallejo, California.

The permittee requests an amendment to take (capture; handle; mark; attach transmitters; collect blood, feathers, and diet samples; and collect eggs) the Yuma clapper rail (*Rallus longirostris yumanensis*) in conjunction with contaminants research throughout the range of the species in California and Arizona for the purpose of enhancing their survival.

Permit No. TE–142435

Applicant: Debra Shier, Topanga, California.

The applicant requests a permit to take (survey, capture, handle, mark, telemetry, translocate) the pacific pocket mouse (*Perognathus longimembris pacificus*) in conjunction with ecological research and surveys within the boundaries of Camp Pendleton, California for the purpose of enhancing their survival.

We solicit public review and comment on each of these recovery permit applications. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that we may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: January 12, 2007.

Darrin Thome,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. E7–5463 Filed 3–26–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–420–5700–ES; AZA 33431]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Pinal County, Arizona, have been examined and found suitable for classification for lease or conveyance to the city of Casa Grande under the provisions of the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 *et seq.*, and under sec. 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and E.O. 6910.

Gila and Salt River Meridian, Arizona

T. 7 S., R. 6 E.,
Sec. 26, N½ NW¼.

The area described contains 80 acres in Pinal County.

The city of Case Grande has not applied for more than the 6,400 acre limitation for recreation uses in a year.

The city of Casa Grande has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b). The city of Casa Grande proposes to use the lands as an extension to a proposed city mountain park. The park, when developed, will have hiking and equestrian trails, trailheads, and public facilities. The public lands will link to the City's proposed mountain park that will contain hiking and equestrian trails, trailheads, and public facilities. The City envisions hosting field trips and having educational programs for several local school districts. The city has not requested more land than is needed for their development and management plans.

DATES: Submit comments on or before May 11, 2007.

ADDRESSES: Detailed information including but not limited to, a proposed development plan and documentation relating to compliance with applicable environmental and cultural resource laws, is available for review at the Bureau of Land Management, Tucson Field Office, 12661 East Broadway Boulevard, Tucson, Arizona 85748–7208.

FOR FURTHER INFORMATION CONTACT: Susan Bernal, Realty Specialist, at (520) 258–7206; e-mail address *susan_bernal@blm.gov*.

SUPPLEMENTARY INFORMATION: The lands are not needed for any Federal purposes.

Lease or conveyance of the lands for recreational or public purposes use is consistent with the Phoenix District Resource Management Plan, dated September 29, 1989, and would be in the public interest.

All interest parties will receive a copy of this notice once it is published in the **Federal Register**. The notice will be published in the newspaper of local circulation for three consecutive weeks. The regulations do not require a public meeting.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

The lease or conveyance of the lands, when issued, will be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391 (43 U.S.C. 945).
2. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.
4. All valid existing rights documented on the official public land records at the time of lease/patent issuance.
5. A right-of-way authorized under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) for a road to the City of Casa Grande, (*AZA 27190*) affecting public lands within sec. 26, T. 7 S., R. 6 E.
6. A right-of-way authorized under the Act of January 13, 1916 (44 LD 513) for an aerial camera calibration range to the Bureau of Land Management, (*AZA 1182*) affecting public lands within sec. 26, T. 7 S., R. 6 E.
7. CERCLA Term: ''Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. 9620(h)) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670) notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances had been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.''
8. Indemnification Term: ''All lessees or Purchasers/patentees, by accepting a lease or patent, covenant and agree to indemnify, defend, and hold the United States harmless of any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the lessees or patentees or their employees, agents, contractors, lessees, or any third-party, arising out of or in connection with the lessee's or patentee's use, occupancy, or operations on the leased or patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the lessees or patentees and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, state and

local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s), and/or hazardous substance(s), as defined by Federal or state environmental laws, off, on, into or under land, property and other interests of the United States; (5) Activities by which solid waste or hazardous substance(s) or waste, as defined by Federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the leased or patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances(s) or waste(s); or (6) Natural resource damages as defined by Federal and state law. This covenant shall be construed as running with the parcels of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

Classification Comments: Interested persons may submit comments involving the suitability of the land for development of a mountain park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and federal programs.

Application Comments: Interested persons may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for a mountain park. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective on May 29, 2007. The lands will not be offered for conveyance until after the classification becomes effective.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority: 43 Code of Federal Regulations (CFR) 2741.5.

Dated: February 20, 2007.

Cindy Alvarez,

Acting Field Office Manager.

[FR Doc. E7–5539 Filed 3–26–07; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–110–1430–EU; DBG–07–1004; IDI–35476]

Notice of Realty Action; Competitive Sale of Public Land, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: An 80.00 acre parcel of public land in Ada County, Idaho is being proposed for competitive sale under the provisions of the Federal Land Policy Management Act of 1976 (FLPMA), at no less than the appraised fair market value.

DATES: Comments must be received within 45 days following publication of this notice in the **Federal Register**.

ADDRESSES: Comments regarding the proposed sale or EA, as well as sealed bids, submitted to BLM, should be addressed to Rosemary Thomas, Four Rivers Field Manager, Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, which is also the address for oral bidding registration, and the location where the public auction will be held.

FOR FURTHER INFORMATION CONTACT: Information regarding the competitive sale instructions, procedures, documents, including environmental and appraisal documents, maps, and materials to submit a bid can be obtained at the public reception desk at the BLM Boise District Office, from 8 a.m. to 4:30 p.m., Monday through Friday (except Federal holidays), or by contacting John Sullivan, Assistant Four Rivers Field Manager, at the above address or phone (208) 384–3338.

SUPPLEMENTARY INFORMATION: The following described public land in Ada County, Idaho, has been examined and found suitable for sale utilizing competitive sale procedures under the authority of Section 203 and Section 209 of FLPMA (90 Stat. 2750, 43 U.S.C. 1713 and 1719):

T. 2 N., R. 1 W., Boise Meridian, Idaho, sec. 34: SE¼SE¼; sec. 35: SW¼SW¼.

The area described contains 80.00 acres in Ada County.

The 1983 Kuna Management Framework Plan identified this parcel of public land as suitable for disposal subject to a site-specific analysis. BLM has prepared an Environmental Assessment (EA) for this proposed sale, pursuant to the National Environmental Policy Act. A draft of the EA is available for public review and comment in the BLM Boise District office. BLM will be accepting comments from the public regarding the EA during the time for comment on the proposed sale, up to 45 days after publication of this Notice in the **Federal Register**.

As of the date of publication of this notice in the **Federal Register**, the above described land is segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or two years from the date of publication of this notice in the **Federal Register**, whichever first occurs, unless extended by the BLM 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 at least 60 days after the date of publication of this notice in the **Federal Register**, and then at no less than the appraised fair market value of $1,600,000.00. A copy of the approved appraisal is located at the above address. The land patent, if issued, will be subject to the following terms, conditions and reservations:

1. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

2. Those rights held by Ada County Highway District, its successors or assigns, for Kuna-Mora Road exercised under the Act of July 26, 1866 (43 U.S.C. 932) and noted under BLM Serial Number IDI–20038.

3. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9620(h)] (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988 (100 Stat. 1670), notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances had been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

4. All purchasers/patentees, by accepting a patent, covenant and agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, lessees, or any third party, arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, State, and local laws and regulations that are now or may in the future become applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s), and/or hazardous substance(s), as defined by Federal or State environmental laws, off, on, into or under land, property and other interests of the United States; (5) Activities by which solid waste or hazardous substance(s) or waste, as defined by Federal and State environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substance(s) or waste(s); or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the parcel of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

The purchaser, by accepting the land patent, agrees to take the property subject to the current grazing lease until such time as the lease expires, or two years from the date of this notice, whichever first occurs.

This land will be offered for competitive sale on May 29, 2007, pursuant to 43 CFR 2711.3–1. In the event of a sale, the unreserved mineral estate will be conveyed simultaneously with the surface estate. The unreserved mineral interests have been determined to have no known mineral value pursuant to 43 CFR 2720.2(a). Acceptance of the sale offer will constitute an application for conveyance of the unreserved mineral interests. The purchaser will be required to pay a $50.00 non-refundable filing fee for conveyance of the available mineral interests.

The sale will be by sealed bid, followed by oral auction. All bids must be received at the BLM Boise District Office at the above address no later than 4:30 p.m. MST on the day before the sale. Federal law requires that bidders must be U.S. citizens 18 years of age or older, or in the case of a corporation, subject to the laws of any State of the U.S. Proof of citizenship shall accompany the bid.

At 10 a.m. MST on May 29, 2007, sealed bids will be opened at the BLM Boise District Office, and the highest acceptable sealed bid will be determined. An oral auction will follow the determination of the highest acceptable sealed bid at or in excess of the appraised fair market value, with the opening oral bid being for not less than the highest acceptable sealed bid. Oral bidding will continue until the highest bid is determined. If no oral bids are received, the highest acceptable sealed bid will be considered the purchaser.

The purchaser will have 30 days from the date of acceptance of the high bid to submit a deposit of 20 percent of the purchase price and the $50.00 filing fee for conveyance of mineral interests. The purchaser must remit the remainder of the purchase price within 180 days from the date of the sale. Payments must be by certified check, postal money order, bank draft or cashiers check payable to the U.S. Department of the Interior—BLM. Failure to meet conditions established for this sale will void the sale, and any monies received will be forfeited to the BLM.

Public Comments: For a period of 45 days following the publication of this notice in the **Federal Register**, the public and interested parties may submit written comments regarding the proposed sale and EA to the BLM Four Rivers Field Manager at the above address. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time.

Any adverse comments will be reviewed by the BLM Idaho State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2711.1–2(a))

Dated: January 5, 2007.

Rosemary Thomas,

Four Rivers Field Manager.

[FR Doc. E7–5536 Filed 3–26–07; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–1430–EU; NMNM–115589]

Notice of Realty Action: Non-Competitive (direct) Sale of Public Lands in San Juan County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following described public lands, comprising approximately 80 acres in San Juan County, New Mexico have been examined and found suitable for direct sale to City of Bloomfield, at not less than the appraised value of $2,200,000.00, for use as an industrial park. The authority for the sale is Section 203(f)(2) of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1701 *et seq.* (FLPMA), and CFR 2711.3–3(a), and will take place according to the procedures governing direct sales of public land.

DATES: On or before May 11, 2007, interested parties may submit comments concerning the proposed sale to Bureau of Land Management, Farmington Field Office at the address stated below.

ADDRESSES: Information related to this action, including the environmental assessment, is available for review at the Bureau of Land Management (BLM), Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401, from 7:45 a.m. to 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Albert Gonzales, Realty Specialist at (505) 599–6334.

SUPPLEMENTARY INFORMATION: The parcel of land, consisting of 80 acres situated in San Juan County within the Bloomfield city limits, is being offered on a non-competitive (direct) sale basis to the City of Bloomfield, in accordance with Section 203(f)(2) of 6 (FLPMA) and 43 CFR 2711.3–3(a), for use as an industrial park. The BLM Farmington District Manager has determined that a non-competitive (direct) sale will be in the best interest of the public to facilitate growth and business opportunities for City of Bloomfield. FLPMA authorizes the use of direct

sales of the public lands in circumstances where that tract has been identified for transfer to a State or local government as an integral part of the project and speculative bidding would jeopardize a timely completion and economic viability of the project. Here, BLM proposes to convey the identified tract to a local government as an integral part of such a project. The parcel is being offered for sale at no less than the appraised fair market value (FMV) of $2,200,000.00, as determined by the authorized officer after appraisal. An appraisal report has been prepared by a state certified appraiser for the purposes of establishing FMV.

New Mexico Principle Meridian, New Mexico

T. 29 N., R. 11 W.
Sec. 3, S½SW¼.

The area described contains 80 acres in San Juan County.

This land is not required for any Federal purposes. The proposed action is in compliance with the BLM Farmington Resource Management Plan that was approved September 2003. The sale is consistent with current Bureau planning for this area, and would be in the public interest. The conveyance will include the surface interests only. The patent, when issued, will contain the following reservations, covenants, terms, and conditions:

1. The parcel will be conveyed with a reservation of a right-of-way to the United States for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

2. The parcel will be conveyed subject to valid existing rights, including, but not limited to rights-of-ways. The parcel may be subject to applications for rights-of-way received prior to the publication of this Notice if processing the application would not adversely affect the marketability or appraised value of the parcel proposed for sale.

3. All minerals are reserved to the United States, together with the right to prospect for, mine and remove the minerals owned by the United States under applicable laws and any regulations that the Secretary of Interior may prescribe, including all necessary access and exit rights.

4. The patentee, by accepting a patent, covenants and agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentees use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, state, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or state environmental laws, off, on, into or under land, property and other interests of the United States; (5) Activities by which solids or hazardous substances or wastes, as defined by Federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and state law. Patentee shall stipulate that it will be solely responsible for compliance with all applicable Federal, state and local environmental and regulatory provisions, throughout the life of the facility, including any closure and/or post-closure requirements that may be imposed with respect to any physical plant and/or facility upon the real property under any Federal, state or local environmental laws or regulatory provisions. This covenant shall be construed as running with the above described parcel of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

No warranty of any kind, express or implied is given or will be given by the United States as to the title, physical condition or potential uses of the land proposed for sale. However, to the extent required by law, such land is subject to the requirements of section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended (42 U.S.C. 9620(h)).

The publication of this Notice in the **Federal Register** shall segregate the public lands covered by this Notice to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequent application, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant, if the Notice segregates the lands from the use applied for in the application. The segregative effect of this Notice will terminate upon issuance of a patent or other document of conveyance for such lands, upon publication in the **Federal Register** of a termination of the segregation, or March 27, 2009, whichever occurs first, unless extended by the BLM State Director in accordance with 43 CFR 2611.1–2(d), prior to the termination date. Interested parties may submit comments to the District Manager, BLM Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401 until 45 days after the date of publication of this notice in the **Federal Register**. Any adverse comments will be reviewed by the BLM State Director who may sustain, vacate, or modify this realty action. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment-including your personal identifying information-may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Authority: 43 CFR 2711.1–2(c).

Dated: February 22, 2007.

Joel Farrell,

Assistant Field Manager, Farmington, New Mexico.

[FR Doc. E7–5540 Filed 3–26–07; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–1430–ES; WYW–06321501]

Notice of Realty Action; Recreation and Public Purposes Act Classification; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for conveyance under the provisions of the Recreation and Public Purposes Act a parcel of public lands located near LaBarge, in Lincoln County, Wyoming. The land has been leased under the Recreation and Public Purposes Act to the Town of LaBarge for use as a sanitary landfill since 1981, but has been closed to disposal of waste generally, since 1995. The Town of LaBarge intends to use the lands for a solid waste transfer facility.

DATES: Interested persons may submit written comments to the BLM at the address stated below. Comments must be received no later than May 11, 2007.

ADDRESSES: Bureau of Land Management, Pinedale Field Office, 432 East Mill Street, P.O. Box 768, Pinedale, Wyoming 82941.

FOR FURTHER INFORMATION CONTACT: Bill Wadsworth, Realty Specialist, at the address above or at 307–367–5341.

SUPPLEMENTARY INFORMATION: The following described public land in Lincoln County, Wyoming, has been examined and found suitable for classification for conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*) and is hereby classified accordingly:

WYW–06321501—LaBarge, WY—Closed landfill and current solid waste transfer facility currently under lease to Town of LaBarge to be classified for conveyance:

Sixth Principal Meridian, Lincoln County, Wyoming

T. 26 N., R. 112 W.,
Sec. 6, Lots 4, 31, 32.
The land described contains 30.82 acres.

In accordance with the R&PP Act and implementing regulation, at 43 CFR part 2740, the Town of LaBarge has filed a R&PP petition/application and plan of development in which it proposes to use the above described public lands for a closed landfill and a solid waste transfer facility. The lands are not needed for federal purposes. Conveyance pursuant to the R&PP Act is consistent with the Pinedale Resource Management Plan, dated December 12, 1988, and would be in the public interest.

The conveyance, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations, including but not limited to the regulations stated in 43 CFR part 2740, and policy and guidance of the Secretary of the Interior.

2. Reservation of a right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals under applicable laws and regulations established by the Secretary of the Interior, including all necessary access and exit rights.

4. No portion of the lands patented shall revert back to the United States under any circumstances. In addition, the patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances (substance as defined in 40 CFR part 302) and indemnify the United States against any legal liability or future costs that may arise out of any violation of such laws.

5. All valid existing rights of record, including those documented on the official public land records at the time of lease/patent issuance.

6. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. 9620(h)) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670) notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances had been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

7. The purchaser/patentee, by accepting a patent, covenants and agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, lessees, or any third party, arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, state, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s), and/or hazardous substance(s), as defined by Federal or state environmental laws, off, on, into or under land, property and other interests of the United States; (5) Activities by which solid waste or hazardous substances(s) or waste, as defined by Federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances(s) or waste(s); or (6) Natural resource damages as defined by Federal and state law. This covenant shall be construed as running with the parcels of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction. Detailed information concerning the proposed actions, including but not limited to documentation relating to compliance with applicable environmental and cultural resource laws, is available for review at the BLM, Pinedale Field Office, 432 East Mill Street, P.O. Box 768, Pinedale, WY 82941, telephone: 307–367–5341.

On March 27, 2007, the above described lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. Interested parties may submit written comments regarding the proposed conveyance or classification of the lands to the Field Manager, Pinedale Field Office, at the address stated above in this notice for that purpose. Comments must be received no later than May 11, 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 you can ask us in your comment to withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Classification Comments: Interested parties may submit comments involving the suitability of the lands for conveyance for the closed landfill and solid waste transfer facilities. Comments on the classification(s) are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, and whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision; or any other factor not directly related to the suitability of the lands for closed landfill and solid waste transfer facilities. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days after March 27, 2007.

(Authority: 43 CFR 2741.5)

Dated: February 5, 2007.

William Lanning,

Associate Field Manager.

[FR Doc. E7–5543 Filed 3–26–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on an extension of a currently approved collection of information (OMB#1024–0224).

DATES: Public comments will be accepted on or before May 29, 2007.

ADDRESSES: *Send Comments To:* Dr. James H. Gramann, NPS Visiting Chief Social Scientist; NPS Social Science Program, Texas A & M University, 225–B Francis Hall, 2261, College Station, TX 77843; Voice: 202–513–7189; Fax: 202–371–2131; E-mail: *James_Gramann@partner.nps.gov*. Also, you may send comments to Leonard Stowe, NPS, Information Collection Clearance Officer, 1849 C St., NW. (2065), Washington, DC 20240, or by e-mail at *leonard_stowe@nps.gov*. All responses to this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Megan McBride, NPS Social Science Senior Research Associate; c/o NPS Air Resource Division, P.O. Box 25287, Denver, Co 80225; Voice: 303–969–2814; E-mail: *Megan_McBride@contractor.nps.gov*.

SUPPLEMENTARY INFORMATION:

Title: Programmatic Approval for NPS-Sponsored Public Surveys.

Bureau Form Number: None.

OMB Number: 1024–0224.

Expiration Date: 1/31/2008.

Type of Request: Extension for a currently approved collection.

Description of Need: The NPS needs information concerning park visitors and visitor services, potential park visitors, and residents of communities near parks to provide park and NPS managers with usable knowledge for improving the quality and utility of agency programs, services, and planning efforts.

Since many of the NPS surveys are similar in terms of the populations being surveyed, the types of questions being asked, and research methodologies, the NPS proposed to and received clearance from OMB for a program of review for NPS-sponsored public surveys (OMB #1024–0224 exp. 8/31/2001; 3-year extension granted, exp. 9/30/2004; 3-year extension granted, exp. 1/31/2008).

The program presented an alternative approach to complying with the Paperwork Reduction Act. In the eight year since the NPS received clearance for the program of expedited review, 371 public surveys have been conducted in units of the National Park System. The benefits of this program have been significant to the NPS, Department of Interior, OMB, NPS cooperators, and the public. Significant time and cost savings have been incurred. Expedited approval was typically granted in 60 days or less from the date the Principal Investigator first submitted the survey package for review. This is a significant reduction over the approximate 6–8 months involved in the standard OMB review process. From FY 1999 through FY 2006, the expedited review process has accounted for a cost savings to the federal government and PIs estimated at $723,087.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Automated data collection: At the present time, there is no automated way to gather this information, since the information gathering process involves asking the public for their opinions on services and facilities that they used during their visits, services and facilities they are likely to use on future park visits, and opinions regarding park management. The burden on individuals is minimized by rigorously designing public surveys to maximize the ability of the surveys to use small samples of individuals to represented large populations of the public, and by coordinating the program of surveys to maximize the ability of new surveys to build on the findings of prior surveys.

Description of respondents: A sample of visitors to parks, potential visitors to parks, and residents of communities near parks.

Estimated average number of respondents: The program does not identify the number of respondents because that number will differ in each individual survey, depending on the purpose and design of each information collection.

Estimated average number of responses: The program does not identify the average number of responses because that number will differ in each individual survey. For most surveys, each respondent will be asked to respond only one time, so in those cases the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: The program does not identify

the average burden hours per response because that number will differ from individual survey to individual survey, depending on the purpose and design of each information collection.

Frequency of Response: Most individual surveys will request only 1 response per respondent.

Estimated annual reporting burden: The program identifies the requested total number of burden hours annually for all of the surveys to be conducted under its auspices to be 15,000 burden hours per year. The total annual burden per survey for most surveys conducted under the auspices of this program would be within the range of 50 to 200 hours.

Dated: February 28, 2007.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 07–1478 Filed 3–26–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Ellis Island Development Concept Plan, Final Environmental Impact Statement, Statute of Liberty National Monument and Ellis Island, New York and New Jersey

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement for Ellis Island Development Concept Plan, Statute of Liberty National Monument and Ellis Island.

SUMMARY: Pursuant to National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of a Final Environmental Impact Statement for the Ellis Island Development Concept Plan, Statute of Liberty National Monument and Ellis Island, New York and New Jersey. The primary purpose of the FEIS is to finalize the documentation of the environmental consequences of alternative management strategies for the rehabilitation and adaptive reuse of 30 deteriorating buildings on Ellis Island, and the limited service and emergency access that are described in the preferred alternative of the Development Concept Plan.

The Development Concept Plan/Final Environmental Impact Statement (DCP/FEIS) evaluates three (3) alternatives regarding the future of the vacant historic buildings of Ellis Island. ''Alternative 1: No Action—Continutation of Existing Management Direction,'' describes the conditions after only temporary stabilization of the buildings and the existing vehicular service bridge. The eventual result of the no action alternative is the complete or near-complete loss of these resources as the effects of temporary stabilization expire. This alternative provides the basis of comparison to judge the potential impacts of the two ''action'' alternatives. Both action alternatives would include a new service bridge to New Jersey for emergency and service vehicles; the no action alternative would not. ''Alternative 2: Ellis Island Partners—Day Use Only,'' describes conditions that would result after the buildings are rehabilitated as a campus for multiple non-profit/institutional uses complimenting the historic of Ellis Island ''Alternative 3: Ellis Island Institute with Overnight Accommodations'' (the preferred alternative), describes the conditions if the buildings were rehabilitated as an educational, non-profit institute with an associated conference/retreat center. The facilities would include overnight accommodations to host meetings, retreats, and workshops primarily focusing on issues such as immigration, world migration, public health, family history, historic preservation, and the environment. The preferred alternative would accomplish the goals and objectives set forth in the NPS 1982 Statute of Liberty National Monument General Management Plan which identified several major buildings on the north side of the island for rehabilitation and reuse by the NPS for interpretation, visitor services and administration (subsequently completed utilizing private funds raised by the Statue of Liberty-Ellis Island Foundation), and proposed that the balance of the buildings on the island, including all of the south-side buildings, be preserved on the exteriors and adapted for reuse by either the NPS or a private organization under a lease agreement or concession contract.

The DCP/FEIS documents the project's requirements to comply with NPS Director's Order 21 and the Partnership Construction Process, as well as the requirement for additional analysis to confirm the economic and programmatic viability of the proposed action. The results of these studies will guide the scope, design and build-out of this project. If the project is determined by the NPS to not be economically feasible, the NPS will consider alternatives for management of Ellis Island taking into account the information gained from said market analysis and feasibility studies and other facts then available. This further consideration of alternatives will be conducted in accordance with applicable requirements of the National Environmental Protection Act and the National Historic Preservation Act (as amended).

The release of the Development Concept Plan/Draft Environmental Impact Statement in June 2003, and publication of the Notice of Availability in the **Federal Register** on June 25, 2003 began a 60-day review period of the draft document. During that review period, the National Park Service held two public meetings to provide agencies and the public an opportunity to comment on the draft document. During the public comment period on the draft document, comments were received in the form of letters, cards, and emails. Written and verbal comments were submitted at public hearings. All substantive comments have been addressed in the ''Consultation and Coordination'' chapter of the DCP/FEIS.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final Environmental Impact Statement. Availability of the ROD will be noticed in the **Federal Register** and the NPS will subsequently move forward with the NPS' Partnership Construction Process and other required reviews for a partnership project. Following the ROD, the NPS will also begin consultation, planning and environmental analysis for the permanent bridge.

ADDRESSES: Information will be available for public inspection on line at *http://parkplanning.nps.gov* and in the offices of the Superintendent, Statute of Liberty NM and Ellis Island, Liberty Island, New York, NY 10004, where copies of the document are available in print and on compact disc.

FOR FURTHER INFORMATION CONTACT: Superintendent, Statute of Liberty National Monument and Ellis Island, Ellis Island Receiving Office, Jersey City, NJ 07305. (212) 3663–3206) Ext. 100), *Cynthia_garrett@nps.gov*.

Dated: January 25, 2007.

Dennis R. Reidenbach,

Acting Regional Director, Northeast Region, National Park Service.

[FR Doc. 07–1479 Filed 3–26–07; 8:45 am]

BILLING CODE 4310–6E–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 5, 2007, Roche Diagnostics Operations, Inc., Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Lysergic Acid Diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Alphamethadol (9605)	I
Phencyclidine (7471)	II
Ecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to manufacture small quantities of the listed controlled substances for use in diagnostic products.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, Washington, DC 20537; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than May 29, 2007.

Dated: March 19, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–5510 Filed 3–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 26, 2007, Stepan Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Cocaine (9041)	II
Ecgonine (9180)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, Washington, DC 20537; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than May 29, 2007.

Dated: March 19, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–5509 Filed 3–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. § 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on November 9, 2006, Tocris Cookson, Inc., 16144 Westwoods Business Park, Ellisville, Missouri 63021–4500, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule I:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The company plans to import the above listed synthetic products for non-clinical laboratory based research only.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, Washington, DC 20537; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than April 26, 2007.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: March 19, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–5507 Filed 3–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1468]

Meeting of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is announcing the spring meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ), which will be held in Washington, DC on April 23–24, 2007. The meeting times and location are noted below.

DATES: The schedule of events is as follows:

1. Sunday, April 22, 2007, 4 p.m. to 6 p.m.
2. Monday, April 23, 2007, 8:30 a.m. to 5 p.m.
3. Tuesday, April 24, 2007, 8:30 a.m. to 12:30 p.m.

ADDRESSES: All open meeting sessions will take place at the Office of Justice Programs, 810 Seventh Street, NW., main conference room, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Robin Delany-Shabazz, Designated Federal Official, OJJDP, *Robin.Delany-Shabazz@usdoj.gov*, or 202–307–9963. [Note: This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee on Juvenile Justice (FACJJ), established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App.2) will meet to carry out its advisory functions under Section 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002. The FACJJ is composed of one representative from each state and territory. FACJJ duties include: Reviewing Federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions and aspects of OJJDP; and advising the President and Congress with regard to State perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. More information, including a member list, may be found at *http://www.facjj.org.*

Meeting Agenda

1. Sunday, April 22, 2007

- 4 p.m.–6 p.m. New Member Orientation. (Closed Session).

2. Monday, April 23, 2007

- 8:30 a.m.–9:15 a.m. Call to Order by the Chair of the FACJJ and Remarks by the Administrator of OJJDP (Open Session).
- 9:15 a.m.–12 p.m. and 1:30 p.m.–5 p.m. Review, Discussion and Deliberation of the 2007 Draft Reports to the President, Congress, and the Administrator of OJJDP (Open Session).
- 12 p.m.–1:30 p.m. Subcommittee Meetings (Closed Sessions).

3. Tuesday, April 23, 2007

- 8:30 a.m.–12:30 p.m. Continuation of Review, Discussion and Deliberation of the 2007 Draft Reports; Presentations and Discussions concerning Effective Legal Counsel; and Other Business (Open Session).

For security purposes, members of the public who wish to attend open sessions of the meeting should register by sending an e-mail with their name, affiliation, address, phone number, and a list of sessions they plan to attend to *ddunston@edjassociates.com.* If e-mail is not available, fax this information to 240–221–4006, attention: Daryel Dunston. Because space is limited, notification of intent to attend should be sent by April 16, 2007.

Note: Photo identification will be required for admission to the meeting. Additional identification documents may be required. Space is limited.

Written Comments

Interested parties may submit written comments by Monday, April 16, 2007, to Robin Delany-Shabazz, Designated Federal Official for the Federal Advisory Committee on Juvenile Justice, OJJDP, at *Robin.Delany-Shabazz@usdoj.gov*. If e-mail is not available, fax your comments to 202–354–4063 and call Francesca Stern at 202–616–3551 to ensure fax was received. [Note: These are not toll-free numbers.] No oral presentations will be permitted at the meeting. However, written questions and comments from members of the public attending the meeting may be invited.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. E7–5544 Filed 3–26–07; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 21, 2007.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *Mills.Ira@dol.gov*, or by accessing *http://www.reginfo.gov/public/do/PRAMain.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for U.S. Department of Labor/Bureau of Labor Statistic (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved Collection.

Title: National Longitudinal Survey of Youth.

OMB Number: 1220–0109.

Frequency: Biennially.

Affected Public: Individuals or households.

Type of Response: Reporting.

Instrument	Total respondents	Total responses	Average time per response (minutes)	Estimated total burden (hours)
NLSY79 Pretest Sample Replenishment Screener	1,000	1,000	3	50
NLSY79 Pretest Sample Replenishment Interview	100	100	15	25
Total	1,100	1,100		75

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: BLS requests OMB approval to conduct interviews to replenish the pretest sample of the National Longitudinal Survey of Youth 1979 cohort (NLSY79). The NLSY79 is a nationally representative survey of people who were born in the years 1957 to 1964 and lived in the U.S. when the survey began in 1979. NLSY79 participants were interviewed annually from 1979 to 1994 and have been interviewed every two years since 1994. The focus of the survey is labor market experiences, but the survey also covers topics that affect or are affected by labor market activity. These topics include education, training, marital and family relationships, fertility, childcare, health, substance use, and others.

Prior to each round of the NLSY79, a pretest has been conducted with a separate, smaller sample to help ensure the proper functioning of questionnaires, procedures, and systems and to rectify any problems before the main fielding of the NLSY79. Over time, the size of the pretest sample has declined significantly, and the characteristics of pretest participants now differ so sharply from the characteristics of most NLSY79 participants that the pretest no longer is a useful tool to detect and remedy problems with the survey. For this reason, BLS and its contractors have decided to replenish the pretest sample. The process of replenishing the sample requires new sample members to be interviewed for about 15 minutes during the summer of 2007. The information obtained from this interview will be used for an input file during the NLSY79 Round 23 pretest that is planned for October 2007. Because the NLSY79 is longitudinal, the questions that respondents are asked in one round sometimes depend on the responses they provided in previous rounds. The summer 2007 interview is necessary to obtain information that will enable all questions to function properly in the October 2007 pretest.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. E7–5578 Filed 3–26–07; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 21, 2007.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained at *http://www.reginfo.gov/public/do/PRAMain,* or contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *Mills.Ira@dol.gov*.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for U.S. Department of Labor/Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Reinstatement.

Title: Work Application/Job Order.

OMB Number: 1205—0001.

Frequency: On occasion.

Affected Public: State, Local, or Tribal Government.

Type of Response: Recordkeeping.

Number of Respondents: 52.

Annual Responses: N/A.

Average Response Time: 8 hours per respondent.

Total Annual Burden Hours: 416.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: The request is only for the retention of information at the state level on work applications and job orders.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. E7–5579 Filed 3–26–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Meetings and Agenda

The regular Spring meetings of the Business Research Advisory Council and its committees will be held April 11 and 12, 2007. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

Wednesday—April 11 (Conference Rooms 1 & 2)

10–11:30 a.m.—Committee on Productivity and Foreign Labor Statistics

1. Expansion of international comparisons of productivity and

compensation (Wolodar Lysko and Jessica Sincavage).

2. KLEMS multifactor productivity (MFP) for major industry groups (Steve Rosenthal).

3. MFP for detailed manufacturing industries (DIPS staff).

4. Effects of capitalization of R&D in the national accounts on major sector MFP (Larry Rosenblum).

5. Discussion of agenda items for the Fall 2007 meeting.

1–2:30 p.m.—Committee on Safety and Health Statistics

1. Undercount activities.

a. Quality assurance survey.

b. Other activities.

2. Workplace violence prevention survey results.

3. Case and demographic data, 2005.

4. Final CFOI estimates, 2005.

5. Internet data collection.

6. Discussion of agenda items for the Fall 2007 meeting.

3–4:30 p.m.—Committee on Price Indexes

1. Associate Commissioner update (Mike Horrigan).

2. Airline indexes in OPLC—results from the methodology team study.

3. Treatment of utility costs in the CPI rental equivalence index.

4. Discussion of agenda items for the Fall 2007 meeting.

Thursday—April 12 (Conference Rooms 1 & 2)

8:30–10 a.m.—Committee on Employment and Unemployment Statistics

1. New Current Employment Statistics (CES) data to be released April 6 on all employee regular hours and earnings and gross monthly earnings.

2. Plans for the next evaluation of our biennial employment projections: progress, goals, and issues.

3. CPS program analysis of trends in labor force participation.

4. Discussion of agenda items for the Fall 2007 meeting.

10:30 a.m.–12 p.m.—Council Meeting

1. Council chairperson's remarks.

2. Deputy Commissioner's remarks.

1:30–3 p.m.—Committee on Compensation and Working Conditions

1. NCS Data Collection—Maximizing value while minimizing burden.

a. NCS provides a wealth of data on employee wages and benefits.

b. NCS constantly looks for ways to obtain these data without undue burden on our respondents.

c. NCS reaches out to respondents and other users to make sure they're aware of this valuable source of information.

d. NCS wants your input on what more we should be doing to minimize burden and maximize utility.

2. Keeping NCS fresh—accounting for change in the economy.

a. Area sample reselection.

b. Establishment sample rotation.

c. Selection of occupations.

d. SOC revision.

3. Update on initiatives and action items.

a. Collective bargaining agreements available on-line.

b. Pay relative processes.

c. Local ECI research.

4. Discussion of agenda items for the Fall 2007 meeting.

The meetings are open to the public. Persons wishing to attend these meetings as observers should contact Tracy A. Jack, Liaison, Business Research Advisory Council, at 202–691–5869.

Philip L. Rones,

Deputy Commissioner.

[FR Doc. E7–5577 Filed 3–26–07; 8:45 am]

BILLING CODE 4510–24–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Determination of Executive Compensation Benchmark Amount Pursuant to Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as Amended

AGENCY: Office of Federal Procurement Policy.

ACTION: Notice.

SUMMARY: The Office of Management and Budget (OMB) is hereby publishing the attached memorandum to the heads of executive departments and agencies concerning the determination of the maximum benchmark compensation amount that will be allowable under government contracts during contractors' FY 2007—$597,912. This determination is required under Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. The benchmark compensation amount applies equally to both defense and civilian procurement agencies.

FOR FURTHER INFORMATION CONTACT: Laura Auletta, Office of Federal Procurement Policy, on (202) 395–3256.

Paul A. Denett,

Administrator.

Memorandum for the Heads of Executive Departments and Agencies

Subject: Determination of Executive Compensation Benchmark Amount, Pursuant to Section 39 of the Office of Federal Procurement Policy, (OFPP) Act (41 U.S.C. 435), as amended.

This memorandum sets forth the benchmark compensation amount as required by Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. Under Section 39, the benchmark compensation amount is the median amount of the compensation provided for all senior executives of benchmark corporations for the most recent year for which data is available. The benchmark compensation amount established by Section 39 limits the allowability of compensation costs under government contracts. The benchmark compensation amount does not limit the compensation that an executive may otherwise receive. This amount is based on data from commercially available surveys of executive compensation that analyze the relevant data made available by the Securities and Exchange Commission. More specifically, as required by Section 39 of the OFPP Act, the data used is the median (50th percentile) amount of compensation accrued over a recent 12 month period for the top five highest paid executives of publicly traded companies with annual sales over $50 million. After consultation with the Director of the Defense Contract Audit Agency, we have determined pursuant to the requirements of Section 39 that the benchmark compensation amount for contractors' Fiscal Year 2007 is $597,912. This amount is for Fiscal Year 2007 and subsequent contractor fiscal years, unless and until revised by OFPP. The benchmark compensation amount applies to contract costs incurred after January 1, 2007, under covered contracts of both the defense and civilian procurement agencies as specified in Section 39 of the OFPP Act (41 U.S.C. 435), as amended.

Questions concerning this memorandum may be addressed to Laura Auletta, Office of Federal Procurement Policy, at (202) 395–3256.

Paul A. Denett, Administrator.

[FR Doc. E7–5573 Filed 3–26–07; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below

on or before April 26, 2007 to be assured of consideration.

ADDRESSES: Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for these information collections on January 17, 2007 (72 FR 2018 and 2019). No comments were received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Court Order Requirements.

OMB number: 3095–0038.

Agency form number: NA Form 13027.

Type of review: Regular.

Affected public: Veterans and Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 5,000.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 1,250 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT), the NPRC also administers military service records of veterans after discharge, retirement, and death, and the medical records of these veterans, current members of the Armed Forces, and dependents of Armed Forces personnel. The NA Form 13027, Court Order Requirements, is used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law and (2) the information to be provided so that records may be identified.

2. *Title:* Authorization for Release of Military Medical Patient Records, Request for Information Needed to Locate Medical Records, Request for Information Needed to Reconstruct Medical Data, and Questionnaire about Military Service.

OMB number: 3095–0039.

Agency form number: NA Forms 13036, 13042, 13055, and 13075.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 79,800.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent wishes to request information from a military personnel, military medical, and dependent medical record).

Estimated total annual burden hours: 6,650 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT, U.S. Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military personnel and medical records of veterans after discharge, retirement, and death. In addition, NRPC administers the medical records of dependents of service personnel. When veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records, they must provide on forms or in letters certain information about the veteran and the nature of the request. A major fire at the NPRC on July 12, 1973, destroyed numerous military records. If individuals' requests involve records or information from records that may have been lost in the fire, requesters may be asked to complete NA Form 13075, Questionnaire about Military Service, or NA Form 13055, Request for Information Needed to Reconstruct Medical Data, so that NPRC staff can search alternative sources to reconstruct the requested information. Requesters who ask for medical records of dependents of service personnel and hospitalization records of military personnel are asked to complete NA Form 13042, Request for Information Needed to Locate Medical Records, so that NPRC staff can locate the desired records. Certain types of information contained in military personnel and medical records are restricted from disclosure unless the veteran provides a more specific release authorization than is normally required. Veterans are asked to complete NA Form 13036, Authorization for Release of Military Medical Patient Records, to authorize release to a third party of a restricted type of information found in the desired record.

Dated: March 21, 2007.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. E7–5542 Filed 3–26–07; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission:* Revision.

2. *The title of the information collection:* Policy Statement for the

''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof By States Through Agreement,'' Maintenance of Existing Agreement State Programs, Request for Information Through the Integrated Materials Performance Evaluation Program (IMPEP) Questionnaire, and Agreement State Participation in IMPEP.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* There are four activities that occur under this collection: information collection activities required by the IMPEP questionnaire in preparation for an IMPEP review conducted no less frequently than every four years; while the following activities are all collected on an annual basis—policy statement addressing requirements for new Agreement States; participation by Agreement States in the IMPEP reviews; and annual requirements for Agreement States to maintain their programs.

5. *Who is required or asked to report:* 34 Agreement States who have signed Section 274b. Agreements with NRC.

6. *An estimate of the number of annual responses:* For States interested in becoming an Agreement State, approximately one State per year. For Agreement State participation in IMPEP reviews: 10 (7 State, 1 NRC Region, and 2 Follow-up reviews per year). For maintenance of existing Agreement State programs: 34 States. For Agreement State response to IMPEP questionnaires: 7 States. The total number of annual responses is 52.

7. *The estimated number of annual respondents:* 34.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* For States interested in becoming Agreement States: Approximately 4,300 hours. For Agreement State participation in 10 IMPEP reviews (7 Agreement State, 1 NRC Regional Office and 2 Follow-up reviews): 360 hours (an average of 36 hours per review). For maintenance of existing Agreement State programs: 255,600 hours (an average of approximately 7,517 hours per State for 34 Agreement States). For Agreement State response to 7 IMPEP questionnaires annually: 371 hours (an average of 53 hours per program). The total number of hours expended annually is 260,631 hours.

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* States wishing to become Agreement States are requested to provide certain information to the NRC as specified by the Commission's Policy Statement, ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof By States Through Agreement.'' Agreement States need to ensure that the Radiation Control Program under the Agreement remains adequate and compatible with the requirements of Section 274 of the Atomic Energy Act (Act) and must maintain certain information. NRC conducts periodic evaluations through IMPEP to ensure that these programs are compatible with the NRC's program, meet the applicable parts of the Act, and are adequate to protect public health and safety.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 26, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. OMB Desk Officer, Office of Information and Regulatory Affairs (3150–0183), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Margaret A. Janney, (301) 415–7245.

Dated at Rockville, Maryland, this 20th day of March 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–5587 Filed 3–26–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of March 26, April 2, 9, 16, 23, 30, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 26, 2007

Tuesday, March 27, 2007

2:55 p.m.
Affirmation Session (Public Meeting) (Tentative)
a. System Energy Resources, Inc. (Early Site Permit for Grand Gulf ESP) (Tentative).

Thursday, March 29, 2007

9:25 a.m.
Affirmation Session (Public Meeting) (Tentative).
a. Consumers Energy Company, *et al.* (Palisades Nuclear Plant); License Transfer Application (Tentative).
b. CBS Corporation's Petition for Hearing Regarding an NRC Staff Decision not to Docket a CBS Request for an Order that Would Change Decontamination Standards Governing a Westinghouse Materials License at Waltz Mill (Tentative).

9:30 a.m.
Discussion of Management Issues (Closed—Ex. 2).

1:30 p.m.
Discussion of Security Issues (Closed—Ex. 1, 3, & 9).

Week of April 2, 2007—Tentative

There are no meetings scheduled for the Week of April 2, 2007.

Week of April 9, 2007—Tentative

There are no meetings scheduled for the Week of April 9, 2007.

Week of April 16, 2007—Tentative

Monday, April 16, 2007

1:30 p.m.
Discussion of Security Issues (Closed-Ex. 1, 2, & 3).

Tuesday, April 17, 2007

9 a.m.
Briefing on New Reactor Issues—Environmental Issues (Public Meeting) (Contact: James Lyons, 301 415–3050).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

1 p.m.
Briefing on Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans (Public Meeting) (Contact: Ann Ramey-Smith, 301 415–6877).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of April 23, 2007—Tentative

There are no meetings scheduled for the Week of April 23, 2007.

Week of April 30, 2007—Tentative

There are no meetings scheduled for the Week of April 30, 2007.

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*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.

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Additional Information

Affirmation of ''Consumers Energy Company, *et al.* (Palisades Nuclear Plant); License Transfer Application'' tentatively scheduled on Thursday, March 22, 2007, has been tentatively rescheduled on Thursday, March 29, 2007, at 9:25 a.m.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *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, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@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: March 22, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–1501 Filed 3–23–07; 12:25 pm]

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 March 2, 2007 to March 15, 2007. The last biweekly notice was published on March 13, 2007 (72 FR 11383).

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.*

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc.

Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi.

Date of amendment request: February 8, 2007.

Description of amendment request: The proposed amendment would modify Grand Gulf Nuclear Station, Unit 1 (GGNS) technical specification (TS) requirements for MODE change limitations in limiting condition for operation (LCO) 3.0.4 and surveillance requirement (SR) 3.0.4. The proposed TS changes are consistent with Revision 9 of Nuclear Regulatory Commission (NRC) approved Industry TS Task Force (TSTF) Standard TS Change Traveler, TSTF–359, ''Increase Flexibility in MODE Restraints.'' In addition, the proposed amendment would also change TS Section 1.4, Frequency, Example 1.4–1, ''Surveillance Requirements,'' to accurately reflect the changes made by TSTF–359, which is consistent with NRC-approved TSTF–485, Revision 0, ''Correct Example 1.4–1.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), as part of the Consolidated Line Item Improvement Process (CLIIP), on possible amendments to revise the

plant-specific TS to modify requirements for MODE change limitations in LCO 3.0.4 and SR 3.0.4.

The NRC staff subsequently issued a notice of availability of the models for Safety Evaluation and No Significant Hazards Consideration Determination for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the CLIIP, including the model No Significant Hazards Consideration Determination, in its application dated February 8, 2007.

The proposed TS changes are consistent with NRC-approved Industry TSTF Standard TS change, TSTF–359, Revision 8, as modified by 68 FR 16579. TSTF–359, Revision 8, was subsequently revised to incorporate the modifications discussed in the April 4, 2003, **Federal Register** notice and other minor changes. TSTF–359, Revision 9, was subsequently submitted to the NRC on April 28, 2003, and was approved by the NRC on May 9, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the NRC staff's analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Changes Do Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed changes in TS Section 1.4, Frequency, Example 1.4–1, would accurately reflect the changes made by TSTF–359 in LCO 3.0.4 and SR 3.0.4, which are consistent with NRC-approved TSTF–485, Revision 0. These changes are considered administrative in that they modify the example to demonstrate the proper application of LCO 3.0.4 and SR 3.0.4. The requirements of LCO 3.0.4 and SR 3.0.4 are clear and are clearly explained in the associated Bases. As a result, modifying the example will not result in a change in usage of the TS.

The proposed changes in LCO 3.0.4 and SR 3.0.4 allow entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The proposed changes do not adversely affect accident initiators or precursors, the ability of structures, systems, and components to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Being in a TS condition and the associated required actions are not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by these changes. The addition of a requirement to assess and manage the risk introduced by these changes will further minimize possible concerns. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Changes Do Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

No new or different accidents result from utilizing the proposed changes. The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The proposed changes do not alter assumptions made in the safety analysis and are consistent with the safety analysis assumptions and current plant operating practice. Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by these changes will further minimize possible concerns. Thus, these changes do not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Changes Do Not Involve a Significant Reduction in the Margin of Safety

The proposed changes in TS Section 1.4, Example 1.4–1, are considered administrative and will have no effect on the application of the TS requirements. Therefore, the margin of safety provided by the TS requirements is unchanged. The proposed changes in TS LCO 3.0.4 and SR 3.0.4 allow entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The GGNS TS allows operation of the plant without the full complement of equipment through the TS conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS LCO condition on the margin of safety is not considered significant. The proposed changes do not alter the required actions or completion times of the TS. The proposed changes allow TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The changes also eliminate current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: David Terao.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois.

Date of amendment request: January 8, 2007.

Description of amendment request: The proposed amendment would revise the technical specification (TS) requirements for selected reactor trip system (RTS) instrumentation, engineered safety feature actuation system (ESFAS) instrumentation, and containment ventilation isolation instrumentation to adopt completion times, test bypass time, and surveillance test interval changes. The changes are based on Westinghouse Electric Company, LLC, topical reports WCAP–14333–P–A, Revision 1, ''Probabilistic

Risk Analysis of the [Reactor Protection System] RPS and ESFAS Test Times and Completion Times,'' and WCAP–15376–P–A, Revision 1, ''Risk-Informed Assessment of the RTS and ESFAS Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed. The same RTS and ESFAS instrumentation will continue to be used. The protection systems will continue to function in a manner consistent with the plant design basis. These changes to the TS do not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered.

The proposed changes will not modify any system interface. The proposed changes will not affect the probability of any event initiators. There will be no degradation in the performance of or an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the Updated Final Safety Analysis Report.

The determination that the results of the proposed changes are acceptable was established in the NRC Safety Evaluations prepared for WCAP–14333–P–A, (issued by letter dated July 15, 1998) and for WCAP–15376–P–A, (issued by letter dated December 20, 2002). Implementation of the proposed changes will result in an insignificant risk impact.

Applicability of these conclusions has been verified through plant-specific reviews and implementation of the generic analysis results in accordance with the respective NRC Safety Evaluation conditions.

The proposed changes to the CTs [completion times], test bypass times, and Surveillance Frequencies reduce the potential for inadvertent reactor trips and spurious engineered safeguard features actuations, and therefore do not increase the probability of any accident previously evaluated. The proposed changes do not change the response of the plant to any accidents and have an insignificant impact on the reliability of the RTS and ESFAS signals. The RTS and ESFAS will remain highly reliable and the proposed changes will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety, as measured by the increase in core damage frequency (CDF) is less than 1.0E–06 per year and the increase in large early release frequency (LERF) is less than 1.0E–07 per year. In addition, for the CT changes, the incremental conditional core damage probabilities (ICCDP) and incremental conditional large early release probabilities (ICLERP) are less than 5.0E–07 and 5.0E–08, respectively. These changes meet the acceptance criteria in Regulatory Guides (RGs) 1.174 and 1.177. Therefore, since the RTS and ESFAS will continue to perform their functions with high reliability, as originally assumed, and the increase in risk, as measured by ΔCDF, ΔLERF, ICCDP, ICLERP risk metrics, is within the acceptance criteria of existing regulatory guidance, there will not be a significant increase in the consequences of any accidents.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. The proposed changes are consistent with safety analysis assumptions and resultant consequences.

Therefore, this change does not increase the probability or consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. The proposed changes will not affect the normal method of plant operation. No performance requirements will be affected or eliminated. The proposed changes will not result in physical alteration to any plant system nor will there be any change in the method by which any safety-related plant system performs its safety function. There will be no setpoint changes or changes to accident analysis assumptions.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety?

The proposed changes do not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Analysis Limit. There will be no effect on the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the departure from nucleate boiling limits, fuel centerline temperature, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' will continue to be met.

Redundant RTS and ESFAS trains are maintained, and diversity with regard of the signals that provide reactor trip and engineered safety features actuation is also maintained. All signals credited as primary or secondary, and all operator actions credited in the accident analyses will remain the same. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in RGs 1.174 and 1.177. Although there was no attempt to quantify any positive human factors benefit due to increased CTs and bypass test times, it is expected that there would be a net benefit due to a reduced potential for spurious reactor trips and actuations associated with testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety, as follows:

- Reduced testing will result in fewer inadvertent reactor trips, less frequent actuation of ESFAS components, less frequent distraction of operations personnel without significantly affecting RTS and ESFAS reliability.
- Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation will be realized. This is due to less frequent distraction of the operators and shift supervisor to attend to instrumentation Required Actions with short CTs.
- Longer repair times associated with increased CTs will lead to higher quality repairs and improved reliability.
- The CT extensions for the reactor trip breakers will provide additional time to complete test and maintenance activities while at power, potentially reducing the number of forced outages related to compliance with reactor trip breaker CT, and provide consistency with the CT for the logic trains.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell A. Gibbs.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: January 30, 2007.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) Surveillance Requirement (SR) 3.5.1.3.b to correctly state that the required pressure at which the Alternate Nitrogen System is determined to be operable should be greater than or equal to 410 psig, not the currently stated pressure of greater than or equal to 220 psig. The safety-related Alternate Nitrogen System provides an alternate pressure source to equipment required during or following an accident. The licensee has determined that the current acceptance value specified by SR 3.5.1.3.b is non-conservative and needs to be corrected to the higher value.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC). The NRC staff reviewed the licensee's analysis, and has performed its own analysis as follows:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment would only correct the acceptance value specified by SR 3.5.1.3.b. The acceptance value of the nitrogen supply was not considered to be a precursor to, and does not affect the probability of, an accident. In addition, there is no design or operation change associated with the proposed amendment.

Therefore, the proposed amendment does not increase the probability of an accident previously evaluated.

The corrected, higher pressure of the Alternate Nitrogen System will ensure that nitrogen is available to operate equipment after an accident, as designed. The increased acceptance value will not decrease the functionality of the Alternate Nitrogen System, or the functionality of the plant equipment it supports. Therefore, the plant systems required to mitigate accidents will remain capable of performing their design functions. As a result, the proposed amendment will not lead to a significant change in the consequences of any accident.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment does not involve a physical alteration of any system, structure, or component (SSC) or a change in the way any SSC is operated. The proposed amendment does not involve operation of any SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the revised acceptance value.

Thus, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed amendment only changes the acceptance value of the Alternate Nitrogen System. There will be no modification of any TSs limiting condition for operation, no change to any limit on previously analyzed accidents, no change to how previously analyzed accidents or transients would be mitigated, no change in any methodology used to evaluate consequences of accidents, and no change in any operating procedure or process. 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 the NRC staff's own analysis above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Branch Chief: L. Raghavan.

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 amendment requests: February 8, 2007.

Description of amendment requests: This license amendment request will (1) revise Technical Specification (TS) Surveillance Requirement (SR) 3.3.7.3.a to lower the allowable value for dropout and raise the allowable value for pickup of the degraded voltage function, and (2) revise TS SR 3.8.1 to lower the diesel generator minimum output voltage due to lower settings for the degraded voltage function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This proposed change revises the Technical Specification (TS) Surveillance Requirement (SR) 3.3.7.3.a allowable values of the Degraded Voltage Function and SRs 3.8.1.2, .7, .9, .11, .12, .15, .16, .17, .19, and .20 for Diesel Generator (DG) minimum operable voltage. This proposed change will allow Southern California Edison (SCE) to widen the operating band while maintaining adequate conservatism for the degraded relay settings and overall loop uncertainties while keeping 218 kV as the minimum voltage on the offsite transmission grid necessary to support operability of the immediate access offsite power source (also referred to as the normal preferred power source). This will be accomplished by lowering the dropout and increasing the pickup settings of the degraded voltage protection relays. Following approval of this proposed change, the 4.16 kV Class 1E buses would remain on the normal preferred power source at or above a grid voltage of 218 kV while protecting all Class 1E equipment from degraded grid conditions.

The degraded voltage protection circuits are designed to protect electrical equipment against the effects of degraded voltage on the offsite transmission networks. Therefore, these circuits are generally not considered to be accident initiators. However, spurious actuation of the degraded voltage protection relays could result in the loss of the preferred power source (offsite source of alternating current (AC) power). The proposed change lowers the allowable value for dropout and raises the allowable value for pickup for the degraded voltage protection relays. This results in an increase in operating band and a lower probability of spurious actuation of these degraded voltage signals. Therefore, there is no increase in the probability of a Loss of Offsite Power (preferred power source) as a result of this proposed change.

The safety function of the degraded voltage protection circuits is to ensure the operability of Class 1E equipment. SCE has performed calculations that demonstrate that operation in accordance with this proposed change will not result in operation of plant equipment at degraded voltages. Therefore, there is no increase in the consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any 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 allowable values of the degraded voltage relays and the DG minimum operating voltage will provide an acceptable level of protection for plant equipment.

This proposed change affects only the voltage settings of the degraded voltage protection relays and voltage regulator setting of the DG for lowering the required bus voltage. There is no other change to the degraded voltage function. There are no physical modifications necessary to the degraded voltage protection relays or the DG. There are no changes to the actions performed by the relays or the DG following actuation. Therefore, there are no new failure

modes or effects introduced by this proposed change.

Therefore, the proposed 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 degraded voltage protection schemes are designed to ensure that plant equipment will not operate at a degraded voltage and the DG Automatic Voltage Regulator (AVR) is set to provide adequate voltage for resetting of the relays and satisfactory operation of the Safety Related equipment. The proposed degraded voltage allowable values will not affect the existing protection criterion for plant equipment. This maintains the existing margin of safety for plant equipment.

Therefore, there is no significant reduction in a margin of safety as a result of the proposed amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: David Terao.

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 amendment request: February 13, 2007.

Description of amendment request: The proposed amendment would modify the licensee's Technical Specification (TS) Section 3.9.1, ''Refueling Equipment Interlocks,'' to add required actions to allow insertion of a control rod withdrawal block and verification that all control rods are fully inserted as alternate actions to suspending in-vessel fuel movement in the event that one or more required refueling equipment interlocks are inoperable. These changes are based on Technical Specification Task Force (TSTF) change TSTF–225, Revision 2, ''Fuel movement with inoperable refueling equipment interlocks'' and are consistent with the current Boiling Water Reactor (BWR)/4 Standard Technical Specifications (STS), NUREG–1433, Volume 1, Revision 3.0.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change provides additional actions for an inoperable refueling equipment interlock. The proposed actions will allow fuel movement with inoperable refueling interlocks, however, those actions will require the insertion of a continuous control rod withdrawal block, as well as verification that all control rods are fully inserted, before the commencement of fuel movement. Since fuel movement with the refueling interlocks operable allows control rod withdrawal under some circumstances, complete prevention of control rod withdrawal with the refueling interlocks inoperable does not increase the likelihood of a reactivity event, and may in fact decrease its probability of occurrence.

The refueling interlocks are not designed or otherwise intended to prevent or mitigate the consequences of the fuel handling accident. This proposed change does not involve those structures that could have an effect on the fuel handling accident and its consequences, such as the fuel design, the integrity of the refueling platform, and the integrity of the refueling mast and grapple. Furthermore, the consequences of the refueling accident are not increased since, should that accident occur while operating under the provisions of the alternate actions, all control rods will be fully inserted. The consequences of the fuel assembly insertion error event during refueling are not increased since this proposed change preserves the initial conditions of that transient event, i.e., all control rods inserted.

Implementing these changes will not increase the likelihood of an equipment failure resulting from the use of the refueling cranes and hoists. Such protection is afforded by other plant (owner controlled) specifications and procedures. These documents require testing and maintenance of these components separate from the requirements of [Limiting Condition for Operation] LCO 3.9.1.

This submittal does not affect any other system, structure or component that is important with respect to the prevention and mitigation of other accidents or transients.

For the above reasons, this proposed Technical Specifications 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?

The proposed change provides additional actions (the insertion of a control rod block and verification that all control rods are fully inserted) for inoperable refueling interlocks. This change does not involve any permanent alterations to plant systems or components. Nor does it involve changes to operational configurations or to the maintenance and testing of systems or components. Consequently, no new modes of operation are being introduced. Therefore, the change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

The proposed change provides additional actions for an inoperable required refueling equipment interlock. The new actions will require that all control rods be fully inserted and that a control rod block be in effect. Under the current specifications, control rod withdrawal is allowed during fuel movement under certain conditions.

The alternate actions of the proposed specifications will not allow rod withdrawal under any circumstances during fuel movement operations, therefore, this proposed change provides a level of safety at least equivalent to the existing actions.

Consequently, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Evangelos C. Marinos.

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: February 26, 2007.

Description of amendment request: The proposed change adds an operating license condition and revises the Technical Specifications to permit the replacement of main control room (MCR) and emergency switchgear room (ESGR) air-conditioning system (ACS) chilled water piping by using temporary 45-day and 14-day allowed outage times (AOTs) four times in a 24-month time span.

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?

The proposed change has been evaluated using the risk-informed processes described

in Regulatory Guide (RG) 1.174, ''An Approach for Using Probabilistic Risk assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' and RG 1.177, ''An Approach for Plant-Specific, Risk-Informed Decision Making: Technical Specifications.''

The risk associated with the proposed change was found to be acceptably ''small'' and therefore not a significant increase in the probability or consequences of an accident previously evaluated.

In addition, the proposed change does not affect the initiators of analyzed events or the assumed mitigation of accident or transient events. During the temporary 45-day and 14-day AOT entries, equipment availability restrictions will restrict or limit the out-of-service time of risk significant plant equipment due to surveillance testing, preventive maintenance, and elective maintenance. In addition, during the replacement activities, compensatory actions will be in place to ensure the availability of chilled water or to provide backup cooling. Therefore, the ACS will continue to perform its required function. As a result, the proposed change to the Surry TS does not involve any significant increase in the probability or the consequences of any accident or malfunction of equipment important to safety previously evaluated since neither accident probabilities nor consequences are being affected by this proposed change.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a change in the methods used to respond to plant transients. There is no alteration to the parameters within which the plant is normally operated or in the setpoints, which initiate protective or mitigative actions. The MCR and ESGR ACS will continue to perform its required function. This is assured by the planned implementation of compensatory actions, including provisions for backup cooling. Consequently, no new failure modes are introduced by the proposed change. Therefore, the proposed Surry TS change does not create the possibility of a new or different kind of accident or malfunction of equipment important to safety from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an accident or transient event. The proposed change does not affect the ability of the MCR and ESGR ACS to perform its required function. This is assured by the planned implementation of compensatory actions, including provisions for backup cooling. Furthermore, the proposed change has been evaluated using the risk-informed processes described in Regulatory Guide (RG) 1.174, ''An approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' and RG 1.177, ''An Approach for Plant-Specific, Risk-Informed Decision Making: Technical Specifications.''

The risk associated with the proposed change was found to be acceptably small. Therefore, the proposed change to the Surry TS 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.

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: March 6, 2007.

Description of amendment request: The proposed amendments would revise the licensing basis (Updated Final Safety Analysis Report (UFSAR)) to permit irradiation of the fuel assemblies beginning with Surry Power Station, Unit Nos. 1 and 2, improved fuel assemblies with ZIRLO (Westinghouse trademark) cladding to a lead rod average burnup of 62,000 MWD/MTU.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability of occurrence or the consequence of an accident previously evaluated is not significantly increased.

The activity being evaluated is a slight increase in the lead rod average burnup limit for the fuel assemblies. No change in fuel design or fuel enrichment will be required to increase the lead rod average burnup. The fuel rods at the extended lead rod average burnup will continue to meet the design limits with respect to fuel rod growth, clad fatigue, rod internal pressure and corrosion. There will be no impact on the capability to engage the fuel assemblies with the handling tools. Therefore, it is concluded that the change will not result in an increase in the probability of occurrence of any accident previously evaluated in the UFSAR. The impact of extending the lead rod average burnup to 62,000 MWD/MTU from 60,000 MWD/MTU on the core kinetics parameter, core thermal-hydraulics/[departure from nucleate boiling ratio]DNBR, specific accident considerations, and radiological consequences was considered. Based on the evaluation of these considerations, it is concluded that increasing the lead rod average burnup limit to 62,000 MWD/MTU will not result in a significant increase in the consequences of the accidents previously evaluated in the Surry UFSAR.

2. The possibility for a new or different type of accident from any accident previously evaluated is not created.

The fuel is the only component affected by the change in the burnup limit. The change does not affect the thermal hydraulic response to any transient or accident. The existing fuel rod design criteria continue to be met at the higher burnup limit. Thus, the change does not create the possibility of an accident of a different type.

3. The margin of safety as defined in the Bases to the Surry Technical Specifications is not significantly reduced.

The operation of the Surry cores with a limited number of fuel assemblies with some fuel rods irradiated to a lead rod average burnup of 62,000 MWD/MTU will not change the performance requirements of any system or component such that any design criteria will be exceeded. The normal limits on core operation defined in the Surry Technical Specifications will remain applicable for the irradiation of the fuel to a lead rod average burnup of 62,000 MWD/MTU. Therefore, the margin of safety as defined in the Bases to the Surry Technical Specifications is not significantly reduced.

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.

Florida Power Corporation, et al.

Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida.

Date of amendment request: February 8, 2007.

Description of amendment request: To change the basis for protection of spent fuel stored in the spent fuel pool (SFP) in order to eliminate the Final Safety Analysis Report commitment for maintaining the SFP missile shields.

*Date of publication of individual notice in the **Federal Register**:* March 13, 2007. (72 FR 11381).

Expiration date of individual notice: May 14, 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*.

Carolina Power & Light Company

Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina.

Date of application for amendment: May 30, 2006, as supplemented by letter dated November 20, 2006.

Brief description of amendment: The amendment revises the existing steam generator tube surveillance program at H. B. Robinson Steam Electric Plant, Unit No. 2.

Date of issuance: March 12, 2007.

Effective date: This license amendment is effective as of the date of issuance and shall be implemented within 60 days.

Amendment No. 212.

Renewed Facility Operating License No. DPR–23. Amendment revises the Technical Specifications.

*Date of initial notice in **Federal Register**:* December 19, 2007 (71 FR 75990). The November 20, 2006, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated: March 12, 2007.

No significant hazards consideration comments received: No.

Dominion Energy Kewaunee, Inc.

Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin.

Date of application for amendment: January 30, 2006, as supplemented by letter dated January 23, 2007.

Brief description of amendment: The amendment modifies the radiological accident analyses and associated technical specifications.

Date of issuance: March 8, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 190.

Facility Operating License No. DPR–43: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* March 14, 2006 (71 FR 13172).

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 March 8, 2007.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc.

Docket No. 50–423, Millstone Power Station, Unit No 3, New London County, Connecticut.

Date of application for amendment: February 7, 2006, as supplemented by letters dated August 14, 2006, and January 2, 2007.

Brief description of amendments: The amendment revised the Millstone Power Station, Unit No. 3 Technical Specifications to permit an increase in the allowed outage time from 72 hours to 7 days for the inoperablity of the steam supply to the turbine-driven auxiliary feedwater pump (AFW) or the inoperability of the turbine-driven AFW pump under certain operating mode restrictions.

Date of issuance: February 28, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 235.

Facility Operating License No NPF–49: Amendment revised the License and Technical Specifications.

*Date of initial notice in **Federal Register**:* April 11, 2006 (70 FR 18372).

The supplements dated August 14, 2006, and January 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.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 28, 2007.

No significant hazards consideration comments received: No.

Entergy Operations, Inc.

Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas.

Date of amendment request: October 25, 2005, as supplemented by letter dated March 20, 2006.

Brief description of amendments: The changes addressed inventory and inspection requirements associated with the emergency cooling pond, which is a common cooling water source for both units during conditions that may render the normal cooling water source (Dardanelle Reservoir) unavailable.

Date of issuance: March 9, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: Unit 1–229, Unit 2–271.

Renewed Facility Operating License Nos. DPR–51 and NPF–6: Amendments revised the Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register**:* October 24, 2006 (71 FR 62309). The supplemental letter dated March 20, 2006, 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 March 9, 2007.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC

Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York.

Date of application for amendment: October 19, 2006, as supplemented by letter dated January 5, 2007.

Brief description of amendment: The amendment revises the Surveillance Requirement (SR) in Technical Specification (TS) 4.1.1.c, ''Scram Insertion Times,'' to modify the conditions under which scram time testing (STT) of control rods is required, and to add a requirement to perform STT on a defined portion of control rods, at a specified frequency, during the operating cycle. The amendment also revises the SR in TS 4.1.7.c, ''Minimum Critical Power Ratio (MCPR),'' to add a requirement to determine the MCPR operating limits following completion of control rod STT per TS 4.1.1.c.

Date of issuance: March 15, 2007.

Effective date: March 15, 2007.

Amendment No.: 193.

Facility Operating License No. DPR–63: Amendment revised the License and Technical Specifications.

*Date of initial notice in **Federal Register**:* December 5, 2006 (71 FR 70562) The supplemental letter dated January 5, 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 consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 15, 2007.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC

Docket No. 50–311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey.

Date of application for amendment: April 6, 2006.

Brief description of amendment: The amendment changed the Technical Specifications (TSs) to reduce the maximum allowable reactor power level when two main steam safety valves are inoperable.

Date of issuance: March 7, 2007.

Effective date: As of the date of issuance and shall be implemented prior to restart from the steam generator replacement outage.

Amendment No.: 259.

Facility Operating License No. DPR–75: The amendment revised the TSs and the License.

Date of initial notice in **Federal Register**: November 7, 2006 (71 FR 65144).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 7, 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: May 1, 2006, as supplemented by letter dated November 3, 2006.

Brief description of amendment: The amendment revises the steam generator tube integrity Technical Specifications consistent with the Nuclear Regulatory Commission's approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–449, ''Steam Generator Tube Integrity,'' Revision 4.

Date of issuance: March 1, 2007.

Effective date: As of the date of issuance to be implemented within 90 days.

Amendment No.: 100.

Renewed Facility Operating License No. DPR–18: Amendment revised the License and Technical Specifications.

*Date of initial notice in **Federal Register**:* June 6, 2006 (71 FR 32605).

The supplemental letter dated November 3, 2006, 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 March 1, 2007.

No significant hazards consideration comments received: No.

Tennessee Valley Authority (TVA)

Docket No. 50–259, Browns Ferry Nuclear Plant (BFN), Unit 1, Limestone County, Alabama.

Date of application for amendment: September 22, 2006.

Brief description of amendment: The amendment supplements a June 28, 2004, request to increase the licensed thermal power from 3293 megawatt thermal (MWt) to 3952 MWt, an approximate 20% increase in thermal power. This supplement requests interim approval of an increase in licensed thermal power from 3293 MWt to 3458 MWt with an attendant 30-psi increase in reactor pressure. This represents an approximate 5% increase above the original licensed thermal power of 3293 MWt. An interim approval would provide for operation at 105% power until such time as certain steam dryer analyses can be completed. The NRC staff's review of the remainder of the June 2004 application would resume upon receipt of the satisfactorily completed steam dryer analyses.

Date of issuance: March 6, 2007.

Effective date: Date of issuance, to be implemented prior to restart.

Amendment No.: 269.

Renewed Facility Operating License No. DPR–33: Amendment revised the License and Technical Specifications.

*Date of initial notice in **Federal Register**:* October 10, 2006 (71 FR 59532). The Commissions related evaluation of the amendment is contained in an Environmental Assessment dated February 12, 2007 (72 FR 6612), and in a Safety Evaluation dated March 6, 2007.

No significant hazards consideration comments received: No.

Union Electric Company

Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri.

Date of application for amendment: March 28, 2006, as supplemented by letter dated November 17, 2006.

Brief description of amendment: The amendment deleted references to specific isolation valves in the chemical

and volume control system (CVCS) and modified to allow (1) an exception for decontamination activities and (2) an exception for CVCS resin vessel operation. These are changes to TS 3.3.9, ''Boron Dilution Mitigation System (BDMS),'' and TS 3.9.2, ''Unborated Water Source Isolation Valves.''

Date of issuance: March 8, 2007.

Effective date: As of its date of issuance and shall be implemented within 90 days of the date of issuance.

Amendment No.: 181.

Facility Operating License No. NPF–30: The amendment revised the Operating License and Technical Specifications.

*Date of initial notice in **Federal Register**:* May 9, 2006 (71 FR 27004). The supplemental letter dated November 17, 2006, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 2007.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company

Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia.

Date of application for amendment: October 3, 2006, as supplemented by letter dated January 24, 2007.

Brief description of amendment: The proposed amendments revised the Technical Specifications (TSs) and licensing basis to support the resolution of the Nuclear Regulatory Commission's (NRC's) Generic Safety Issue (GSI) 191, assessment of debris accumulation on containment sump performance and its impact on emergency recirculation during an accident, and NRC Generic Letter (GL) 2004–02.

Date of issuance: March 13, 2007.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 250 and 230.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the licenses and the technical specifications.

*Date of initial notice in **Federal Register**:* December 5, 2006 (71 FR 70563). The supplement dated January 24, 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. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 13, 2007.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 19th day of March 2007.

For the Nuclear Regulatory Commission.

John W. Lubinski,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–5342 Filed 3–26–07; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

Board Votes to Close March 19, 2007 Meeting

At its teleconference meeting on March 16, 2007, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for March 19, 2007, in Washington, DC, via teleconference. The Board determined that prior public notice was not possible.

ITEM CONSIDERED: Postal Regulatory Commission Opinion and Recommended Decision in Docket No. R2006–1, Postal Rate and Fee Changes.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

FOR FURTHER INFORMATION CONTACT: Requests for information about the meeting should be addressed to the Secretary of the Board, Wendy A. Hocking, at (202) 268–4800.

Wendy A. Hocking,

Secretary.

[FR Doc. 07–1487 Filed 3–22–07; 4:43 pm]

BILLING CODE 7710–12–M

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIME AND DATE: 8 a.m., Wednesday, March 28, 2007.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Wednesday, March 28 at 8 a.m. (Closed)

1. Strategic Issues.
2. Rates Implementation.
3. Labor Negotiations Update.
4. Financial Update.
5. Personnel Matters and Compensation Issues.
6. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

FOR FURTHER INFORMATION CONTACT: Wendy A. Hocking, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Wendy A. Hocking,

Secretary.

[FR Doc. 07–1488 Filed 3–22–07; 4:43 pm]

BILLING CODE 7710–12–M

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

Board Votes to Close March 16, 2007 Meeting

At its teleconference meeting on March 14, 2007, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for March 16, 2007, in Washington, DC, via teleconference. The Board determined that prior public notice was not possible.

ITEM CONSIDERED: Postal Regulatory Commission Opinion and Recommended Decision in Docket No. R2006–1, Postal Rate and Fee Charges.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Services has certified that the meeting was properly closed under the Government in the Sunshine Act.

FOR FURTHER INFORMATION CONTACT: Requests for information about the meeting should be addressed to the Secretary of the Board, Wendy A. Hocking, at (202) 268–4800.

Wendy A. Hocking,

Secretary.

[FR Doc. 07–1489 Filed 3–22–07; 4:43 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55499; File No. SR–Amex–2007–27]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to an Amendment to the Options Marketing Fee

March 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On March 14, 2007, the Amex submitted Amendment No. 1 to the proposed rule change. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Amex under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its marketing fee program to customer orders of 1,000 contracts or greater, which are executed in open-outcry (*i.e.*, manual executions).

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.amex.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the options marketing fee is assessed on those specialists, registered options traders (''ROTs''), remote registered options traders (''RROTs''), and supplemental registered options traders (''SROTs'') transactions involving electronically executed customer orders from firms that accept payment for directing their orders to the Exchange (''payment accepting firms'') with whom a specialist or SROT has negotiated a payment for order flow arrangement.[5]

The Exchange is now proposing to charge specialists and ROTs a fee of $0.40 per contract on customer orders of 1,000 contracts or greater executed in open-outcry (*i.e.*, manual executions), that are from payment accepting firms with whom a specialist has negotiated a payment for order flow arrangement.[6]

As with electronically executed customer orders, the Exchange has no role with respect to the negotiations between specialists and payment accepting firms. The Exchange collects and administers the payment of the fee, collected on those transactions for which the specialist has advised the Exchange that it has negotiated with a payment accepting firm, to pay for the firm's order flow. Included in this general administrative support, the Exchange tracks the number of qualified orders sent by a payment accepting firm, bills specialists and ROTs through their clearing firms and issues payments to payment accepting firms to reflect the collection and payment of the marketing fee. The Exchange rebates to specialists and ROTs, on a quarterly basis, the amount of marketing fees collected that have not been paid to order flow providers.

The Exchange notes that strategy trades (*i.e.*, dividend spreads, merger spreads, short stock interest spreads) executed manually will not be eligible for payment under this proposal.[7]

The specialists are solely responsible, but are not required, to negotiate payment for order flow agreements with payment accepting firms and are responsible for any arrangements made with payment accepting firms. Funds collected on manual orders would only be paid for the class they are collected, and to the order flow provider they are collected for. So long as it is within the foregoing parameters, the specific terms governing the orders that qualify for payment and the amount of any payments are determined by the specialists in their discretion.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [8] in general, and Section 6(b)(4) of the Act [9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among exchange members and issuers and other persons using exchange facilities.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and Rule 19b–4(f)(2) [11] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 7 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] For electronically executed customer orders, the fee is $0.75 per contract on the transactions of specialists, ROTs, RROTs, and SROTs in equity options (except for SPDR options which will continue to remain subject to the current fee level of $1.00 per contract) as well as Nasdaq 100 Index options (NDX) and Russell 2000 Index options (RUT). Likewise, the fee is $0.35 per contract for those equity, exchange traded fund share and trust issued receipt options series that quote and trade in one cent increments under the penny pilot program.

[6] This fee is not applicable to SROTs and RROTs because their trades are only executed electronically.

[7] Amendment No. 1 clarified in the Exchange's Options Fee Schedule that the marketing fee does not apply to strategy trades executed manually.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

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.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–Amex–2007–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–27 and should be submitted on or before April 17, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5549 Filed 3–26–07; 8:45 am]

BILLING CODE 8010–01–P

[12] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on March 14, 2007, the date on which the Exchange filed Amendment No. 1.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55500; File No. SR–Amex–2007–22]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend Its Minor Rule Violation Fine Systems

March 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 21, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On March 20, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to incorporate violations of Amex Rule 131A—AEMI and Commentary .03 to Amex Rule 958—ANTE into Part 1 of its Minor Rule Violation Fine Systems (the ''Plan'').[3] The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *http://www.amex.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's Plan provides a simplified procedure for the resolution of minor rule violations. Codified in Amex Rule 590, the Plan has three distinct sections: (1) Part 1 (General Rule Violations) covers substantive matters that are nonetheless deemed to be minor; (2) Part 2 (Floor Decorum Violations) covers guidelines concerning the personal appearance and conduct of persons on the trading floor and other operational matters; and (3) Part 3 (Reporting Violations) covers the late submission of routine reports required to be filed with the Exchange.

The Exchange proposes to include violations of Amex Rule 131A—AEMI into Part 1 of the Plan. Amex Rule 131A–AEMI, which generally sets forth procedures related to market-on-close (''MOC'') and limit-on-close (''LOC'') orders and expiration, is designed to minimize price volatility on the close by requiring members to enter all MOC and LOC orders as early in the day as possible. Amex Rule 131A—AEMI also establishes deadlines for entering MOC and LOC orders, restrictions on canceling MOC and LOC orders, requirements for publishing imbalances on the consolidated tape, the order of execution for MOC and LOC orders, and procedures for days on which derivative, index-related products (*e.g.*, options, futures, and options on futures) settle against opening prices.

The Exchange also proposes to include violations of Commentary .03 to Amex Rule 958—ANTE into Part 1 of the Plan. Commentary .03 to Amex Rule 958-ANTE provides, in part, that, for purposes of paragraph (a) of such rule, at least 50% of the trading activity in any quarter (measured in terms of contract volume) of a registered options trader must ordinarily be in classes to which such registered options trader is assigned, except for unusual circumstances.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amex Rule 590.

[4] The remaining provisions of Commentary .03 to Amex Rule 958—ANTE are not to be included in the Plan.

The inclusion of the foregoing rules in Part 1 of the Plan would enable prompt resolution of violations that do not rise to the level of formal enforcement action,[5] but warrant more significant action than the issuance of an admonition letter.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–22. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–22 and should be submitted on or before April 17, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5550 Filed 3–26–07; 8:45 am]

BILLING CODE 8010–01–P

[5] *See generally* Article V, Amex Constitution (setting forth the formal disciplinary procedures and penalties with respect to members of the Exchange).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55493; File No. SR–ISE–2006–77]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Penny Increments for Block Mechanism Orders

March 20, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2006, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On March 19, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend ISE Rule 716 to allow orders to be entered into the Block Mechanism in penny increments and to receive executions in penny increments. The text of the proposed rule change is available at ISE, the Commission's Public Reference Room, and *http://www.iseoptions.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 ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange offers a Block Mechanism for the execution of single-sided, block-sized orders. The Block Mechanism exposes orders of at least 50 contracts to all ISE members for three seconds, giving members an opportunity to respond with contra-side trading interest for their own account or on behalf of their customers.[3] Currently, orders may be entered and executed using the Block Mechanism at the standard 5 and 10 cent increments and at ''split prices'' (2.5 cents for options trading in 5 cent standard increments and 5 cents for options trading in 10 cent standard increments). The Exchange proposes to allow these orders to be entered and executed in penny increments as a way to provide greater flexibility in the pricing of block-size orders and to allow a greater opportunity for price improvement.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] 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. In particular, the proposal will provide additional pricing flexibility and opportunities for block-size orders to receive price improvement.

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.

[3] Supplementary Material .03 to ISE Rule 716 prohibits members from entering Responses for the account of an options market maker from another options exchange. This is the only limitation regarding who may enter Responses.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2006–77 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 No. SR–ISE–2006–77. 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 at *http://www.sec.gov/rules/sro.shtml*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of 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 No. SR–ISE–2006–77 and should be submitted on or before April 17, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5546 Filed 3–26–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55494; File No. SR–Phlx–2007–19]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Odd Lot Fees for XLE Transactions

March 20, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On March 16, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Phlx has designated this amended proposal as one establishing or changing a due, fee, or other charge imposed by the

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Partial Amendment No. 1, the Exchange made several clarifying and technical changes to the original filing. In addition, the Exchange included a revised Exhibit 5 in Partial Amendment No. 1 to reflect technical and clarifying changes made therein, which, for clarity and ease of reference, replaces in its entirety the Exhibit 5 contained in the original filing. The Exchange did not propose any new fees in Partial Amendment No. 1.

Exchange under Section 19(b)(3)(A),[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend the fees applicable to certain odd lot transactions[6] over XLE,[7] the Exchange's equity trading system, as follows: to (1) Decrease the execution fee for odd-lot Immediate-or-Cancel (''IOC'') Cross and Mid-Point Cross orders; and (2) increase the fee for single-sided odd lot orders routed to and executed at an away market, as set forth in detail below. 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, Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to continue to encourage executions of odd lot IOC Cross and Mid-Point Cross orders on XLE. The Exchange believes that lowering the fees for these types of transactions should, in turn, encourage additional odd lot IOC Cross and Mid-Point Cross transactions, thereby allowing the Exchange to remain competitive. In addition, the Exchange believes that increasing the odd lot fee for away market executions should help it recover its costs associated with away market executions.

Currently, all odd lot executions (IOC Cross and Mid-Point Cross orders and single-sided orders) are charged the execution fee for odd lot orders, which is $0.003 per share for all tiers.[8] Pursuant to this proposal: (1) The execution fee for odd lot IOC Cross and Mid-Point Cross orders entered over technology provided by Phlx will be reduced to $0.0023 per share per side for all tiers.[9] This is the same amount as round lot IOC Cross and Mid-Point Cross orders today, such that odd lot and round lot IOC Cross and Mid-Point Cross orders will be charged the same amount when entered over technology provided by Phlx; (2) odd lot IOC Cross and Mid-Point Cross orders that are not entered over technology provided by Phlx will no longer be assessed any fee, such that odd lot and round lot IOC Cross and Mid-Point Cross orders not entered over technology provided by Phlx will not be charged execution fees.

In addition, the Exchange proposes to increase the fee for single-sided odd lot orders that are routed to and executed at an away market from $0.003 to $0.03 per share for all tiers. The execution fee for single-sided odd lot orders executed on XLE against another XLE Participant will remain at the current rate of $0.003 per share for all tiers.

The fee changes set forth in this proposal are scheduled to become effective for transactions settling on or after March 9, 2007.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(4) of the Act,[11] in particular, in that it is designed to provide for the equitable allocation of reasonable fees and other charges among Phlx members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and subparagraph (f)(2) of Rule 19b–4 thereunder,[13] since it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary of appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2007–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] An odd lot order means an order for less than a round lot, which is defined for purposes of XLE as a unit of trading that is 100 shares. *See* Exchange Rules 1(w) and 1(gg). The execution fee for odd lot orders applies to orders initially entered as odd lot orders.

[7] XLE provides the opportunity for entirely automated executions to occur within a central matching system accessible by Exchange members and member organizations and their Sponsored Participants. *See* Securities Exchange Act Release Nos. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR–Phlx–2006–43) and 54941 (December 14, 2006), 71 FR 77079 (December 22, 2006) (SR–Phlx–2006–70) (establishing fees for the trading of equity securities on XLE).

[8] The execution fees for odd lot transactions are set forth in the Miscellaneous Transaction Fee section of the XLE fee schedule. The Exchange has adopted volume tiers in connection with the assessment of transaction fees, which are based on the monthly shares executed per XLE Participant Organization.

[9] IOC Cross and Mid-Point Cross orders entered over technology provided by Phlx are subject to a maximum charge of $50.00 per trade side.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 16, 2007, the date on which Phlx filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. 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 No. SR–Phlx–2007–19 and should be submitted on or before April 17, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5547 Filed 3–26–07; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55498; File No. SR–Phlx–2007–15]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete the Exchange's Auto-Quote Options Pricing Functionality

March 20, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on February 22, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Phlx. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(5) thereunder,[4] which renders the proposal immediately effective upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1080, Commentary .01, to delete references to ''Auto-Quote.'' The text of the proposed rule change is available on the Exchange's Web site at *http://www.Phlx.com,* at the Phlx'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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the outmoded and little-used options pricing functionality of the Exchange's Automated Quotation System (''Auto-Quote''), which should reduce updating and modification costs which could ultimately be passed on to customers, as described more fully below. Auto-Quote is the Exchange's electronic options pricing system, which enables specialists, Streaming Quote Traders (''SQTs'') [5] and Remote Streaming Quote Traders (''RSQTs''),[6] to automatically monitor and instantly update and submit electronic quotations for equity option and index option contracts.[7]

Currently, the wide majority of traders on the Exchange use their own proprietary options pricing systems, and access the Exchange's electronic options trading system, Phlx XL, through a specialized connection, by-passing Auto-Quote. This specialized connection is known as a specialized quote feed (''SQF'').[8] SQF users who do not use Auto-Quote submit proprietary electronic option quotations via SQF. SQF users submit electronic option quotations through their own pricing models or through quotation vendors.

In July, 2004, the Exchange implemented its fully electronic trading system for options, Phlx XL.[9] At that time, vendor options pricing systems used by Exchange members often were not technologically capable of providing full options pricing services to Exchange members. Consequently, many members used Auto-Quote instead of vendor option pricing systems. Since that time, vendor options pricing systems have been upgraded to address shortcomings that existed previously. As a result, very few options traders still use Auto-Quote on the Exchange. Such options traders have received written notification by way of Exchange circular of the Exchange's intention to eliminate the Auto-Quote options pricing functionality from its options trading systems and will make necessary arrangements with the appropriate vendors to price options and to access the Exchange's trading systems via SQF.

Recent changes in options trading such as quoting and trading of options in pennies, increased quote traffic, and the automation of processing complex orders, to name a few, would mandate continual upgrades to the technological requirements to maintain Auto-Quote as a component of the Exchange's options trading systems. The Exchange's

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(5).

[5] An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit options quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(A).

[6] An RSQT is a ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[7] *See* Exchange Rule 1080, Commentary .01(a).

[8] *See* Exchange Rule 1080, Commentary .01(b).

[9] *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59).

Financial Automation Department [10] describes Auto-Quote as an older system that would require a large investment to update it to match existing industry and vendor functionality. The Exchange believes that such a large investment could result in increased fees that might eventually be passed on to customers, which is one result that the Exchange seeks to avoid by eliminating the Auto-Quote options pricing functionality from its options trading systems.

Therefore, because of the limited use of the Auto-Quote options pricing functionality on the Exchange, together with the disproportionate expense the Exchange would incur to continually upgrade Auto-Quote to meet industry needs, the Exchange proposes to eliminate the Auto-Quote options pricing functionality from its options trading systems, and to delete all references to Auto-Quote from its rules. The Exchange's systems will no longer incorporate the Auto-Quote options pricing functionality beginning March 19, 2007.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by enabling the Exchange to limit expenses relating to the under-used and antiquated Auto-Quote options pricing functionality.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change effects a change in an existing order-entry or trading system of a self-regulatory organization that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not have the effect of limiting the access to or availability of the system. Therefore, it has become effective pursuant to Section 19(b)(3)(A) [13] of the Act and Rule 19b–4(f)(5) [14] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2007–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. 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–2007–15 and should be submitted on or before April 17, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5548 Filed 3–26–07; 8:45 am]

BILLING CODE 8010–01–P

[10] The Exchange's Financial Automation Department is responsible for the design, development, implementation, testing and maintenance of the Exchange's automated trading systems, surveillance systems, and back office systems, and for monitoring the quality of performance and operational readiness of such systems, in addition to user training and validation of user technology as it pertains to such users' interface with the Exchange's systems.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(5).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55501; File No. SR–Phlx–2007–22]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Orders With Two-Day Delivery

March 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on March 16, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below which Items have been substantially prepared by the Phlx. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Phlx Rule 162(b)(2) and (3) regarding two-sided orders with a delivery of two days after the day of execution, which is a non-regular way settlement. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site (*http://www.phlx.com/exchange/phlx_rule_fil.html*), and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify the method of order marking for non-regular way two-sided orders on XLE to conform to the method used by the National Securities Clearing Corporation (''NSCC''). The NSCC treats equity transactions with a non-regular settlement condition of two days as a ''Seller's Option'' instead of a ''Next Day'' transaction.[5] Currently, Phlx treats equity transactions with a non-regular settlement condition of two days as a ''Next Day'' transaction.

Effectively, this proposed rule change does not change the availability or the attributes of a two-day settlement transaction (*i.e.*, settlement of the securities two days after a transaction), but simply changes the method of order marking on XLE. At this time, Phlx proposes to change its rules and its specification for XLE to conform them to this change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, 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[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2007–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. 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–2007–22 and should be submitted on or before April 17, 2007.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 54816 (November 27, 2006), 71 FR 69604 (December 1, 2006) (SR–NSCC–2006–09) (text at footnote 5).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied the pre-filing notice requirement.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5551 Filed 3–26–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55492; File No. SR–Phlx–2006–61]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 2 Thereto Relating to Order and Decorum Regulations

March 20, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 26, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Phlx. On November 14, 2006, the Exchange filed Amendment No. 1 to the proposed rule change which was subsequently withdrawn.[3] On January 19, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Section 19(b)(1) of the Act[4] and Rule 19b–4 thereunder,[5] proposes to amend Option Order and Decorum Regulation 2, Food, Liquids and Beverages; Regulation 4, Order; Regulation 5, Visitors and Applicants; and Regulation 6, Dress, pursuant to Exchange Rule 60. The amendments intend to: (i) Add clarifying language to Regulations 4 and 5; (ii) amend Regulation 2 language concerning food, liquids and beverages and propose fines for violations of these new sections; (iii) add new language to address trash, litter and vandalism to Regulation 2; (iv) increase fine amounts as specified in proposed Regulations 2 and 6; (v) delete the language of Regulation 6 and adopt a revised dress code; and (vi) add clarifying language to Regulations 2, 4, 5 and 6 regarding supervisory responsibility for violations of the various order and decorum regulations.

The text of the proposed rule change is available at Phlx, 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, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend various Option Order and Decorum Regulations, adopted pursuant to Exchange Rule 60, to ensure the efficient, undisrupted conduct of business on the Exchange and provide a trading floor environment free from conduct that could distract or interfere with market activity. Further, the Exchange seeks to delineate specific guidelines concerning the conduct and personal appearance of persons on the trading floor to prohibit any act or omission, which could interfere with the personal safety of other persons on the trading floor.

Regulation 2

The Exchange no longer has a cafeteria for members on the premises and therefore, for purposes of convenience, the Exchange proposes to amend Regulation 2 to allow members, member organizations, participants, participant organizations and their associated persons to consume foods, liquids and beverages while on the trading floor, provided this does not unreasonably interfere with the business of the trading floor. The Exchange proposes to increase the fines associated with a violation of this Regulation to create a deterrent for members who are not compliant with the new policy.

Additionally, new language is proposed to address trash, litter and vandalism on the trading floor. The Exchange desires to promote a professional environment and to create a physical workplace that is free of trash and litter. The Exchange proposes to add certain fines for violating the trash, litter and vandalism Regulations. Also, the Exchange proposes language to address vandalism. In an effort to maintain a businesslike atmosphere, the abuse, destruction and theft of property will not be tolerated. Due to the addition of these sections, the Exchange proposes changing the title of Regulation 2 from ''Food, Liquids and Beverages'' to ''Food, Liquids and Beverages, Trash, Litter and Vandalism'' to reflect the additions to this Regulation.

Regulation 4

The Exchange proposes adding language to section (a) of this Regulation to clarify that the use of profanity is a violation of this Regulation. While the use of profanity is currently a violation of Regulation 4, the Exchange seeks to further define the scope of prohibited conduct by specifically indicating that members, member organizations, participants, participant organizations and their associated persons will be disciplined for the use of profanity.

Regulation 5

The Exchange proposes amending this Regulation to authorize an Exchange or Floor Official to permit visitors on the trading floor. It is more practicable for Exchange and Floor Officials to determine whether to permit visitors to the trading floor instead of requiring a floor committee to meet and make such determinations. The decision to permit visitors on the trading floor is a day-to-day business function, which is better served by allowing Exchange and Floor Officials the authority to make these decisions.

Regulation 6

The Exchange proposes amending its current dress code to adopt a business casual dress code and clarify what business attire is deemed acceptable on the trading floor. By issuing guidelines on acceptable apparel while on the trading floor, the Exchange intends to encourage all members, member organizations, participants, participant organizations and their associated persons to comply with the dress code requirements of Regulation 6.[6] The

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On January 12, 2007, Phlx withdrew Amendment No. 1.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] The Commission made minor clarifications to this sentence pursuant to a telephone call with the

Continued

Exchange also proposed to increase sanctions.

Other Changes

In addition, the Exchange proposes to further amend Regulations 2, 4, 5 and 6 to add language to indicate, pursuant to Exchange Rule 60, that Exchange Staff may impose fines for breaches of order, decorum, health, safety and welfare on the members, member organizations, participants, participant organizations and their associated persons. This language is intended to clarify the responsibility of members and their associated persons for compliance with Regulations.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, because the proposal should facilitate prompt, appropriate, and effective discipline for violations of Exchange Rule 60 and the regulations thereunder designed to maintain order on the Exchange. In addition, the proposed rule is consistent with Section 6(b)(6) of the Act [9] which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, by imposing increased fine amounts for breaches of order and decorum to better reflect the severity of the violation and provide an appropriate form of deterrence for violation of Exchange Rule 60 and the regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

Exchange. *See* telephone call by and between Rahman Harrison, Special Counsel, Division of Market Regulation, Commission, and Angela Dunn, Director and Counsel, Phlx, on March 19, 2007.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2006–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. 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–2006–61 and should be submitted on or before April 17, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–5552 Filed 3–26–07; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5730]

Fine Arts Committee Notice of Meeting

The Fine Arts Committee of the Department of State will meet on April 20, 2007 at 2:30 p.m. in the Henry Clay Room of the Harry S. Truman Building, 2201 C Street NW, Washington, DC. The meeting will last until approximately 3:30 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on February 20, 2007 and the announcement of gifts and loans of furnishings as well as financial contributions from January 1, 2007 through March 31, 2007.

Public access to the Department of State is strictly controlled and space is limited. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office at (202) 647–1990 or send an e-mail to *Craighillmf@state.gov* by April 13 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: March 16, 2007.

Gail F. Serfaty,

Secretary, Fine Arts Committee, Department of State.

[FR Doc. E7–5586 Filed 3–26–07; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Pierce County Airport/Thun Field, Puyallup, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at Pierce County Airport/Thun Field under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before May 4, 2007.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address; Mr. J. Wade Bryant, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98057–3356.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael Esher, Airport Administrator, 2702 S 42nd Street, Room 201, Tacoma, Washington 98409–7322.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Winter, Project Manger, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98057–3356.

The request to release property may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Pierce County Airport/Thun Field under the provisions of the AIR 21.

On March 8, 2007, the FAA determined that the requests to release property at Pierce County Airport/Thun Field submitted by the country met the procedural requirements of the Order 5290.6A. The FAA may approve the request, in whole or in part, no later than May 15, 2007.

The following is a brief overview of the request:

Pierce County Airport/Thun Field requests the release of 0.13 acres of airport runway approach protection property to Tarragon Development. The purpose of this release is to transfer to Tarragon Development a Dedication of Permanent Road and Utility Easement for the needed right-of-way and slope easements for the construction of 160th Street on the north side of the airport. Pierce County, a political subdivision of the State of Washington, on behalf of the Pierce County Airport/Thun Field requests the release from the terms, conditions, reservations, and restrictions imposed upon the property purchased with AIP grant funds, and the release of the subject property from any assurances of the County as sponsor as contained in any FAAP, ADAP, or AIP grant agreement. The release of the property will benefit the users of the airport in that the airport will obtain at no cost, a road connection for access to the East side airport parcel from the proposed 160th Street.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATON CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application, in person at the Pierce County Airport, 16715 Meridian E., Puyallup, Washington 98375.

Issued in Renton, Washington on March 21, 2007.

J. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 07–1482 Filed 3–26–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces action taken by the FHWA and Other Federal Agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, U.S. 31 Plymouth to South Bend, Indiana, in the Counties of Marshall and St. Joseph, State of Indiana. This action is the Record of Decision issued by FHWA for the U.S. 31 Plymouth to South Bend Project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before September 24, 2007. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence Heil, P.E., Air Quality/Environmental Specialist, Federal Highway Administration, Indiana Division, 575 North Pennsylvania Street, Room 254, 46204; telephone: (317) 226–7480; e-mail: *Larry.Heil@fhwa.dot.gov*. You may also contact Mr. Jonathan Wallace, Project Manager, Indiana Department of Transportation, 100 North Senate Avenue, Room N801, Indianapolis, Indiana, 46204; telephone: (317) 233–3520; e-mail: *JonWallace@indot.IN.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency action subject to 23 U.S.C. 139(l)(1) by approving the Record of Decision for the following highway project in the State of Indiana: U.S. 31 Plymouth to South Bend, in Marshall and St. Joseph Counties. The project provides for upgrading existing U.S. 31 between U.S. 30 and U.S. 20 (approximately 20 miles) to a fully access controlled, grade-separated freeway. The proposed freeway will be on both new and existing alignment. The FHWA project reference number is Des. No. 9405230. The actions by FHWA are described in the Final Environmental Impact Statement (FEIS) for the project, approved on April 3, 2006 and in the FHWA Record of Decision (ROD) issued on June 26, 2006, and in other documents in the project record. The FEIS, ROD, and other documents in the FHWA project file are available by contacting the FHWA or the Indiana Department of Transportation at the addresses provided above. The FEIS and ROD can be viewed and downloaded from the project Web site at *http://www.us31study.org* or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. Air: Clean Air Act, 42 U.S.C. 7401–7671(q).

3. Land: Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), [23 U.S.C.

319]; National Forest Management Act (NFMA) of 1976 [16 U.S.C. 1600–1614].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: March 21, 2007.

Robert F. Tally Jr.,

Division Administrator, Indianapolis, Indiana.

[FR Doc. E7–5595 Filed 3–26–07; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Renewal Without Change; Comment Request; Imposition of Special Measure Against Commercial Bank of Syria, Including Its Subsidiary Syrian Lebanese Commercial Bank, as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, we invite comment on a proposed renewal, without change, to information collection requirements found in existing regulations imposing a special measure against the Commercial Bank of Syria, including its subsidiary Syrian Lebanese Commercial Bank, as a financial institution of primary money laundering concern. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before May 29, 2007.

ADDRESSES: Written comments should be submitted to: Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, Attention: Comment Request; Imposition of Special Measure against Commercial Bank of Syria. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov*, again with a caption, in the body of the text, ''Attention: Comment Request; Imposition of Special Measure against Commercial Bank of Syria.''

Inspection of comments: Comments may be inspected, between 10 a.m. and 4 p.m., in our reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Financial Crimes Enforcement Network, Regulatory Policy and Programs Division at (800) 949–2732.

SUPPLEMENTARY INFORMATION: *Abstract:* The Director of the Financial Crimes Enforcement Network is the delegated administrator of the Bank Secrecy Act. The Act authorizes the Director to issue regulations to require all financial institutions defined as such pursuant to the Act to maintain or file certain reports or records that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism.[1]

Regulations implementing section 5318A of title 31, United States Code can be found in part at 31 CFR 103.188. In general, the regulations require financial institutions, as defined in 31 U.S.C. 5312(a)(2) and 31 CFR 103.11 to establish, document, and maintain programs as an aid in protecting and securing the U.S. financial system.

Title: Imposition of Special Measure Against Commercial Bank of Syria, Including Its Subsidiary Syrian Lebanese Commercial Bank, as a Financial Institution of Primary Money Laundering Concern.

Office of Management and Budget Control Number: 1506–0036.

Abstract: The Financial Crimes Enforcement Network is issuing this notice to renew the imposition of a special measure against the Commercial Bank of Syria, including its subsidiary Syrian Lebanese Commercial Bank, as a financial institution of primary money laundering concern, pursuant to the authority contained in 31 U.S.C. 5318A.

Current Action: Renewal without change to existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: Estimated Number of Respondents: 5000.

Estimated Number of Responses: 500.

Estimated Number of Hours: 5000 (estimated at one hour per respondent).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the

[1] Pub. L. 91–508, as amended and codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959 and 31 U.S.C. 5311–5332. Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107–56.

request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: March 20, 2007.

William F. Baity,

Director (Acting), Financial Crimes Enforcement Network.

[FR Doc. E7–5535 Filed 3–26–07; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Annual Financial Statement of Surety Companies—Schedule F

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the Form FMS–6314 ''Annual Financial Statement of Surety Companies—Schedule F.''

DATES: Written comments should be received on or before May 29, 2007.

ADDRESSES: Direct all written comments to Financial Management Service, Records and Information Management Branch, Room 135, 3700 East West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Cline, Surety Bond Branch, Room 600F, 3700 East West Highway, Hyattsville, MD 20782, (202) 874–6507.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Annual Financial Statement of Surety Companies—Schedule F.

OMB Number: 1510–0012.

Form Number: FMS–6314.

Abstract: This form provides information that is used to determine the amount of unauthorized reinsurance of a Treasury Certified Company, and to compute its underwriting limitations. This computation is necessary to ensure the solvency of companies certified by Treasury, and their ability to carry out contractual surety requirements.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 341.

Estimated Time per Respondent: Varies from 8 hours to 80 hours.

Estimated Total Annual Burden Hours: 14,458.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: March 16, 2007.

Janice Lucas,

Assistant Commissioner, Financial Operations.

[FR Doc. 07–1483 Filed 3–26–07; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Clearwater Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No.7 to the Treasury Department Circular 570, 2006 Revision, published June 20, 2006, at 71 FR 37694.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: The above mentioned company was listed in 71 FR 37694, June 30, 2006, as an acceptable reinsuring company on Federal bonds. A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company:

Clearwater Insurance Company. (NAIC # 25070). BUSINESS ADDRESS: 300 First Stamford Place, Stamford, CT 06902. PHONE: (203) 977–8024.

UNDERWRITING LIMITATION b/: $60,293,000. SURETY LICENSES c/: AL, AK, AZ, CA, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, MD, MI, MS, M0, MT, NE, NJ, HM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORTATED IN: DE.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2006 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long at the companies remain qualified (*see* 31 CFR part 223). A list of qualified companies is published annually as of July 1 in the Circular, which outlines details as to underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: March 14, 2007.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 07–1484 Filed 3–26–07; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Tuesday,
March 27, 2007

Part II

Department of the Interior

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Pecos Sunflower (Helianthus paradoxus); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AV02

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Pecos Sunflower (Helianthus paradoxus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Pecos sunflower (*Helianthus paradoxus*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 1579.3 acres (ac) (639.1 hectares (ha)) fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Chaves, Cibola, Guadalupe, Socorro, and Valencia Counties, New Mexico, and in Pecos County, Texas.

DATES: We will accept comments from all interested parties until May 29, 2007. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by May 11, 2007.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. Submit written comments and information by mail or hand-delivery to Wally ''J'' Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Rd NE, Albuquerque, NM 87113.

2. Send comments by electronic mail (e-mail) to: *R2FWE_AL@fws.gov.*

Please see the Public Comments Solicited section below for file format and other information about electronic filing.

3. Fax your comments to 505/346–2542.

4. Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office, 2105 Osuna Rd NE, Albuquerque, NM 87113 (telephone 505/346–2525).

FOR FURTHER INFORMATION CONTACT: Wally ''J'' Murphy, Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna Rd NE, Albuquerque, NM 87113; telephone 505/346–2525; facsimile 505/346–2542. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 et seq.), including whether the benefit of designation would outweigh any threats to the species caused by designation;

(2) Specific information on the amount and distribution of *Helianthus paradoxus* habitat, what areas should be included in the designation that were occupied at the time of listing that contain features essential for the conservation of the species and why, and what areas that were not occupied at the listing are essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

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

(6) The existence of any conservation or management plans being implemented by public or private land management agencies or owners that we should consider for exclusion from the designation pursuant to section 4(b)(2) of the Act. Please include information on any benefits (educational, regulatory, etc.) of including or excluding lands from this proposed designation.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). Please include ''Attn: *Helianthus paradoxus*'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your message, contact us directly by calling our New Mexico Ecological Services Field Office at 505/346–2525. Please note that the e-mail address *R2FWE_AL@fws.gov* will be closed out at the termination of the public comment period.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under the Act's section 4(b)(2), there are significant limitations on the regulatory effect of designation under the Act's section 7(a)(2). In brief, (1) designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, only 485 species, or 37 percent of the 1,310 listed species in the United States under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,310 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative,

nonregulatory efforts with private landowners. The Service believes that these measures may make the difference between extinction and survival for many species.

In considering exclusions of areas proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir 2004) (hereinafter *Gifford Pinchot*). In that case, the Ninth Circuit invalidated the Service's regulation defining ''destruction or adverse modification of critical habitat.'' In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This proposed critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

To the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a timeframe that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless and is expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the cost of analysis of the economic effects and of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4371 et seq.). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

It is our intent to discuss only those topics directly relevant to designation of critical habitat in this proposal. For more information on *Helianthus paradoxus*, refer to the final listing rule published in the **Federal Register** on October 20, 1999 (64 FR 56582) and the Pecos Sunflower Recovery Plan posted at *http://www.ecos.fws.gov/docs/recovery_plans/2005/050915.pdf.*

Helianthus paradoxus is a member of the Asteraceae family, described by Dr. Charles Heiser in 1958 as *Helianthus paradoxus* (Heiser 1958, pp. 272–274). Genetic and morphological analyses have confirmed *Helianthus paradoxus* as a valid taxon (Rieseberg et al. 1990, pp. 1508–1509; Lexer et al. 2003, p. 1999; Welch and Riesberg 2002, p. 477). A number of vernacular names for this plant, including Pecos sunflower, puzzle sunflower, and paradox sunflower, have appeared in printed literature, and all refer to *Helianthus paradoxus.* The Service has adopted 'Pecos sunflower' as the standard common name for this species.

H. paradoxus is a plant that grows on permanently wet, alkaline soils at spring seeps, wet meadows, stream courses, and pond margins. It is currently known from 12 populations in 5 widely spaced geographical areas in west-central and eastern New Mexico and adjacent Trans-Pecos Texas. These populations are all dependent upon wetlands that result from an elevated water table. The number of *H. paradoxus* per site varies from fewer than 100 to over one million. Because *H. paradoxus* is an annual, the number of plants per site can fluctuate greatly from year to year with changes in precipitation and depth to groundwater or in response to other physical and biological changes. Stands of *H. paradoxus* can change location within the habitat as well (Sivinski 1992, p. 125). If a wetland habitat dries out permanently, even a large population of *H. paradoxus* will disappear (Service 1999, p. 56582).

Little is known about the historic distribution of *H. paradoxus.* The plant is associated with spring seeps and desert cienegas, and there is evidence these habitats were historically reduced or eliminated by aquifer depletion, or severely impacted by agricultural activities and encroachment by nonnative plants (Poole 1992, p. 2; Sivinski 1995, p. 11). *H. paradoxus* was known only from a single population near Fort Stockton, Pecos County, Texas, when it was proposed as a candidate species under the Act on December 15, 1980 (45 FR 82480). This is a large population of several hundred thousand to one million plants at The Nature Conservancy's Diamond Y Spring Preserve and a smaller group of plants downstream at a nearby highway right-of-way. Between 1980 and 1994, field surveys for this plant found additional populations in New Mexico and Texas (Service 1999, p. 56582). During this period, *H. paradoxus* was discovered in a second Texas site at The Nature Conservancy's Sandia Spring Preserve in the Balmorhea area of Reeves County, Texas. In addition, *H. paradoxus* was found at 11 spring seeps and cienegas in the Roswell/Dexter region of the Pecos River valley in Chaves County, New Mexico. Three of these wetlands support many thousands

of *H. paradoxus,* but the remainder are smaller, isolated occurrences. Springs and cienegas within and near the town of Santa Rosa in Guadalupe County, New Mexico, were found to have eight wetlands with *H. paradoxus*, one of which consisted of a few hundred thousand plants. Also discovered were two widely separated areas of spring seeps and cienegas in the Rio San Jose valley of western New Mexico, each supporting a medium-sized population of *H. paradoxus.* One occurs on the lower Rio San Jose in Valencia County and the other is in Cibola County in the vicinity of Grants. After the species was listed, two more populations were added to the total number of known populations: (1) A very large population near La Joya, in Socorro County, at the confluence of the Rio Grande and the Rio Puerco; and (2) a population on State lands in Chaves County in a marshy sink (Service 2005, p. 4).

Previous Federal Actions

H. paradoxus was listed as a threatened species on October 20, 1999 (64 FR 56582). At the time this plant was federally listed, the Service determined that the designation of critical habitat was not prudent because we believed publication of critical habitat maps would increase the degree of threats to the species by vandalism and commercial collection. On September 27, 2005, the Forest Guardians filed suit against the Service for failure to designate critical habitat for this species (*Forest Guardians* v. *Hall* 2005). On March 20, 2006, a settlement was reached that requires the Service to re-evaluate our original prudency determination. The settlement stipulated that, if prudent, a proposed rule would be submitted to the **Federal Register** for publication on or before March 16, 2007, and a final rule by March 16, 2008. This proposed rule complies with the settlement agreement and with section 4(b)(2) of the Act.

For more information on previous Federal actions concerning *H. paradoxus*, refer to the final listing rule published in the **Federal Register** on October 20, 1999 (64 FR 56582), and the Pecos Sunflower Recovery Plan, dated July 2005, prepared by the Fish and Wildlife Service.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

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

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

Habitat known at the time of listing to be occupied may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat under section 4(b)(2) of the Act.) Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area known at the time of listing to be occupied by the species. However, an area currently occupied by the species but was not known at the time of listing to be occupied will likely, but not always, be essential to the conservation of the species and, therefore, typically may be included in the critical habitat designation.

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

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

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

Methods

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas that contain the features that are essential to the conservation of *H. paradoxus*, areas that are essential to the conservation of *H. paradoxus*, or both. In designating critical habitat for this species, we reviewed the Final Pecos Sunflower Recovery Plan and listing packages for the species, articles in peer-reviewed journals, conservation plans developed by land managers, scientific status surveys and studies, biological assessments, and other unpublished materials, including expert opinion. We are proposing to designate habitat that we have determined contains the physical and biological features essential to the conservation of the species arranged in the quantity and spatial characteristics necessary for conservation (see ''Criteria Used To Identify Critical Habitat'' section below).

We have also reviewed available information that pertains to the habitat requirements of this species. We reviewed information from knowledgeable biologists, including Hirsch 2006, Poole 2006, Sivinski 2007, and Ulibarri 2006, and reviewed recommendations contained in State resource reports. We also reviewed the available literature pertaining to habitat requirements, historical localities, and current localities of the species in peer-reviewed articles such as Van Auken and Bush 1998. We used data in reports submitted during consultations under section 7 of the Act and in regional Geographic Information System (GIS) data layer coverages. Of particular importance, we reviewed databases, published literature, and field notes to determine the historical and current distribution of the species. Agency and researcher field notes and published literature contained additional information on surveys and species' detections, such as in performance reports under section 6 of the Act prepared by botanists in New Mexico and Texas (Poole 1992, pp. 1–6; Sivinski 1992, pp. 124–126; Sivinski 1995, pp. 1–11).

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and within areas occupied by the species at the time of listing, that may require special management considerations and protection. These include, but are not limited to: (1) Space for individual and population growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, and rearing (or development) of offspring; and (5) habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

The specific PCEs required for *H. paradoxus* are derived from the physical and biological features that are essential to the conservation of the species, as described below and in the Background section of this proposal. We determined the PCEs for *H. paradoxus* from studies of habitat requirements (see ''Background'' and ''Methods'' sections above).

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

H. paradoxus is an annual species that must re-establish populations of adult plants each year from seed produced during previous years' reproductive efforts. Habitats with suitable alkaline soils and perennially wet hydrologic conditions for all of the life functions of *H. paradoxus* are typically small areas around springs and ponds. Therefore, populations tend to grow in crowded patches of dozens or even thousands of individuals. Solitary individuals may be found around the periphery of the wetland, but dense, well-defined stands within suitable habitats are more typical. Aggregations of individuals may occur in different adjacent areas than the patches of dead stalks from the population of the previous year (Sivinski 1992, p. 125). This suggests seed dispersal or the presence of a persistent soil seed bank (Van Auken 2001). Patch densities and locations are determined by a combination of factors, including variations in seasonal soil moisture, salinity, oxygen, disturbance, and competing vegetation (Bush 2002, pp. 1–2; Van Auken and Bush 1995, p. 15; Bush and Van Auken 1997, p. 417).

Dense stands of *H. paradoxus* produce smaller, spindly plants, while more open stands have larger plants (Service 2005, p. 6). Likewise, experiments to remove competing vegetation, such as alkali sacaton (*Sporobolus airoides*) and saltgrass (*Distichlis spicata*), also produced larger *H. paradoxus* plants with more flowers per plant (Bush and Van Auken 1997, p. 417).

Pollination vectors for *H. paradoxus* have not been studied. However, most plants in the aster family with ray-like flowers, such as *H. paradoxus,* attract a variety of insect pollinators (Service 2005, p. 7). Seed production is greatly enhanced in *H. paradoxus* by cross-pollination between individual plants. An experiment that excluded pollinators from flower heads produced only 5 percent viable seed compared to 84 percent viable seed produced by flower heads that were open to insect pollination (Van Auken and Bush 1997, p. 44). *H. paradoxus* blooms in the months of September and October. Flowering peaks the second week of September in the northern-most New Mexico populations. The peak flowering time for the southern-most population in West Texas is later in October. Seeds fill and mature during October and November and then require a 2- to 3-month after-ripening period before germination (Van Auken 2001, p. 157). A few seeds remain dormant for longer periods and appear to be insurance for species survival by remaining viable in the soil seed bank (Van Auken 2001). The duration of seed viability has not yet been studied.

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

H. paradoxus habitat attributes usually are present in desert wetland areas that contain permanently saturated soils in the root zone (Service 2005, p. 6). These are most commonly desert springs and seeps that form wet meadows called ''cienegas.'' Nevertheless, *H. paradoxus* also can occur around the margins of lakes and creeks (Service 2005, p. 6). When *H.*

paradoxus grows around lakes or ponds, these areas are usually associated with natural cienega habitats. The soils of these desert wetlands and riparian areas are typically saline or alkaline because the waters are high in dissolved solids and elevated evaporation rates leave deposits of salts, including carbonates, at the soil's surface. Studies by Van Auken and Bush (1995, pp. 14) showed that *H. paradoxus* grows in saline soils, but seeds germinate and establish best when precipitation and high water tables reduce salinity near the soil surface. Based on greenhouse and limited field studies, *H. paradoxus* requires salinity levels ranging from 10 to 40 parts per thousand for optimal growth in competition with other salt marsh plant species (Van Auken and Bush 2006, p. 29). *H. paradoxus* can occur on the cienegas that contain alkaline, fine sand soils that may be dry at the surface during summer months, but are sub-irrigated in the root zone. Where saturated soils are shaded by taller vegetation, *H. paradoxus* may also not be present every year or in numbers greater than a few hundred plants. Like all sunflowers, this species requires open areas that are not shaded by taller vegetation for optimal growth. Solitary trees or shrubs are sometimes located within stands of *H. paradoxus.* Clusters of tall tress and shrubs will inhibit *H. paradoxus*'s growth by shading germinating seeds and seedlings (Service 2005, p. 6).

Primary Constituent Elements for Helianthus Paradoxus

Pursuant to the Act and its implementing regulations, we are required to identify the physical and biological features (PCEs) within the geographical area known to be occupied at the time of listing of *H. paradoxus,* that may require special management considerations or protections.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that *H. paradoxus*'s PCEs are the desert wetland or riparian habitat components that provide:

(1) Silty clay or fine sand soils that contain high organic content, are saline or alkaline, are permanently saturated within the root zone (top 50 cm of the soil profile), and have salinity levels ranging from 10 to 40 parts per thousand; and

(2) Low proportion (less than 10 percent) of woody shrub or canopy cover directly around the plant.

Critical habitat does not include manmade structures, such as buildings, aqueducts, runways, airports, roads, and other paved areas, and the land on which such structures are located within the boundaries of a final critical habitat designation that exist on the effective date of a final rule.

This proposed designation is designed for the conservation of PCEs necessary to support the life history functions that are the basis for the proposal and the areas containing those PCEs. Because all of the species' life history functions require all of the PCEs, all proposed critical habitat units contain all PCEs.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing and that contain the primary constituent elements may require special management considerations or protections. Threats to *H. paradoxus* include drying of wetlands from groundwater depletion, alteration of wetlands (e.g., wetland fills, draining, impoundment, and development), competition from nonnative plant species, overgrazing by livestock during *H. paradoxus*'s flowering season, impacts from recreational activities, mowing, and highway maintenance.

We believe each area included in this proposal requires special management or protections as described in our unit descriptions below.

The loss or alteration of wetland habitat continues to be the main threat to *H. paradoxus.* The scattered distribution of cienegas makes them aquatic islands of unique habitat in an arid-land matrix (Hendrickson and Minckley 1984, p. 169). There is evidence these habitats have been historically, and are presently being, reduced or eliminated by aquifer depletion, and severely impacted by agricultural activities and encroachment by exotic plants (Poole 1992, pp. 1–2; Sivinski 1995, p. 11). The lowering of water tables through aquifer withdrawals for irrigation and municipal use, diversion of water from wetlands for agriculture and recreational uses, and wetland filling for conversion to dry land uses destroy or degrade desert wetlands.

In Grants, New Mexico, *H. paradoxus* has been observed to occur in close proximity to building sites that may have contained suitable wetland habitat prior to filling (Service 2005, p. 8). A cienega containing *H. paradoxus* near Dexter, New Mexico, was dried when a wellhead was placed on the spring and the water diverted for other uses (Service 2005, p. 8). Springs that have fed *H. paradoxus* habitats have been converted to swimming pools and fishing ponds in the towns of Roswell and Santa Rosa, New Mexico (Service 2005, p. 8). Groundwater withdrawals for agriculture in Pecos and Reeves Counties in Texas have had an especially severe impact on desert springs (Service 2005, p. 8). Of the 61 historical desert springs in these two counties, only 13 were still flowing in 1980 (Brune 1981 *in* Poole 1992, p. 5). Beginning around 1946, groundwater levels fell as much as 400 ft (120 m) in Pecos County and 500 ft (150 m) in Reeves County. Groundwater pumping has lessened in recent years due to the higher cost of removing water from deeper aquifers, but rising water tables and resumption of spring flows are not expected (Poole 1992, p. 5). Texas water law provides no protection for the remaining springs that support *H. paradoxus* populations on The Nature Conservancy properties, which limits options for addressing this threat.

Livestock will eat *H. paradoxus* when other green forage is scarce, and when the buds are developing and abundant (Service 1999, p. 56587). Cattle and horses tend to pull off the flower heads, which can reduce seed production (Bush and Van Auken 1997, p. 416). However, well-managed grazing during non-flowering months may have a beneficial effect on *H. paradoxus* populations by decreasing the density and biomass of potentially competing plant species in these habitats. This sunflower germinates earlier than most associated plants and grows vigorously on wet, bare, highly insolated soils (Service 2005, p. 9). Actions that remove shading grass cover, such as grazing, appear to enhance growth and reproduction of sunflower plants that are later protected from grazing while they are reproductively maturing. Therefore, properly managed livestock grazing is not incompatible with *H. paradoxus* conservation. Livestock grazing operations that are not managed to protect *H. paradoxus* occur in populations in the Grants and Roswell areas of New Mexico (Service 2005, p. 9).

The specific threats requiring special management or protections are described in the critical habitat unit descriptions below.

Criteria Used To Identify Critical Habitat

We are proposing to designate critical habitat in areas that were known at the time of listing to be occupied and that contain sufficient PCEs to support life history functions essential for the conservation of the species. Lands are proposed for designation based on

sufficient PCEs being present to support the life history processes of the species. All lands contain all PCEs and support multiple life processes. We are also proposing critical habitat in areas that were not known at the time of listing to be occupied. However, we have determined that these areas are currently occupied and are essential to the conservation of the species.

Occupancy

We consider an area to be currently occupied if *H. paradoxus* was found to be present by species experts within the last 2 years (Hirsch 2006, p. 1; Poole 2006, p. 1; Ulibarri 2006, p. 1; Sivinski 2007, p. 1).

Stability

In proposing to designate critical habitat, we considered the stability of the known populations, including size and status over time. According to population-level analysis conducted for *H. paradoxus*, approximately 1,600 or more individuals is a population target that gives a high probability of having a stable population over time (Poole 2004; Sanderson 2006, p. 918). We consider the status of a population to be stable when it appears that (1) the number of new individuals in a population is equal to or greater than the number of individuals dying, and (2) the population occupies a similar or larger area over multiple survey periods. The survey and field data on which this proposed designation is based represent consistently observed populations during the last several years. Most of the sites included in this proposal were visited by species experts four or more times between 1992 and 2007; however, at a minimum each site was visited twice.

By including stable populations, we are proposing to designate currently occupied habitat that provides for important life-history functions, such as seed dispersal and genetic exchange, and will contribute to the long-term conservation of the species. Locations that have populations that do not support at least 1,600 individuals are usually either dependent on an inconsistent water supply or rely on small, restricted, or modified habitats. We believe that, by proposing to designate large populations, the species will persist, the potential for successful pollination is high, and genetic exchange will be facilitated.

Essential

For areas not known to be occupied at the time of listing, the Service must demonstrate that these areas are essential to the conservation of the species in order to include them in a critical habitat designation. The *H. paradoxus* critical habitat units shown in Table 1 in New Mexico and west Texas are sufficiently distant (40 to 100 miles (mi) (64 to 161 kilometers (km)) from one another to rule out frequent gene exchange by pollen vectors or seed dispersal. Therefore, we have determined that each of these populations, including any not known to be occupied at the time of listing, is essential to the conservation of the species because they ensure maintenance of the genetic diversity of *H. paradoxus*. The areas we are proposing for critical habitat designation include populations containing all of the known remaining genetic diversity within the species that are not currently under a management regime that would result in the conservation of *H. paradoxus*. These areas include representation of each major subbasin in the known historical range of the species (Service 2005, p. 4).

In summary, this proposed critical habitat designation includes populations of *H. paradoxus* and habitats that possess the physical and biological features essential to the conservation of the species. We believe the proposal: (1) Maintains PCEs in areas where large populations of *H. paradoxus* are known to occur; (2) maintains the current distribution, thus preserving genetic variation throughout the range of *H. paradoxus* and minimizing the potential effects of local extinction; (3) minimizes fragmentation within populations by establishing contiguous occurrences and maintaining existing connectivity; (4) includes sufficient pollinators; and (5) protects the seed bank to ensure long-term persistence of the species.

Mapping

The proposed *H. paradoxus* critical habitat areas are grouped both spatially and by watershed into five larger units: West-Central New Mexico, La Joya, Santa Rosa, Roswell/Dexter, and West Texas. The boundaries of the proposed critical habitat designation for each subunit were mapped using global positioning system (GPS) along the outside boundary of the area of occupied habitat (Pittenger 2007). We attempted to encompass only areas that contain all of the PCEs in a year of average rainfall. The elevated water table that provides conditions favorable to *H. paradoxus* growth is influenced by both past and current precipitation. Groundwater level is often affected by precipitation in the entire watershed from many prior years as water slowly moves through the soil and geologic features into springs and wetlands. The groundwater provides a relatively reliable, stable water source permanently saturating soils adjacent to springs and wetlands. Winter storms and monsoons provide a more dynamic source of precipitation to *H. paradoxus* habitat. The suitable habitat expands and contracts horizontally and laterally from the groundwater-influenced areas depending on the amount of annual precipitation (Sivinski 1992, p. 125). Therefore, in very wet years, suitable *H. paradoxus* habitat may extend beyond the mapped boundaries for critical habitat and in very dry years may shrink to a smaller area than delineated.

In a few of the subunits we include, narrow dirt roads within the mapped boundaries when these roads were present within the occupied habitat. Due to soil compaction from vehicle tracks, these roads do not provide the PCEs for *H. paradoxus*. They do, however, represent a small area (2 m (6 ft) wide), and they are directly adjacent to occupied habitat, so we found it too difficult, due to mapping constraints, to exclude them from the maps of proposed critical habitat. To the best of our knowledge, no other areas were included within the mapped boundaries of proposed subunits that do not possess all of the PCEs.

We were not able to obtain physical access to some private lands in order to map the boundaries of *H. paradoxus* habitat. We utilized U.S. Geological Survey 7.5 minute quadrangle maps to create maps that depict the habitat containing the PCEs. One of the features of 7.5 minute quadrangle maps is their accurate depiction of permanent water sources (e.g., springs and wetlands) associated with these populations. The depiction of the subunits are based on: (1) Map features, (2) limited visual observations, and (3) a knowledge of how spring/wetland habitats influence similar *H. paradoxus* populations in other geographic areas within the species' range.

With the exception of the narrow dirt roads discussed above, when determining proposed critical habitat boundaries, we made every effort to avoid including (within the boundaries of the map contained within this proposed rule) developed areas such as buildings, paved areas, and other structures that lack PCEs for *H. paradoxus*. 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.

We are proposing to designate critical habitat in areas that we have determined were occupied at the time of listing, and

that contain sufficient PCEs to support life history functions essential for the conservation of the species. Lands are proposed for designation based on sufficient PCEs being present to support the life processes of the species. We are also proposing critical habitat in areas that were not known at the time of listing to be occupied. However, we have determined that these areas are currently occupied and are essential to the conservation of the species.

Proposed Critical Habitat Designation

We are proposing five (5) units as critical habitat for *H. paradoxus*. The critical habitat areas described below constitute our best assessment currently of areas known at the time of listing to be occupied, that contain the primary constituent elements and may require special management, and those additional areas that were not known to be occupied at the time of listing but were found to be essential to the conservation of *H. paradoxus*. Table 1 shows the areas that were known at time of listing to be occupied, those areas that are currently occupied, and the threats requiring special management or protections.

TABLE 1.—THREATS AND OCCUPANCY IN AREAS CONTAINING FEATURES ESSENTIAL TO THE CONSERVATION OF *H. Paradoxus*

Geographic area/unit	Threats requiring special management or protections	Known to be occupied at the time of listing	Currently occupied
Unit 1. West-Central New Mexico			
Subunit 1a. Rancho del Padre Spring Cienega	Water withdrawal, wetland filling and development, incompatible livestock management.	Yes	Yes.
Subunit 1b. Grants Salt Flat Wetland	Wetland filling and development, encroachment by nonnative vegetation,incompatible livestock management.	Yes	Yes.
Subunit 1c. Pueblo of Laguna	Water withdrawal, incompatible livestock management, encroachment by nonnative vegetation.	Yes	Yes.
Unit 2. La Joya			
La Joya State Wildlife Management Area	Encroachment by nonnative vegetation	No	Yes.
Unit 3. Santa Rosa			
Subunit 3a. Blue Hole Cienega / Blue Hole Fish Hatchery Ponds.	Encroachment by nonnative vegetation; on City land, wetland filling and recreation use, mowing to edges of ponds, dredging ponds and filling of wetlands.	Yes	Yes.
Subunit 3b. Westside Spring	Next to major road, water withdrawal, wetland filling and development, encroachment by nonnative vegetation.	No	Yes.
Unit 4. Roswell/Dexter			
Subunit 4a. Bitter Lake National Wildlife Refuge/ City of Roswell Land.	Threats on Refuge lands have been addressed by CCP; on City land, water withdrawal, wetland filling and development, incompatible livestock management.	Yes	Yes.
Subunit 4b. Bitter Lake National Wildlife Refuge Farm.	Threats have been addressed by CCP	Yes	Yes.
Subunit 4c. Oasis Dairy	Water withdrawal, wetland filling and development, incompatible livestock management.	Yes	Yes.
Subunit 4d. Lea Lake at Bottomless Lakes State Park.	Campgrounds and human trampling, encroachment by nonnative vegetation.	Yes	Yes.
Subunit 4e. Dexter Cienega	Water withdrawal wetland filling and development, incompatible livestock management.	Yes	Yes.
Unit 5. West Texas			
Diamond Y Spring	Water withdrawal, wetland filling and development, incompatible livestock management.	Yes	Yes.

The approximate area encompassed within each proposed critical habitat unit is shown in Table 2.

TABLE 2.—CRITICAL HABITAT UNITS PROPOSED FOR *H. Paradoxus*

[Area estimates reflect all land within proposed critical habitat unit boundaries.]

Geographic area/unit	Land ownership	Acres (Hectares) for non-inclusion and proposed exclusion	Proposed critical habitat acres (hectares)
Unit 1. West-Central New Mexico			
Subunit 1a. Rancho del Padre Spring Cienega	Private and Tribal		25.5 (10.3)
Subunit 1b. Grants Salt Flat Wetland	Private		62.5 (25.3)
Subunit 1c. Pueblo of Laguna	Tribal	undefined	undefined
Unit 2. La Joya			
La Joya State Wildlife Management Area	State of New Mexico		854.3 (345.7)
Unit 3. Santa Rosa			
Subunit 3a. Blue Hole Cienega/Blue Hole Fish Hatchery Ponds.	State of New Mexico and City of Roswell		133.9 (54.2)
Subunit 3b. Westside Spring	Private		6.4 (2.6)
Unit 4. Roswell/Dexter			
Subunit 4a. Bitter Lake National Wildlife Refuge/City of Roswell Land.	U.S. Fish and Wildlife Service and City of Roswell.	3,480 (1408.3)	92.2 (37.3)
Subunit 4b. Bitter Lake National Wildlife Refuge Farm.	U.S. Fish and Wildlife Service	686.2 (277.7)	0 (0)
Subunit 4c. Oasis Dairy	Private		103.9 (42.0)
Subunit 4d. Lea Lake at Bottomless Lakes State Park.	State of New Mexico		19.5 (7.9)
Subunit 4e. Dexter Cienega	Private		41.4 (16.8)
Unit 5. West Texas			
Diamond Y Spring	Private		239.7 (97.0)
Total Acres (Hectares)		4,166.2 (3094.3)	1,579.3 (639.1)

Below, we present brief descriptions of all subunits, and reasons why they do or do not meet the definition of critical habitat for *H. paradoxus* (see ''Criteria Used to Identify Critical Habitat'' section above).

Unit 1: West-Central New Mexico

Subunit 1a is located at Rancho del Padre Spring Cienega. This subunit is 25.5 ac (10.3 ha) in Cibola County, New Mexico. The subunit consists of an area of Rancho del Padre Spring Cienega from the spring on the south side of I–40 then northeast approximately 0.5 mi (0.8 km) to the Rio San Jose.

This population consists of large patches of several thousand plants on areas owned by two private landowners (22.6 ac (9.1 ha)) and the Pueblo of Acoma (2.9 ac (1.2 ha). This site was known to be occupied at the time of listing and has been visited or observed from a public right-of-way by species experts during four or more seasons. These experts have found the site occupied by *H. paradoxus* on every visit (Sivinski 2007a, p. 3). This unit is currently occupied, contains all of the PCEs, and is threatened by water withdrawal, wetland filling and development, and livestock grazing during *H. paradoxus*'s growing and flowering season. Therefore, special management or protections may be required to minimize these threats. At this time, we are not aware of any management plans that address *H. paradoxus* in this area.

In January 2007, we found that the Pueblo of Acoma owned the land that contained part of this population. Although we are not aware of any management plans that address *H. paradoxus* in this area, if the Pueblo or other landowners request, we will provide technical assistance on management of the species and the development of a management plan. We will consult with the Pueblo and other landowners during the proposal period to evaluate whether these lands should be considered for exclusion in the final designation. As such, we may consider excluding this area, including lands owned by the Pueblo of Acoma, from the final critical habitat designation pursuant to section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section below for additional information).

Subunit 1b is located at Grants Salt Flat Wetland. This subunit is 62.5 ac (25.3 ha) in Cibola County, New Mexico. The subunit consists of an area of wet alkaline playa between railroad tracks and I–40 and west of Hwy 122 (Road from Interstate to downtown Grants). Playas are nearly level areas at the bottom of undrained desert basins that are sometimes covered in water.

This population consists of large patches of several thousand plants mostly on private property. This site was known to be occupied at the time of listing and has been visited or observed from a public right-of-way by species experts during four or more seasons. These experts have found the site occupied by *H. paradoxus* on every visit (Sivinski 2007). This unit is currently occupied, contains all of the PCEs, and is threatened by wetland filling and development, encroachment by nonnative vegetation, and livestock management not compatible with *H. paradoxus* physiology. Therefore, special management or protections may be required to minimize these threats. At this time, we are not aware of any management plans that address *H. paradoxus* in this area.

Subunit 1c is located at the Pueblo of Laguna. This subunit's acreage is undefined in Valencia County, New Mexico. The subunit consists of an area along the Rio San Jose, South Garcia, New Mexico.

At this site, *H. paradoxus* plants are located in patches at springs along the Rio San Jose. Each patch consists of several hundred to several thousand plants, and a few scattered plants grow along the river (Sivinski 1995, p. 4). The entire site belongs to the Pueblo of Laguna. This site was known to be occupied at the time of listing, is currently occupied, contains all of the PCEs, and is threatened by water withdrawal, encroachment by nonnative vegetation, and livestock grazing during the *H. paradoxus*'s growing and flowering season. The Pueblo is developing a management plan for *H. paradoxus*. On the basis of this plan and our partnership with the Pueblo of Laguna, we anticipate excluding this area from the final critical habitat designation pursuant to section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section below for additional information).

Unit 2: La Joya

Unit 2 is located in the La Joya State Wildlife Management Area. This unit is 854.3 ac (345.7 ha) in Socorro County, New Mexico. This population is located about 7 mi (11 km) south of Bernardo within Socorro County near the confluence of the Rio Grande and the Rio Puerco. The La Joya population is bounded to the west by I–25 and to the east by the Unit 7 Drain. The north boundary is adjacent to River Mile 126 of the Rio Grande and the south boundary is adjacent to River Mile 123.

One of the largest populations of *H. paradoxus* occurs on the Rio Grande at La Joya. This Rio Grande population consists of 100,000 to 1,000,000 plants and occurs on the La Joya State Waterfowl Management Area (Service 2005, p. 4). It is within the La Joya Unit of the Ladd S. Gordon Waterfowl Complex. This property is owned by the New Mexico State Game Commission. It is managed by the New Mexico Department of Game and Fish for migratory waterfowl habitat, which is compatible with preservation of wetlands for *H. paradoxus*.

This area was not known to be occupied at the time of listing. It was discovered in 2004. This site has been found to be occupied every year since then by one of the largest populations of *H. paradoxus* in the range of the species (Hirsch 2006, p. 1). This unit is currently occupied by a stable population (Blue Earth Ecological Consultants, Inc. 2007c, p. 3), contains all of the PCEs, and is threatened by encroachment of nonnative vegetation.

We have determined this site to be essential to the conservation of the species because it is currently occupied by a stable, very large population of H. paradoxus, and is sufficiently distant (over 40 mi (64 km)) from other populations to serve as an additional locality that contributes to the conservation of genetic variation. This population may prevent extirpation of the species resulting from encroachment of nonnative species, degradation of habitat, or a catastrophic event because it is the sole representative located in an area distinct from any other population in the range of the species. As such, it may contain genetic variation not found anywhere else in the range of the species. Because the water source for this population is very stable, this population can be expected to persist in very large numbers every year.

Unit 3: Santa Rosa

Subunit 3a is located at Blue Hole Cienega/Blue Hole Fish Hatchery Ponds. This subunit is 127.6 ac (51.6 ha) in Guadalupe County, New Mexico. The Blue Hole Fish Hatchery Ponds population of *H. paradoxus* is part of the same population as and nearly contiguous with the Blue Hole Cienega in Santa Rosa, New Mexico. The Blue Hole Fish Hatchery Ponds is immediately north of Blue Hole Road and the Blue Hole Cienega is immediately south.

This subunit was known to be occupied at the time of listing and has been visited by species experts during four or more seasons. These experts found the subunit to be occupied by *H. paradoxus* on every visit (Sivinski 2007a, p. 2). This subunit is currently occupied (Blue Earth Ecological Consultants, Inc. 2006, p.1), contains all of the PCEs, and is threatened by encroachment by nonnative vegetation, wetland filling, and park maintenance activities. Therefore, special management or protections may be required to minimize these threats. At this time, we are not aware of any management plans that address *H. paradoxus* in this area.

The part of this population at Blue Hole Cienega consists of 100,000 to 1,000,000 plants and is the largest population of *H. paradoxus* in the upper Pecos River basin. A non-traditional section 6 grant was awarded to the State of New Mexico in 2004 for acquisition of the Blue Hole Cienega, which was finalized in July 2005. At this site, shallow ground water seeps to the surface to create cienega communities. This subunit is currently occupied, contains all of the PCEs, and is threatened by encroachment by nonnative vegetation. Therefore, special management or protections may be required to minimize these threats. At this time, we are not aware of any management plans that address *H. paradoxus* in this area.

The part of this population at the Blue Hole Fish Hatchery Ponds is owned and administered by the City of Santa Rosa and consists of approximately 1,000 plants. This site is maintained as a recreational area. Park maintenance staff have voluntarily stopped mowing and cutting the sunflower during the months of August and September. An information kiosk on endangered wetland plants is being planned for the bike/foot path along the creek at Blue Hole Park.

This subunit was confirmed to be occupied in 2006 (Blue Earth Ecological Consultants, Inc. 2006, p. 4), contains all of the PCEs, and is threatened by encroachment from nonnative vegetation, wetland filling, and park maintenance activities. Therefore, special management or protections may be required to minimize these threats. The City of Santa Rosa is willing to participate in the development of a conservation plan. We will work with the City in this effort to develop and implement a plan to conserve this population.

Subunit 3b is located at Westside Spring. This subunit is 6.4 ac (2.6 ha) in Santa Rosa, Guadalupe County, New Mexico. The subunit consists of an area along an unnamed spring on west side of Pecos River, located to the west of River Road and 1 mi (1.6 km) east of Highway 54.

This area was not known to be occupied at the time of listing. It was discovered in 2005, and contained thousands of plants. This site was found to be occupied again in 2006 by a species expert observing from a public right-of-way (Sivinski 2007). This subunit is currently occupied by a stable population, contains all of the PCEs, and is threatened by proximity to a major road, water withdrawal, wetland filling and development, and encroachment of nonnative vegetation. Therefore, special management or protections may be required to minimize these threats. At this time, we are not aware of any management plans that address *H. paradoxus* in this area.

We have determined this site to be essential to the conservation of the species because it is currently occupied by a stable, large population of *H. paradoxus*, and is one of only two stable, large populations in Unit 3. This

subunit is sufficiently distant (over 40 mi (64 km)) from other populations to serve as an additional locality that contributes to the conservation of genetic variation. This population may prevent extirpation of the species resulting from encroachment of nonnative species, degradation of habitat, or a catastrophic event that could occur to the other subunit in Unit 3. It may also contain genetic variation specific to this Unit. Because the water source for this population is very stable, this population can be expected to persist in large numbers every year.

Unit 4: Roswell/Dexter

Subunit 4a is located at Bitter Lake National Wildlife Refuge/ City of Roswell Land. The subunit is 3,572.2 ac (1,445.6 ha) in Chaves County, New Mexico. This subunit is located approximately 5 mi (8 km) northeast of Roswell.

One of the largest *H. paradoxus* populations occurs on the Bitter Lake National Wildlife Refuge in New Mexico on Federal lands managed by the Service. Several hundred thousand to a few million plants occur nearly continuously along the shores and small islands of all the artificial lakes in the southern unit of the refuge. Also a few small patches of plants occur on the west side of Bitter Lake Playa and adjacent springs on Lost River.

This area was known to be occupied at the time of listing and has been visited by species experts during four or more seasons. These experts found the site occupied by *H. paradoxus* on every visit (Ulibarri 2006a, p. 1; Sivinski 2007a, p. 2; Blue Earth Ecological Consultants, Inc. 2007a, p. 3). This area is currently occupied and contains all of the PCEs. However, this area is covered by a final Comprehensive Conservation Plan (CCP) that manages *H. paradoxus* in a manner that provides a conservation benefit to the species; therefore, we believe this area does not require special management or protections. As this area does not meet the definition of critical habitat, the portion of this subunit within Bitter Lake National Wildlife Refuge has not been included in this critical habitat proposal. Please see ''Application of Section 3(5)(a) of the Act'' below for additional discussion.

Approximately 92.2 ac (37.3 ha) of land adjacent to the southwest boundary of Bitter Lake National Wildlife Refuge is owned by the City of Roswell. There are a few thousand *H. paradoxus* on this land. It is located on a large alkaline cienega adjoining the Bitter Lake National Wildlife Refuge population. This site was known to be occupied at the time of listing and has been visited by species experts during at least two seasons. These experts have found it occupied by *H. paradoxus* on both visits (Sivinski 2007a, p. 2). This unit is currently occupied (Blue Earth Ecological Consultants, Inc. 2007c, p. 3), contains all of the PCEs, and is threatened by water withdrawal, wetland filling and development, and livestock grazing during *H. paradoxus*'s growing and flowering season. Therefore, special management or protections may be required to minimize these threats. At this time, we are not aware of any management plans that address *H. paradoxus* in this portion of the subunit.

Subunit 4b is located at Bitter Lake National Wildlife Refuge (Refuge) Farm. This subunit is 686.2 ac (277.7 ha) in Chaves County, New Mexico. The subunit is located approximately 5 mi (8 km) east of Roswell on the west side of the Pecos River.

This area consists of a few large patches with several thousand plants on alkaline seeps behind the dikes on the western edge of the Refuge Farm south of Highway 380. This land is owned and managed by the Service as a grain farm and feeding area for migratory birds. The eastern portion of the Refuge Farm is a marshy spring-seep area that contains a large population of *H. paradoxus*. The wet soils in this population are not cultivated.

This site was known to be occupied at the time of listing and has been visited by species experts during four or more seasons. The experts found the site occupied by *H. paradoxus* on every visit (Ulibarri 2006b, p. 1; Sivinski 2007a, p. 2; Blue Earth Ecological Consultants, Inc. 2007a, p. 3). This subunit is currently occupied and contains all of the PCEs. However, this area is covered by a final CCP that manages *H. paradoxus* in a manner that provides a conservation benefit to the species; therefore, we believe this area does not require special management or protections. As this area does not meet the definition of critical habitat, it has not been included in the critical habitat proposal. Please see ''Application of Section 3(5)(a) of the Act'' below for additional discussion.

Subunit 4c is located at the Oasis Dairy. This subunit is 103.9 ac (42.0 ha) Chaves County, New Mexico. The subunit is located on the east side of Roswell, west side of Pecos River Valley, approximately 4.5 mi (7.2 km) southeast of the Hwy 380 bridge, and beside an unnamed spring approximately 0.6 mi (1 km) west of the Pecos River and 5.5 mi (8.9 km) south of Highway 380.

This site contains a very large, dense patch of several thousand *H. paradoxus* in a low alkaline sink area approximately 0.5 mi (0.8 km) west of the Pecos River on private land. It also contains a large patch with many thousands of *H. paradoxus* in a low area below a spring, also on private land. This site was known to be occupied at the time of listing and has been visited by species experts during at least three seasons. These experts found the site occupied by *H. paradoxus* on every visit (Sivinski 2007a, p. 3). This subunit is currently occupied, contains all of the PCEs, and is threatened by livestock grazing during *H. paradoxus*'s growing and flowering season, water withdrawal, and wetland filling and development. Therefore, special management or protections may be required to minimize these threats. At this time, we are not aware of any management plans that address *H. paradoxus* in this area.

Subunit 4d is located at Lea Lake at Bottomless Lakes State Park. This subunit is 19.5 ac (7.9 ha) in Chaves County, New Mexico. It includes the wet margins of Lea Lake.

This site contains a few thousand plants on the riparian margins of Lea Lake. This land belongs to the State of New Mexico and is managed by the New Mexico Parks and Recreation Division. Lea Lake is used as a picnic area and campground for the State Park. This site was known to be occupied at the time of listing and has been visited by species experts during four or more seasons. These experts found the site occupied by *H. paradoxus* on every visit (Sivinski 2007a, p. 3). This subunit is currently occupied (Sivinski 2007a, p. 3; Blue Earth Ecological Consultants, Inc. 2007a, p. 3), contains all of the PCEs, and is threatened by encroachment of nonnative vegetation, and recreational and park maintenance activities. Therefore, special management or protections may be required to minimize these threats. At this time, we are not aware of any management plans that address *H. paradoxus* in this area.

Subunit 4e is located at Dexter Cienega. This subunit is 41.4 ac (16.8 ha) in Chaves County, New Mexico. The subunit is located in a small valley west of the Pecos River, east of the Hagerman Irrigation Canal, and 2.9 mi (4.7 km) north of Dexter.

This site consists of several thousand plants on private land along a wide, boggy drainage bottom. This site was known to be occupied at the time of listing based upon observations from a public right-of-way by species experts during at least three seasons (Sivinski 2007a, p. 2). This subunit is currently occupied, contains all of the PCEs, and

is threatened by water withdrawal, wetland filling and development, and livestock grazing during *H. paradoxus*'s growing and flowering season. Therefore, special management or protections may be required to minimize these threats. At this time, we are not aware of any management plans that address *H. paradoxus* in this area.

Unit 5: West Texas

This unit is located at Diamond Y Spring. It is 239.7 ac (97.0 ha) in Pecos County, Texas. This unit is located approximately 12 mi (20 km) north-northwest of Fort Stockton, Texas.

The Nature Conservancy owns a very large area of habitat for *H. paradoxus* that contains 100,000 to 1,000,000 plants within its Diamond Y Spring Preserve near Fort Stockton, Pecos County, Texas. This is the type locality, or location from which the species was first described. It consists of a large population with several hundred thousand to one million plants at The Nature Conservancy's Diamond Y Spring Preserve, and a small group of plants downstream at a nearby highway right-of-way, and another small group of plants on adjacent private land. This site was known to be occupied at the time of listing and has been visited by species experts during four or more seasons. These experts found the site occupied by *H. paradoxus* on every visit (Poole 2006, p. 2). This unit is currently occupied (Blue Earth Ecological Consultants, Inc. 2007b, p. 3) and contains all of the PCEs. On The Nature Conservancy land, *H. paradoxus* is threatened by water withdrawal. The Nature Conservancy land was purchased to protect this plant and other rare or endangered aquatic species in the Diamond Y Spring system. This habitat is managed for conservation of these species (Service 2005, p. 12). Diamond Y Spring Preserve recently expanded from 1,500 to 4,000 acres. On the private land, *H. paradoxus* has the same threat as above, plus wetland filling and development, and livestock grazing during *H. paradoxus*'s growing and flowering season. Therefore, special management or protections may be required to minimize these threats. At this time, we are not aware of any completed management plans that address *H. paradoxus* in this area.

Table 3 below provides approximate area of lands containing features essential to the conservation of the species, lands not included in proposed critical habitat, lands considered for exclusion from the final critical habitat rule, and reasons why we are not including those lands in proposed critical habitat or considering those lands for exclusion from the final critical habitat rule.

TABLE 3.—NON-INCLUSIONS AND PROPOSED EXCLUSIONS BY SUBUNIT

Subunit/geographical area	Reason for non-inclusion or proposed exclusion	Acres (hectares)	Proposed exclusion acres (hectares)
Subunit 1c. Pueblo of Laguna	Section 4(b)(2) of the Act	Undefined	Undefined
Subunit 4a. Bitter Lake National Wildlife Refuge.	Section 3(5)(a) of the Act	3,480.0 (1,408.3)	3,480.0 (1,408.3)
Subunit 4b. Bitter Lake National Wildlife Refuge Farm.	Section 3(5) (a) of the Act	686.2 (277.7)	686.2 (277.7)

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, recent decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)). Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action because of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report, while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are

typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that 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 result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect *H. paradoxus* or its designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to Helianthus paradoxus and Its Critical Habitat

Jeopardy Standard

The Service has applied an analytical framework for *H. paradoxus* jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of *H. paradoxus*. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of *H. paradoxus* in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is warranted because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

For the reasons described in the Director's December 9, 2004 memorandum, the key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of *H. paradoxus* critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for the species is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for *H. paradoxus* include, but are not limited to:

(1) Projects that physically alter permanently saturated saline or alkaline soils (e.g., salt deposits or crusts present) or result in the loss and degradation of *H. paradoxus* habitat. Such activities could include, but are not limited to, drying of wetlands from groundwater depletion, alteration of wetlands (e.g., wetland fills, draining, impoundment wetland filling and development), livestock management not compatible with *H. paradoxus's* physiology, clearing, introducing or encouraging the spread of nonnative plants, and recreational use (such as the use of off-road vehicles);

(2) Removing, thinning, or destroying *H. paradoxus* plants. This may occur through plowing, grading, wetland filling and development, road building, burning, mechanical weed control, herbicide application, and activities associated with firefighting (e.g., staging areas, surface disturbance); and

(3) Activities that appreciably diminish habitat value or quality through indirect effects (e.g., encroachment of nonnative plants or animals, or fragmentation).

We consider all of the units proposed as critical habitat, as well as those that have been proposed for exclusion or not included due to special management, to contain features essential to the conservation of *H. paradoxus.* All units

are within the geographic range of the species, all except two were known at the time of listing to be occupied by the species (based on observations made within the last 14 seasons (Ulibarri 2006; Kargas 2007; Sivinski 2007)), and are likely to be used by *H. paradoxus.* Federal agencies already consult with us on activities in areas currently occupied by *H. paradoxus*, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of *H. paradoxus.*

Application of Section 3(5)(A) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (i) essential to the conservation of the species, and (ii) which may require special management considerations or protection. Therefore, areas known at the time of listing to be occupied by the species that do not contain the features essential to the conservation of the species are not, by definition, critical habitat. Similarly, areas known at the time of listing to be occupied by the species that require no special management or protection also are not, by definition, critical habitat.

There are multiple ways to provide management for species habitat. Statutory and regulatory frameworks that exist at a local level can provide such protection and management, as can lack of pressure for change, such as areas too remote for anthropogenic disturbance. Finally, State, local, or private management plans, as well as management under Federal agencies' jurisdictions, can provide protection and management to avoid the need for designation of critical habitat. When we consider a plan to determine its adequacy in protecting habitat, we consider whether the plan, as a whole, will provide the same level of protection that designation of critical habitat would provide. The plan need not lead to exactly the same result as a designation in every individual application, as long as the protection it provides is equivalent overall. In making this determination, we examine whether the plan provides management, protection, or enhancement of the PCEs that is at least equivalent to that provided by a critical habitat designation, and whether there is a reasonable expectation that the management, protection, or enhancement actions will continue into the foreseeable future. Each review is particular to the species and the plan, and some plans may be adequate for some species and inadequate for others.

Within the areas known to be occupied by *H. paradoxus* at the time of listing and containing sufficient PCEs to support *H. paradoxus's* life processes, we have identified the Bitter Lake National Wildlife Refuge (portion of subunit 4a) and the associated Refuge Farm (subunit 4b) as areas that do not require special management or protections. Our preliminary analysis of section 3(5)(a) of the Act and special management on these Refuge lands follows.

Bitter Lake National Wildlife Refuge: Lands within the Service's Bitter Lake National Wildlife Refuge and the Refuge Farm are considered to be occupied and contain the necessary features that are essential for the conservation of *H. paradoxus.* Below, we provide general background information on the Refuge and CCP, followed by an analysis pursuant to section 3(5)(a) of the Act of the current management provisions on the Refuge.

The Bitter Lake National Wildlife Refuge was established on October 8, 1937, by Executive Order 7724 ''as a refuge and breeding ground for migratory birds and other wildlife.'' The Refuge Recreation Act (16 U.S.C. 460k et seq.) identifies the refuge as being suitable for incidental fish and wildlife-oriented recreational development, the protection of natural resources, and the conservation of endangered species or threatened species. The Wilderness Act of 1964 (16 U.S.C. 1131*1136) directs the Service to ''maintain wilderness as a naturally functioning ecosystem'' on portions of the Refuge. While the Refuge was originally established to save wetlands vital to the perpetuation of migratory birds, the isolated gypsum springs, seeps, and associated wetlands protected by the Refuge have been recognized as providing the last known habitats in the world for several unique species. Management emphasis of the Refuge is placed on the protection and enhancement of habitat for endangered species and Federal candidate species, maintenance and improvement of wintering crane and waterfowl habitat, and monitoring and maintenance of natural ecosystem values.

The Refuge sits at a juncture between the Roswell Artesian Groundwater Basin and the Pecos River. These two systems and their interactions account for the diversity of water resources on the Refuge, including sinkholes, springs, wetlands, oxbow lakes, and riverine habitats. The federally reserved water right for Bitter Lake National Wildlife Refuge has been signed by the State of New Mexico, but awaits final approval by the Federal government, a procedural process. The Refuge is currently in negotiations with the New Mexico Office of the State Engineer, a State agency responsible for administering New Mexico's water resources, to quantify these reserved rights. This water right allows for an in-stream flow in Bitter Creek and allows the Refuge to manage impounded springs for the benefit of many species, including *H. paradoxus.* This water right protects against the threat of a future water user purchasing a Pecos River Basin water right and moving the use to a location that would be detrimental to the Refuge's ability to manage for the conservation of *H. paradoxus.* While the water right does not specifically protect water for the purposes of *H. paradoxus* conservation, it combines with management under the Refuge's CCP (discussed below) to remove the threat of water withdrawal on Refuge lands.

The National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57) (Refuge Improvement Act) establishes a conservation mission for refuges, gives policy direction to the Secretary of the Interior and refuge managers, and contains other provisions such as the requirement to integrate scientific principles into the management of the Refuges. According to section 7(e)(1)(E) of the Refuge Improvement Act, all lands of the Refuge System are to be managed in accordance with an approved CCP that will guide management decisions and set forth strategies for achieving refuge purposes. In general, the purpose of the CCP is to provide long-range guidance for the management of National Wildlife Refuges. The Refuge Improvement Act requires all refuges to have a CCP and provides the following legislative mandates to guide the development of the CCP: (1) Wildlife has first priority in the management of refuges; (2) wildlife-dependent recreation, including hunting, fishing, wildlife observation, wildlife photography, environmental education, and environmental interpretation, are the priority public uses of the refuge system, and shall be allowed when compatible with the refuge purpose; and (3) other uses have lower priority in the refuge system and are only allowed if not in conflict with any of the priority uses and determined appropriate and compatible with the refuge purpose.

The CCP must also be revised if the Secretary determines that conditions that affect the refuge or planning unit have changed significantly. In other words, a CCP must be followed once it is approved, and regularly updated in response to environmental changes or new scientific information.

The Bitter Lake National Wildlife Refuge has a final CCP that was approved in September 1998. The CCP serves as a management tool to be used by the Refuge staff and its partners in the preservation and restoration of the ecosystem's natural resources. The plan is intended to guide management decisions for 15 years after the plan is made final, and sets forth strategies for achieving Refuge goals and objectives within that timeframe. In 2013, the plan will not expire, but will undergo review, and any needed revisions will be incorporated at that time. Key goals of the CCP related to *H. paradoxus* include the following: (1) To restore, enhance, and protect the natural diversity on the Refuge including threatened and endangered species by (a) appropriate management of habitat and wildlife resources on refuge lands and (b) strengthening existing and establishing new cooperative efforts with public and private stakeholders and partners; and (2) To restore and maintain selected portions of a hydrological system that more closely mimics the natural processes along the reach of the Pecos River adjacent to the Refuge by (a) restoration of the river channel, as well as restoration of threatened, endangered, and special concern species, and (b) control of exotic species and managment of trust responsibilities for maintenance of plant and animal communities and to satisfy traditional recreational demands (Service 1998, pp. 5, 46–52). Specific objectives related to these goals include: (1) The restoration of populations of aquatic species designated as endangered, threatened, or of special concern to a sustainable level (*H. paradoxus* is specifically mentioned in this goal); and (2) following existing recovery plan objectives to monitor and study threatened or endangered species, their habitat requirements, exotic species encroachment, and human-induced impacts to prevent further decline and loss (Service 1998, pp. 49–52).

In summary, we believe that the Refuge lands are being adequately protected and managed for the conservation of *H. paradoxus* and that special management consideration or protections are not required. Therefore, we have determined that the Refuge lands do not meet the definition of critical habitat under section 3(5)(a) of the Act, and we are not proposing to designate critical habitat for *H. paradoxus* within Bitter Lake National Wildlife Refuge or the Refuge farm.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Congressional record is clear that the Secretary is afforded broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we are considering. In addition, the Service is conducting an economic analysis of the impacts of the proposed critical habitat designation and related factors, which will be available for public review and comment. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, additional areas beyond those identified in this assessment may be excluded from final critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act and in our implementing regulations at 50 CFR 424.19.

Benefits of Designating Critical Habitat

Educational Benefits

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for *H. paradoxus*. In general, the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, Habitat Conservation Plans (HCPs) have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect benefit: that the designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse et al. 2002). Stein et al. (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998; Crouse et al. 2002; James 2002). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-Federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction in contributing to endangered species' recovery. The Service promotes these private-sector efforts through the Department of the Interior's Cooperative Conservation philosophy. This philosophy is evident in Service programs such as HCPs, Safe Harbor Agreements, Candidate Conservation Agreements, Candidate Conservation Agreements with Assurances, and conservation challenge cost-share. Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property, and there is mounting evidence that some regulatory actions by the Federal government, while well-intentioned and required by law, can (under certain

circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove et al. 1996; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook et al. 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability, resulting in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main et al. 1999; Brook et al. 2003).

The Department of the Interior's Cooperative Conservation philosophy is the foundation for developing the tools of conservation. These tools include conservation grants, funding for Partners for Fish and Wildlife Program, the Coastal Program, and cooperative-conservation challenge cost-share grants. Our Private Stewardship Grant program and Landowner Incentive Program provide assistance to private landowners in their voluntary efforts to protect threatened, imperiled, and endangered species, including the development and implementation of Habitat Conservation Plans (HCPs). Conservation agreements with non-Federal landowners (HCPs, contractual conservation agreements, easements, and stakeholder-negotiated State regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through coercive methods. We invite discussion with all landowners within the proposed critical habitat that have an interest in developing conservation strategies that we would evaluate to determine if they provide a greater benefit to *H. paradoxus* than could be achieved through the final designation of critical habitat.

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7 of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main et al. 1999; Bean 2002; Brook et al. 2003). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002). The Service believes that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation under section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory measures and terms and conditions to implement such measures are only specified when the proposed action would result in the incidental take of a listed animal. Reasonable and prudent alternatives to the proposed Federal action would only be suggested when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot*, the Service combined the jeopardy standard with the standard for destruction or adverse modification of critical habitat when evaluating Federal actions that affect currently-occupied critical habitat. The Court ruled that the two standards are distinct and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing habitat conservation plans (HCPs) or other habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and agencies do not have to commit to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any HCP or management plan that considers enhancement or recovery as the management standard will often provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat in that it provides the framework for the consultation process.

Benefits of Excluding Lands With Approved Management Plans From Critical Habitat

The benefits of excluding lands with approved management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by a critical habitat designation. Most conservation plans take many years to develop and, upon completion, are consistent with the recovery objectives for listed species that are covered within the plan area. Many conservation plans also provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine these conservation efforts and partnerships designed to proactively protect species to ensure that listing under the Act will not be necessary. Designation of critical habitat within the boundaries of management plans that provide conservation measures for a species could be viewed as a disincentive to those entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species are affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning. In fact, designating critical habitat in areas covered by a pending conservation plan could result in the loss of some species' benefits if participants abandon the planning process, in part because of the strength of the perceived additional regulatory compliance that such designation would entail. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for them to be perceived as additional Federal regulatory burden sufficient to discourage continued participation in plans targeting listed species' conservation.

A related benefit of excluding lands within management plans from critical habitat designation is the unhindered, continued ability to seek new partnerships with future plan participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within approved management plan areas are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Relationship of Critical Habitat to Tribal Lands

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); 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 relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in many cases, designation of tribal lands as critical habitat provides very little additional benefit to threatened and endangered species. Conversely, such designation is often viewed by tribes as an unwanted intrusion into tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

In our critical habitat designations, we use the provision outlined in section 4(b)(2) of the Act to evaluate those specific areas that contain the features essential to the conservation of the species to determine which areas to propose and subsequently finalize (i.e., designate) as critical habitat. On the basis of our preliminary evaluation, discussed in detail below, we are proposing to exclude certain lands from the final designation of critical habitat for *H. paradoxus*. In the development of our final designation, we will incorporate or address any new information received during the public comment periods, and from our evaluation of the potential economic and or other relevant impacts of this proposal. As such, we may revise this proposal to address new information and/or exclude additional areas that may warrant exclusion pursuant to section 4(b)(2) of the Act.

Pueblo of Acoma

The Pueblo of Acoma has lands containing features essential to the conservation of *H. paradoxus*. In making our decision on the final critical habitat designation with regard to these lands, we will be considering several factors, including our relationship with the Pueblo and whether a management plan has been developed for the conservation of *H. paradoxus* on their lands. Currently, we are not aware of a management plan for *H. paradoxus*. As noted above, if the Pueblo requests, we will provide technical assistance on management of the species and the development of a management plan. We also note that lands of the Pueblo of Acoma could be considered for exclusion in the final determination or designation under section 4(b)(2) of the Act and that any exclusions made in the final determination or designation will be the result of an analysis of any new information received.

Pueblo of Laguna

The Pueblo of Laguna has lands containing features essential to the conservation of *H. paradoxus*. In making our final decision with regard to Pueblo lands, we will consider several factors, including our relationship with the Pueblo and whether a management plan has been developed for the conservation of *H. paradoxus* on their lands. On August 2, 2004, in a letter to the New Mexico Ecological Services Field Office from Pueblo of Laguna Governor Johnson, we learned that the Pueblo has developed a draft management plan for *H. paradoxus* and has been managing Pueblo land consistent with the protection and recovery of the sunflower. We received the Pecos Sunflower (*Helianthus paradoxus*) Draft Management Plan, Pueblo of Laguna, 2007, for review on February 8, 2007, and we are working with the Pueblo on finalizing the management plan for their lands. On the basis of our partnership with the Pueblo, and in anticipation of completion of a management plan, the populations of *H. paradoxus* associated with spring habitats along the Rio San Jose belonging to the Pueblo of Laguna may be excluded from final critical habitat designation pursuant to section 4(b)(2) of the Act (see ''Relationship of Critical Habitat to Tribal Lands'' section below for additional information).

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for *H. paradoxus* is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic

analysis will be available for downloading from the Internet at *http://www.fws.gov/southwest/es/newmexico/* or by contacting the New Mexico Ecological Services Field Office directly (see **ADDRESSES**).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period (see **DATES**). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 (Regulatory Planning and Review) requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, Executive Order 12630, Executive Order 13211, and Executive Order 12875.

Further, Executive Order 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (OMB, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement under the Act (16 U.S.C. 1531 et seq.), we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

When it is completed, the draft economic analysis will be made available through an announcement in the **Federal Register** and in local newspapers. At that time, we will seek public review and comment on the draft economic analysis. The draft economic analysis will also be available on our Web site at *http://www.fws.gov/southwest/es/newmexico/* or by contacting the New Mexico Ecological Services Field Office directly (see **ADDRESSES**).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designations. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has

concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We recognize that some areas within the proposed critical habitat designation are within the City of Santa Rosa. As we conduct our draft economic analysis, we will complete a comprehensive assessment of the effect of designating critical habitat on these small governmental jurisdictions.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this proposed rule to designate critical habitat for *H. paradoxus* is a significant regulatory action under Executive Order 12866 in that it may raise novel legal and policy issues, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis and review and revise this assessment as warranted.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for *H. paradoxus* in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for *H. paradoxus* does not pose significant takings implications. However, we will further evaluate this issue as we conduct our economic analysis and review and revise this assessment as warranted.

Federalism

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in New Mexico and Texas. The designation of critical habitat in areas currently occupied by *H. paradoxus* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the 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 propose designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *H. paradoxus*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et. seq.)

It is our position that, outside the Jurisdiction of the Tenth Federal Circuit, we do not need to prepare environmental analyses as defined by 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 by the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of *H. paradoxus*, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for this proposal when it is completed.

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. In accordance with Secretarial Order 3206 of June 5, 1997, ''American Indian Tribal Rights, Federal—Tribal Trust Responsibilities, and the Endangered Species Act,'' we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. If requested by the Pueblo of Acoma, we will provide technical assistance on management of the species and the development of a management plan. We will also continue to work with the Pueblo of Laguna on the development of a final management plan for their lands. We note that lands of the Pueblos of Acoma and Laguna may be considered for exclusion in the final designation or determination pursuant to section 4(b)(2) of the Act and that any exclusions made in the final designation or determination will be the result of an analysis of any new information received.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES**).

Author(s)

The primary authors of this package are staff of the New Mexico Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h), revise the entry for ''*Helianthus paradoxus*'' under ''FLOWERING PLANTS'' in the List of Threatened and Endangered Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Helianthus paradoxus	Pecos (=puzzle, =paradox) sunflower.	U.S.A. (NM, TX)	Asteraceae	T	667	17.96(a)	NA
*	*	*	*	*	*		*

3. In § 17.96(a), add an entry for ''*Helianthus paradoxus* (Pecos sunflower)'' in alphabetical order under Family Asteraceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Asteraceae: *Helianthus paradoxus* (Pecos sunflower)

(1) Critical habitat units are depicted for Chaves, Cibola, Guadalupe, Socorro, and Valencia Counties, New Mexico, and for Pecos County, Texas, on the maps below.

(2) Within critical habitat units, the primary constituent elements of critical habitat for the *Helianthus paradoxus* are the desert wetland or riparian habitat components that provide:

(i) Silty clay or fine sand soils that contain high organic content, are saline or alkaline, are permanently saturated within the root zone (top 50 cm (19.7 in) of the soil profile), and have salinity levels ranging from 10 to 40 parts per thousand; and

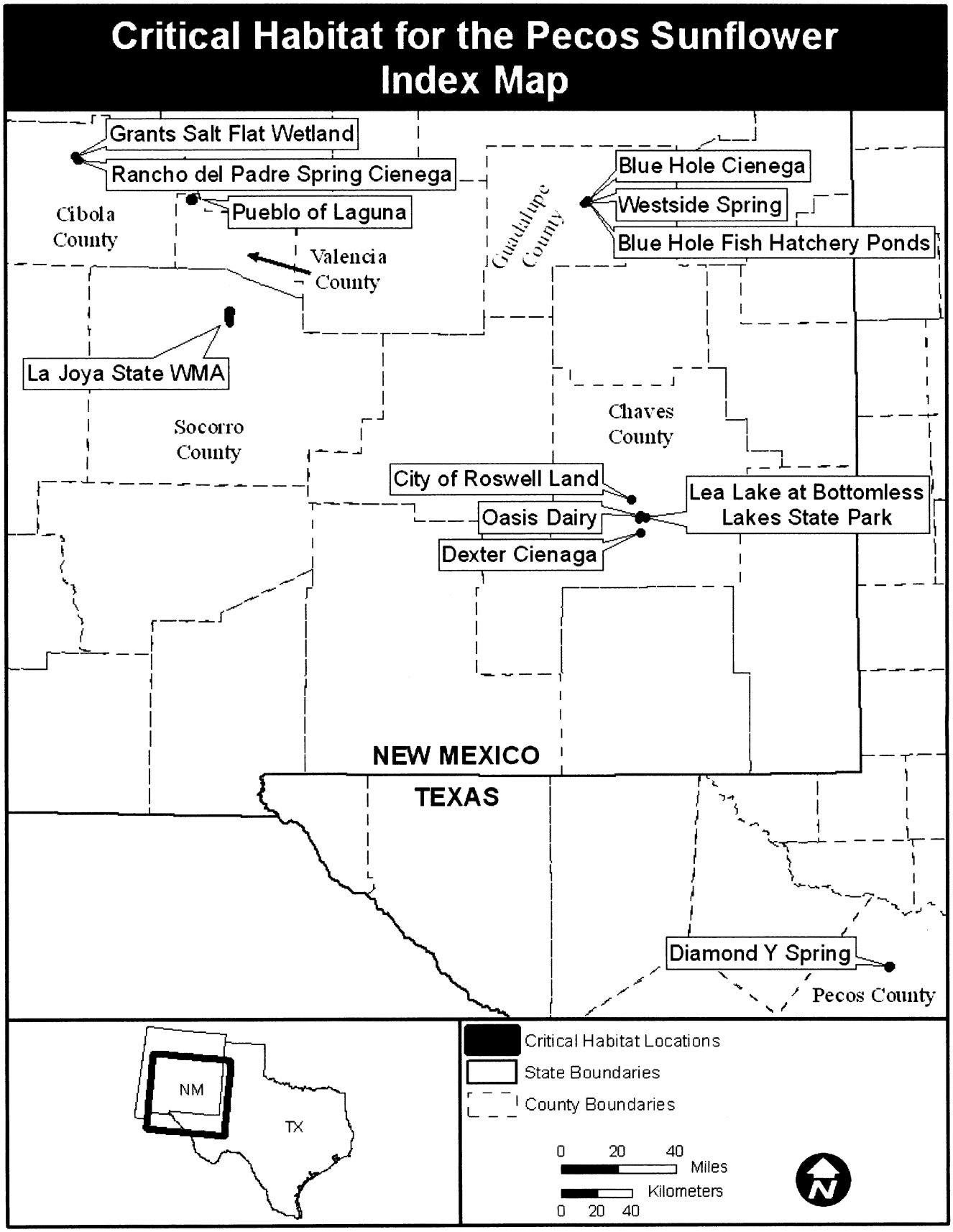
(ii) A low proportion (less than 10 percent) of woody shrub or canopy cover directly around the plant.

(3) Critical habitat does not include manmade structures, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located, existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 1:24,0000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) *Note:* Index map of Pecos sunflower critical habitat units (map 1) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

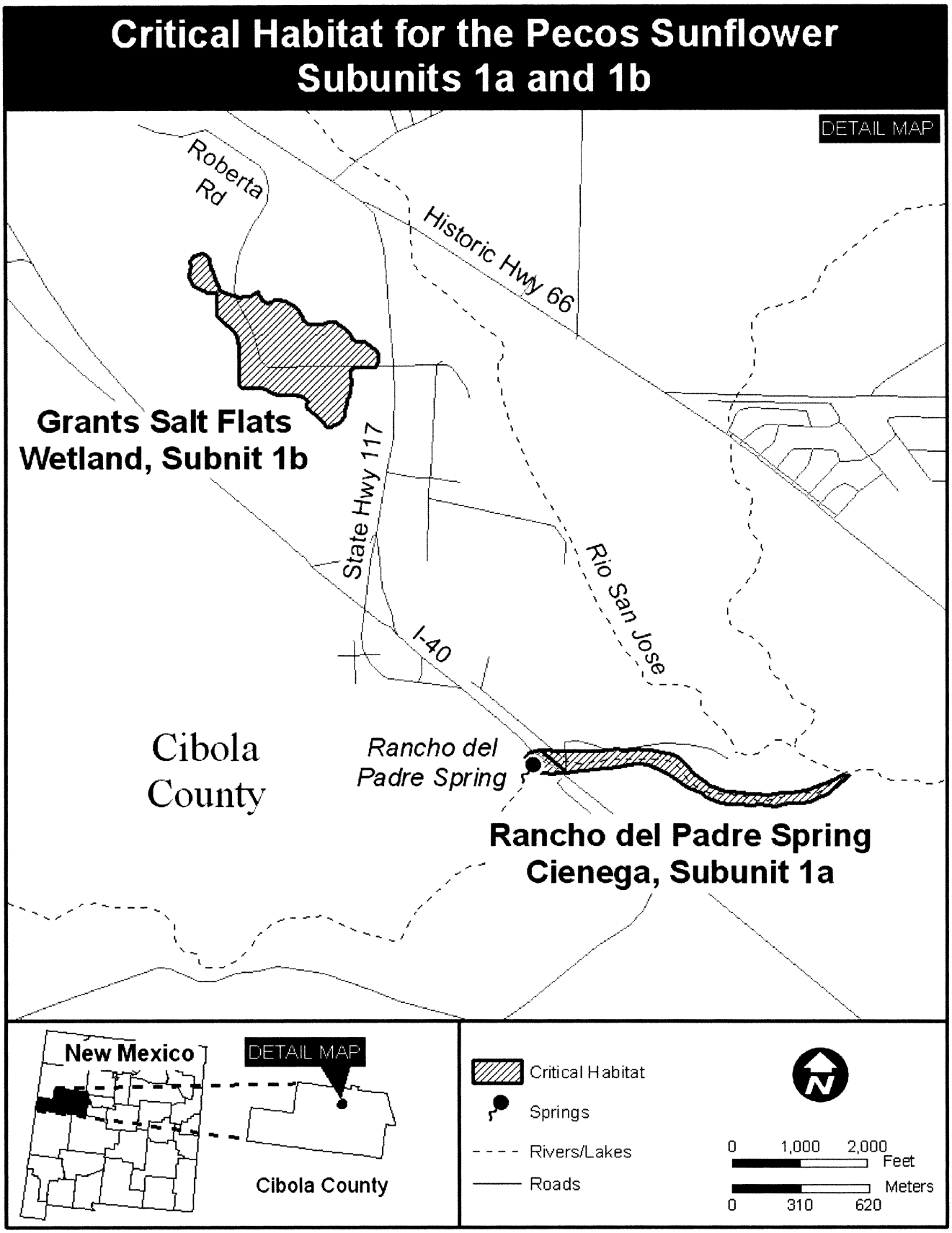
(6) Unit 1: West-Central New Mexico, Cibola and Valencia Counties, New Mexico.

(i) Subunit 1a for *Helianthus paradoxus*, Rancho del Padre Spring Cienega, Cibola County, New Mexico. From USGS 1:24,000 quadrangle Grants SE, lands bounded by the following UTM NAD83 coordinates (meters E, meters N): 243145, 3889604; 243025, 3889705; 243053, 3889708; 243097, 3889700; 243141, 3889702; 243201, 3889703; 243246, 3889703; 243286, 3889703; 243342, 3889708; 243377, 3889712; 243402, 3889704; 243441, 3889707; 243441, 3889707; 243472, 3889710; 243490, 3889709; 243518, 3889707; 243577, 3889698; 243626, 3889686; 243657, 3889669; 243683, 3889642; 243706, 3889616; 243729, 3889590; 243765, 3889564; 243794, 3889545; 243826, 3889535; 243863, 3889518; 243888, 3889519; 243932, 3889513; 243966, 3889506; 243991, 3889508; 244056, 3889504; 244120, 3889510; 244157, 3889513; 244196, 3889517; 244242, 3889530; 244282, 3889546; 244325, 3889560; 244359, 3889575; 244388, 3889592; 244423, 3889592; 244410, 3889576; 244393, 3889566; 244362, 3889539; 244322, 3889506; 244278, 3889486; 244244, 3889470; 244209, 3889467; 244155, 3889466; 244126, 3889461; 244088, 3889450; 244057, 3889453; 244019, 3889457; 243982, 3889456; 243923, 3889459; 243879, 3889459; 243824, 3889470; 243779, 3889490; 243752, 3889510; 243726, 3889522; 243689, 3889537; 243653, 3889566; 243604, 3889594; 243573, 3889612; 243515, 3889637; 243471, 3889643; 243427, 3889641; 243376, 3889630; 243325, 3889625; 243265, 3889619; 243224, 3889611; 243169, 3889606; thence returning to 243145, 3889604.

(ii) Subunit 1b for *Helianthus paradoxus*, Grants Salt Flat Wetlands, Cibola County, New Mexico. From USGS 1:24,000 quadrangle Grants, lands bounded by the following UTM NAD83 coordinates (meters E, meters N): 241567, 3891788; 241548, 3891788; 241521, 3891788; 241509, 3891801; 241493, 3891806; 241482, 3891812; 241460, 3891822; 241448, 3891840; 241440, 3891865; 241445, 3891886; 241449, 3891910; 241445, 3891930; 241456, 3891947; 241463, 3891957; 241484, 3891960; 241499, 3891965; 241517, 3891962; 241531, 3891941; 241534, 3891918; 241543, 3891893; 241551, 3891866; 241560, 3891846; 241568, 3891825; 241582, 3891801; 241602, 3891789; 241636, 3891777; 241670, 3891770; 241691, 3891774; 241714, 3891774; 241733, 3891785; 241751, 3891795; 241751, 3891785; 241762, 3891765; 241775, 3891750; 241798, 3891741; 241812, 3891747; 241825, 3891755; 241850, 3891755; 241876, 3891751; 241901, 3891738; 241917, 3891731; 241934, 3891717; 241942, 3891694; 241952, 3891679; 241959, 3891662; 241979, 3891648; 242003, 3891648; 242025, 3891648; 242045, 3891648; 242071, 3891659; 242100, 3891656; 242122, 3891641; 242135, 3891629; 242168, 3891604; 242175, 3891585; 242186, 3891578; 242196, 3891570; 242215, 3891570; 242234, 3891570; 242252, 3891554; 242288, 3891527; 242295, 3891507; 242295, 3891482; 242288, 3891465; 242283, 3891452; 242239, 3891452; 242191, 3891452; 242178, 3891441; 242171, 3891432; 242169, 3891409; 242172, 3891391; 242172, 3891378; 242171, 3891358; 242169, 3891344; 242165, 3891323; 242155, 3891303; 242154, 3891285; 242142, 3891252; 242141, 3891232; 242128, 3891205; 242114, 3891194; 242097, 3891188; 242080, 3891180; 242062, 3891179; 242052, 3891190; 242040, 3891204; 242023, 3891225; 241999, 3891240; 241984, 3891255; 241975, 3891262; 241971, 3891278; 241972, 3891293; 241964, 3891308; 241944, 3891322; 241911, 3891325; 241879, 3891325; 241836, 3891326; 241811, 3891335; 241785, 3891350; 241768, 3891359; 241755, 3891360; 241728, 3891356; 241706, 3891357; 241680, 3891357; 241666, 3891373; 241662, 3891403; 241664, 3891455; 241666, 3891502; 241666, 3891544; 241657, 3891574; 241650, 3891611; 241612, 3891644; 241567, 3891688; thence returning to 241567, 3891788.

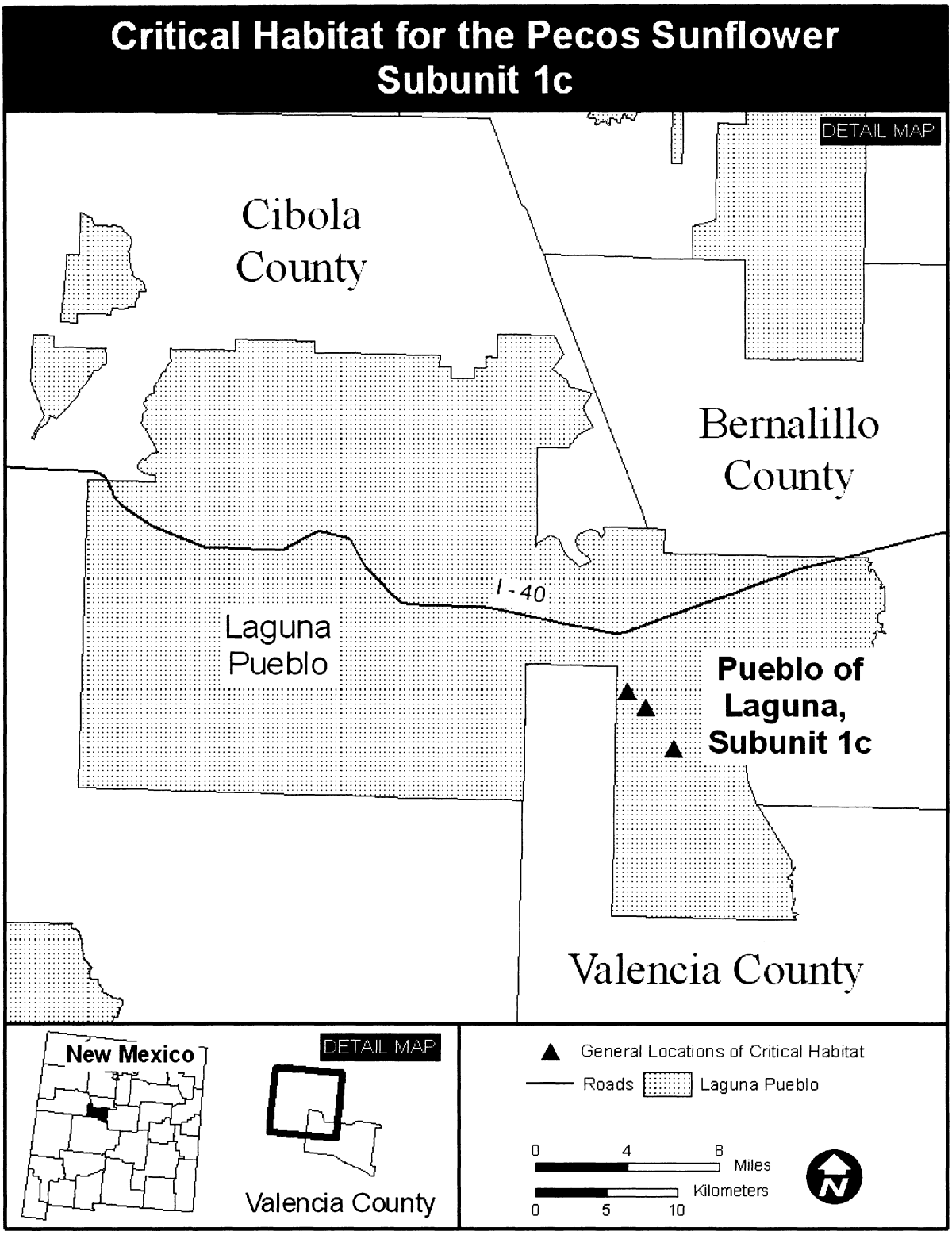
(iii) *Note:* Map of Subunits 1a and 1b for *Helianthus paradoxus* (Map 2) follows:

BILLING CODE 4310–55–C


Critical Habitat for the Pecos Sunflower
Subunits 1a and 1b
DETAIL MAP
Roberta Rd
Historic Hwy 66
Grants Salt Flats Wetland, Subnit 1b
State Hwy 117
Rio San Jose
I-40
Cibola County
Rancho del Padre Spring
Rancho del Padre Spring Cienega, Subunit 1a
New Mexico
DETAIL MAP
Cibola County
Critical Habitat
Springs
Rivers/Lakes
Roads
N
0 1,000 2,000 Feet
0 310 620 Meters

(iv) Subunit 1c for *Helianthus paradoxus*, Pueblo of Laguna, Valencia County, New Mexico. From USGS 1:24,000 quadrangles Correo and South Garcia, springs along the Rio San Jose south of Interstate 40, and the areas immediately surrounding these springs.

(v) Note: Map of Subunit 1b (West-Central New Mexico—Pueblo of Laguna Subunit) of *Helianthus paradoxus* critical habitat (Map 3) follows:



BILLING CODE 4310–55–C

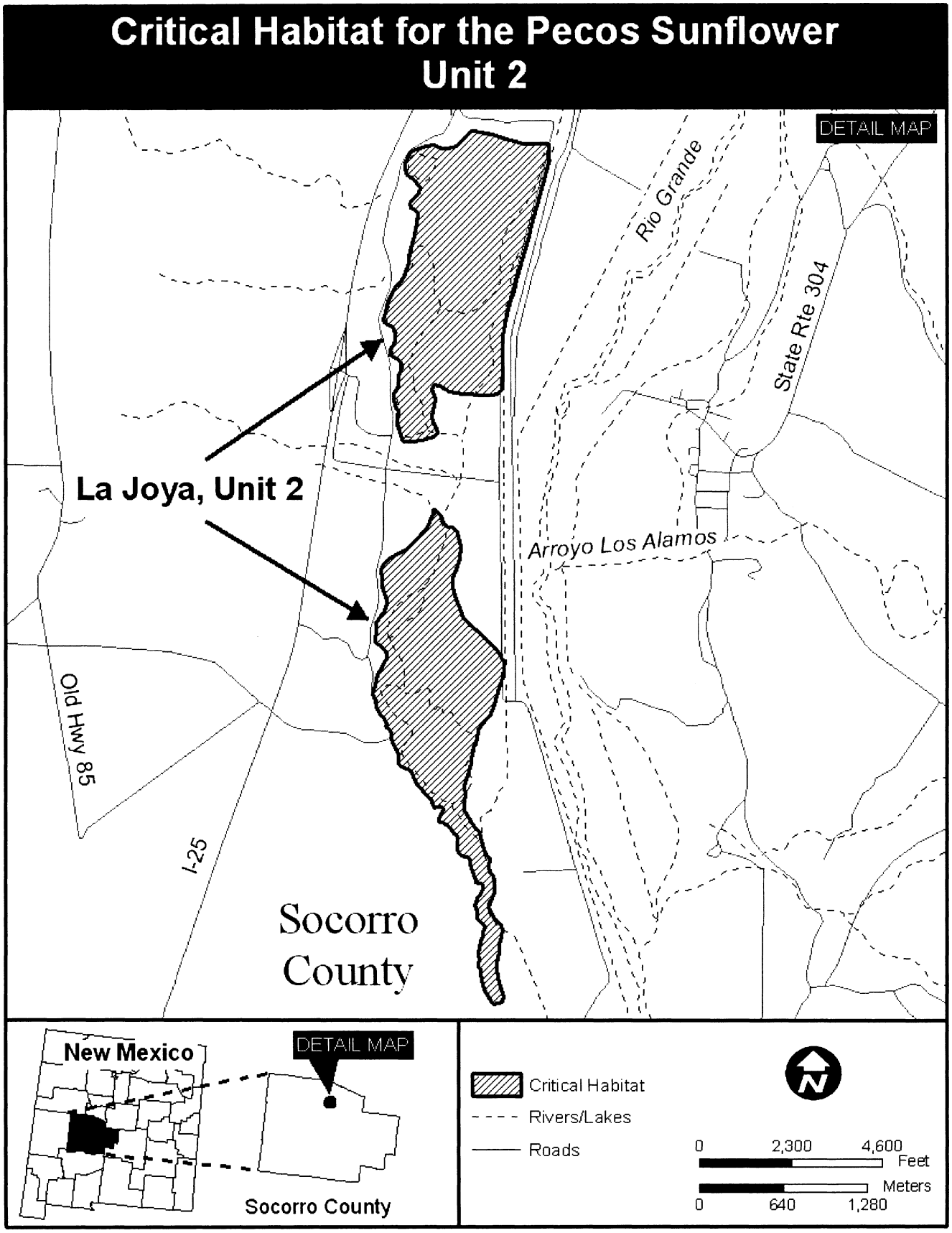
(7) Unit 2: La Joya, Socorro County, New Mexico.

(i) Unit 2 for *Helianthus paradoxus*, La Joya State Wildlife Management Area, Socorro County, New Mexico. From USGS 1:24,000 quadrangle La Joya, lands bounded by the following UTM NAD83 coordinates (meters E, meters N): 327938, 3803771; 328008, 3803841; 328017, 3803889; 327974, 3803950; 327921, 3803981; 327906, 3804024; 327900, 3804069; 327929, 3804128; 327953, 3804169; 328019, 3804191; 328076, 3804209; 328129, 3804211; 328192, 3804189; 328237, 3804185; 328306, 3804204; 328353, 3804256; 328416, 3804317; 328493, 3804315; 328575, 3804293; 328654, 3804268; 328744, 3804240; 328809, 3804227; 328891, 3804221; 328978, 3804221; 329007, 3804221; 329002, 3804151; 329007, 3804081; 328943, 3803853; 328884, 3803635; 328854, 3803517; 328795, 3803310; 328756, 3803178; 328739, 3803098; 328730, 3803069; 328716, 3803028; 328698, 3802962; 328686, 3802913; 328669, 3802848; 328662, 3802791; 328654, 3802744; 328651, 3802687; 328649, 3802547; 328649, 3802336; 328619, 3802307; 328559, 3802294; 328514, 3802292; 328352, 3802301; 328237, 3802318; 328166, 3802369; 328126, 3802370; 328104, 3802335; 328123, 3802292; 328137, 3802262; 328123, 3802215; 328115, 3802167; 328112, 3802126; 328115, 3802093; 328142, 3802036; 328156, 3802004; 328126, 3801971; 328025, 3801950; 327961, 3801941; 327897, 3801940; 327881, 3801959; 327845, 3802076; 327843, 3802138; 327847, 3802172; 327830, 3802196; 327824, 3802226; 327817, 3802269; 327815, 3802305; 327847, 3802363; 327849, 3802406; 327847, 3802448; 327864, 3802483; 327875, 3802517; 327871, 3802547; 327854, 3802572; 327813, 3802589; 327785, 3802607; 327788, 3802637; 327815, 3802687; 327828, 3802722; 327822, 3802771; 327805, 3802818; 327773, 3802833; 327740, 3802854; 327738, 3802884; 327751, 3802923; 327762, 3802967; 327766, 3803012; 327796, 3803064; 327820, 3803117; 327858, 3803158; 327895, 3803209; 327914, 3803265; 327928, 3803309; 327929, 3803359; 327958, 3803460; 327978, 3803524; 327995, 3803612; 328003, 3803685; 327976, 3803721; 327948, 3803730; thence returning to 327938, 3803771.

327683, 3800456; 327686, 3800538; 327717, 3800591; 327740, 3800627; 327757, 3800689; 327762, 3800723; 327743, 3800777; 327726, 3800820; 327722, 3800890; 327715, 3800947; 327735, 3800983; 327791, 3801036; 327872, 3801083; 327917, 3801107; 327973, 3801164; 328021, 3801220; 328071, 3801278; 328114, 3801381; 328117, 3801417; 328133, 3801417; 328183, 3801359; 328186, 3801340; 328201, 3801308; 328230, 3801280; 328255, 3801276; 328283, 3801262; 328307, 3801232; 328329, 3801131; 328320, 3801039; 328302, 3800977; 328267, 3800885; 328272, 3800815; 328285, 3800744; 328311, 3800674; 328351, 3800590; 328403, 3800529; 328483, 3800459; 328531, 3800401; 328606, 3800340; 328658, 3800252; 328663, 3800195; 328654, 3800120; 328619, 3800010; 328597, 3799947; 328579, 3799881; 328553, 3799819; 328504, 3799779; 328465, 3799718; 328456, 3799643; 328417, 3799555; 328408, 3799459; 328381, 3799358; 328359, 3799278; 328368, 3799217; 328359, 3799151; 328355, 3799094; 328430, 3798975; 328474, 3798923; 328509, 3798788; 328527, 3798757; 328553, 3798727; 328544, 3798661; 328553, 3798625; 328579, 3798590; 328592, 3798559; 328588, 3798502; 328588, 3798463; 328557, 3798401; 328544, 3798349; 328579, 3798274; 328645, 3798212; 328649, 3798169; 328641, 3798120; 328623, 3798063; 328623, 3798001; 328610, 3797918; 328610, 3797865; 328623, 3797761; 328658, 3797664; 328654, 3797616; 328582, 3797604; 328520, 3797699; 328497, 3797746; 328491, 3797783; 328485, 3797841; 328477, 3797877; 328462, 3797893; 328464, 3797913; 328469, 3797944; 328466, 3797990; 328470, 3798038; 328483, 3798093; 328496, 3798128; 328503, 3798162; 328513, 3798192; 328509, 3798209; 328496, 3798209; 328474, 3798249; 328456, 3798271; 328452, 3798324; 328440, 3798362; 328447, 3798381; 328456, 3798420; 328483, 3798456; 328500, 3798486; 328501, 3798520; 328493, 3798536; 328464, 3798536; 328445, 3798539; 328443, 3798562; 328431, 3798594; 328419, 3798630; 328413, 3798658; 328405, 3798677; 328402, 3798701; 328399, 3798716; 328392, 3798725; 328370, 3798733; 328360, 3798733; 328342, 3798748; 328322, 3798765; 328309, 3798775; 328308, 3798793; 328308, 3798821; 328302, 3798837; 328301, 3798861; 328306, 3798879; 328303, 3798898; 328293, 3798911; 328279, 3798917; 328262, 3798938; 328240, 3798967; 328215, 3798987; 328186, 3799000; 328164, 3799007; 328158, 3799014; 328161, 3799027; 328174, 3799051; 328188, 3799082; 328195, 3799097; 328194, 3799114; 328182, 3799123; 328168, 3799127; 328149, 3799122; 328140, 3799117; 328127, 3799112; 328122, 3799116; 328117, 3799139; 328096, 3799178; 328038, 3799245; 328002, 3799293; 327989, 3799302; 327972, 3799331; 327962, 3799355; 327956, 3799383; 327945, 3799400; 327931, 3799414; 327916, 3799417; 327906, 3799418; 327898, 3799427; 327883, 3799430; 327867, 3799434; 327854, 3799454; 327851, 3799475; 327852, 3799498; 327850, 3799528; 327839, 3799553; 327833, 3799563; 327810, 3799598; 327803, 3799622; 327797, 3799653; 327794, 3799688; 327790, 3799711; 327783, 3799722; 327768, 3799731; 327761, 3799737; 327755, 3799745; 327759, 3799761; 327752, 3799774; 327730, 3799811; 327712, 3799844; 327694, 3799873; 327685, 3799893; 327678, 3799936; 327664, 3799973; 327658, 3800004; 327663, 3800029; 327674, 3800049; 327685, 3800106; 327693, 3800146; 327717, 3800188; 327737, 3800226; 327758, 3800262; 327761, 3800294; 327748, 3800325; 327697, 3800375; 327674, 3800398; 327671, 3800427; thence returning to 327683, 3800456.

(ii) Note: Map of Unit 2 for *Helianthus paradoxus* (Map 4) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

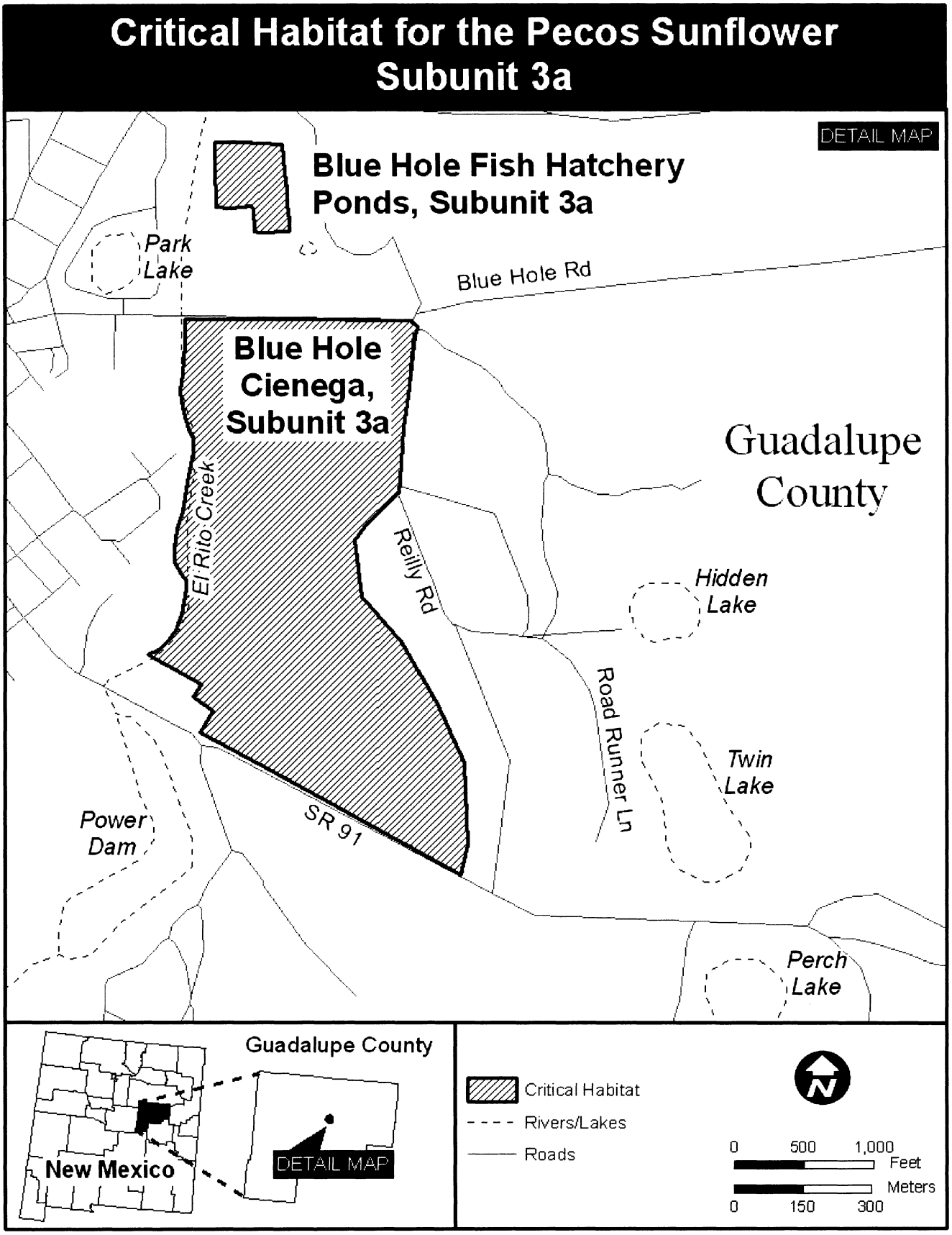
(8) Unit 3: Santa Rosa, Guadalupe County, New Mexico.

(i) Subunit 3a for *Helianthus paradoxus,* Blue Hole Cienega / Blue Hole Fish Hatchery Ponds, Guadalupe County, New Mexico. From USGS 1:24,000 quadrangle Santa Rosa, lands bounded by the following UTM NAD83 coordinates (meters E, meters N):

529408, 3865628; 529431, 3865639; 529449, 3865654; 529468, 3865681; 529481, 3865715; 529491, 3865773; 529491, 3865792; 529478, 3865810; 529467, 3865832; 529465, 3865863; 529472, 3865903; 529484, 3865943; 529494, 3866006; 529507, 3866073; 529505, 3866104; 529497, 3866123; 529484, 3866171; 529479, 3866207; 529483, 3866245; 529489, 3866310; 529489, 3866366; 529640, 3866364; 529771, 3866366; 529910, 3866363; 529980, 3866361; 529991, 3866355; 529996, 3866347; 529991, 3866329; 529988, 3866289; 529980, 3866217; 529967, 3866125; 529959, 3866012; 529957, 3865985; 529887, 3865918; 529859, 3865879; 529876, 3865756; 529962, 3865656; 530041, 3865519; 530099, 3865390; 530105, 3865209; 530091, 3865144; 529784, 3865313; 529705, 3865355; 529593, 3865417; 529522, 3865456; 529550, 3865504; 529505, 3865533; 529524, 3865564; thence returning to 529408, 3865628.

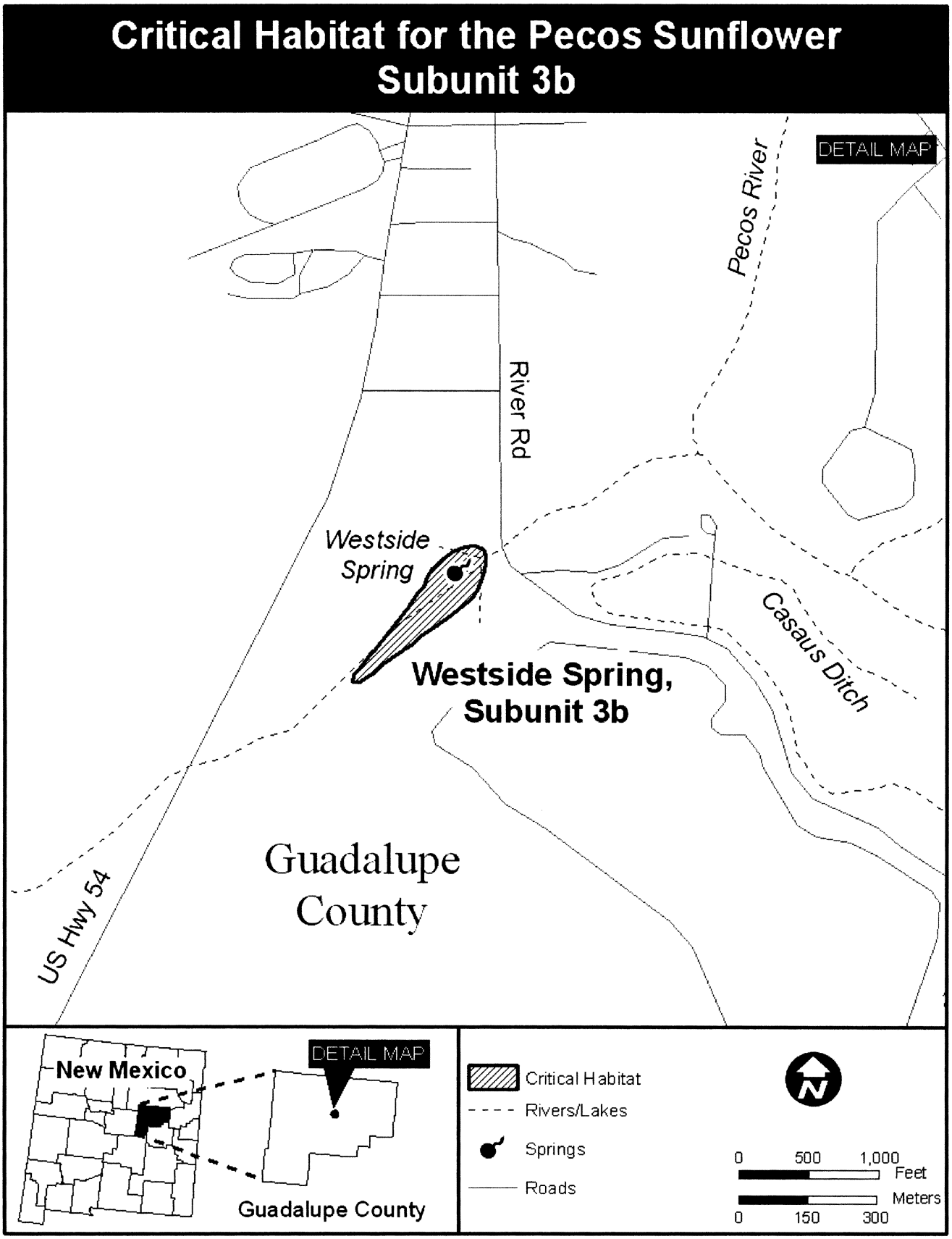
529555, 3866753; 529618, 3866754; 529654, 3866751; 529702, 3866748; 529706, 3866687; 529712, 3866651; 529713, 3866618; 529717, 3866581; 529717, 3866559; 529652, 3866555; 529640, 3866558; 529638, 3866609; 529634, 3866613; 529590, 3866609; 529556, 3866611; 529556, 3866639; 529555, 3866683; thence returning to 529555, 3866753.

(ii) Note: Map of Subunit 3a for *Helianthus paradoxus* (Map 5) follows:


Critical Habitat for the Pecos Sunflower
Subunit 3a
DETAIL MAP
Blue Hole Fish Hatchery
Ponds, Subunit 3a
Park
Lake
Blue Hole Rd
Blue Hole
Cienega,
Subunit 3a
Guadalupe
County
El Rito Creek
Reilly Rd
Hidden
Lake
Road Runner Ln
Twin
Lake
Power
Dam
SR 91
Perch
Lake
Guadalupe County
New Mexico
DETAIL MAP
Critical Habitat
Rivers/Lakes
Roads
N
0
500
1,000
Feet
Meters
0
150
300

(iii) Subunit 3b for *Helianthus paradoxus,* Westside Spring, Guadalupe County, New Mexico. From USGS 1:24,000 quadrangle Santa Rosa, lands bounded by the following UTM NAD83 coordinates (meters E, meters N): 527977, 3864746; 527990, 3864762; 527999, 3864783; 528009, 3864801; 528033, 3864823; 528054, 3864837; 528079, 3864848; 528103, 3864852; 528121, 3864843; 528125, 3864832; 528125, 3864813; 528123, 3864796; 528118, 3864780; 528108, 3864756; 528095, 3864734; 528072, 3864717; 528047, 3864697; 528018, 3864676; 527987, 3864654; 527961, 3864633; 527932, 3864613; 527906, 3864594; 527886, 3864575; 527866, 3864561; 527850, 3864551; 527836, 3864552; 527838, 3864566; 527852, 3864585; 527869, 3864606; 527886, 3864626; 527903, 3864648; 527921, 3864672; 527938, 3864694; 527957, 3864716; 527961, 3864722; 527975, 3864743; thence returning to 527977, 3864746.

(iv) Note: Map of Subunit 3b for *Helianthus paradoxus* (Map 6) follows:

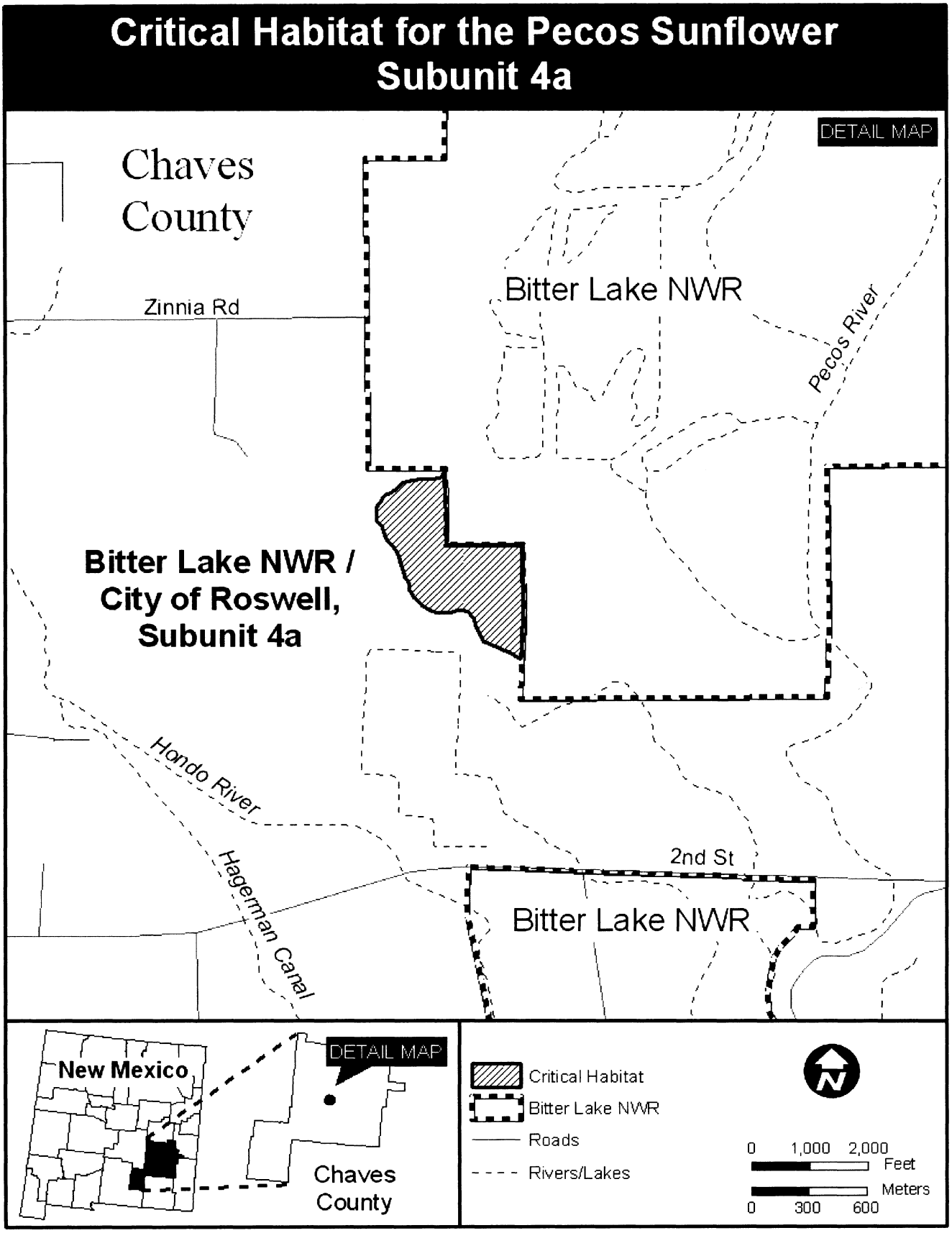

Critical Habitat for the Pecos Sunflower
Subunit 3b
DETAIL MAP
Pecos River
River Rd
Westside Spring
Westside Spring, Subunit 3b
Casaus Ditch
Guadalupe County
US Hwy 54
New Mexico
DETAIL MAP
Guadalupe County
Critical Habitat
Rivers/Lakes
Springs
Roads
N
0 500 1,000 Feet
0 150 300 Meters

(9) Unit 4: Roswell/Dexter, Chaves County, New Mexico.

(i) Subunit 4a for *Helianthus paradoxus,* Bitter Lake National Wildlife Refuge/City of Roswell Land, Chaves County, New Mexico. From USGS 1:24,000 quadrangle Bitter Lake, lands bounded by the following UTM NAD83 coordinates (meters E, meters N):

553930, 3697605; 553934, 3697207; 554338, 3697211; 554336, 3696806; 554330, 3696733; 554330, 3696665; 554327, 3696605; 554268, 3696635; 554205, 3696666; 554127, 3696699; 554092, 3696768; 554089, 3696787; 554084, 3696811; 554048, 3696856; 554021, 3696861; 553990, 3696861; 553957, 3696849; 553925, 3696849; 553881, 3696851; 553847, 3696860; 553809, 3696885; 553793, 3696903; 553765, 3696930; 553751, 3696954; 553740, 3696972; 553738, 3696995; 553733, 3697019; 553718, 3697038; 553716, 3697053; 553710, 3697067; 553702, 3697088; 553691, 3697115; 553689, 3697128; 553684, 3697150; 553673, 3697170; 553652, 3697201; 553624, 3697231; 553617, 3697248; 553614, 3697266; 553601, 3697291; 553600, 3697304; 553580, 3697324; 553571, 3697335; 553567, 3697359; 553567, 3697381; 553569, 3697402; 553577, 3697416; 553587, 3697427; 553601, 3697453; 553627, 3697474; 553647, 3697485; 553663, 3697495; 553689, 3697518; 553709, 3697535; 553731, 3697546; 553765, 3697552; 553808, 3697556; 553866, 3697558; 553895, 3697563; 553916, 3697574; 553923, 3697590; thence returning to 553930, 3697605.

(ii) Note: Map of Subunit 4a for *Helianthus paradoxus* (Map 7) follows:



BILLING CODE 4310–55–C

(iii) Subunit 4c for *Helianthus paradoxus,* Oasis Dairy Subunit, Chaves County, New Mexico. From USGS 1:24,000 quadrangles Bottomless Lakes and South Spring, lands bounded by the following UTM NAD83 coordinates (meters E, meters N): 559225, 3688383; 559265, 3688370; 559292, 3688339; 559312, 3688333; 559335, 3688294; 559348, 3688262; 559355, 3688228; 559377, 3688207; 559420, 3688160; 559431, 3688128; 559436, 3688078; 559458, 3688030; 559492, 3687977; 559523, 3687927; 559548, 3687893; 559579, 3687870; 559595, 3687851; 559617, 3687819; 559638, 3687777; 559649, 3687709; 559647, 3687656; 559636, 3687605; 559608, 3687555; 559584, 3687497; 559559, 3687483; 559533, 3687486; 559506, 3687488; 559486, 3687523; 559475, 3687573; 559474, 3687634; 559481, 3687686; 559480, 3687729; 559469, 3687782; 559446, 3687826; 559433, 3687871; 559412, 3687924; 559385, 3687977; 559365, 3688014; 559345, 3688040; 559325, 3688077; 559305, 3688122; 559282, 3688159; 559238, 3688182; 559204, 3688219; 559184, 3688267; 559184, 3688314; 559199, 3688359; thence returning to 559225, 3688383.

558767, 3686447; 558771, 3686449; 558790, 3686451; 558823, 3686444; 558852, 3686446; 558879, 3686451; 558899, 3686458; 558917, 3686464; 558932, 3686466; 558952, 3686459; 558963, 3686453; 558977, 3686433; 558986, 3686422; 558997, 3686411; 559012, 3686407; 559030, 3686392; 559038, 3686377; 559038, 3686361; 559035, 3686343; 559031, 3686291; 559031, 3686253; 559026, 3686238; 559014, 3686223; 558985, 3686205; 558960, 3686191; 558934, 3686182; 558915, 3686177; 558884, 3686164; 558866, 3686152; 558839, 3686137; 558817, 3686127; 558804, 3686124; 558795, 3686123; 558772, 3686135; 558745, 3686144; 558722, 3686150; 558700, 3686157; 558678, 3686161; 558650, 3686157; 558621, 3686154; 558589, 3686153; 558561, 3686152; 558534, 3686153; 558498, 3686144; 558467, 3686137; 558439, 3686122; 558415, 3686108; 558398, 3686086; 558385, 3686058; 558380, 3686024; 558387, 3685985; 558396, 3685944; 558404, 3685914; 558408, 3685894; 558404, 3685879; 558387, 3685862; 558363, 3685843; 558338, 3685818; 558318, 3685805; 558305, 3685787; 558290, 3685762; 558284, 3685734; 558286, 3685712; 558292, 3685684; 558294, 3685662; 558288, 3685634; 558286, 3685609; 558276, 3685584; 558262, 3685566; 558253, 3685552; 558232, 3685540; 558208, 3685531; 558183, 3685532; 558148, 3685542; 558126, 3685553; 558099, 3685568; 558086, 3685583; 558073, 3685608; 558071, 3685633; 558079, 3685654; 558095, 3685671; 558115, 3685672; 558132, 3685672; 558150, 3685666; 558163, 3685655; 558192, 3685654; 558209, 3685658; 558221, 3685671; 558221, 3685689; 558221, 3685714; 558220, 3685738; 558211, 3685759; 558209, 3685781; 558207, 3685799; 558218, 3685819; 558232, 3685829; 558250, 3685836; 558262, 3685843; 558270, 3685859; 558275, 3685880; 558273, 3685888; 558255, 3685909; 558253, 3685931; 558252, 3685946; 558256, 3685956; 558259, 3685975; 558260, 3685989; 558258, 3686009; 558256, 3686024; 558250, 3686035; 558240, 3686046; 558233, 3686056; 558223, 3686065; 558221, 3686071; 558220, 3686078; 558224, 3686092; 558227, 3686102; 558227, 3686119; 558219, 3686147; 558215, 3686174; 558216, 3686193; 558228, 3686212; 558243, 3686232; 558267, 3686257; 558281, 3686271; 558297, 3686283; 558315, 3686290; 558338, 3686302; 558355, 3686314; 558368, 3686325; 558393, 3686346; 558406, 3686362; 558423, 3686381; 558432, 3686397; 558438, 3686423; 558437, 3686445; 558425, 3686461; 558410, 3686475; 558392, 3686490; 558373, 3686507; 558364, 3686529; 558413, 3686519; 558466, 3686502; 558514, 3686488; 558558, 3686475; 558601, 3686470; 558635, 3686457; 558667, 3686443; 558689, 3686445; 558720, 3686431; thence returning to 558767, 3686447.

(iv) Note: Map of Subunit 4c for *Helianthus paradoxus* (Map 8) follows:

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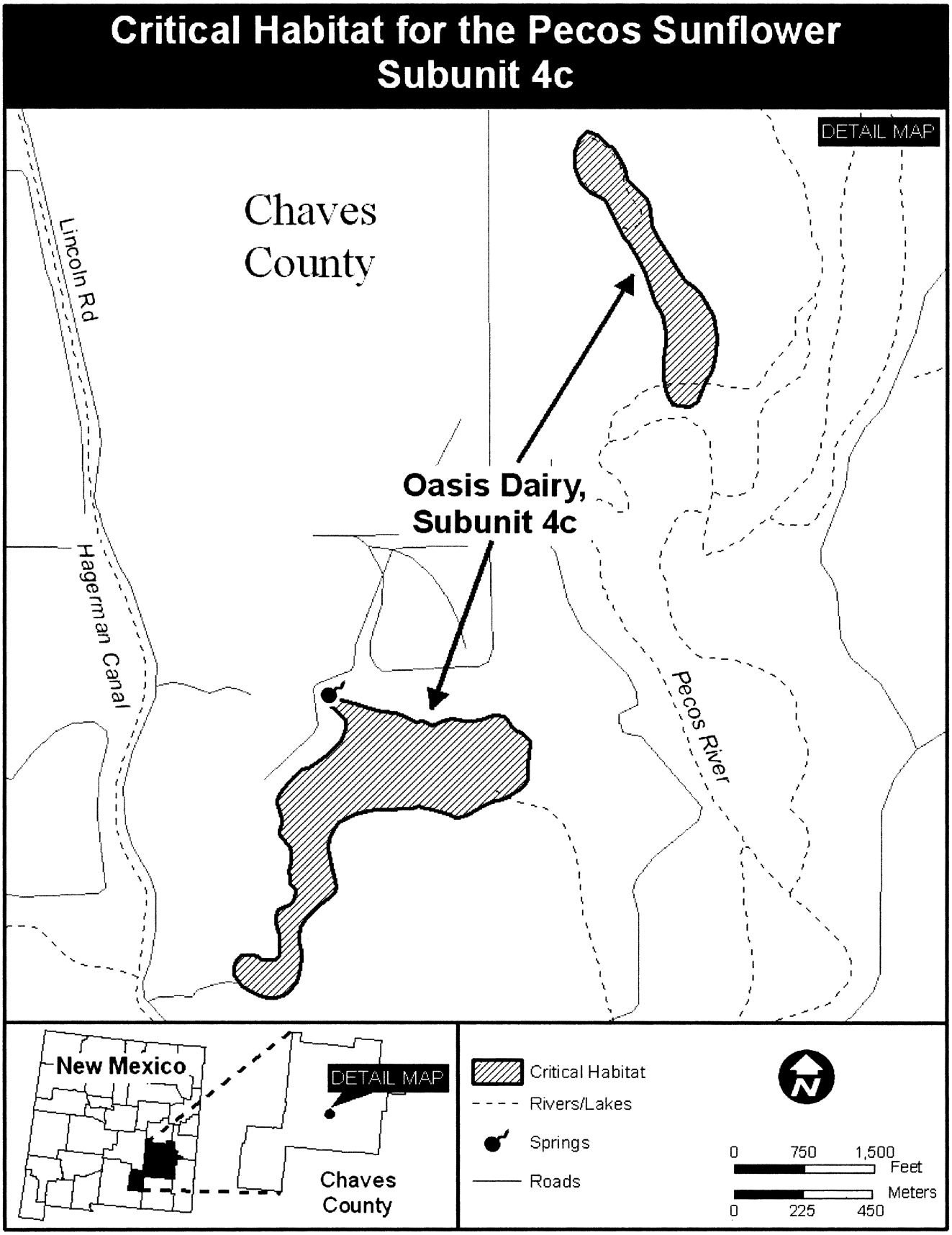
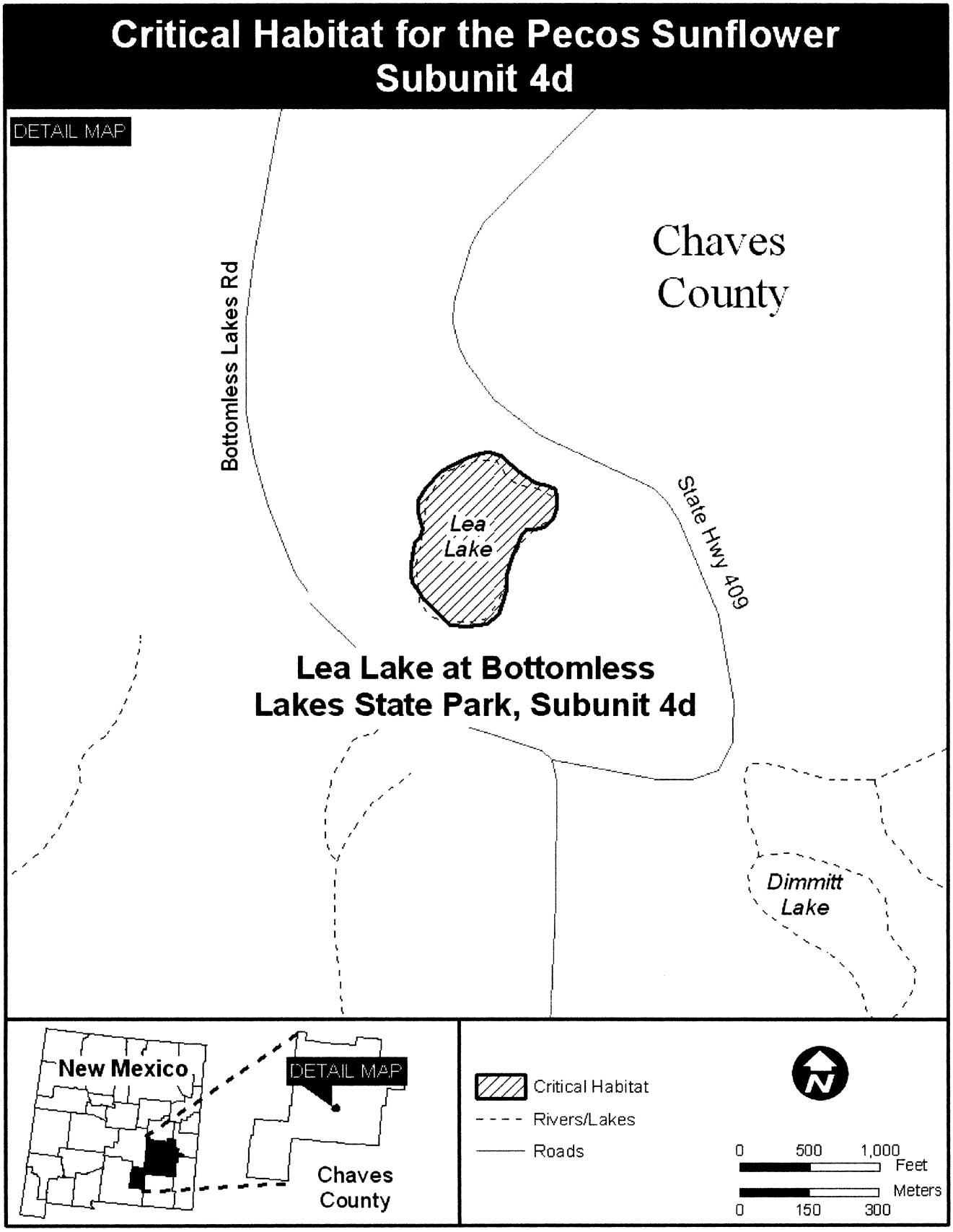

Critical Habitat for the Pecos Sunflower
Subunit 4c
DETAIL MAP
Chaves
County
Lincoln Rd
Hagerman Canal
Oasis Dairy,
Subunit 4c
Pecos River
New Mexico
DETAIL MAP
Chaves
County
Critical Habitat
Rivers/Lakes
Springs
Roads
N
0
750
1,500
Feet
Meters
0
225
450

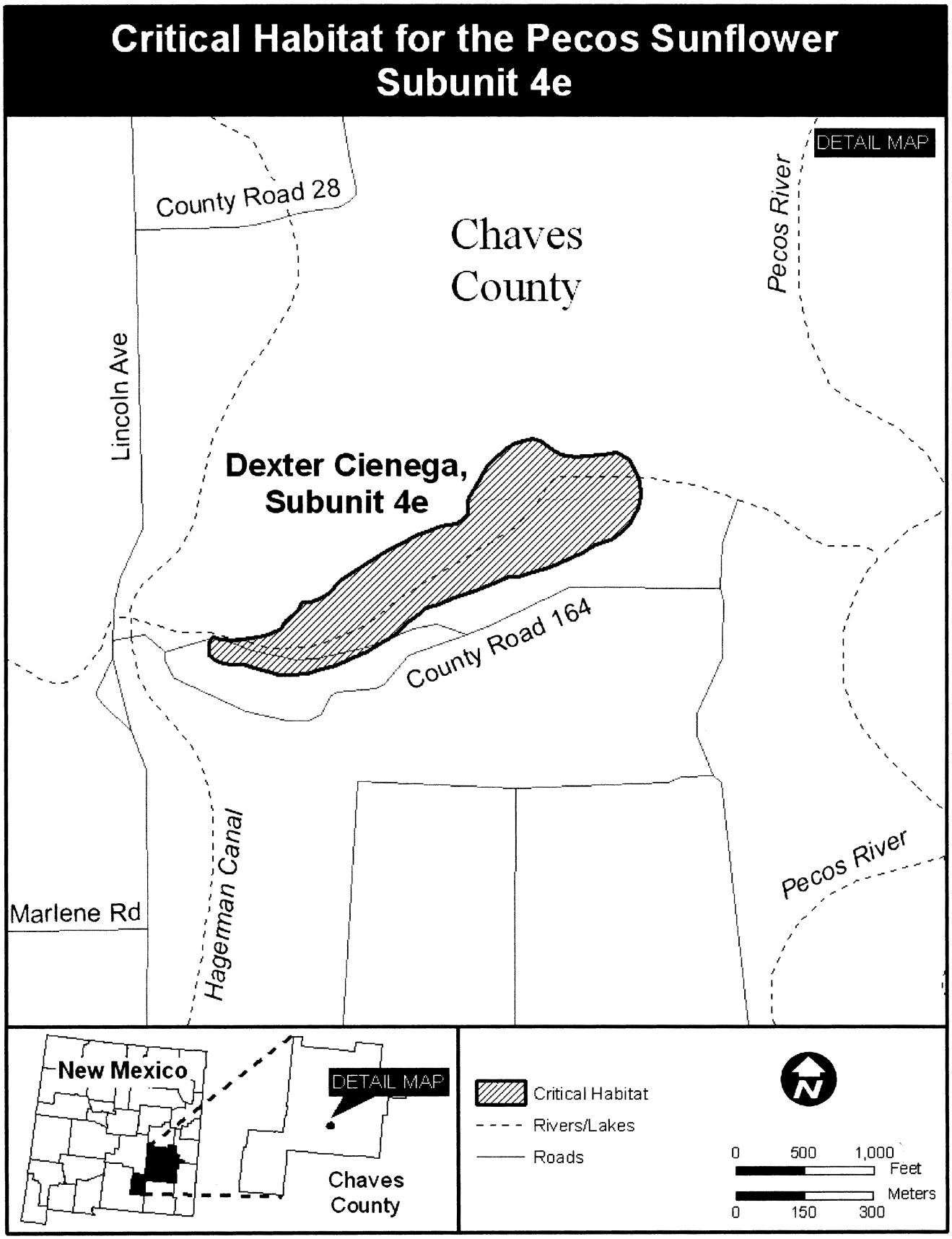
(v) Subunit 4d for *Helianthus paradoxus,* Lea Lake at Bottomless Lakes State Park, Chaves County, New Mexico. From USGS 1:24,000 quadrangle Bottomless Lakes, lands bounded by the following UTM NAD83 coordinates (meters E, meters N): 562371, 3687020; 562381, 3687019; 562402, 3687011; 562419, 3686993; 562437, 3686976; 562464, 3686956; 562476, 3686950; 562499, 3686947; 562515, 3686938; 562519, 3686919; 562520, 3686895; 562511, 3686875; 562495, 3686857; 562483, 3686851; 562471, 3686849; 562453, 3686850; 562442, 3686836; 562432, 3686814; 562420, 3686784; 562409, 3686747; 562410, 3686718; 562402, 3686690; 562391, 3686663; 562366, 3686642; 562325, 3686637; 562286, 3686639; 562276, 3686652; 562230, 3686695; 562216, 3686715; 562203, 3686732; 562200, 3686752; 562201, 3686770; 562203, 3686791; 562208, 3686818; 562221, 3686835; 562225, 3686852; 562222, 3686868; 562216, 3686888; 562217, 3686914; 562230, 3686939; 562250, 3686958; 562270, 3686978; 562293, 3686992; 562323, 3687006; 562351, 3687016; thence returning to 562371, 3687020.

(vi) Note: Map of Subunit 4d for *Helianthus paradoxus* (Map 9) follows:


Critical Habitat for the Pecos Sunflower
Subunit 4d
DETAIL MAP
Chaves
County
Bottomless Lakes Rd
State Hwy 409
Lea
Lake
Lea Lake at Bottomless
Lakes State Park, Subunit 4d
Dimmitt
Lake
New Mexico
DETAIL MAP
Chaves
County
Critical Habitat
Rivers/Lakes
Roads
N
0 500 1,000
Feet
Meters
0 150 300

(vii) Subunit 4e for *Helianthus paradoxus,* Dexter Cienega, Chaves County, New Mexico. From USGS 1:24,000 quadrangle Dexter East, lands bounded by the following UTM NAD83 coordinates (meters E, meters N): 559316, 3678509; 559316, 3678510; 559329, 3678521; 559339, 3678530; 559355, 3678547; 559372, 3678557; 559402, 3678565; 559412, 3678566; 559432, 3678560; 559452, 3678542; 559471, 3678532; 559508, 3678527; 559525, 3678528; 559567, 3678532; 559595, 3678535; 559622, 3678521; 559635, 3678495; 559645, 3678472; 559648, 3678443; 559642, 3678414; 559630, 3678392; 559622, 3678376; 559606, 3678361; 559582, 3678344; 559549, 3678334; 559519, 3678314; 559493, 3678303; 559464, 3678290; 559439, 3678280; 559410, 3678271; 559381, 3678263; 559358, 3678260; 559329, 3678249; 559293, 3678233; 559265, 3678223; 559234, 3678215; 559205, 3678201; 559177, 3678193; 559160, 3678178; 559132, 3678157; 559111, 3678136; 559083, 3678118; 559048, 3678097; 559012, 3678082; 558980, 3678067; 558948, 3678058; 558915, 3678047; 558884, 3678045; 558855, 3678046; 558830, 3678054; 558801, 3678062; 558776, 3678067; 558754, 3678070; 558732, 3678071; 558714, 3678078; 558703, 3678089; 558702, 3678101; 558703, 3678116; 558711, 3678128; 558728, 3678126; 558757, 3678122; 558776, 3678124; 558812, 3678130; 558833, 3678134; 558843, 3678141; 558856, 3678145; 558869, 3678166; 558895, 3678186; 558906, 3678205; 558926, 3678207; 558948, 3678215; 558966, 3678227; 558976, 3678240; 558995, 3678256; 559017, 3678272; 559038, 3678284; 559074, 3678307; 559099, 3678323; 559124, 3678334; 559157, 3678352; 559185, 3678364; 559210, 3678373; 559242, 3678378; 559260, 3678389; 559269, 3678401; 559268, 3678424; 559272, 3678437; 559285, 3678457; 559299, 3678486; thence returning to 559316, 3678509.

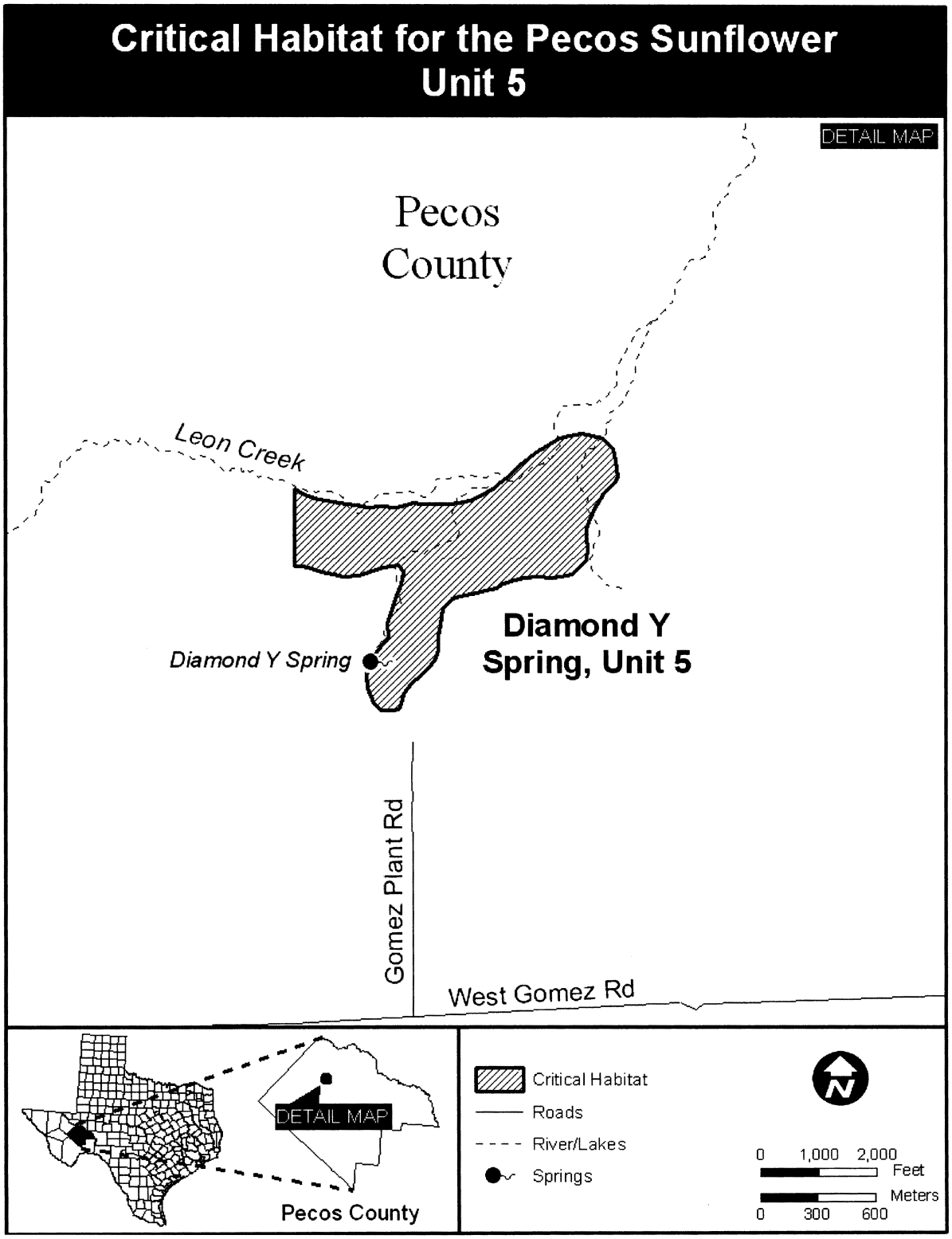
(viii) Note: Map of Subunit 4e for *Helianthus paradoxus* (Map 10) follows:


Critical Habitat for the Pecos Sunflower
Subunit 4e
DETAIL MAP
County Road 28
Chaves
County
Pecos River
Lincoln Ave
Dexter Cienega,
Subunit 4e
County Road 164
Hagemman Canal
Pecos River
Marlene Rd
New Mexico
DETAIL MAP
Chaves
County
Critical Habitat
Rivers/Lakes
Roads
0 500 1,000
Feet
Meters
0 150 300

(10) Unit 5: West Texas—Diamond Y Springs, Pecos County, Texas.

(i) Unit 5 for *Helianthus paradoxus*, West Texas—Diamond Y Spring, Pecos County, Texas. From USGS 1:24,000 quadrangles Diamond Y Spring and Fort Stockton West, lands bounded by the following UTM NAD83 coordinates (meters E, meters N): 699410, 3432430; 699368, 3432356; 699338, 3432300; 699323, 3432253; 699323, 3432205; 699328, 3432141; 699320, 3432086; 699291, 3432054; 699243, 3432009; 699185, 3431996; 699137, 3431991; 699068, 3431999; 698992, 3431993; 698941, 3431977; 698883, 3431961; 698849, 3431935; 698793, 3431924; 698719, 3431906; 698679, 3431901; 698616, 3431884; 698565, 3431825; 698552, 3431741; 698542, 3431685; 698539, 3431606; 698523, 3431558; 698486, 3431510; 698425, 3431455; 698391, 3431420; 698362, 3431378; 698348, 3431325; 698333, 3431296; 698295, 3431288; 698240, 3431291; 698200, 3431330; 698168, 3431405; 698163, 3431479; 698190, 3431561; 698237, 3431624; 698280, 3431680; 698274, 3431751; 698303, 3431839; 698325, 3431900; 698346, 3431952; 698356, 3432021; 698333, 3432058; 698253, 3432048; 698126, 3432003; 698044, 3431995; 697994, 3432011; 697933, 3432019; 697877, 3432040; 697831, 3432050; 697785, 3432055; 697785, 3432459; 697841, 3432429; 697913, 3432408; 697990, 3432391; 698060, 3432384; 698110, 3432373; 698173, 3432366; 698237, 3432370; 698321, 3432366; 698371, 3432377; 698417, 3432387; 698459, 3432384; 698519, 3432380; 698565, 3432380; 698607, 3432380; 698653, 3432387; 698710, 3432401; 698759, 3432426; 698830, 3432461; 698872, 3432497; 698918, 3432532; 698978, 3432592; 699059, 3432656; 699119, 3432691; 699183, 3432726; 699262, 3432748; 699299, 3432756; 699405, 3432732; 699463, 3432674; 699473, 3432613; 699484, 3432525; 699468, 3432494; thence returning to 699410, 3432430.

(ii) Note: Map of Unit 5 for *Helianthus paradoxus* (Map 11) follows:



* * * * *

Dated: March 15, 2007.

Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–1396 Filed 3–26–07; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
March 27, 2007

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 984

Walnuts Grown in California; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendments of Marketing Agreement and Order No. 984; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. AO–192–A7; FV06–984–1]

Walnuts Grown in California; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendments of Marketing Agreement and Order No. 984

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to Marketing Order No. 984, which regulates the handling of walnuts grown in California (Order). The amendments were proposed by the Walnut Marketing Board (Board), which is responsible for local administration of the order. The amendments included in this recommended decision would: Change the marketing year; include ''pack'' as a handler function; restructure the Board and revise nomination procedures; rename the Board and add authority to change Board composition; modify Board meeting and voting procedures; add authority for marketing promotion and paid advertising; add authority to accept voluntary financial contributions and to carry over excess assessment funds; broaden the scope of the quality control provisions and add the authority to recommend different regulations for different market destinations; add authority for the Board to appoint more than one inspection service; replace outdated order language with current industry terminology; and other related amendments.

The Department of Agriculture (USDA) proposed three additional amendments: To establish tenure limitations for Board members, to require that continuance referenda be conducted on a periodic basis to ascertain producer support for the order, and to make any changes to the order as may be necessary to conform with any amendment that may result from the hearing.

The proposed amendments are intended to improve the operation and functioning of the marketing order program.

DATES: Written exceptions must be filed by April 16, 2007.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, Fax: (202) 720–9776, or via the Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick or Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Melissa.Schmaedick@usda.gov* or *Kathy.Finn@usda.gov.*

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on April 18, 2006, and published in the April 24, 2006, issue of the **Federal Register** (71 FR 20902).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of Marketing Agreement and Order No. 984, which regulates the handling of walnuts grown in California, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Melissa Schmaedick, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments are based on the record of a public hearing held on May 17 and 18, 2006, in Modesto, California. Notice of this hearing was published in the **Federal Register** on April 24, 2006 (71 FR 20902). The notice of hearing contained proposals submitted by the Walnut Marketing Board (Board), which is responsible for local administration of the order, and by the Agricultural Marketing Service (AMS).

The proposed amendments are the result of a committee appointed by the Board to conduct a review of the order. The committee met several times in 2005 and drafted proposed amendments to the order and presented them at industry meetings. The proposed amendments were then forwarded to the Board, which unanimously approved them. The amendments are intended to streamline organization and administration of the marketing order program. The Board's request for a hearing was submitted to USDA on March 3, 2006.

The Board's proposed amendments to the order are summarized below.

1. Amend the order to change the marketing year from August 1 through July 31 to September 1 through August 31. This proposal would amend § 984.7, Marketing year, and would result in conforming changes being made to § 984.36, Term of office, and § 984.48, Marketing estimates and recommendations.

2. Amend the order by specifying that the act of packing walnuts is considered a handling function. This proposal would amend § 984.13, To handle, as well as clarify the definition of ''pack'' in § 984.15 by including the term ''shell'' as a function of ''pack.''

3. (a) Amend all parts of the order that refer to cooperative seats on the Board, redistribute member seats among districts, and provide designated seats for a handler handling 35 percent or more of production, if such handler exists. This proposal would amend § 984.35, Walnut Marketing Board, and § 984.14, Handler.

3. (b) Amend the Board member nomination process to reflect proposed changes in the Board structure, as outlined in 3(a). This proposal would amend § 984.37, Nominations, and § 984.40, Alternate.

4. Require Board nominees to submit a written qualification and acceptance statement prior to selection by USDA. This proposal would amend § 984.39, Qualify by acceptance.

5. Change the name of the Walnut Marketing Board to the California Walnut Board. This proposal would amend § 984.6, Board, and § 984.35, Walnut Marketing Board.

6. Add authority to reestablish districts, reapportion members among districts, and revise groups eligible for representation on the Board. This

proposal would add a new paragraph (d) to § 984.35, Walnut Marketing Board.

7. Amend Board quorum and voting requirements to add percentage requirements, add authority for the Board to vote by ''any other means of communication'' (including facsimile) and add authority for Board meetings to be held by telephone or by ''any other means of communication'', providing that all votes cast at such meetings shall be confirmed in writing. This proposal would amend § 984.45, Procedure, and would result in a conforming change in § 984.48(a), Marketing estimates and recommendations.

8. Amend the order to add authority to carry over excess assessment funds. This proposal would amend § 984.69, Assessments.

9. Amend the order by adding authority to accept voluntary financial contributions. This proposal would add a new § 984.70, Contributions.

10. Amend the order to clarify that members and alternate members may be reimbursed for expenses incurred while performing their duties and that reimbursement includes per diem. This proposal would amend § 984.42, Expenses.

11. Amend the order to add authority for the Board to appoint more than one inspection service as long as the functions performed by each service are separate and do not duplicate each other. This proposal would amend § 984.51, Inspection and certification of inshell and shelled walnuts.

12. (a) Amend the order by broadening the scope of the quality control provisions and by adding authority to recommend different regulations for different market destinations. This proposal would amend § 984.50, Grade and size regulations.

12. (b) Amend the order by adding authority that would allow for shelled walnuts to be inspected after having been sliced, chopped, ground, or in any other manner changed from shelled walnuts, if regulations for such walnuts are in effect. This proposal would amend § 984.52, Processing of shelled walnuts.

13. Amend the order by adding authority for marketing promotion and paid advertising. This proposal would amend § 984.46, Research and development.

14. Amend the order to replace the terms ''carryover'' with ''inventory,'' and ''mammoth'' with ''jumbo,'' to reflect current day industry practices. This proposal would amend § 984.21, Handler inventory, and § 984.67, Exemption, and would also result in conforming changes being made to § 984.48, Marketing estimates and recommendations, and § 984.71, Reports of handler carryover.

15. (a) Amend the order to clarify and to simplify the interhandler transfer provision, and to add authority for the Board to recommend to USDA regulations, including necessary reports, for administrative oversight of such transfers. This proposal would amend § 984.59, Interhandler transfers.

15. (b) Amend the order to clarify that the Board may require reports from handlers or packers that place California walnuts into the stream of commerce. This proposal would amend § 984.73, Reports of walnut receipts.

16. Update and simplify the language in § 984.22, Trade demand, to state ''United States and its territories,'' rather than name ''Puerto Rico'' and ''The Canal Zone''.

17. Amend the order by adding language that would acknowledge that the Board may deliberate, consult, cooperate, and exchange information with the California Walnut Commission. Any information sharing would be kept confidential. This would add a new § 984.91, Relationship with the California Walnut Commission.

In addition, USDA proposed adding three provisions that would help assure that the operation of the program conforms to current Department policy and that USDA can make any necessary conforming changes. These provisions would:

18. Establish tenure requirements for Board members. This proposal would amend § 984.36, Term of office.

19. Require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order and add more flexibility in the termination provisions. This proposal would amend § 984.89, Effective time and termination.

20. Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Twenty-five witnesses testified at the hearing. These witnesses represented walnut growers and handlers. While all witnesses supported the Board's recommended changes, several witnesses opposed USDA recommendations to establish tenure requirements and require continuance referenda.

Witnesses speaking in favor of the proposed changes addressed the need to change the structure of the Board to reflect recent changes in the industry, and the need to improve the administration, operation and functioning of the program in effect for walnuts grown in California. The order was established in 1948 and was last amended in 1976.

Witnesses at the hearing further stated that the amendments being considered were designed to streamline the operation of the order based on accepted business procedures in the 21st century. Witnesses also stated that many of the proposed amendments would provide the program with the necessary flexibility for the future.

At the conclusion of the hearing, the Administrative Law Judge stated that the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing would be 30 days after the posting of the hearing transcript on the USDA Web site, or July 6, 2006. One brief was filed. The brief clarified the intent of the Board's proposed amendments and offered general support.

Material Issues

The material issues presented on the record of hearing are as follows:

1. Whether to amend the order to change the marketing year from August 1 through July 31 to September 1 through August 31;

2. Whether to amend the order by specifying that the act of packing walnuts is considered a handling function and by clarifying that the definition of ''pack'' should include the term ''shell'';

3. (a) Whether to amend all parts of the order that refer to cooperative seats on the Board, redistribute member seats among districts, and provide designated seats for a major handler, if such handler exists (a major handler would have to handle 35 percent or more of the crop);

3. (b) Whether to amend the Board member nomination process to reflect proposed changes in the Board structure, as outlined in 3(a);

4. Whether to require Board nominees to submit a written qualification and acceptance statement prior to selection by USDA;

5. Whether to change the name of the Walnut Marketing Board to the California Walnut Board;

6. Whether to add authority to reestablish districts, reapportion members among districts, and revise groups eligible for representation on the Board;

7. Whether to amend Board quorum and voting requirements to add percentage requirements, to add authority for the Board to vote by ''any other means of communication'' (including facsimile), and to add authority for Board meetings to be held by telephone or by ''any other means of

communication'', providing that all votes cast at such meetings shall be confirmed in writing;

8. Whether to amend the order to add authority to carry over excess assessment funds;

9. Whether to amend the order by adding authority to accept voluntary financial contributions;

10. Whether to amend the order to clarify that members and alternate members may be reimbursed for expenses incurred while performing their duties and that reimbursement includes per diem;

11. Whether to amend the order to add authority for the Board to appoint more than one inspection service as long as the functions performed by each service are separate and do not duplicate each other;

12. (a) Whether to amend the order by broadening the scope of the quality control provisions and by adding authority to recommend different regulations for different market destinations;

12. (b) Whether to amend the order by adding authority that would allow for shelled walnuts to be inspected after having been sliced, chopped, ground, or in any other manner changed from shelled walnuts, if regulations for such walnuts are in effect;

13. Whether to amend the order by adding authority for marketing promotion and paid advertising;

14. Whether to amend the order to replace the terms ''carryover'' with ''inventory,'' and ''mammoth'' with ''jumbo,'' to reflect current industry procedures;

15. (a) Whether to amend the order to clarify and to simplify the interhandler transfer provision and to add authority for the Board to recommend to USDA methods and procedures, including necessary reports, for administrative oversight of such transfers;

15. (b) Whether to amend the order to clarify reports required regarding interhandler transfers;

16. Whether to update and simplify the language in § 984.22, Trade demand, to state ''United States and its territories,'' rather than name ''Puerto Rico'' and ''The Canal Zone'';

17. Whether to amend the order by adding language that would acknowledge that the Board may deliberate, consult, cooperate, and exchange information with the California Walnut Commission;

18. Whether to amend the order to limit the number of terms a member may serve on the Board at any one time to three consecutive, two-year terms; and,

19. Whether to require that continuance referenda are held every six years to determine support for continuation of the order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue Number 1—Marketing Year

Section 984.7, Marketing year, should be amended to change the marketing year from August 1 through July 31 to September 1 through August 31.

Under the current definition of the order, the California walnut marketing year begins August 1 and continues through July 31. While this marketing period was appropriate at the time of the order's promulgation in 1948, witnesses stated that it no longer reflects the current crop cycle. Witnesses explained that, over time, new varieties of walnuts have been introduced, and the areas in which walnuts are cultivated have shifted. The newer varieties mature later than the varieties grown at the time of the program's inception. At the same time, cultivation has slowly moved into areas that previously were not suited for walnut production. With differences in climate, soil, and water, witnesses explained that these new production areas have slightly later growing cycles. The proposed change in the marketing year would better reflect current crop cycles.

Witnesses also advocated adding language to this section that would allow the Board to recommend, subject to USDA's approval, alternative marketing year periods. Witnesses stated that this authority would allow the industry to adjust to future changes in crop cycles without the need to undertake formal amendment of the marketing order language.

Witnesses also stated that conforming changes should be made to §§ 984.36, Term of office, and 984.48, Marketing estimates. According to the hearing record, Walnut Marketing Board member terms of office should be for a period of two years and should end on the same day as the marketing year. Currently a member's term ends one month prior to the end of the marketing year, or on June 30. If implemented, the amended term of office would end on August 31.

Market estimates, which evaluate California walnut production and market activities, should also be amended to reflect current-day harvest cycles. If implemented, the amended market estimate would be calculated using handler beginning inventory on September 1, and ending inventory on August 31, and would coincide with the amended marketing year.

According to the record, market estimates are typically calculated shortly after the beginning of the marketing year, prior to September 20. The proposed amendment would change this requirement to calculate market estimates prior to October 20. This proposal would maintain the amount of time between the beginning of the amended marketing year and the required market estimate calculation as currently required under the order.

Record evidence supports amending the marketing year for California walnuts from August 1 through July 31 to September 1 through August 31. This amendment would update the order's marketing year to reflect the industry's current growing cycle and would provide authority for the Board to recommend, with USDA approval, changes in future marketing year periods. Record evidence also supports conforming changes proposed to §§ 984.36, Term of office, and 984.48, Marketing estimates. Section 984.36 would be amended so that the end of a Board member's term of office would coincide with the end of the amended marketing year (August 31) after a period of two years. Section 984.48 would be amended so that market estimates would be calculated using handler beginning and ending inventories coinciding with the amended marketing year. Market estimates would be required to be calculated prior to October 20.

No testimony in opposition to this proposed amendment was given. For the reasons stated above, it is recommended that § 984.7, Marketing year, be amended. Additionally, conforming changes to §§ 984.36, Term of Office, and 984.48, Marketing estimates, should also be made.

Material Issue Number 2—Definition of ''Pack''

Section 984.13, To handle, should be amended to include the act of packing walnuts as a handling function. In addition, § 984.15, Pack, should be amended to include shelling, and should be modified so that packing is applicable to both inshell and shelled walnuts.

According to the hearing record, the order currently defines ''to handle'' as to ''sell, consign, transport, or ship, or in any other way, to put walnuts into the current of commerce''. The definition does not include the specific act of packing. ''Pack'', as currently defined in the order means, ''to bleach, clean,

grade, or otherwise prepare inshell walnuts for market.'' Pack is not currently applicable to shelled walnuts.

Witnesses stated that the proposed amendment to the definition of ''handle'' would more accurately reflect current industry practices. Witnesses described present day situations where a grower may have his or her product cleaned by a packer. The packer cleans and grades the product to meet the standards specified under the order and prepares the product for market. Through the packing process, the product is typically inspected and certified to meet order requirements.

Witnesses explained that because the current definition of ''handle'' does not include the term ''to pack'' and the activities associated therewith, the packer is not subject to the reporting or assessment requirements under the order. Witnesses explained that because inspection and certification of the product is conducted under the care of the packer, subjecting the packer to reporting and assessment requirements of the order would result in a more efficient and accurate tracking system for California walnuts. Witnesses stated that packers should be responsible for reporting the amount of walnuts processed by their facility to the Board, and for paying assessments on those walnuts, as is currently required for walnut handlers. Witnesses also explained that if this amendment were implemented there would be approximately 5 packer entities that would qualify as handlers under the new definition.

Witnesses stated that the definition of ''pack'' under the order should be revised to include the act of shelling and should apply to both inshell and shelled walnuts. Currently, the definition of ''pack'' only applies to activities preparing inshell walnuts for market.

In the past, packers packed primarily inshell walnuts for sale during traditional holiday seasons and were not responsible for inspection certification prior to shipping product to market. At that time, shelled walnuts did not comprise a large portion of the market, and therefore were not included. According to the record, shelled walnuts have become increasingly important in terms of industry sales, specifically to the baking and confectionary industries. As a result, many packers now include the function of shelling as part of the activities undertaken to prepare walnuts for market. For this reason, witnesses stated that act of ''shelling'' should be included in the definition of ''pack.''

Record evidence supports adding the act of packing to the definition of handle. This amendment would facilitate more accurate tracking of California walnuts prepared for market, including inspection and reporting requirements as they relate to the collection of assessments. Record evidence also supports adding the act of shelling to the definition of ''pack'' as it would modify the term to be applicable to both shelled and inshell walnuts.

There was no opposition testimony given against this proposed amendment. For the reasons stated above, it is recommended that § 984.13, To handle, should be amended to include the act of packing walnuts as a handling function. In addition, § 984.15, Pack, should be amended to include the term ''to shell'' and the definition should be modified so that packing is applicable to both inshell and shelled walnuts.

Material Issue Number 3a—Restructuring of the Board

Sections 984.35, Walnut Marketing Board, and § 984.14, Handler, should be amended to remove all references to cooperative membership on the Board, to redistribute member seats among districts, and to provide designated seats for any handler handling 35 percent or more of production, if such handler exists.

Witnesses explained that when the order was established, a cooperative marketing association represented a majority share of California walnut production. Board structure accommodated representation of this large cooperative by allocating two grower and two handler seats out of a total of 10 member seats to cooperatives. The remaining seats were divided between the order's two districts, with one grower and one handler member being selected from each district, respectively, for a total of four non-cooperative member positions.

An additional grower seat was awarded to cooperatives if they represented more than 50 percent of production. Otherwise, the additional grower seat was filled as an at-large non-cooperative member position. Only growers not affiliated with cooperatives were eligible to fill the at-large seat, and that member could be from either district. Lastly, the Board nominated a public member, who was not affiliated with the growing or handling of California walnuts. Provisions for Board structure in the absence of a large cooperative was not contemplated when the order was promulgated, and thus was not provided for in the order.

According to the hearing record, the recent transition of the industry's largest cooperative from a cooperative entity to a publicly held company was the impetus for this proposal. Witnesses expressed the need to modify the Board structure to provide for representation that accurately reflects the current industry. Witnesses advocated that the Board structure should maintain the current number of Board members and alternates, and that the allocation of member seats between grower and handler positions should remain the same (meaning 4 handler member seats, five grower member seats and one public member). However, witnesses recommended modifying the allocation of Board representation according to two possible scenarios. The two scenarios include: (1) Membership allocation that accommodates the existence of a handler handling 35 percent or more of production and, (2) membership allocation in the absence of such handler.

Witnesses stated that in the first scenario, a handler handling 35 percent or more of the crop would be afforded a designated number of seats, and nominations for those seats would be conducted by the handler. The Board would conduct all other member nominations.

In the second scenario, none of the Board membership positions would be allocated to a specific entity, and all nominations would be conducted by the Board. Proposed modifications to nomination procedures are further discussed under Material Issue No. 3b.

Evidence presented at the hearing outlines the following Board structure and membership allocation in the event that a handler representing 35 percent or more of production exists:

The Board would consist of 10 members and alternates, including one public member and alternate. Two handler members and two grower members would represent the handler handling 35 percent or more of production. Grower members filling these seats would be growers that deliver their product to that handler. Handler members would be either employees or officers of that handler.

Two handler members would represent handlers that do not handle 35 percent of production. Two grower members would be growers that do not market their product through the handler that handles 35 percent or more of the production. One grower member would represent District 1, and one grower would represent District 2.

One member would be an at-large grower member who does not market his or her product through the handler that handles 35 percent or more of the production. A public member would be

nominated by the Board and would have no affiliations with the industry as a handler or grower.

In the event that no handler handles 35 percent or more of the crop, the following Board structure is proposed:

The Board would consist of 10 members and alternates, including one public member and alternate. Two handler members and two grower members would represent District 1. Two handler members and two grower members would represent District 2. One member would represent the production area at-large. A public member would be nominated by the Board and would have no affiliations with the industry as a grower or a handler.

The proposed amendment and hearing record pertaining to this scenario does not specify whether the at-large member seat is allocated to a grower or handler. However, as previously discussed, witnesses advocated that the allocation of member seats between growers and handlers should not change as a result of the amendment. Current order language allocates the at-large seat to growers in all situations. In addition, scenario 1 of the proposed amendment allocates the at-large seat to growers. USDA therefore recommends modifying the proposed amendatory language to specify that the at-large seat under scenario 2 be allocated as a grower seat. This would achieve the intent of the industry by making the number of grower and handler seats consistent with the allocation under current order requirements.

Witnesses stated that 35 percent was determined to be a reasonable level at which a handler should be afforded designated seats on the Board. Witnesses also stated that the determination of whether or not a handler qualifies as handling 35 percent or more of the crop should be based on a calculation which averages the crop handled for the two years prior to the year in which the nominations are made.

Witnesses recognized that the potential scale of the impact of Board recommendations increases with the volume of product handled, and that any entity holding a major interest at or above the proposed 35 percent should be afforded representation. According to record evidence, there are 44 handlers that handle California walnuts. Current distribution of industry production among those handlers indicates that any handler handling 35 percent or greater of the total crop would be a major handler and therefore should be guaranteed representation on the Board.

Witnesses also provided testimony regarding allocation of Board membership in the event that there were two or more handlers handling 35 percent or more of production. Witnesses testified that the proposed language in Material Issue No. 6, Authority to Reestablish Districts and Change Board Structure, includes a provision that would allow the Board to make recommendations, subject to the Secretary's approval, to revise the groups eligible to be represented, if such situation occurred.

In addition to amending § 984.35, Walnut Marketing Board, witnesses identified necessary changes in § 984.14, Handler. The current order definition of handler includes the term ''cooperative handler.'' Witnesses stated that a revised definition of the term handler would remove the distinction between cooperative and independent handlers and simplify the definition.

No opposition to this proposed amendment was offered at the hearing. Record evidence supports the amendment of § 984.35, Walnut Marketing Board, and therefore, § 984.14, Handler, should be amended to remove all references to cooperative membership on the Board and to provide designated seats for a major handler, if such handler exists.

This proposal should also be modified to clarify that the at-large seat proposed in the revised Board structure for the industry when a handler handling 35 percent or more of the crop does not exist should be allocated as an at-large grower seat.

Material Issue Number 3b—Nominations

Sections 984.37, Nominations, and 984.40, Alternate, should be amended to reflect proposed changes in the Board structure, as outlined in Material Issue No. 3a.

According to record evidence, current nomination procedures are designed to accommodate cooperative membership on the Board. As described in Material Issue No. 3a, above, Board membership is presently configured to include 4 cooperative seats (2 grower and 2 handler), 4 non-cooperative seats (2 grower and 2 handler), one grower seat that is either a cooperative or non-cooperative seat, depending on the cooperative's share of production, and one public member seat.

Current nomination procedures allow for all cooperative seat nominees to be selected by the cooperative and forwarded to the Secretary for approval and appointment. According to the record, current nomination procedures do not specify the method of nominee selection by the cooperative. The cooperative nominees selection process is independent of the Board.

All noncooperative seat nominees are selected through a ballot nomination process overseen by the Board staff, and forwarded to the Secretary for approval and appointment. Board staff is responsible for identifying all parties interested in filling Board member seats. Once a list of nominee candidates is identified, nomination ballots are sent out to all growers and handlers not associated with the cooperative. Board member nominations are given to the parties receiving the highest and second highest number of votes for their District and member seat. The names of the nominees are then forwarded to USDA for approval and appointment by the Secretary.

The public member is selected by the Board members, and then forwarded to the Secretary for approval and appointment.

According to the hearing record, the revised nomination procedures would be as follows:

In the event that a handler who handles 35 percent or more of the crop exists, nominees to fill Board seats designated for that handler would be selected by that handler and forwarded to the Board for approval. The Board would include those nominations with the other nominees and submit them to the Secretary for approval and appointment.

Accordingly, based on the hearing record, USDA recommends modifying the proposed language in § 984.37(c)(1) as published in the Notice of Hearing by removing the following language: ''In such a manner that is consistent with the requirements of nominations of growers conducted by the Board. The two persons receiving the highest number of votes for the grower positions attributed to that handler (Groups (b)(2) of § 984.35) shall be nominees. The two persons receiving the third and fourth highest number of votes shall be designated as alternates.'' The removed statement should be replaced with the following statement: ''And the names of the nominees shall be forwarded to the Board for approval and appointment by the Secretary.'' The USDA also recommends modifying the proposed language in § 984.37(c)(2) as published in the Notice of Hearing by removing the following language: ''In such a manner that is consistent with the requirements of nominations of handlers conducted by the Board. The two persons receiving the highest number of votes for the major handler positions shall be nominees. The two persons receiving the third and fourth

highest number of votes shall be designated as alternates.'' The removed statement should be replaced with the following statement: ''And the names of the nominees shall be forwarded to the Board for approval and appointment by the Secretary.''

Witnesses also stated that the determination of whether or not a handler qualifies as handling 35 percent or more of the crop should be based on a calculation which averages the crop handled for the two years prior to the year in which the nominations are made.

Proposed language published in the Notice of Hearing does not state this requirement. Moreover, the hearing record does not state how the 35 percent threshold should be applied for the nomination of new Board members if this proposed amendment were to be implemented in 2007, when a two year average calculation would capture the transition of the cooperative to a publicly traded company. For this reason, USDA recommends the following calculation and proposes to modify order language accordingly:

If this proposed amendment is implemented, the 35 percent threshold for the first nominations held following implementation should be calculated using an average of the crop handled for the year in which nominations are made and the crop handled for the year prior to the nomination. This recommendation considers the recent transition of the industry's largest cooperative to a publicly held company. For all future nominations, the 35 percent crop handling calculation should be based on the average of the crop handled for the two years prior to the year in which nominations are made.

Further, USDA also proposes adding the following language to the beginning of § 984.37(c), as published in the Notice of Hearing: ''A calculation to determine whether or not a handler who handles 35 percent or more of the crop shall be made prior to nominations. For the first nominations held upon implementation of this language, the 35 percent threshold shall be calculated using an average of crop handled for the year in which nominations are made and one year's handling prior. For all future nominations, the 35 percent handling calculation shall be based on the average of the two years prior to the year in which nominations are made.''

Witnesses clarified that any grower delivering all of his or her production to the handler with designated grower seats would be considered eligible for nomination by that handler. Any grower delivering part of his or her production to the handler in question would have the option of selecting whether or not they would participate in that handler's nomination process and serve as a grower member nominated to fill that handler's grower representation on the Board. A grower would not be eligible for nomination as both a grower representative of a major handler and as an independent grower on the Board.

According to the hearing record, owners, employees or officers of the handler handling 35 percent or more of the crop would be eligible as nominees for that handler's designated handler seats.

All nominees for remaining, non-handler-designated seats (with the exception of the public member) would be selected through a ballot nomination process overseen by the Board staff (the current non-cooperative nominee selection process, described above), and then forwarded to the Secretary for approval and appointment. The public member nominee would be selected by the Board and forwarded to the Secretary for approval and appointment.

Record evidence states that in the event a handler handling 35 percent or more of the crop does not exist, all Board nominees (with the exception of the public member) would be selected through a ballot nomination process (the current non-cooperative nominee selection process, described above). Nominees would then be forwarded to the Secretary for approval and appointment. The public member would be selected by the Board and then forwarded to the Secretary for approval and appointment.

Regarding proposed amendments to § 984.40, this section would be modified by removing all references to cooperative member seats in order to conform with the proposed changes to § 984.37. USDA recommends modifying the amendatory text as published in the Notice of Hearing by removing the last sentence of paragraph (b) of this section that refers to qualification of handler Board members to serve as temporary alternate members for other handlers. It was not the intention of the Board to propose this language and it was published in the Notice of Hearing by error.

No opposition to this proposed amendment was offered at the hearing. Record evidence supports the amendment of § 984.37, Nominations, and 984.40, Alternate, to reflect proposed changes in the Board structure, as outlined in Material Issue No. 3a. Section 984.37(c), and paragraphs §§ 984.37(c)(1) and 984.37(c)(2) should also be modified as recommended by USDA above. The last sentence of § 984.40 should also be removed, as recommended by USDA.

Material Issue Number 4—Qualify by Acceptance

Section 984.39, Qualify by acceptance, should be amended to require Board nominees to submit a written qualification and acceptance statement prior to selection by USDA.

This proposed amendment would modify the current acceptance procedure for persons nominated to serve on the Board. Currently, the acceptance procedure for persons nominated and selected to serve on the Board involves a two-step process. First, persons nominated for consideration and possible appointment to the Board by USDA are required to complete a form indicating their eligibility to sit as a member of the Board. Once appointed by USDA, nominees must then sign an additional form indicating their acceptance of the appointment. If this amendment were implemented, the two steps could be combined into one, thus resulting in less paperwork, a shorter acceptance procedure, and improved efficiency in the acceptance process. The change means that when a nominee submits a statement confirming their eligibility, the nominee will also in that statement agree to serve if the Secretary appoints the nominee to the Board.

Record evidence supports this proposed change. No opposition to this proposed amendment was presented at the hearing. For the reasons outlined above, § 984.39, Qualify by acceptance, should be amended.

Material Issue Number 5—California Walnut Board

Sections 984.6, Board, and 984.35, Walnut Marketing Board, should be amended to change the name of the Walnut Marketing Board to the California Walnut Board.

Witnesses explained that the current use of the word ''marketing'' in the Board's title is confusing to persons not familiar with federal marketing order programs. The Board's activities involve generic promotion of California walnuts. Witnesses stated that the proposed name of ''California Walnut Board'' would more accurately represent the Board's responsibilities.

Witnesses also stated that identifying their industry's product as a product of California is particularly important in foreign markets, where the California name is often associated with a high level of quality.

Record evidence supports this proposed change. No opposition to this proposed amendment was presented at the hearing. For the reasons outlined

above, § 984.6, Board, should be amended.

Material Issue Number 6—Authority To Reestablish Districts and Change Board Structure

A new paragraph (d) should be added to § 984.35, Walnut Marketing Board, to add authority to the order to reestablish districts, reapportion members among districts, and revise groups eligible for representation on the Board. The intent of this proposal is to provide the Board with a tool to more efficiently respond to the changing character of the California walnut industry. In recommending to the Secretary any such changes, the following would be considered: (1) Shifts in acreage within districts and within the production area during recent years; (2) the importance of new production in its relation to existing districts; (3) the equitable relationship between Board apportionment and districts; (4) changes in industry structure and/or the percentage of crop represented by various industry entities resulting in the existence of two or more handlers handling 35 percent or more of the crop; and (5) other relevant factors.

Testimony indicates that significant changes have occurred in both the production base and industry demographics of the California walnut industry since the order was implemented. These changes suggest that flexibility in adapting to the changing character of the industry is important to the administration of the order. Witnesses stated that the order's ability to remain effective over time would be reliant on its ability to change with the needs of the industry. In this regard, witnesses proposed adding authority to the order that would allow for certain aspects of the Board's structure to be reconsidered, including: Reestablishment of districts, reapportionment of members among districts, and revisions to groups eligible for representation on the Board.

Witnesses stated that the authority to reapportion and redistrict districts within the production area would be important. According to the hearing record, walnut production has shifted over time. Competition between agriculture and urban growth for land has served as an incentive for walnut production to locate to areas previously not cultivated. Moreover, new varieties of walnuts have allowed growers to produce walnuts in areas that would not have been suited for traditional varieties of walnuts. Witnesses stated that the need to adjust district boundaries, or reallocate representation of Board seats among districts, would be important to maintain accurate representation of shifting production within the production area.

According to the record, the authority to revise groups eligible for representation on the Board would include modifying the proportion of grower to handler seats on the Board, as well as modifying representation of entities either producing or handling a major portion of the crop.

Witnesses testified that careful industry analysis would lead to sound recommendations to USDA regarding reapportionment of members among districts, reestablishment of districts, or revisions in groups eligible for representation on the Board. If this authority were added, the Board could, at regular meetings, review its current structure using the points of consideration mentioned above. Upon completing this analysis, the Board could make a recommendation to USDA for such changes described above. Implementation of this authority would allow these changes to be pursued through the informal rulemaking process.

Given the changes that the California walnut industry has seen over time, flexibility to change the composition of the Board in step with the evolving needs of the industry would be an important tool. Witnesses stated that this authority would allow the Board to more effectively represent the industry as production and member representation demands shift. It would ensure that the Board appropriately represented the industry.

There was no opposition to the above proposal. Record evidence supports amending the order to add authority to reestablish districts, reapportion members among districts, and revise groups eligible for representation on the Board. This amendment would allow the Board, given due analysis and consideration of key factors and USDA approval, to more quickly adapt to changes within the industry. Accordingly, USDA is proposing that a new paragraph (d) be added to § 984.35, as proposed.

Material Issue Number 7—Voting Procedures

Section 984.45, Procedure, should be amended to add percentage requirements to quorum and voting procedures, to add authority for Board meetings to be held by telephone or by ''any other means of communication'', and to add authority for the Board to vote by ''any other means of communication.'' This proposal would also add authority for the Board to recommend the minimum number of votes that must be met when voting by any of those methods, and any other necessary procedures. In addition, this proposal would result in a conforming change to § 984.48(a), Marketing estimates and recommendations.

Witnesses stated that references to the meeting quorum requirement in this section should be amended to include a percentage equivalent of the current six-out-of-10-member minimum, or sixty percent. In addition, witnesses supported modifying the order language regarding voting requirements to state that a sixty-percent super-majority vote of the members present at a meeting should be required of all Board decisions, except where otherwise specifically provided. The order currently states that a majority vote is needed, with no percentage equivalent specified.

Witnesses stated that a conforming change should also be made to § 984.48(a), Marketing estimates and recommendations. The proposed conforming change would change the current six-out-of-10-member minimum vote requirement for the adoption of a marketing policy to sixty percent of the Board.

According to the record, the order currently requires that all Board meetings be held at a physical location. Witnesses stated that the order should be amended to allow for some meetings to be held using ''other means of communication'', such as telephone or videoconferencing. Witnesses stated that use of new communication technology would result in time savings while still allowing the Board to conduct its business. For example, telephone or videoconferencing technology would be helpful in providing Board meeting flexibility during harvest season when Board members find it more challenging to take time away from the field.

Additionally, short assembled meetings held to discuss non-controversial or administrative issues do not justify Board members' time and travel expenses. For this reason, witnesses stated that the authority to meet via teleconference call or videoconference, or any other means of communication recommended by the Board, could result in a more effective use of each member's time.

Witnesses stated that teleconferencing or videoconferencing should only be used as a method for conducting meetings when the meeting agenda does not contain issues that require a significant amount of deliberation, such as establishing the recommended rate of assessment.

According to the record, voting requirements for meetings other than assembled meetings should be established through informal rulemaking by USDA upon recommendation of the Board. Witnesses stated that procedures specific to each different method of meeting may need to be established. For example, while videoconferencing involves technology that allows each member to see the other members in attendance at the meeting, witnesses stated that any voting should continue to be verified through a written accounting that confirms the original votes made at the meeting. Similarly, votes made by teleconference (or telephone) would need to be followed by the submission of signed votes to the Board office by mail, or by fax or e-mail that contains a scanned copy of the original with the member's signature. Thus, witnesses stated that adding authority for the Board to recommend voting requirements and procedures would be important in order to ensure accurate and fair voting methods for each form of communication.

Witnesses speaking in favor of this amendment identified a sentence in paragraph (c) of § 984.45 as published in the Notice of Hearing that was not intended to be included in the proposed language. This sentence reads, ''When any proposition is to be voted on by any of these methods, one dissenting vote shall prevent its adoption.'' Witnesses stated that this sentence is part of the current order language and was intended to be replaced the following sentence: ''The Board, with the approval of the Secretary, shall prescribe the minimum number of votes that must be cast when voting is by any of these methods, and any other procedures necessary to carry out the objectives of this paragraph.''

Witnesses stated that it is the intent of the Board that voting guidelines for all types of non-traditional meetings can be recommended and adopted as appropriate for each type of technology used. For this reason, USDA recommends modifying the proposed language for § 984.45 as published in the Notice of Hearing by removing the sentence erroneously left in the proposed language.

There was no opposition testimony given against this proposed amendment. For the reasons stated above, § 984.45, Procedure, should be amended to add percentage requirements to quorum and voting procedures, to add authority for the Board to vote by ''other means of communication'', and to add authority for Board meetings to be held by telephone or by ''any other means of communication.'' The Board would be authorized to recommend voting procedures for votes taken by means other than at traditional meetings. The proposed language for this section should be modified as recommended by USDA. This amendment should also result in a conforming change to § 984.48(a), Marketing estimates and recommendations.

Material Issue Number 8—Carryover of Excess Assessment Funds

Section 984.69, Assessments, should be amended to add authority to carryover excess assessment funds.

According to the hearing record, the order currently states that any assessment funds held in excess of the marketing year's expenses must be refunded to handlers. Refunds are returned to handlers in accordance with the amount of that handler's pro rata share of the actual expenses of the Board.

This proposed amendment would allow the Board, with the approval of the Secretary, to establish an operating monetary reserve. This would allow the Board to carry over to subsequent production years any excess funds in a reserve, provided that funds already in the reserve do not exceed approximately two years' expenses. If reserve funds do exceed that amount, the assessment rate could be reduced so as to cause reserves to diminish to a level below the two-year threshold.

According to the record, reserve funds could be used to defray expenses during any production year before assessment income is sufficient to cover such expenses, or to cover deficits incurred during any fiscal period when assessment income is less than expenses. Additionally, reserve funds could be used to defray expenses incurred during any period when any or all of the provisions of the order are suspended, or to meet any other such costs recommended by the Board and approved by the Secretary.

Record evidence supports that allowing a monetary reserve to be maintained would provide flexibility to the Board's in meeting its financial planning responsibilities. If the amendment were implemented, the Board would have the authority to decide, at regular Board meetings, whether or not to establish a monetary reserve. Currently, the Board may refund any excess assessment funds on a pro-rata basis to each handler or apply excess funds to defray administrative expenses. These options would remain available to the Board.

Record evidence supports amending the order to add authority to carryover excess assessment funds as a financial reserve. There was no opposition testimony given against this proposed amendment. For the reasons stated above § 984.69, Assessments, should be amended.

Material Issue Number 9—Contributions

A new § 984.70, Contributions, should be added to the order to allow the Board to accept voluntary contributions to pay for expenses incurred under § 984.46, Research and development.

Witnesses stated that the order currently does not provide authority to accept voluntary contributions of any kind. If implemented, this proposed amendment would grant authority to the Board to accept voluntary contributions. Contributions could only be used to pay for research and development activities, and would be free from any encumbrances by the donor. According to the hearing record, the Board would retain oversight of the application of such contributions.

Witnesses supported this proposal by stating that it would provide the Board and the industry with valuable resources to enhance research and development activities. Record evidence indicates that any contributions used to further production research, market research and market development projects would not only benefit the industry, but also the consumer, through improved production technology and product information.

There was no opposition testimony given against this proposed amendment. For the reasons stated above, a new § 984.70, Contributions, should be added to the order to allow the Board to accept voluntary contributions.

Material Issue Number 10—Reimbursement of Expenses

Section 984.42, Expenses, should be amended to clarify that members and alternate members may be reimbursed for expenses incurred while performing their duties.

According to the hearing record, this proposed amendment would not have any impact on the current expense reimbursement activities of the Board. Rather, it would clarify and update order language to more clearly state that while Board members and alternates serve without compensation, expenses incurred while performing the duties of a Board member will be incurred.

For the reasons outline above, § 984.42, Expenses, should be amended. Record evidence supports this amendment, and no opposition to this proposal was offered at the hearing.

Material Issue Number 11—Alternative Inspection Services

Section 984.51 of the order provides the Board with the authority to designate an inspection service for mandatory certification of product under the order. This section should be amended to allow the Board to designate more than one inspection service, as long as the functions performed by each service shall be separate so as not to duplicate each other. Inspection and certification requirements ensure compliance with any regulations in effect under the authority of § 984.50, Grade quality and size regulations.

The purpose of this proposal is to allow handlers to take advantage of USDA's alternative inspection programs such as the Customer Assisted Inspection Program (CAIP) and the Partners in Quality Program (PIQ). Handlers who do not wish to use the alternative inspection services offered by USDA would continue to use the services of the Dried Food Administration of California (DFA) for traditional inspection services, such as end-line and lot inspections.

The proposal also specifies that ''each service shall be separate so as to not conflict with each other'', meaning that each inspection service would offer distinct and different services (i.e. PIQ vs. lot inspections) that do not duplicate each other. Accordingly, USDA recommends modification of the proposed regulatory language to clarify that the two inspection services will not duplicate the services of each other.

Witnesses speaking in favor of this proposal explained the importance of a handler's ability to take advantage of inspection services that would most economically fit the size and functions of his or her operation. Currently, all walnut product is inspected by DFA. While this inspection service has worked well for the industry for many years, the DFA inspection service does not accommodate inspection procedures that support larger handler economies of scale. Witnesses stated that USDA programs, such as PIQ and CAIP, are designed to fit larger scale handling operations, and therefore offer cost saving advantages that the DFA service does not. This proposal, if implemented, would allow handlers to use the alternative inspection programs offered by USDA.

Since the order's inception, the California walnut industry has used end-line inspection services provided by DFA. Under this scenario, samples of packed walnuts are examined and certified by licensed DFA inspectors at the end of the handling and packing process.

The Federal-State Inspection Service has developed effective, less costly alternatives to traditional end-line inspection programs. One alternative, the PIQ program, is a documented quality assurance system. Under this program, individual handlers must demonstrate and document their ability to handle and pack product that meets all relevant quality requirements. Effectiveness of the program is verified through periodic, unannounced audits of each handler's system by USDA-approved auditors.

Under CAIP, USDA inspectors oversee the in-line sampling and inspection process performed by trained company staff. USDA oversight ranges from periodic visits throughout the day to a continuous on-site presence.

Witnesses at the hearing testified that a California walnut handler should be provided the flexibility to use either the DFA for traditional inspections, such as end-line or lot inspections or alternative programs such as PIQ or CAIP offered by USDA. Either inspection service can determine whether walnuts meet the minimum order requirements.

According to the hearing record, if this amendment was implemented, total industry savings of $1 million or more could be realized on an annualized basis. Financial impact calculations provided by the Board indicate that introducing the option of using USDA PIQ and CAIP programs could result in an average per handler savings of $156,067 for the industry's seven largest handlers. Given that the PIQ and CAIP programs are most beneficial for large handlers, as potential savings are correlated with economies of scale, it is unlikely that the smaller handlers would opt for these programs. Witnesses stated that no change in inspection costs is expected for handlers remaining with traditional DFA inspection services.

The Agricultural Marketing Service is responsible for ensuring that all handlers regulated under a marketing order program are in compliance with any regulations that are in effect. Marketing order administrative bodies have the responsibility of locally administering marketing order programs, which includes monitoring industry's compliance with order requirements, and reporting any violations to the Department for enforcement measures.

While the Department supports and encourages innovation and development of cost-saving procedures, it is important that the program maintain its integrity and that any quality or size regulations in effect are not compromised. For this reason, USDA supports providing the Board with authority to recommend rules and regulations to administer this proposed amendment. To this end, the last sentence of paragraph (a) of § 984.51 should be modified to read as follows: The Board, with the approval of the Secretary, may prescribe procedures for the administration of this provision.

According to the hearing record, the industry's commitment to comply with grade and size regulations would not be compromised by allowing the industry to take advantage of the inspection service that best meets their needs. The authority to designate more than one inspection service would be a practical tool for the industry. It would allow grade and size standards to be maintained, yet could allow for time and cost-saving opportunities.

No opposition to this proposed amendment was offered at the hearing. Record evidence supports amending § 984.51 to allow more than one inspection service to be designated by the Board to inspect California walnuts. This proposal should also be modified as recommended by USDA above.

Material Issue Number 12a—Quality Regulations and Different Regulations for Different Market Destinations

Section 984.50, Grade and size regulations, should be amended to broaden the scope of quality regulations issued under the order. In addition, the authority for the Board to recommend different regulations for different market destinations should be added to this section.

Currently the order provides for the establishment of minimum grade regulations, but does not specify authority for the Board to recommend other types of quality regulations. Witnesses stated that adding this authority to the order would be an important tool.

Witnesses explained that the intent of this proposal is to broaden the scope of the order's authority to include the ability to regulate other factors of quality in addition to the current grade regulations, which reflect the U.S. Grade Standards for Walnuts. Quality standards, other than minimum grade, would be recommended by the Board for approval by USDA and would regulate certain product characteristics currently not regulated by U.S. Grade Standards for inshell or shelled walnuts. Other quality regulations could regulate, for example, moisture content or aflatoxin levels, if such proposed regulations were approved by USDA. These additional quality regulations could also regulate characteristics

currently regulated by U.S. Grade Standards at levels more stringent than existing grade regulations, if warranted for a specific market destination.

According to the hearing record, the order currently allows for the establishment of more restrictive minimum grade standards. The proposed amendment would replace this language with language specifying the Board's authority to recommend other quality standards in addition to minimum grade. Witnesses explained that the proposed modification in the order language would clarify that any additional quality standards established under the order would be guidelines recommended by the Board and would be different from grade regulation based on USDA grade standards. Witnesses stated that this distinction would reduce possible confusion in the administration of such standards.

According to the hearing record, the authority to establish different regulations for different market destinations would provide the Board with authority to formalize current trends in export market product specifications. Witnesses stated that many customers in export markets have unique product specifications in place to meet the consumer tastes and needs of their market. California walnut handlers shipping to those markets are already meeting those product specifications.

Witnesses explained that this proposed authority would result in the Board's ability to recommend uniform standards for all California walnut handlers shipping to specific export markets, if such regulation is needed. Different regulations for different market destinations would ensure that all product shipped into a particular export market would meet the same requirements. Product uniformity among California handlers serving those markets would ensure uniform quality of product, and a level playing field for foreign customers who are comparing product services from multiple handlers.

According to the hearing record, the addition of this authority is not intended to address any specific export market at this time. Witnesses stated that the market is currently functioning well, with quality product being shipped to consistently meet foreign customers' product specifications.

Witnesses stated, however, that the export market has become increasingly important to the California walnut industry. Witnesses noted that export market demand for California walnuts has increased nearly 35 percent over the past 5 years, making up a large portion of the California walnut industry's ability to maintain positive producer returns within the context of increasing yields per acre and total industry production. Witnesses stated that ensuring product quality and uniformity is vital to the California walnut industry and its ability to maintain viable export market relationships. For this reason, witnesses stated that the authority to establish uniform guidelines for specific market destinations would be an important tool.

According to the hearing record, any proposed regulation specific to different market destinations would require deliberation among the Board members and approval by USDA.

Record evidence supports amending the order to broaden the scope of regulations issued under the order to include additional types of quality regulations. In addition, the authority for the Board to recommend different regulations for different market destinations should be added to this section. No opposition to this proposed amendment was offered at the hearing.

Material Issue Number 12b—Processing of Shelled Walnuts

Section 984.52, Processing of shelled walnuts, should be amended by adding authority to allow for shelled walnuts to be inspected after having been sliced, chopped, ground, or in any other manner changed from shelled walnuts, if regulations for such walnuts are in effect. The Act allows for the regulation of processed walnuts. This proposal would establish authority for the Board to recommend such regulations, subject to approval by the Secretary.

According to the hearing record, the order currently provides that handlers may only reprocess previously inspected walnuts that have been certified as meeting any size and grade regulations in effect. The order specifically provides that shelled walnuts may not be sliced, chopped, ground or otherwise altered unless such walnuts have been previously certified. Witnesses explained that this language was appropriate for the technology available to the industry when the order was promulgated. Such provisions were necessary in order to provide assurances that off-grade product did not enter into the stream of commerce.

Witnesses explained that more effective technology, which relies on laser color sorters and highly automated screening processes to eliminate defects throughout the sorting process, is now widely used by the industry. This current technology provides handlers with a sophisticated system of assurances that product entering the market place meets minimum quality standards. For this reason, witnesses advocated amending the order language to allow the Board to recommend testing, certification, and minimum standards for processed walnuts. Witnesses stated that the reliability of current technology is such that provisions for handlers to inspect and certify product after further processing could be established, and that such provisions would facilitate flow of product through processing facilities yet maintain a minimum standard of quality.

New walnut product forms are regularly requested by both domestic and foreign customers. In the last 20 years, the industry has become much more capable of producing at a considerably higher level quality and of developing more specific types of products that meet the differing needs of individual customers. To capitalize on this growing capability, a number of witnesses expressed the view that an important tool for increasing sales is the ability to establish standards for walnut products for which no USDA standards currently exist.

The order currently requires shelled product to be certified as merchantable, that is, meeting the minimum USDA requirements prior to further processing. When handlers are processing for end users that require further processing, this certification represents a costly extra step. After the initial shelled walnut certification, the handlers employ their own quality control procedures to meet the higher customer specifications. This proposal would allow a single inspection at the end of the process that would serve both purposes. If implemented, this proposal would allow the Board to recommend modifications to allow certification of product after it has been modified or chopped, leading to cost savings in the handling process.

According to the hearing record, the proposed language would allow for walnuts to be sliced, chopped, ground or in any other manner altered if quality for such walnuts were established under § 984.50(d), Additional grade, quality and size regulation, as discussed in Material Issue No. 12(a), above. This amendment would also establish a new paragraph (c) to § 984.52, Processing of shelled walnuts, that would provide authority for the Board to establish any procedures as deemed necessary to insure that all walnuts are inspected prior to being placed into the stream of commerce. The proposed language would allow the Board to create guidelines that would ensure that processed walnut product would meet a

minimum standard, and that it would be certified as compliant with the regulation in effect under the order. Implementation of this authority would allow these changes to be pursued through the informal rulemaking process.

Given the changes that the California walnut industry has seen over time, flexibility to recommend regulation regarding the further processing of shelled walnuts prior to inspection and certification would be an important tool. Witnesses explained that as consumer demands for further processed product grows, increases in efficiency of product flow through the processing facilities would enable handlers to handle product more quickly, better satisfy their customers, as well as potentially reduce costs.

Record evidence supports amending the order to add authority to allow for shelled walnuts to be inspected after having been sliced, chopped, ground, or in any other manner changed from shelled walnuts. The record also supports amending the language to provide authority for the Board to recommend any necessary testing, certification or minimum quality standards for such product to ensure that the integrity of any California walnut product entering the stream of commerce is kept.

There was no opposition to the proposed amendment offered at the hearing. For the reasons outlined above, Section 984.52, Processing of shelled walnuts, should be amended as proposed.

Material Issue Number 13—Paid Advertising and Promotion

Amend the order by adding authority for marketing promotion and paid advertising. This proposal would amend § 984.46, Research and development. This order provision currently authorizes only production research, marketing research and development activities.

This authority would enable the Board to develop more efficient marketing and distribution techniques for walnuts produced in the production area. Promotional activities, including paid advertising, could lead to greater market exposure and consumer demand for California walnuts, thereby supporting increased returns for growers.

According to the record, this authority would enable the Board to fund promotion efforts. Such activities could be conducted by the Board itself or be contracted out to other parties. Witnesses stated that it is important to include promotion and paid advertising under the Federal marketing order, as these activities are vital to increasing demand for walnuts which promotes the long-term health of the industry.

The record evidence shows that walnut acreage in California has increased from 193,000 acres in 1997 to an estimated 219,000 acres in 2005. In that same time period, overall tonnage of California walnuts increased from 269,000 tons to 355,000 tons, or an increase in average yield from 1.39 tons per acre to 1.62 tons per acre. Witnesses testified that acreage and production will continue to increase, making promotion and paid advertising all that more important.

Witnesses explained that the California Walnut Commission (Commission), and other entities within the industry, has been responsible for past promotion and paid advertising activities. Demonstrated success of these promotion activities has led to industry support for adding this authority to the order. Testimony indicated that current marketing and promotion activities range from in-store promotion activities, to featured articles in magazines, inclusion of walnuts in cooking shows and promotion by celebrity chefs, and paid advertising.

A representative of the Board testifying at the hearing stated that, since 2001, both volume and prices of California walnuts have shown annual increases. Increased market demand can be tied to the Commission's success in working with the market outlets, the retail sector and consumers, with domestic consumption increasing by over 34 percent in the past 5 years. Witnesses attribute the industry's ability to successfully meet the challenge of increasing production to these promotion activities.

Witnesses explained that the industry wants to further its ability to conduct these activities by adding promotion authority to the order. According to the hearing record, authority to conduct promotion and paid advertising under the order would ensure that those activities continue in a consistent manner. Board member input into the development of promotional programs would also ensure that these activities, and the use of assessment funds to support them, would remain responsive to industry needs. Witnesses also indicated that this authority would be equally beneficial to small and large grower and handler entities.

According to the record, adding this authority to the order would provide the Board with the flexibility to use promotional activities, including paid advertising, to assist and improve the marketing, distribution and consumption of California walnuts. The use of assessments for such promotion would be an important component to increasing demand and consumption of California walnuts, and would be beneficial to all members of the industry. The industry does not contemplate using this provision immediately. However, it wants to have the ability to consider these activities in the future. The impacts of any increased assessments resulting from implementing any program would be considered before a recommendation is made.

There was no opposition testimony on this issue. The record supports adding authority for promotion and paid advertising to § 984.46, Research and development.

Material Issue Number 14—Updating Order Terminology

Section 984.21, Handler carryover, and § 984.67, Exemptions, should be amended to replace the terms ''carryover'' with ''inventory,'' and ''mammoth'' with ''jumbo,'' respectively, to reflect current day industry nomenclature. Conforming changes should also be made to § 984.48, Marketing estimates and recommendations, and § 984.71, Reports of handler carryover.

Section 984.21, Handler carryover, defines the amount of California walnuts (both merchantable as well as the estimated quantity of merchantable walnuts to be produced from shelling stock and unsorted material), wherever located, held by California walnut handlers at any given time. Witnesses explained that the current term ''carryover'' is misleading in that the term implies the amount of inventory held by handlers from one marketing year to the next. Witnesses stated that the term ''inventory'' would more accurately convey the intent of this definition, and would also reflect current day calculations of walnut availability.

According to the record, conforming changes should also be made to § 984.48, Marketing estimates and recommendations, and § 984.71, Reports of handler carryover. Both of these sections make references to handler ''carryover.'' In order to provide consistency in the order's terminology, witnesses stated that these sections should incorporate the updated term ''inventory.''

Section 984.67, Exemptions, of the order provides for situations under which California walnuts may be exempted from complying with order regulations. One exemption is applicable to lots of merchantable

inshell walnuts that are mammoth size or larger, as defined by the United States Standards for Walnuts in the Shell.

Witnesses stated that given the new varieties currently being produced in the industry, the term ''mammoth'' no longer applies. New walnut varieties do not produce walnuts that fit this size description. According to record evidence, the current production's equivalent to ''mammoth'' size is ''jumbo'' size, as defined by the Untied States Standards for Walnuts in the Shell. Thus, witnesses stated that the order language should be updated to reflect the industry's current terminology and size of walnuts being produced.

Record evidence supports this proposed change. The term ''carryover'' should be changed to ''inventory'', and the term ''mammoth'' should be changed to ''jumbo.'' No opposition to this proposed amendment was presented at the hearing. For the reasons outlined above, § 984.21, Handler carryover, and § 984.67, Exemptions, should be amended. Conforming changes should also be made to § 984.48, Marketing estimates and recommendations, and § 984.71, Reports of handler carryover.

Material Issue Number 15a—Interhandler Transfers

Section 984.59, Interhandler transfers, should be amended to clarify the interhandler transfer provision of the order, and to add authority for the Board to recommend to USDA regulations, including necessary reports, for administrative oversight of such transfers.

According to the hearing record, current order language specifies two scenarios under which certain provisions relating to interhandler transfers are regulated. These include: (1) Transfers of inshell walnuts for the purpose of packing or shelling; or, (2) interhandler transfers that are made to meet reserve obligations. In both scenarios, the receiving handler must comply with regulations that are in effect under the order. The order further provides that any interhandler transfers that is not included under the above two scenarios, the first handler of such walnuts shall comply with any regulations in effect under the order.

Witnesses stated that it would be beneficial to simplify current order language so that all interhandler transfers were considered a ''sale of inshell and shelled walnuts within the area of production by one handler to another.'' Witnesses explained that the proposed language restated the current application of this provision in walnut transactions in simpler terms.

Witnesses also explained that authority for the Board to recommend rules and regulations, including necessary reports for such transfers, should be added to the order. This proposed authority would provide the Board with flexibility to adapt interhandler transfer rules and regulations as needed.

Concurrent with the proposal to add this authority, witnesses stated that the sentence, ''The receiving handler shall comply with the regulations made effective to this part,'' as published in the Notice of Hearing, should be removed. Witnesses stated that the intent of this proposal was to replace the above sentence with the proposed authority for the Board to recommend such regulations. For this reason, USDA is recommending that this sentence be removed.

No opposition to this proposed amendment was presented at the hearing. Record evidence supports this proposed change. The order provisions regarding interhandler transfers should be simplified, as proposed. The authority for the Board to make recommendations to establish methods and procedures, including reporting requirements, for overseeing interhandler transfers should also be added. The proposed language for this section should be modified as recommended by USDA.

Material Issue Number 15b—Reporting Requirements

Section 984.73, Reports of walnut receipts, should be amended to clarify that the Board may require reports from handlers or packers that involve placing California walnuts into the stream of commerce.

According to the hearing record, current authority provided in this section only applies to the reporting of handler walnut receipts from growers. Witnesses stated that this authority should be broadened to include interhandler transfer receipts, or any other entity as recommended by the Board and approved by the Secretary.

Witnesses explained that this proposal is intended to support other proposed amendments to the order, such as the proposed clarification of interhandler transfer provisions discussed under Material Issue No. 15(a), above, by further clarifying the Board's authority to recommend reporting provisions necessary to obtain accurate tracking information of California walnuts.

No opposition to this proposed amendment was presented at the hearing. Record evidence supports this proposed change. The authority for the Board to request handler reports of walnut receipts should be broadened to include receipts from other handlers, entities or activities that involve placing California walnuts into the stream of commerce.

Material Issue Number 16—Trade Demand

Section 984.22, Trade demand, should be amended to change the order language to state ''United States and its territories,'' rather than name ''Puerto Rico'' and ''The Canal Zone''.

Under the marketing order, the Board is required to calculate a trade demand for all inshell and shelled walnuts. Calculation of domestic trade demand, or the anticipated amount of California inshell and shelled walnuts that are needed to satisfy the domestic market, is important in determining the need for volume regulation, and the amount of free versus reserve tonnage if volume regulation is in effect.

Witnesses explained that the reference to ''Puerto Rico'' and ''The Canal Zone'' in the order is outdated. According to the record, this terminology was incorporated into the order at the time of promulgation. Witnesses stated that the order language should be updated to reference ''United States and its territories''.

According to record evidence, this amendment would not impact trade demand calculations under the order since the purpose of the reference is to accurately identify the amount of shelled or inshell walnuts demanded by the Untied States, including its territories. Thus, while the terminology identifying the geographic regions included in the calculation would change, the intent of the original language would remain unchanged.

Record evidence supports this proposed change. No opposition to this proposed amendment was presented at the hearing. For the reasons outlined above, § 984.22, Trade demand, should be amended.

Material Issue Number 17—Relationship With the California Walnut Commission

Witnesses supported the addition of § 984.91, Relationship with the California Walnut Commission, by stating that the Board should have authority to deliberate, consult, cooperate and exchange information with the California Walnut Commission (CWC). Any sharing of information between the two organizations would be kept confidential in accordance with the provisions of section 10(i) of the Act.

Record evidence indicates the CWC and the Federal marketing order program are currently administered out of the same office location and employ the same staff. Thus, this proposal, if implemented, would formalize the relationship that currently exists between the two entities. Witnesses stated that collaboration between the two programs leads to reduced administrative costs, as much of the information collected by each entity can be shared.

For the reasons stated above, a new § 984.91, Relationship with the California Walnut Commission, should be added. No opposition to this proposal was presented at the hearing.

Material Issue Number 18—Term Limits

Section 984.36, Term of office, should be revised to establish a limit on the number of consecutive terms a person may serve as a member of the Board. Currently, the term of office of each member and alternate member of the Board is 2 years. There are no provisions related to term limits in the marketing order. Members and alternates may serve on the Board until their respective successors are selected and have qualified.

The record evidence suggests that term limits for Board members could increase industry participation on the Board, provide for more diverse membership, provide the Board with new perspectives and ideas, and increase the number of individuals in the industry with Board experience.

At the hearing, USDA proposed a period of 8 years as an appropriate limit to the number of years a member may serve consecutively. However, in other instances concerning Federal marketing orders containing term limit provisions, USDA has determined that a period of 6 years would be more appropriate. Accordingly, a limit of six years as the number of years that a member may serve consecutively would be in conformance with other marketing orders containing this provision and with established USDA practices regarding term limits. The proposed regulatory text has been modified to reflect this change.

Since the current term of office for members and alternates is 2 years, USDA is proposing that members serve no more than 3 consecutive two-year terms, or a total of 6 years. This proposal for term limits would not apply to alternate members. Once a member has served on the Board for 3 consecutive terms, or 6 years, the member could not serve as a member for least one year before being eligible to serve again. However, the individual could immediately begin serving as an alternate member after completing 3 consecutive terms as a member.

Industry witnesses presented testimony in opposition to this proposal. Although they agreed that increased industry participation in the program is desirable, witnesses stated that the application of term limits could be problematic. Testimony indicated that finding California walnut growers to serve on the Board is difficult. Witnesses noted that there have been times in the past when filling Board member positions has been difficult, and that recruiting new members is not easily done. Moreover, witnesses stated that industry members who currently serve on the Board bring knowledge and experience to the Board that would be difficult to replace.

USDA believes that any additional efforts necessary to find eligible growers and handlers who are willing to serve on the Board are offset by the benefits derived by broader industry participation in order operations. USDA recommends adding this requirement. Section 984.35, Term of office, should be amended to include tenure requirements. The proposed language should also be modified to reflect a proposed term limit of a total of six years, as discussed above.

Material Issue Number 19—Continuance Referenda

Section 984.89, Effective time and termination, should be amended to require that continuance referenda be conducted every six years to ascertain industry support for the order.

Currently, there is no requirement in the order that continuance referenda be conducted on a periodic basis. The USDA believes that growers should have an opportunity to periodically vote on whether a marketing order should continue. Continuance referenda provide an industry with a means to measure grower support for the program. Experience has shown that programs need significant industry support to operate effectively.

Under this proposal, USDA would consider termination of the order if continuance is not favored by at least two-thirds of those voting, or at least two-thirds of the volume represented in the referendum. This is the same as that for issuance and amendment of an order. Experience in recent years indicates that six years is an appropriate period to allow growers an opportunity to vote for continuance of the program. Therefore, the proposal sets forth that a referendum would be conducted six years after the year in which this amendment is effective and every sixth year thereafter.

Several industry witnesses opposed periodic continuance referenda. They indicated that requiring unnecessary referenda would be costly and of little value to the industry or USDA.

The USDA believes, however, that growers should have an opportunity to periodically vote on whether the marketing order should continue, and that the minimal industry costs in time and money are well worth the periodic grower feedback afforded to the Board and the USDA by such referenda. Accordingly, USDA recommends adding a requirement that such referenda be conducted.

The USDA also proposed to make such changes as may be necessary to the order to conform to any amendment that may result from the hearing. All conforming changes have been identified and discussed in this document.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural growers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $6,500,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact on growers and handlers of the proposed amendments, and in particular the impact on small businesses. The record evidence shows that the proposed amendments are designed to enhance industry efficiencies and streamline administrative operations of the marketing order. The record evidence is that while some minimal costs may occur, those costs would be outweighed

by the benefits expected to accrue to the California walnut industry.

Walnut Industry Background and Overview

According to the record, the California walnut industry currently has 44 handlers and approximately 5000 producers. The crop is produced in a region that spans approximately 400 miles in California's Central Valley.

Fifteen grower witnesses and 7 handler witnesses testified at the hearing. Using the SBA definition ($750,000 in gross annual walnut sales), 7 of the grower witnesses identified themselves as large business entities and 6 as small business entities. All 7 handler witnesses identified themselves as being large business entities according to the SBA definition. Some of the handler witnesses were also growers. According to witnesses, 37 out of an industry total of 44 handlers would qualify as small business entities under the SBA definition. Also, under the order amendments contained herein, it is estimated that five packers would be considered handlers, the majority of whom would be considered small entities.

Based on information presented at the hearing, calculations describing an average California walnuts producer provide the following: Dividing 5000 producers by 219,000 bearing acres in 2005 indicates an average of 44 bearing acres per producer. Dividing 5000 producers by the two-year average crop value for 2003 and 2004 ($414,950) yields an average walnut revenue per producer estimate of about $83,000. According to the hearing record, more than 70 percent of California walnut producers would be classified as small producers according to the SBA definition.

According to a study presented at the hearing, entitled ''Cost to Produce Walnuts in California'' (prepared by Dr. Karen Klonsky, Department of Agriculture and Resource Economics, University of California Davis, 2006), typical average costs for a walnut orchard in the Sacramento Valley are $2,460 per acre in full production. The costs are broken down as follows: (a) Land and trees, $678 (28 percent), (b) cultural costs, $667 (27 percent), (c) harvest, $538 (22 percent), (d) equipment and buildings, $302 (12%), and (e) cash overhead, $275 (11 percent).

At an average grower price in recent years of $0.62 per pound, a grower would need a yield of 2 tons per acre to break even, according to the study. The breakeven price at the State average yield of 1.5 tons per acre is about $0.70 per pound, which is above the actual price received in most recent years, but equal to the 2004 average price received by growers.

Individual grower costs can vary considerably due to such variables as horticultural practices and varieties grown, and also due to orchard location and year of acquisition, and water availability and cost.

Although a majority of producers are considered small business entities, record evidence also indicates that producer revenue has increased over time. The National Agricultural Statistical Service (NASS) crop value estimate for 2004, $451.75 million, was 38 percent higher than in 1995, and was the sixth successive yearly increase. Average revenue per acre in 2004 reached a record $2,082.

Record evidence also indicates that acreage and production are trending upward. Production did not exceed 300,000 tons until 2001, but has exceeded that level for 4 out of the last 5 years. Witnesses stated that the five-year average production for 1996–2000 was 244,000 tons, compared to the five-year average production (2001–2005), which was 318,600 inshell tons.

According to the hearing record, a number of factors have contributed to increased production in recent years. New acres have been planted at a rate of three to five thousand acres per year, some of which are new varieties with higher yields. Witnesses explained that older varieties may yield 1,500 to 3,000 pounds per acre, due to both planting patterns and the typical yield of the variety. New varieties, such as the Chandler, will yield up to 6,000 pounds per acre. Newer plantings have led to a reduction in the cyclical peaks and valleys associated with the alternate-bearing characteristic of tree nuts. This, in turn, has facilitated better inventory management and has made the walnut industry a more reliable ingredient supplier to the food-processing industry.

According to the hearing record, the growing season commences in March of each year with harvest occurring between September and November, depending upon the variety. Inshell California walnuts are a seasonal item with 95 percent of the volume shipped between the months of September and December. This represents roughly 25 percent of the industry's production. Inshell walnuts are marketed primarily as a winter holiday food. According to the hearing record, the purchase of significant quantities of inshell walnuts occurs due to the tradition in many markets of displaying them with other inshell nuts as part of winter holiday décor.

Shelled walnuts are marketed on a year-round basis, and represent about 75 percent of utilization. Large handler infrastructure investments have contributed substantially to the growth of the year-round shelled business, as well as the inshell business.

Over the past ten years sophisticated laser-sorting equipment and new varieties such as the Chandler have contributed to improved quality. Higher customer expectations have accompanied the improvements in technology and quality, with more demand for high-quality, high-specification California walnuts. Marketing success in Japan is cited as a prime example of this trend.

According to the hearing record, shelled walnuts are utilized in a variety of ways, with commercial baking believed to be the single largest utilization category. Retail consumption of walnuts packaged for use in the home has increased dramatically over the past several years. Shelled walnuts may be sold in packages ranging from 2.75 ounce retail packages to large bulk containers of 25 pounds or more for industrial users, wholesalers, and distributors. The last 12 years have seen substantial increases in snack food uses of walnuts, in addition to expansion of ingredient use beyond baking and confectionery items to include usage with salads, rice, and pasta.

A high degree of mechanization in the harvest has reduced the deleterious impact on nut quality from rain and other weather conditions. Once harvested, walnuts are taken to holding stations where a fibrous husk is removed, and the walnuts are then dried to approximately eight percent moisture. They are delivered to handlers for further processing, which includes cleaning, sorting, and shelling.

According to the hearing record, California walnuts rank eighth in exports over all the commodities grown in the state. The top three inshell export markets are Spain, Italy, and Germany. Five-year average export value (2000/01–2004/05) is approximately $52 million, representing 63 percent of total export value for that five-year period. The key export markets for shelled-walnut utilization are: Japan, Germany, Spain, Israel, Korea, and Canada. Five-year average export value for those six countries is $91.8 million, which is about 76 percent of the total value of shelled walnut exports.

California walnuts compete with walnuts grown in China, Turkey, France, Italy, Chile, North Korea, India, Vietnam, Argentina, Brazil, and many

areas within the former Soviet Union including Kazakhstan, Ukraine, Hungary, and Moldova. Within the European Union the major competition comes from France and Eastern Europe. In the Pacific Rim, major competitors include China and India.

Material Issues

The amendments included in this recommended decision would: change the marketing year; include ''pack'' as a handler function; restructure the Board and revise nomination procedures; rename the Board and add authority to change Board composition; modify Board meeting and voting procedures; add authority for marketing promotion and paid advertising; add authority to accept contributions, and to carry over excess assessment funds; broaden the scope of the quality control provisions and add the authority to recommend different regulations for different market destinations; add authority for the Board to designate more than one inspection service; replace outdated order language with current industry terminology; and other related amendments.

The USDA proposed three additional amendments: To establish tenure limitations for Board members, to require that continuance referenda be conducted on a periodic basis to ascertain producer support for the order, and to make any changes to the order as may be necessary to conform with any amendment that may result from the hearing.

All of the proposals are intended to streamline and improve the administration, operation, and functioning of the program. Many of the proposed amendments would up-date the language of the order, thus better representing and conforming to current practices in the industry. The proposed amendments are not expected to result in any significant cost increases for growers or handlers. More efficient administration of program activities may result in cost savings for the Board. A description of the proposed amendments and their anticipated economic impact on large and small entities is outlined below:

Designation of More Than One Inspection Service

Proposal 11 would amend the order to add authority for the Board to designate more than one inspection service, as long as the functions performed by each service are separate and do not conflict with each other.

To ensure that walnuts are properly graded and meet marketing order minimum standards, the Board currently arranges for inspection of walnuts prior to shipping for all walnut handlers. The marketing order currently authorizes contracting with one agency, the California-based Dried Fruit and Nut Association (DFA).

DFA inspects all walnuts that leave California to certify that they meet marketing order minimum standards. Operating as an out-going inspection service, samples of packed walnuts are examined and certified by licensed DFA inspectors at the end of the handling and packing process.

The following data representing current inspection costs, summarizing actual inspection cost data for 2004–05 for the entire industry (44 handlers), was presented at the hearing by Board representatives. According to the record, the 2004–05 cost to serve the 44 handlers was $1.857 million, which is an average cost of just over $42,000 per handler.

Since inspection costs depend largely on volume handled, the four largest handlers account for $1.282 million, or 69% of total inspection expenditure in the 2004–05 crop year. The 37 smaller handlers account for $412,172 in expenditure, about 22 percent of the total, averaging about $11,000 per handler.

ANNUAL WALNUT INSPECTION COSTS USING DFA, 2004–05 CROP YEAR

	DFA cost	Number of handlers	Average per handler
Largest Handlers	$1,282,362	4	$320,591
Additional Large Handlers	162,487	3	54,162
Other Handlers	412,172	37	11,140
All Handlers	1,857,021	44	42,205

Source: Walnut Marketing Board.

The Federal-State Inspection Service (FSIS) has developed effective, less costly alternative inspection programs which do not require the continuous presence of a third party inspector at the end of the packing lines.

The PIQ program is a documented quality assurance system. Under this program, individual handlers must demonstrate and document their ability to handle and pack product that meets all relevant quality requirements. Effectiveness of the program is verified through periodic, unannounced audits of each handler's system by USDA-approved auditors.

Under the Customer Assisted Inspection Program, or CAIP, USDA inspectors oversee the in-line sampling and inspection process performed by trained company staff. USDA oversight ranges from periodic visits throughout the day to a continuous on-site presence.

DFA does not offer inspection services that operate similarly to the PIQ and CAIP programs.

Cost savings would occur by reducing the prevalence of double inspections under the current system. Currently, one inspection is undertaken to meet minimum USDA quality requirements specified in the marketing order. A second inspection is often required to meet the considerably higher standards of specific customers. Moving to a PIQ or CAIP program would greatly reduce inspection costs, because meeting higher standards under PIQ or CAIP would also ensure that an inspected lot met minimum marketing order standards.

Witnesses at the hearing testified that the California walnut industry should allow handlers to take advantage of USDA's alternative inspection programs such as the CAIP and the PIQ. Handlers who do not wish to use the alternative inspection services offered by USDA would continue to use the services of the DFA for traditional inspection services, such as end-line and lot inspections.

The proposal also specifies that ''each service shall be separate so as to not conflict with each other'', meaning that each inspection service would offer distinct and different services (i.e. PIQ vs. lot inspections) so that the integrity of both programs can be maintained.

Witnesses speaking in favor of this proposal explained the importance of a handler's ability to take advantage of inspection services that would most economically fit the size and functions of his or her operation. Currently, all

walnut product is inspected by DFA. While this inspection service has worked well for the industry for many years, the DFA inspection service does not accommodate inspection procedures that support larger handler economies of scale. Witnesses stated that USDA programs, such as PIQ and CAIP, are designed to fit larger scale handling operations, and therefore offer cost saving advantages that the DFA service does not. This proposal, if implemented, would allow handlers to use the alternative inspection programs offered by USDA.

Several witnesses indicated that lowering costs to handlers would benefit growers because they expect that the cost reduction would be reflected in increased payments to growers.

Financial impact calculations provided by the Board (shown in the table below) indicate that introducing the option of using PIQ or CAIP programs could result in savings of $1.09 million, an average per handler savings of $156,067 for the industry's seven largest handlers. Due to the high volumes handled, most of the savings accrue to the four largest handlers, estimated at $1.05 million, or an average per handler of $263,169.

WALNUT INSPECTION COST COMPARISON: DFA VS USDA FOR TOP 7 HANDLERS

	DFA	USDA PIQ/CAIP	Cost savings	
			Total	Per handler
Largest 4 Handlers	$1,282,362	$229,688	$1,052,674	$263,169
Additional 3 large handlers	162,487	122,692	39,795	13,265
Largest 7 Handlers	1,444,849	352,380	1,092,469	156,067

Source: Walnut Marketing Board.

Data from NASS indicate that the two-year average value of the 2003 and 2004 crops was about $415 million. The current DFA inspection cost ($1.857 million) represents a very small proportion of crop value, about 0.4 percent. If the largest 7 handlers used USDA for inspection at a cost of $352,380 and the remaining 37 handlers continue to work with DFA at an estimated cost of $412,172, then the combined cost of $764,552 would represent 0.2 percent of the recent-year crop value.

Witnesses emphasized the cost effectiveness of having an additional inspection agency. If implemented, this proposal would facilitate the streamlining of handler operations to utilize the inspection service best suited to their operations.

Since potential savings are correlated with economies of scale, record evidence indicates that PIQ and CAIP programs would be most beneficial for large handlers. It is unlikely that the smaller handlers would initially opt for these programs. Smaller handlers that expand their operations in the future may realize benefits from switching to PIQ or CAIP. Witnesses stated that no change in inspection costs is expected for handlers remaining with traditional DFA inspection services. Therefore, no financial disadvantages are expected to result from this proposed amendment. If implemented, this proposal may result in an overall decrease in costs of inspection to the industry.

Inspection of Sliced, Chopped or Ground Shelled Walnuts

Proposal 12b would add authority for shelled walnuts to be inspected after having been sliced, chopped, or ground or in any manner changed from shelled walnuts, if regulations for such walnuts are in effect.

New walnut product forms are regularly requested by both domestic and foreign customers. In the last 20 years, the industry has become much more capable of producing at a considerably higher level of quality and of developing more specific types of products that meet the differing needs of individual customers. To capitalize on this growing capability, a number of witnesses expressed the view that an important tool for increasing sales is the ability to establish standards for these walnut products.

The order currently requires shelled product to be certified as merchantable, that is, meeting the minimum USDA requirements prior to further processing. When handlers are processing for end users that require further processing, this certification represents a costly extra step. After the initial shelled walnut certification, the handlers employ their own quality control procedures to meet the higher customer specifications. This proposal would allow a single inspection at the end of the process that would serve both purposes. If implemented, this proposal would allow the Board to recommend modifications to allow certification of product after it has been modified or chopped, leading to cost savings in the handling process.

Witnesses contended that current standards focus on visually observed characteristics that are significant for consumer acceptance, but often do not adequately address specific quality concerns important to various export markets, including Europe. Such concerns include, for example, moisture content or aflatoxin tolerances. If implemented, this proposal would allow the Board to review scientific data and develop inspection procedures for recommendation and approval by USDA to assure customers that walnuts meet their specified criteria.

Any new quality standards recommended by the Board would be subject to thorough review prior to seeking approval from USDA. Witnesses supported this amendment as it would give the Board authority to pursue quality regulations in addition to existing grade standards, both of which are important to industry customers.

Witnesses emphasized that this proposal would grant authority to the Board to recommend quality standards that could exceed current standards or to develop new standards for product characteristics not currently covered. Witnesses also stated that no specific modifications are currently requested, just flexibility to create them in the future.

While this proposed amendment may result in some cost increases associated with administration and oversight of new quality regulations, it is also expected that some handlers may benefit from lower inspection costs if the inspection requirements for specific markets were modified. Any costs associated with the implementation of this proposal are expected to be outweighed by the overall benefits accrued to the industry.

Marketing Promotion and Paid Advertising

Proposal 13 would amend the order by adding authority for marketing promotion and paid advertising.

Current promotional activities for California walnuts are undertaken by

the California Walnut Commission (CWC). Witnesses stated that the CWCs activities have led to considerable success in increasing demand for the industry's product.

Witnesses explained that with price inelastic demand for walnuts, recent increases in production could have driven down prices and total grower revenue. The CWCs successful promotional activities has helped mitigate that potential impact, keeping average grower prices and grower revenue steady or increasing for several years.

According to the hearing record, adding authority for paid advertising and promotion under the order would benefit the industry by allowing the Board to engage in activities that are currently supported by the Commission. Small businesses would be the greatest beneficiaries of an expanded generic advertising program, because they have the least financial resources to devote to selling their products, according to a witness.

While an increase in advertising and promotional activities may result in Board expenditures, witnesses were confident that the positive results of the Board's promotional activities on consumer demand for California walnuts would more than outweigh any increases in costs to the industry.

Impact of Remaining Amendment Proposals

Remaining amendment proposals are largely administrative in nature and would impose no new significant regulatory burdens on California walnut growers or handlers. They should benefit the industry by improving the operation of the program and making it more responsive to industry needs.

Marketing Year

Proposal 1 would amend the order to change the marketing year from August 1 through July 31 to September 1 through August 31. Under the current definition of the order, the California walnut marketing year begins August 1 and continues through July 31. Witnesses explained that, over time, new varieties of walnuts have been introduced, and the areas in which walnuts are cultivated have shifted. The newer varieties mature later than the varieties grown at the time of the program's inception. At the same time, cultivation has slowly moved into areas that previously were not suited for walnut production. With differences in climate, soil, and water, witnesses explained that these new production areas have slightly later growing cycles. The proposed change in the marketing year would better reflect current crop cycles.

Proposed conforming changes would ensure that Board member terms of office and marketing estimates calculated by the Board would conform to the modified marketing year. This amendment is not expected to result in any increases in costs to growers or handlers.

Definition of Pack

Proposal 2 would amend the order by specifying that the act of packing walnuts is considered a handling function. In addition, the term ''pack'' would be amended to include shelling, and would be modified so that packing is applicable to both inshell and shelled walnuts.

According to the hearing record, the order currently defines ''to handle'' as to ''sell, consign, transport, or ship, or in any other way, to put walnuts into the current of commerce''. The definition does not include the specific act of packing. ''To pack'', as currently defined in the order means, ''to bleach, clean, grade or otherwise prepare inshell walnuts for market''. Pack is not currently applicable to shelled walnuts. Witnesses stated that the proposed amendments to the definitions of ''handle'' and ''pack'' would more accurately reflect current industry operations.

This amendment is not expected to result in any increases in costs to growers. If implemented, this proposal may result in some packing entities previously not considered to be handlers under the order to be redefined as handlers. According to witnesses, there are roughly five packer entities that would qualify as handlers under the new definition. While some increases in administration costs on the part of handlers could arise as a result of reporting requirements, record evidence indicates that the benefit of more accurate industry information would merit that expense.

Restructuring of the Board

Proposal 3(a) seeks to amend all parts of the order that refer to cooperative seats on the Board, to redistribute member seats among districts, and to provide designated seats for a major handler, if such handler existed. A major handler would have to handle 35 percent or more of the crop.

According to the hearing record, the recent transition of the industry's largest cooperative from a cooperative entity to a publicly held company was the impetus for this proposal. Witnesses expressed the need to modify the Board structure to provide for representation that accurately reflects the current industry. Witnesses advocated that the Board structure should maintain the current number of Board members and alternates, and that the allocation of member seats between grower and handler positions should remain the same (meaning 4 handler member seats, five grower member seats and one public member).

Witnesses also recommended modifying the allocation of Board representation according to two possible scenarios. The two scenarios include: (1) Membership allocation that acknowledges the existence of a handler handling 35 percent or more of production and, (2) membership allocation in the absence of such handler. According to record evidence, these proposed amendments would not result in any increases in costs.

Nominations

Proposal 3(b) would amend the Board member nomination process to reflect proposed changes in the Board structure, as outlined in 3(a). Current nomination procedures allow for all cooperative seat nominees to be selected by the cooperative and forwarded to the Secretary for approval and appointment. The cooperative nominee selection process is independent of the Board. All non-cooperative seat nominees are selected through a ballot nomination process overseen by the Board staff, and forwarded to the Secretary for approval and appointment.

According to the hearing record, the revised nomination procedures would allow a handler who handles 35 percent or more of the crop to nominate persons to fill its designated seats (as described in 3(a)) and to forward them to the Secretary for approval and appointment. Nomination of persons to fill all other seats would be conducted by the Board staff.

In the event a handler handling 35 percent or more of the crop does not exist, all Board nominees would be selected through a ballot nomination process conducted by the Board staff.

While some increases in administration costs could arise as a result of an increased number of ballots to be mailed by the Board if a major handler does not exist, record evidence indicates that the expense would be minor and would not directly burden growers or handlers.

Qualify by Acceptance

Proposal 4 would require Board nominees to submit a written qualification and acceptance statement prior to selection by USDA. Currently, the acceptance procedure for persons

nominated and selected to serve on the Board involves a two-step process. If this amendment were implemented, the two steps could be combined into one, thus resulting in less paperwork, a shorter acceptance procedure and improved efficiency in the acceptance process. This amendment is not expected to result in any increases in costs to growers or handlers.

California Walnut Board

Proposal 5 would change the name of the Walnut Marketing Board to the California Walnut Board. Witnesses stated that the proposed name of ''California Walnut Board'' would more accurately represent the Board's responsibilities. This amendment is not expected to result in any significant increases in costs to growers or handlers.

Authority To Reestablish Districts and Board Structure

Proposal 6 would add authority to reestablish districts, to reapportion members among districts, and to revise groups eligible for representation on the Board. The intent of this proposal is to provide the Board with a tool to more efficiently respond to the changing character of the California walnut industry. In recommending any such changes, the following would be considered: (1) Shifts in acreage within districts and within the production area during recent years; (2) the importance of new production in its relation to existing districts; (3) the equitable relationship between Board apportionment and districts; (4) changes in industry structure and/or the percentage of crop represented by various industry entities resulting in the existence of two or more handlers handling 35 percent or more of the crop; and (5) other relevant factors. This amendment is not expected to result in any increases in costs to growers or handlers.

Voting Procedures

Proposal 7 would amend Board quorum and voting requirements to add percentage requirements, add authority for the Board to vote by ''any other means of communication'' (including facsimile) and add authority for Board meetings to be held by telephone or by ''any other means of communication''.

Witnesses stated that references to the meeting quorum requirements should be amended to include a percentage equivalent of the current six-out-of-10-member minimum, or sixty percent. In addition, witnesses supported modifying the order language regarding voting requirements to state that a sixty-percent super-majority vote of the members present at a meeting should be required of all Board decisions, except where otherwise specifically provided. The order currently states that a majority vote is needed, with no percentage equivalent specified.

According to the record, the order currently requires that all Board meetings be held at a physical location. Witnesses stated that the order should be amended to allow for some meetings to be held using ''other means of communication'', such as telephone or videoconferencing. Witnesses stated that use of new communication technology would result in timesavings while still allowing the Board to conduct its business. Witnesses stated that it is the intent of the Board that voting procedures for all types of non-traditional meetings can be recommended and adopted as appropriate for each type of technology used.

Amendments proposed under this material issue are not expected to result in any significant changes in costs to growers or handlers.

Carryover of Excess Assessment Funds

Proposal 8 would amend the order to add authority to carry over excess assessment funds. According to the hearing record, the order currently states that any assessment funds held in excess of the marketing year's expenses must be refunded to handlers. Refunds are returned to handlers in accordance with the amount of that handler's pro rata share of the actual expenses of the Board.

This proposed amendment would allow the Board, with the approval of the Secretary, to establish an operating monetary reserve. This would allow the Board to carry over to subsequent production years any excess funds in a reserve, provided that funds already in the reserve do not exceed approximately two years' expenses. If reserve funds do exceed that amount, the assessment rate could be reduced so as to cause reserves to diminish to a level below the two-year threshold.

According to the record, reserve funds could be used to defray expenses during any production year before assessment income is sufficient to cover such expenses, or to cover deficits incurred during any fiscal period when assessment income is less than expenses. Additionally, reserve funds could be used to defray expenses incurred during any period when any or all of the provisions of the order are suspended, or to meet any other such costs recommended by the Board and approved by the Secretary. This proposal is not expected to result in any significant increases in costs to growers or handlers.

Contributions

Proposal 9 would amend the order by adding authority to accept contributions. If implemented, this proposed amendment would grant authority to the Board to accept voluntary contributions. Contributions could only be used to pay for research and development activities, and would be free from any encumbrances by the donor. According to the hearing record, the Board would retain oversight of the application of such contributions.

Witnesses supported this proposal by stating that it would provide the Board and the industry with valuable resources to enhance research and development activities. It is not expected that this proposal would result in any additional costs to growers or handlers.

Reimbursement of Expenses

Proposal 10 would amend the order to clarify that members and alternate members may be reimbursed for expenses incurred while performing their duties and that reimbursement includes per diem. According to the hearing record, this proposed amendment would not have any impact on the current expense reimbursement activities of the Board. Rather, it would clarify and update order language to more clearly state that while Board members and alternates serve without compensation, expenses incurred while performing the duties of a Board member that have been authorized by the Board will be incurred. It is not expected that this proposal would result in any additional costs to growers or handlers.

Quality Regulations

Proposal 12a would broaden the scope of the quality control provisions by adding authority to recommend different regulations for different market destinations. Witnesses emphasized the usefulness in terms of market development of being able to establish different regulations for individual markets and/or regions. Witnesses stated that allowing the Board to make such recommendations would help the walnut industry adapt to changing international market conditions.

Updating Order Terminology

Proposal 14 would amend the order by replacing the terms ''carryover'' with ''inventory,'' and ''mammoth'' with ''jumbo,'' to reflect current day industry procedures. This proposal would also

result in conforming changes being made to the ''Marketing estimates and recommendations'' and ''Reports of handler carryover'' sections of the order.

Handler carryover, defines the amount of California walnuts (both merchantable as well as the estimated quantity of merchantable walnuts to be produced from shelling stock and unsorted material), wherever located, held by California walnut handlers at any given time.

Witnesses explained that the current term ''carryover'' is misleading in that the term implies the amount of inventory held by handlers from one marketing year to the next. Witnesses stated that the term ''inventory'' would more accurately convey the intent of this definition, and would also reflect current day calculations of walnut availability.

Section 984.67, Exemptions, of the order provides for situations under which California walnuts may be exempted from complying with order regulations. One exemption is applicable to lots of merchantable inshell walnuts that are mammoth size or larger, as defined by the United States Standards for Walnuts in the Shell.

Witnesses stated that given the new varieties currently being produced in the industry, the term ''mammoth'' no longer applies. According to record evidence, the current production's equivalent to ''mammoth'' size is ''jumbo'' size, as defined by the United States Standards for Walnuts in the Shell. Thus, witnesses stated that the order language should be updated to reflect the industry's current terminology and size of walnuts being produced. This proposal is not expected to result in any increases in costs to growers or handlers.

Interhandler Transfers

Proposal 15(a) would amend the order to clarify the term ''transfer'' and to add authority for the Board to recommend methods and procedures, including necessary reports, for administrative oversight of such transfers.

Witnesses stated that it would be beneficial to simplify current order language so that all interhandler transfers were considered a ''sale of inshell and shelled walnuts within the area of production by one handler to another.'' Witnesses explained that the proposed language restated the current application of this provision in walnut transactions in simpler terms. This proposal is not expected to result in any increases in costs to growers or handlers.

Reporting Requirements

Proposal 15(b) would amend the order to clarify that the Board may require reports from handlers and packers to include interhandler transfers or any other activity that involves placing California walnuts into the stream of commerce.

According to the hearing record, current authority provided in this section only applies to the reporting of handler walnut receipts from growers. Witnesses stated that this authority should be broadened to include interhandler transfers, or receipts from any other entity as recommended by the Board and approved by the Secretary. This proposal is not expected to result in any increases in costs to growers or handlers.

Trade Demand

Proposal 16 would update and simplify the language in § 984.22, Trade demand, to state ''United States and its territories,'' rather than name ''Puerto Rico'' and ''The Canal Zone''. Witnesses explained that the reference to ''Puerto Rico'' and ''The Canal Zone'' in the order is outdated and should be updated to reference ''United States and its territories''.

According to record evidence, this amendment would not impact trade demand calculations under the order since the purpose of the reference is to accurately identify the amount of shelled or inshell walnuts demanded by the Untied States, including its territories. Thus, while the terminology identifying the geographic regions included in the calculation would change, the intent of the original language would remain unchanged. This proposal is not expected to result in any increases in costs to growers or handlers.

Relationship With California Walnut Commission

Proposal 17 would amend the order by adding language that would acknowledge that the Board may deliberate, consult, cooperate and exchange information with the California Walnut Commission (CWC). Any information sharing would be kept confidential.

Record evidence indicates the CWC and the Federal marketing order program are currently administered out of the same office location and employ the same staff. Thus, this proposal, if implemented, would formalize the relationship that currently exists between the two entities. Witnesses stated that collaboration between the two programs leads to reduced administrative costs, as much of the information collected by each entity can be shared. This amendment is not expected to result in any increases in costs to growers or handlers.

In addition, USDA proposed adding two provisions that would help assure that the operation of the program conforms to current Department policy.

Proposal 18 would establish tenure requirements for Board members. Currently, the term of office of each member and alternate member of the Board is 2 years. There are no provisions related to term limits in the marketing order.

The record evidence suggests that term limits for Board members could increase industry participation on the Board, provide for more diverse membership, provide the Board with new perspectives and ideas, and increase the number of individuals in the industry with Board experience. This amendment is not expected to result in any increases in costs to growers or handlers.

Proposal 19 would require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order and add more flexibility in the termination provisions.

Currently, there is no requirement in the order that continuance referenda be conducted on a periodic basis. The USDA believes that growers should have an opportunity to periodically vote on whether a marketing order should continue. Continuance referenda provide an industry with a means to measure grower support for the program. Experience has shown that programs need significant industry support to operate effectively. This amendment is not expected to result in any increases in costs to growers or handlers.

The proposals put forth at the hearing would streamline program organization, but are not expected to result in a significant change in industry production, handling or distribution activities. In discussing the impacts of the proposed amendments on growers and handlers, record evidence indicates that the changes are expected to be positive because the administration of the programs would be more efficient, and therefore more effective, in executing Board duties and responsibilities. There would be no significant cost impact on either small or large growers or handlers.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small entities. The record evidence is that most of the

amendments are designed to increase efficiency in the functioning of the orders.

Current information collection requirements for Part 984 are approved by OMB under OMB number 0581–0178, Vegetable and Specialty Crops. Any changes in those requirements as a result of this proceeding would be submitted to OMB for approval. Witnesses stated that existing forms could be adequately modified to serve the needs of the Board. While conforming changes to the forms would need to be made (such as changing the name of the Board), the functionality of the forms would remain the same.

As with other similar marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of marketing order 984 to the benefit of the California walnut industry.

Board meetings regarding these proposals as well as the hearing dates were widely publicized throughout the California walnut industry. All interested persons were invited to attend the meetings and the hearing and participate in deliberations on all issues. All Board meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate so that this rulemaking may be completed and nominations can be conducted prior to the beginning of the next crop year. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

AMS is committed to complying with the E-Government Elimination Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Further, the public hearing held on May 17 and 18, 2006, in Modesto, California, was widely publicized throughout the California walnut industry and all interested persons were invited to attend and all entities, both large and small, were able to express their views on this issue.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Civil Justice Reform

The amendments to Marketing Order No. 984 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Rulings on Briefs of Interested Persons

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of walnuts grown in the production area (the State of California) in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreements and orders upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production areas which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production areas would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of walnuts grown in the production area; and

(5) All handling of walnuts grown in the production areas as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, and Walnuts.

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Revise § 984.6 to read as follows:

§ 984.6 Board.

Board means the California Walnut Board established pursuant to § 934.35.

3. Revise § 984.7 to read as follows:

§ 984.7 Marketing year.

Marketing year means the twelve months from September 1 to the following August 31, both inclusive, or any other such period deemed appropriate and recommended by the Board for approval by the Secretary.

4. Revise § 984.13 to read as follows:

§ 984.13 To handle.

To handle means to pack, sell, consign, transport, or ship (except as a common or contract carrier of walnuts owned by another person), or in any other way to put walnuts, inshell or shelled, into the current of commerce either within the area of production or from such area to any point outside thereof, or for a manufacturer or retailer within the area of production to purchase directly from a grower: The term ''to handle'' shall not include sales and deliveries within the area of production by growers to handlers, or between handlers.

5. Revise § 984.14 to read as follows:

§ 984.14 Handler.

Handler means any person who handles inshell or shelled walnuts.

6. Revise § 984.15 to read as follows:

§ 984.15 Pack.

Pack means to bleach, clean, grade, shell or otherwise prepare walnuts for market as inshell or shelled walnuts.

7. Revise § 984.21 to read as follows:

§ 984.21 Handler inventory.

Handler inventory as of any date means all walnuts, inshell or shelled (except those held in satisfaction of a reserve obligation), wherever located, then held by a handler or for his or her account.

8. Revise § 984.22 to read as follows:

§ 984.22 Trade demand.

(a) *Inshell.* The quantity of merchantable inshell walnuts that the trade will acquire from all handlers during a marketing year for distribution in the United States and its territories.

(b) *Shelled.* The quantity of merchantable shelled walnuts that the trade will acquire from all handlers during a marketing year for distribution in the United States and its territories.

9. Revise § 984.35 to read as follows:

§ 984.35 California Walnut Board.

(a) A California Walnut Board is hereby established consisting of 10 members selected by the Secretary, each of whom shall have an alternate nominated and selected in the same way and with the same qualifications as the member. The members and their alternates shall be selected by the Secretary from nominees submitted by each of the following groups or from other eligible persons belonging to such groups:

(1) Two handler members from District 1;

(2) Two handler members from District 2;

(3) Two grower members from District 1;

(4) Two grower members from District 2;

(5) One grower member nominated at-large from the production area; and,

(6) One member and alternate who shall be selected after the selection of the nine handler and grower members and after the opportunity for such members to nominate the tenth member and alternate. The tenth member and his or her alternate shall be neither a walnut grower nor a handler.

(b) In the event that one handler handles 35% or more of the crop the membership of the Board shall be as follows:

(1) Two handler members to represent the handler that handles 35% or more of the crop;

(2) Two members to represent growers who market their walnuts through the handler that handles 35% or more of the crop;

(3) Two handler members to represent handlers that do not handle 35% or more of the crop;

(4) One member to represent growers from District 1 who market their walnuts through handlers that do not handle 35% or more of the crop;

(5) One member to represent growers from District 2 who market their walnuts through handlers that do not handle 35% or more of the crop;

(6) One member to represent growers who market their walnuts through handlers that do not handle 35% or more of the crop shall be nominated at large from the production area; and,

(7) One member and alternate who shall be selected after the selection of the nine handler and grower members and after the opportunity for such members to nominate the tenth member and alternate. The tenth member and his or her alternate shall be neither a walnut grower nor a handler.

(c) Grower Districts:

(1) *District 1.* District 1 encompasses the counties in the State of California that lie north of a line drawn on the south boundaries of San Mateo, Alameda, San Joaquin, Calaveras, and Alpine Counties.

(2) *District 2.* District 2 shall consist of all other walnut producing counties in the State of California south of the boundary line set forth in paragraph (c)(1) of this section.

(d) The Secretary, upon recommendation of the Board, may reestablish districts, may reapportion members among districts, and may revise the groups eligible for representation on the Board as specified in paragraphs (a) and (b) of this section: Provided, That any such recommendation shall require at least six concurring votes of the voting members of the Board. In recommending any such changes, the following shall be considered:

(1) Shifts in acreage within districts and within the production area during recent years;

(2) The importance of new production in its relation to existing districts;

(3) The equitable relationship between Board apportionment and districts;

(4) Changes in industry structure and/or the percentage of crop represented by various industry entities resulting in the existence of two or more major handlers;

(5) Other relevant factors.

10. Revise § 984.36 to read as follows:

§ 984.36 Term of office.

The term of office of Board members, and their alternates shall be for a period of two years ending on August 31 of odd-numbered years, but they shall serve until their respective successors are selected and have qualified. Board members may serve up to three consecutive, two-year terms of office. In no event shall any member serve more than six consecutive years on the Board. For purposes of determining when a Board member has served three consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office. The limitation on tenure shall not apply to alternates.

11. Revise § 984.37 to read as follows:

§ 984.37 Nominations.

(a) Nominations for all grower members shall be submitted by ballot pursuant to an announcement by press releases of the Board to the news media in the walnut producing areas. Such releases shall provide pertinent voting information, including the names of candidates and the location where ballots may be obtained. Ballots shall be accompanied by full instructions as to their markings and mailing and shall include the names of incumbents who are willing to continue serving on the Board and such other candidates as may be proposed pursuant to methods established by the Board with the approval of the Secretary. Each grower, regardless of the number and location of his or her walnut orchard(s), shall be entitled to cast only one ballot in the nomination and each vote shall be given

equal weight. If the grower has orchards in both grower districts, he or she shall advise the Board of the district in which he/she desires to vote. The person receiving the highest number of votes for each grower position shall be the nominee.

(b) Nominations for handler members shall be submitted on ballots mailed by the Board to all handlers in their respective Districts. All handlers' votes shall be weighted by the kernelweight of walnuts certified as merchantable by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates. However, no handler with less than 35% of the crop shall have more than one member and one alternate member. The person receiving the highest number of votes for each handler member position shall be the nominee for that position.

(c) A calculation to determine whether or not a handler who handles 35 percent or more of the crop shall be made prior to nominations. For the first nominations held upon implementation of this language, the 35 percent threshold shall be calculated using an average of crop handled for the year in which nominations are made and one year's handling prior. For all future nominations, the 35 percent handling calculation shall be based in the average of the two years prior to the year in which nominations are made. In the event that one handler handles 35% or more of the crop the membership of the Board, nominations shall be as follows:

(1) Nominations of growers who market their walnuts to the handler that handles 35% or more of the crop shall be conducted by that handler and the names of the nominees shall be forwarded to the Board for approval and appointment by the Secretary.

(2) Nominations for the two handler members representing the major handler shall be conducted by the major handler and the names of the nominees shall be forwarded to the Board for approval and appointment by the Secretary.

(3) Nominations on behalf of all other grower members (Groups (b) (4), (5) and (6) of § 984.35) shall be submitted after ballot by such growers pursuant to an announcement by press releases of the Board to the news media in the walnut producing areas. Such releases shall provide pertinent voting information, including the names of candidates and the location where ballots may be obtained. Ballots shall be accompanied by full instructions as to their markings and mailing and shall include the names of incumbents who are willing to continue serving on the Board and such other candidates as may be proposed pursuant to methods established by the Board with the approval of the Secretary. Each grower in Groups (Groups (b) (4), (5) and (6) of § 984.35), regardless of the number and location of his or her walnut orchard(s), shall be entitled to cast only one ballot in the nomination and each vote shall be given equal weight. If the grower has orchard(s) in both grower districts he or she shall advise the Board of the district in which he or she desires to vote. The person receiving the highest number of votes for grower position shall be the nominee.

(4) Nominations for handler members representing handlers that do not handle 35% or more of the crop shall be submitted on ballots mailed by the Board to those handlers. The votes of these handlers shall be weighted by the kernelweight of walnuts certified as merchantable by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates of this subsection. However, no handler shall have more than one person on the Board either as member or alternate member. The person receiving the highest number of votes for a handler member position of this subsection shall be the nominee for that position.

(d) Each grower is entitled to participate in only one nomination process, regardless of the number of handler entities to whom he or she delivers walnuts. If a grower delivers walnuts to more than one handler entity, the grower must choose which nomination process he or she participates in.

(e) The nine members shall nominate one person as member and one person as alternate for the tenth member position. The tenth member and alternate shall be nominated by not less than 6 votes cast by the nine members of the Board.

(f) Nominations in the foregoing manner received by the Board shall be reported to the Secretary on or before June 15 of each odd-numbered year, together with a certified summary of the results of the nominations. If the Board fails to report nominations to the Secretary in the manner herein specified by June 15 of each odd-numbered year, the Secretary may select the members without nomination. If nominations for the tenth member are not submitted by September 1 of any such year, the Secretary may select such member without nomination.

(g) The Board may recommend, subject to the approval of the Secretary, a change to these nomination procedures should the Board determine that a revision is necessary.

12. Revise § 984.38 to read as follows:

§ 984.38 Eligibility.

No person shall be selected or continue to serve as a member or alternate to represent one of the groups specified in § 984.35(a)(1) through (6) or § 984.38(b)(1) through (6), unless he or she is engaged in the business he or she is to represent, or represents, either in his or her own behalf or as an officer or employee if the business unit engaged in such business. Also, each member or alternate member representing growers in District 1 or District 2 shall be a grower, or officer or employee of the group he or she is to represent.

13. Revise § 984.39 to read as follows:

§ 984.39 Qualify by acceptance.

Any person nominated to serve as a member or alternate member of the Board shall, prior to selection by USDA, qualify by filing a written qualification and acceptance statement indicating such person's willingness to serve in the position for which nominated.

§ 984.40 [Amended]

14. Amend § 984.40 by removing the word ''his'' and adding the phrase ''his or her'' in its place in 2 places in paragraph (a) and 3 places in paragraph (b), and by removing the last sentence in paragraph (b).

15. Revise § 984.42 to read as follows:

§ 984.42 Expenses.

The members and their alternates of the Board shall serve without compensation, but shall be allowed their necessary expenses incurred by them in the performance of their duties under this part.

16. Amend § 984.45 by revising paragraphs (b) and (c) and adding paragraph (d) to read as follows:

§ 984.45 Procedure.

(a) * * *

(b) All decisions of the Board, except where otherwise specifically provided (see § 984.35(d)), shall be by a sixty-percent (60%) super-majority vote of the members present. A quorum of six members, or the equivalent of sixty percent (60%) of the Board, shall be required for the conduct of Board business.

(c) The Board may vote by mail or telegram, or by any other means of communication, upon due notice to all members. The Board, with the approval of the Secretary, shall prescribe the minimum number of votes that must be cast when voting is by any of these methods, and any other procedures

necessary to carry out the objectives of this paragraph.

(d) The Board may provide for meetings by telephone, or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing: Provided, That if any assembled meeting is held, all votes shall be cast in person.

17. Revise § 984.46 to read as follows:

§ 984.46 Research and development.

The Board, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of walnuts. The expenses of such projects shall be paid from funds collected pursuant to § 984.69 and § 984.70.

18. Amend § 984.48 by revising paragraphs (a) introductory text, (a)(2), (4), and (5) to read as follows:

§ 984.48 Marketing estimates and recommendations.

(a) Each marketing year the Board shall hold a meeting, prior to October 20, for the purpose of recommending to the Secretary a marketing policy for such year. Each year such recommendation shall be adopted by the affirmative vote of at least 60% of the Board and shall include the following, and where applicable, on a kernelweight basis:

(1) * * *

(2) Its estimate of the handler inventory on September 1 of inshell and shelled walnuts;

(3) * * *

(4) Its estimate of the trade demand for such marketing year for shelled and inshell walnuts, taking into consideration trade inventory, imports, prices, competing nut supplies, and other factors;

(5) Its recommendation for desirable handler inventory of inshell and shelled walnuts on August 31 of each marketing year;

* * * * *

19. Amend § 984.50 by revising the heading and paragraph (d) to read as follows:

§ 984.50 Grade, quality and size regulations.

* * * * *

(d) *Additional grade, size or other quality regulation.* The Board may recommend to the Secretary additional grade, size or other quality regulations, and may also recommend different regulations for different market destinations. If the Secretary finds on the basis of such recommendation or other information that such additional regulations would tend to effectuate the declared policy of the Act, he or she shall establish such regulations.

* * * * *

20. Amend § 984.51 by revising paragraph (a) to read as follows:

§ 984.51 Inspection and certification of inshell and shelled walnuts.

(a) Before or upon handling of any walnuts for use as free or reserve walnuts, each handler at his or her own expense shall cause such walnuts to be inspected to determine whether they meet the then applicable grade and size regulations. Such inspection shall be performed by the inspection service or services designated by the Board with the approval of the Secretary; Provided, That if more than one inspection service is designated, the functions performed by each service shall be separate, and shall not duplicate each other. Handlers shall obtain a certificate for each inspection and cause a copy of each certificate issued by the inspection service to be furnished to the Board. Each certificate shall show the identity of the handler, quantity of walnuts, the date of inspection, and for inshell walnuts the grade and size of such walnuts as set forth in the United States Standards for Walnuts (Juglans regia) in the Shell. Certificates covering reserve shelled walnuts for export shall also show the grade, size, and color of such walnuts as set forth in the United States Standards for Shelled Walnuts (Juglans regia). The Board, with the approval of the Secretary, may prescribe procedures for the administration of this provision.

* * * * *

21. Amend § 984.52 by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 984.52 Processing of shelled walnuts.

(a) No handler shall slice, chop, grind, or in any manner change the form of shelled walnuts unless such walnuts have been certified as merchantable or unless such walnuts meet quality regulations established under § 984.50(d) if such regulations are in effect.

* * * * *

(c) The Board shall establish such procedures as are necessary to insure that all such walnuts are inspected prior to being placed into the current of commerce.

22. Revise § 984.59 to read as follows:

§ 984.59 Interhandler transfers.

For the purposes of this part, transfer means the sale of inshell and shelled walnuts within the area of production by one handler to another. The Board, with the approval of the Secretary, may establish methods and procedures, including necessary reports, for such transfers.

§ 984.67 [Amended]

23. Amend § 984.67 by removing the word ''mammoth'' and adding the word ''jumbo'' in its place in paragraph (a).

24. Amend § 984.69 by revising paragraph (c) to read as follows:

§ 984.69 Assessments.

* * * * *

(c) *Accounting.* If at the end of a marketing year the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (c)(2) or (c)(3) of this section, it shall be refunded to handlers from whom collected and each handler's share of such excess funds shall be the amount of assessments he or she has paid in excess of his or her pro rata share of the actual expenses of the Board.

(2) Excess funds may be used temporarily by the Board to defray expenses of the subsequent marketing year: Provided, That each handler's share of such excess shall be made available to him or her by the Board within five months after the end of the year.

(3) The Board may carry over such excess into subsequent marketing years as a reserve: Provided, That funds already in reserve do not exceed approximately two years' budgeted expenses. In the event that funds exceed two marketing years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two marketing years' budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any marketing year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any year when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended;

(iv) To meet any other such costs recommended by the Board and approved by the Secretary.

* * * * *

25. Add a new § 984.70 to read as follows:

§ 984.70 Contributions.

The Board may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 984.46, Research and development. Furthermore, such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use.

26. Revise § 984.71 to read as follows:

§ 984.71 Reports of handler inventory.

Each handler shall submit to the Board in such form and on such dates as the Board may prescribe, reports showing his or her inventory of inshell and shelled walnuts.

27. Revise § 984.73 to read as follows:

§ 984.73 Reports of walnut receipts.

Each handler shall file such reports of his or her walnut receipts from growers, handlers, or others in such form and at such times as may be requested by the Board with the approval of the Secretary.

28. Amend § 984.89 by redesignating paragraph (b)(4) as (b)(5) and adding a new paragraph (b)(4) to read as follows:

§ 984.89 Effective time and termination.

* * * * *

(b) * * *

(4) Within six years of the effective date of this amendment the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by a two-thirds (2/3) majority of voting producers, or a two-thirds (2/3) majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of walnuts in the production area. Such termination shall be announced on or before the end of the production year.

* * * * *

29. Add a new § 984.91 to read as follows:

§ 984.91 Relationship with the California Walnut Commission.

In conducting Board activities and other objectives under this part, the Board may deliberate, consult, cooperate and exchange information with the California Walnut Commission, whose activities compliment those of the Board. Any sharing of information gathered under this subpart shall be kept confidential in accordance with provisions under section 10(i) of the Act.

Dated: March 19, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

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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.

RULES GOING INTO EFFECT MARCH 27, 2007

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Medicine Bow-Routt National Forests and Thunder Basin National Grassland; WY; Open for comments until further notice; published 3-13-07 [FR 07-01157]

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LIST OF PUBLIC LAWS

This is a continuing list of publicnn 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.

H.R. 584 / P.L. 110–15

To designate the Federal building located at 400 Maryland Avenue Southwest in the District of Columbia as the "Lyndon Baines Johnson Department of Education Building". (Mar. 23, 2007; 121 Stat. 70; 1 page)

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