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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. AMS–FV–06–0225; FV07–932–1 FR]

Olives Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the California Olive Committee (committee) for the 2007 and subsequent fiscal years from $11.03 to $47.84 per assessable ton of olives handled. The committee locally administers the marketing order which regulates the handling of olives grown in California. Assessments upon olive handlers are used by the committee to fund reasonable and necessary expenses of the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective April 13, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer R. Garcia, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or e-mail: *Jennifer.Garcia@usda.gov* or *Kurt.Kimmel@usda.gov*.

Small businesses may request information on complying with this regulation 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: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein would be applicable to all assessable olives beginning on January 1, 2007, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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. Such 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.

This rule increases the assessment rate established for the committee for the 2007 and subsequent fiscal years from $11.03 to $47.84 per ton of assessable olives from the applicable crop years.

The California olive marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The fiscal year, which is the 12-month period between January 1 and December 31, begins after the corresponding crop year, which is the 12-month period beginning August 1 and ending July 31 of the subsequent year. Fiscal year budget and assessment recommendations are made after the corresponding crop year olive tonnage is reported. The members of the committee are producers and handlers of California olives. They are familiar with the committee's needs and with costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2006 and subsequent fiscal years, the committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on December 12, 2006, and unanimously recommended 2007 fiscal year expenditures of $950,396 and an assessment rate of $47.84 per ton of assessable olives. In comparison, the budgeted expenditures for fiscal year 2006 were $1,301,121. The assessment rate of $47.84 is $36.81 higher than the rate currently in effect. The committee recommended the higher assessment rate because the 2006–07 assessable olive receipts as reported by the California Agricultural Statistics Service (CASS) are only 16,270 tons, which compares to 114,761 tons in 2005–06. Unusual weather conditions, including a wet winter and very hot summer, contributed to a substantially smaller crop. The committee also plans to use available reserve funds to help meet its 2007 expenses.

The major expenditures recommended by the committee for the 2007 fiscal year include $365,775 for research, $332,450 for marketing activities, and $252,171 for administration. Budgeted expenditures for these items in 2006 were $210,000, $800,700, and $290,421, respectively. The committee recommended a larger

2007 research budget so it can continue its ongoing olive fly research and research to develop a mechanical olive harvesting method. The 2007 marketing program would be scaled back. Recommended decreases in the administrative budget are due mainly to tighter budgeting in several areas.

The assessment rate recommended by the committee was derived by considering anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2006–07 crop year, and additional pertinent factors. Actual assessable tonnage for the 2007 fiscal year is expected to be lower than the 2006–07 crop receipts of 16,270 tons reported by the CASS because some olives may be diverted by handlers to uses that are exempt from marketing order requirements. Income derived from handler assessments, along with funds from the committee's authorized reserve and interest income, would be adequate to cover budgeted expenses. Funds in the reserve would be kept within the maximum permitted by the order of approximately one fiscal year's expenses (§ 932.40).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The committee's 2007 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 850 producers of olives in the production area and 2 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

Based upon information from the committee, the majority of olive producers may be classified as small entities. Both of the handlers may be classified as large entities.

This rule increases the assessment rate established for the committee and collected from handlers for the 2007 and subsequent fiscal years from $11.03 to $47.84 per ton of assessable olives. The committee unanimously recommended 2007 expenditures of $950,396 and an assessment rate of $47.84 per ton. The proposed assessment rate of $47.84 is $36.81 higher than the 2006 rate. The higher assessment rate is necessary because assessable olive receipts for the 2006–07 crop year were reported by the CASS to be 16,270 tons, compared to 114,761 tons for the 2005–06 crop year. Actual assessable tonnage for the 2007 fiscal year is expected to be lower because some of the receipts may be diverted by handlers to exempt outlets on which assessments are not paid.

Income generated from the $47.84 per ton assessment rate should be adequate to meet this year's expenses when combined with funds from the authorized reserve and interest income. Funds in the reserve would be kept within the maximum permitted by the order of about one fiscal year's expenses (§ 932.40).

Expenditures recommended by the committee for the 2007 fiscal year include $365,775 for research, $332,450 for marketing activities, and $252,171 for administration. Budgeted expenses for these items in 2006 were $210,000, $800,700, and $290,421 respectively. The committee recommended a larger 2007 research budget so it can continue its olive fly research projects and research to develop a mechanical olive harvesting method. The 2007 marketing program would be scaled back. Recommended decreases in the administrative budget are due mainly to tighter budgeting in several areas.

Prior to arriving at this budget, the committee considered information from various sources, such as the committee's Executive, Market Development, and Research Subcommittees. Alternate spending levels were discussed by these groups, based upon the relative value of various research and marketing projects to the olive industry and the reduced olive production. The assessment rate of $47.84 per ton of assessable olives was derived by considering anticipated expenses, the volume of assessable olives and additional pertinent factors.

A review of historical information indicates that the grower price for the 2006–07 crop year was approximately $960.57 per ton for canning fruit and $344.56 per ton for limited-use sizes, leaving the balance as unusable cull fruit. Approximately 87 percent of a ton of olives are canning fruit sizes and 9 percent are limited use sizes, leaving the balance as unusable cull fruit. Grower revenue on 16,270 total tons of canning and limited-use sizes would be $14,704,092 given the current grower prices for those sizes. Therefore, with an assessment rate increased from $11.03 to $47.84, the estimated assessment revenue is expected to be approximately 5 percent of grower revenue.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the December 12, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The AMS is committed to complying with the E-Government 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on March 7, 2007 (72 FR 10091). Copies of the proposed rule were also mailed or sent via facsimile to all olive handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending March 22, 2007, was provided for interested persons to respond to the proposal. No comments were received.

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.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2007 fiscal year began on January 1, 2007, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during such fiscal year; (2) the committee needs sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was discussed by the committee and unanimously recommended at a public meeting, and is similar to other assessment rate actions issued in past years. Also, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 932 is proposed to be amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2007, an assessment rate of $47.84 per ton is established for California olives.

Dated: April 9, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–1832 Filed 4–10–07; 1:10 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket Nos. AMS–FV–07–0039; FV07–985–2 IFR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 1 (Scotch) and Class 3 (Native) Spearmint Oil for the 2006–2007 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the quantity of Class 1 (Scotch) and Class 3 (Native) spearmint oil that handlers may purchase from, or handle for, producers during the 2006–2007 marketing year. This rule increases the Scotch spearmint oil salable quantity from 878,205 pounds to 2,984,817 pounds, and the allotment percentage from 45 percent to 153 percent. In addition, this rule increases the Native spearmint oil salable quantity from 1,161,260 pounds to 1,205,208 pounds, and the allotment percentage from 53 percent to 55 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

DATES: Effective June 1, 2006, through May 31, 2007; comments received by June 11, 2007 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or 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** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.*

FURTHER INFORMATION CONTACT: Susan M. Hiller, Marketing Specialist, or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or e-mail: *Susan.Hiller@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation 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: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Scotch and Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 2006–2007 marketing year, which ends on May 31, 2007. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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.

The original salable quantity and allotment percentages for Scotch and Native spearmint oil for the 2006–2007 marketing year were recommended by the Committee at its October 5, 2005, meeting. The Committee recommended salable quantities of 878,205 pounds and 1,007,886 pounds, and allotment percentages of 45 percent and 46 percent, respectively, for Scotch and Native spearmint oil. A proposed rule was published in the **Federal Register** on February 1, 2006 (71 FR 5183). Comments on the proposed rule were solicited from interested persons until March 3, 2006. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2006–2007 marketing year was published in the **Federal Register** on April 5, 2006 (71 FR 16986).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the Committee has made recommendations to increase the quantity of Scotch and Native spearmint oil that handlers may purchase from, or handle for, producers during the 2006–2007 marketing year, which ends on May 31, 2007. An interim final rule was published in the **Federal Register** on May 26, 2006 (71 FR 30266), which increased the 2006–2007 salable quantity and allotment percentage for Native spearmint oil to 1,161,260 pounds and 53 percent, respectively. Comments on the interim final rule were solicited from interested persons until July 25, 2006. No comments were received. Subsequently, a final rule establishing the salable quantity and allotment percentage for Native spearmint oil was published in the **Federal Register** on September 7, 2006 (71 FR 52735).

This rule would further revise the quantity of Scotch and Native spearmint oil that handlers may purchase from, or handle for, producers during the 2006–2007 marketing year, which ends on May 31, 2007. The Committee, with all eight members present, met on February 21, 2007, and in two separate motions, recommended that the 2006–2007 Scotch and Native spearmint oil allotment percentages be increased by 108 percent and 2 percent, respectively. The motion to increase the allotment percentage for Scotch was unanimous and the motion to increase the allotment percentage for Native passed with seven members in favor and one member opposed. The member opposing was concerned that there was not enough demand.

Thus, taking into consideration the following discussion on adjustments to the Scotch and Native spearmint oil salable quantities, this rule increases the 2006–2007 marketing year salable quantities and allotment percentages for Scotch and Native spearmint oil to 2,984,817 pounds and 153 percent, and 1,205,208 pounds and 55 percent, respectively.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during the marketing year. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The total industry allotment base for Scotch spearmint oil for the 2006–2007 marketing year was estimated by the Committee at the October 5, 2005, meeting at 1,951,567 pounds. This was later revised at the beginning of the 2006–2007 marketing year to 1,950,861 pounds to reflect a 2005–2006 marketing year loss of 706 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 1,950,861 pounds is applied to the originally established allotment percentage of 45 percent, the initially established 2006–2007 marketing year salable quantity of 878,205 pounds is effectively modified to 877,887 pounds.

The same situation applies to Native spearmint oil where the Committee estimated that the total industry allotment base for the 2006–2007 marketing year was established at 2,191,056 pounds and was revised at the beginning of the 2006–2007 marketing year to 2,191,287 pounds to reflect a 2005–2006 marketing year gain of 231 pounds of base for new and existing producers. When the revised total allotment base of 2,191,287 pounds is applied to the originally established allotment percentage of 46 percent, the initially established 2006–2007 marketing year salable quantity of 1,007,886 pounds is effectively modified to 1,007,992 pounds.

By increasing the salable quantities and allotment percentages, this rule makes an additional amount of Scotch and Native spearmint oil available by releasing oil from the reserve pool. When applied to each individual producer, the allotment percentage increase allows each producer to take up to an amount equal to their allotment base from their reserve for this respective class of oil. In addition, pursuant to §§ 985.56 and 985.156, producers with excess oil are not able to transfer such excess oil to other producers to fill deficiencies in annual allotments after October 31 of each marketing year.

The following table summarizes the Committee recommendations:

Scotch Spearmint Oil Recommendation

(A) Estimated 2006–2007 Allotment Base—1,951,567 pounds. This is the estimate on which the original 2006–2007 Scotch spearmint oil salable quantity and allotment percentage was based.

(B) Revised 2006–2007 Allotment Base—1,950,861 pounds. This is 706 pounds less than the estimated allotment base of 1,951,567 pounds. This is less because some producers failed to produce all of their 2005–2006 allotment.

(C) Original 2006–2007 Allotment Percentage—45 percent. This was unanimously recommended by the Committee on October 5, 2005.

(D) Original 2006–2007 Salable Quantity—878,205 pounds. This figure is 45 percent of the estimated 2006–2007 allotment base of 1,951,567 pounds.

(E) Adjustment to the Original 2006–2007 Salable Quantity—877,887 pounds. This figure reflects the salable quantity initially available after the beginning of the 2005–2006 marketing year due to the 706 pound reduction in the industry allotment base to 1,950,861 pounds.

(F) First Revision to the 2006–2007 Salable Quantity and Allotment Percentage:

(1) Increase in Allotment Percentage—108 percent. The Committee recommended a 108 percent increase at its February 21, 2007, meeting.

(2) 2006–2007 Allotment Percentage—153 percent. This figure is derived by

adding the increase of 108 percent to the original 2006–2007 allotment percentage of 45 percent.

(3) Calculated Revised 2006–2007 Salable Quantity—2,984,817 pounds. This figure is 153 percent of the adjusted 2006–2007 allotment base of 1,950,861 pounds.

(4) Computed Increase in the 2006–2007 Salable Quantity—2,106,930 pounds. This figure is 108 percent of the adjusted 2006–2007 allotment base of 1,950,861 pounds.

(G) No Second Revision to the 2006–2007 Salable Quantity and Allotment Percentage.

The 2006–2007 marketing year began on June 1, 2006, with an estimated carry-in of 43,057 pounds of salable oil. Of the original 2006–2007 salable quantity of 877,887 pounds, only 708,768 pounds was actually produced. This results in an available supply of 751,825 pounds for the 2006–2007 marketing year. Of this amount, 736,904 pounds of Scotch spearmint oil has already been sold or committed for the 2006–2007 marketing year, which leaves 14,921 pounds available for sale. As of February 15, 2007, the reserve pool is estimated at 13,529 pounds.

In making this recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and reports given by the Committee Manager from handlers who were not in attendance. Handlers expressed concern about the limited supply of Scotch spearmint oil remaining and that significant quantities of this oil is of less than desirable quality. An additional concern is that the remaining spearmint oil is in the possession of only a few producers with minimal allotment base. An example of this would be a producer who has 4,000 pounds of reserve pool oil and only 3,700 pounds of allotment base. The only way a handler could purchase this producer's oil is if the allotment percentage is increased to at least 108 percent. Without this increase, the industry may not be able to meet market demand based on past history and current conditions. Additionally, when the Committee made its original recommendation for the establishment of the Scotch spearmint oil salable quantity and allotment percentage for the 2006–2007 marketing year, it had anticipated that the year would end with an ample available supply.

Native Spearmint Oil Recommendation

(A) Estimated 2006–2007 Allotment Base—2,191,056 pounds. This is the estimate on which the original 2006–2007 Native spearmint oil salable quantity and allotment percentage was based.

(B) Revised 2006–2007 Allotment Base—2,191,287 pounds. This is 231 pounds more than the estimated allotment base of 2,191,056 pounds. This is more because some producers over-produced their 2005–2006 allotment.

(C) Original 2006–2007 Allotment Percentage—46 percent. This was unanimously recommended by the Committee on October 5, 2005.

(D) Original 2006–2007 Salable Quantity—1,007,886 pounds. This figure is 46 percent of the estimated 2006–2007 allotment base of 2,191,056 pounds.

(E) Adjustment to the Original 2006–2007 Salable Quantity—1,007,992 pounds. This figure reflects the salable quantity initially available after the beginning of the 2006–2007 marketing year due to the 231 pound gain in the industry allotment base to 2,191,287 pounds.

(F) First Revision to the 2006–2007 Salable Quantity and Allotment Percentage:

(1) Increase in Allotment Percentage—7 percent. The Committee recommended a 7 percent increase at its April 18, 2006, meeting.

(2) 2006–2007 Allotment Percentage—53 percent. This figure is derived by adding the increase of 7 percent to the original 2006–2007 allotment percentage of 46 percent.

(3) Calculated Revised 2006–2007 Salable Quantity—1,161,382 pounds. This figure is 53 percent of the adjusted 2006–2007 allotment base of 2,191,287 pounds.

(4) Computed Increase in the 2006–2007 Salable Quantity—153,390 pounds. This figure is 7 percent of the adjusted 2006–2007 allotment base of 2,191,287 pounds.

(G) Second Revision to the 2006–2007 Salable Quantity and Allotment Percentage:

(1) Increase in Allotment Percentage—2 percent. The Committee recommended a 2 percent increase at its February 21, 2007, meeting.

(2) 2006–2007 Allotment Percentage—55 percent. This figure is derived by adding the increase of 2 percent to the first revised 2006–2007 allotment percentage of 53 percent.

(3) Calculated Revised 2006–2007 Salable Quantity—1,205,208 pounds. This figure is 55 percent of the adjusted 2006–2007 allotment base of 2,191,287 pounds.

(4) Computed Increase in the 2006–2007 Salable Quantity—43,826 pounds. This figure is 2 percent of the adjusted 2006–2007 allotment base of 2,191,287 pounds.

The 2006–2007 marketing year began on June 1, 2006, with an estimated carry-in of 82,675 pounds of salable oil. When the estimated carry-in is added to the revised 2006–2007 salable quantity of 1,161,382 pounds, a total estimated available supply for the 2006–2007 marketing year of 1,244,057 pounds results. Of this amount, 1,130,872 pounds of oil has already been sold or committed for the 2006–2007 marketing year, which leaves 113,185 pounds available for sale. As of February 15, 2007, the reserve pool is estimated at 223,880 pounds.

In making this recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and reports given by the Committee Manager from handlers and producers who were not in attendance. On average, handlers estimate that there is demand for an additional 30,000 pounds to 50,000 pounds of Native spearmint oil for the 2006–2007 marketing year. The Committee was reluctant to increase the salable quantity any more due to the relatively low demand; however the Committee believed that an increase was necessary since handlers expressed their difficulty in finding spearmint oil available for sale. It was also reported that approximately 30,000 pounds to 80,000 pounds of Native spearmint oil was poor quality or re-distilled to improve its chemical composition. Therefore, the industry may not be able to meet market demand without this increase. In addition, when the Committee made its original recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2006–2007 marketing year, it had anticipated that the year would end with an ample available supply.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Scotch spearmint oil for the 2006–2007 marketing year should be increased to 2,984,817 pounds and 153 percent, respectively. In addition, USDA has determined that the salable quantity and allotment percentage for Native spearmint oil for the 2006–2007 marketing year should be increased to 1,205,208 pounds and 55 percent, respectively.

This rule relaxes the regulation of Scotch and Native spearmint oil and

will allow producers to meet market demand while improving producer returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2006–2007 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of § 985.50 of the order. During its discussion of revising the 2006–2007 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The increases in the Scotch and Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for both classes of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

Initial Regulatory Flexibility Analysis

Pursuant to 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 in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are eight spearmint oil handlers subject to regulation under the order, and approximately 58 producers of Scotch spearmint oil and approximately 90 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 58 Scotch spearmint oil producers and 21 of the 90 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This rule further increases the quantity of Scotch and Native spearmint oil that handlers may purchase from, or handle for, producers during the 2006–2007 marketing year, which ends on May 31, 2007. This rule increases the 2006–2007 marketing year salable quantities and allotment percentages for Scotch and Native spearmint oil to 2,984,817 and 153 percent, and 1,205,208 pounds and 55 percent, respectively.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The recommended allotment percentages, upon which 2006–2007 producer allotments are based, are 153 percent for Scotch (a 108 percentage point increase from the original allotment percentage of 45 percent) and 55 percent for Native (a 9 percentage point increase from the original allotment percentage of 46 percent). Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint oil. The econometric model estimated a $1.37 decline in the season average producer price per pound of Far West spearmint oil (combining the two classes of spearmint oil) resulting from the higher quantities that would be produced and marketed if volume controls were not used.

A previous price decline estimate of $1.49 per pound was based on the original 2006–2007 allotment percentages (45 percent for Scotch and 46 percent for Native) published in the **Federal Register** on April 5, 2006 (71 FR 16986). The revised estimate reflects the impact of the additional quantities that will be made available by this rule compared to the original allotment percentages. In actuality, this rule will make available 13,026 additional pounds of Scotch and 21,624 additional pounds of Native spearmint oil, since not all producers have reserve pool oil. Loosening the volume control

restriction resulted in the smaller price decline estimate of $1.37 per pound.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

Based on projections available at the meeting, the Committee considered alternatives to each of the increases. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also looked at various increases. The Committee reached each of its recommendations to increase the salable quantity and allotment percentage for Scotch and Native spearmint oil after careful consideration of all available information, and believes that the levels recommended will achieve the objectives sought. Without the increases, the Committee believes the industry would not be able to meet market needs.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The AMS is committed to complying with the E-Government 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.

The Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the February 21, 2007, meeting was a public meeting 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.

This rule invites comments on changes to the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2006–2007 marketing year. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Scotch and Native spearmint oil that may be marketed during the marketing year which ends on May 31, 2007; (2) the current quantity of Scotch and Native spearmint oil may be inadequate to meet demand for the 2006–2007 marketing year, thus making the additional oil available as soon as is practicable will be beneficial to both handlers and producers; (3) the Committee recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 985.225, paragraph (a) and (b) are revised to read as follows:

[**Note:** This section will not appear in the annual Code of Federal Regulations.]

§ 985.225 Salable quantities and allotment percentages—2006–2007 marketing year.

* * * * *

(a) Class 1 (Scotch) oil—a salable quantity of 2,984,817 pounds and an allotment percentage of 153 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,205,208 pounds and an allotment percentage of 55 percent.

Dated: April 9, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–1831 Filed 4–10–07; 1:10 pm]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AE83

Liquidation and Debt Collection Activities

AGENCY: U.S. Small Business Administration (SBA or Agency).

ACTION: Final rule.

SUMMARY: This final rule amends the regulations pertaining to guaranteed loan and debenture liquidation and litigation found in rules governing the 7(a) Guaranteed Loan program and the Certified Development Company program. It codifies statutory language contained in the Small Business Investment Act, and revises the Agency's guidance on the proper liquidation and litigation of defaulted SBA guaranteed loans and debentures. These rules will give program participants authority to liquidate small business loans in a more timely fashion, and creates a process for identifying loans and debentures that could be disposed of in an asset sale conducted or overseen by SBA.

DATES: This rule is effective May 14, 2007.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Director, Loan Programs Division, Office of Financial Assistance, (202) 205–7505, or by e-mail at *james.hammersley@sba.gov.*

SUPPLEMENTARY INFORMATION: On November 3, 2005, SBA published proposed rules to revise and update regulations on liquidating and litigating SBA 7(a) and 504 loans (70 FR 66800, November 3, 2005). The initial period for public comment ended on January 6, 2006, but was reopened for additional comments on January 25, 2006. The extended comment period ended on February 24, 2006.

Comment Summary

In total, SBA received 138 responses to the proposed regulations. Of these,

133 were submitted by SBA lender participants (''Lenders'') or Certified Development Company (''CDC'') principals, two of the comments were submitted by Lender and CDC trade association representatives, two were submitted by third-party service providers, and one was submitted by the Chairman of the House Committee for Small Business.

One hundred eleven of the 138 respondents were generally opposed to portions of the proposed regulations. Lenders were virtually unanimous in expressing their objection to SBA requiring them to complete the liquidation of all collateral securing a defaulted SBA loan before requesting SBA's purchase of its guaranteed portion. Lenders and CDCs also objected to the proposed rule provision under which Lenders and CDCs would have deemed to have given their consent, for loans made on or after the effective date that later go into default, to sell the defaulted loans in an asset sale. CDC commenters generally did not object to the principles behind having CDCs liquidate defaulted loans, but believed the rules lacked sufficient detail on their implementation for the lending community. The most prevalent comment focused on the need to compensate CDCs that perform liquidation and litigation activities.

Section-by-Section Analysis of Comments

Five general comments were received in relation to the proposed definition of an Authorized CDC Liquidator to be included in § 120.10. One comment expressed a view that the definition as written is too restrictive and that the liquidation function should be a fundamental requirement for all CDC participants. SBA has decided to retain the definition as proposed to provide CDCs and SBA with the flexibility to obtain necessary expertise in liquidations.

Seven comments were submitted opposing the proposed definition in § 120.10 for Loan Program Requirements. The comments centered on concerns regarding program compliance and potential denial of an SBA guarantee resulting from interpretations of outdated standard operating procedures (''SOPs''), policy notices, and other loan documentation forms provided by SBA. Another commenter stated that including SOPs, Notices and Forms in the definition raises these items for enforcement purposes to a status equivalent to regulations without granting participants adequate notice and the right to submit comments. A third comment challenges the enforceability of Agency SOPs and notices in legal actions before a court of law, with the lender remaining unconvinced that lender compliance with respect to dynamic changes in SBA procedures or policy would be enforceable. A final commenter felt the proposed definitions could be another way to reinforce that Lenders should rely solely on written instruction and not expect direct assistance from SBA representatives.

SBA acknowledges the dynamic nature of SOPs, Agency Notices and other policy and procedural guidelines. However, SBA's proposed definition is not designed to create conditions for releasing itself of the obligation to purchase its guaranteed portion of 7(a) loans. The definition was drafted to build awareness of all the related material the Agency provides to participants in SBA's loan programs. SOPs and Agency Notices are released by SBA to aid lenders in understanding current policy, procedures, and processes. These documents can be issued only after internal Agency clearance, including reviews by offices engaged in measuring Agency risk and compliance with Congressional intent. Forms and other documents are also subject to periodic Office of Management and Budget (''OMB'') review to measure regulatory burden and the impact on small businesses. These reviews ensure that SBA is reasonable in its program delivery. SBA also believes that by incorporating these additional elements in the definition, it will prompt more attention by program participants to stay abreast of changing program requirements, including those brought about through the Agency's periodic reassessment of its loan programs.

In addition, this definition merely codifies current law and practice in a more clearly stated form. CDCs are already held to the substance of this definition. Section 120.826, which was enacted through notice and comment rulemaking in 2003, states that CDCs ''must operate in accordance with all 504 program requirements imposed by statute, regulation, SOPs, policy and procedural notices, loan authorizations, debentures, and agreements between the CDC and SBA.''

Lenders are also already held to the substance of this definition. Lenders sign a Loan Guarantee Agreement which requires a lender to comply with SBA's ''rules and regulations.'' Section 120.524(a)(1) states that SBA may deny liability under a 7(a) loan if lender has failed to comply materially with ''any of the provisions of these regulations, the Loan Guarantee Agreement, or the Authorization.'' The National 7(a) Loan Authorization Boilerplate (paragraph E) states that SBA's guarantee on each 7(a) loan is contingent upon the lender's compliance with current SOPs.

It is for these reasons that the proposed rule is therefore adopted as written.

Proposed § 120.180 revised the current § 120.180 to clarify that Loan Program Requirements in effect when a Lender or CDC undertook a specific action with respect to a given 7(a) or 504 loan will govern that action. The proposed rule makes use of the new term Loan Program Requirements in order to better specify the rules which govern an SBA loan financing transaction. No comments were received in reference to this rule, and thus the rule is adopted as final.

Proposed new § 120.181 clarifies that Lenders or CDCs and their contractors are independent contractors and that SBA is not responsible for their actions. Two comments in support and ten comments in opposition to this proposed regulation were received. Support was general in nature, with no specific reasons cited. Comments in opposition to the proposed regulation noted a CDC's past inability to represent SBA in legal proceedings, SBA legal staff coordination issues, and also raised the issue of the availability of liability insurance for firms engaged in liquidation and litigation activity. The matter of legal representation of the SBA's interest in CDC litigation is granted by Congress in § 510(c)(1)(B) of the Small Business Investment Act. Pursuant to the statute, CDCs are to litigate any matter related to the performance of liquidation and foreclosure functions in a reasonable and sound manner according to commercially accepted practices pursuant to a litigation plan approved in advance by SBA. The concern about coordination with SBA legal staff would be resolved through SBA's review and action on the liquidation and litigation plan provided by the CDC pursuant to revised § 120.540. The Agency is not aware of any lack of availability of liability insurance for CDCs since this has not been a problem with Lenders participating in the 7(a) program. The new rule is thus adopted as proposed.

Proposed new § 120.197 imposes a notification requirement to the SBA Office of Inspector General by all Lenders, CDCs, Borrowers and others when instances of fraud may have occurred. Twenty comments were received on this proposed regulation, three in support and 17 in opposition. One commenter who opposed the regulation stated that it appears to

extend beyond the scope and intent of this regulatory action, and suggested it be treated as a separate matter. Another opposing commenter echoed the sentiments of many in identifying this notification requirement as another Suspicious Activity Reporting System (''SARS'') requirement already required of federal depository institutions. A commenter qualified his support of the proposal, insisting that this requirement be enforced upon bank and non-bank lenders alike. A fourth comment opposed to the proposal focused on the Agency's pursuit of lenders unaware of a fraudulent action and whether the Lender, absent factual evidence, should have timely reported suspected fraud.

SBA has provided similar guidance in the past to Lenders, CDCs, and SBA personnel in program operating procedures. These guidelines were useful when SBA underwrote much of the 7(a) and 504 loan portfolio. With current loan activity, however, predominantly delivered through delegated authority processes such as the Preferred Lender Program (''PLP''), the Preferred Certified Lender Program (''PCLP''), and SBAExpress, the element of ensuring program integrity and a level of accountability shifts to the program participants. This new rule formalizes the reporting requirement into regulation for program participants. § 120.197 is retained as proposed.

Minor revisions to § 120.440 received no substantive comments and are therefore revised as proposed.

SBA received two comments in support of the revisions proposed for § 120.453. The proposed rule amends the heading and the existing regulation on PLP lender servicing, and directs the reader to revised subpart E for general instruction on SBA loan servicing responsibilities. SBA is adopting the revisions as proposed.

In the proposed rule, § 120.500 along with §§ 120.510–120.513 were to be deleted. Additionally, a revision to the heading preceding this section was to be revised. Section 120.500 was a general introductory paragraph regarding general loan administration policies applicable to both loan servicing and loan liquidation. No comments were received and the section is deleted as proposed. No comments were received regarding the name change in the heading for Subpart E. The heading for this Subpart is now changed to read Servicing and Liquidation, and is adopted as proposed.

Section 120.510 pertains to the servicing of SBA direct loans and immediate participation loans under the 7(a) program. SBA no longer makes direct or immediate participation loans and received no comments on its proposed deletion. SBA deletes this section as proposed.

Section 120.511 identifies the Lender as the entity responsible for servicing SBA guaranteed loans, holding Loan Instruments, and accepting borrower payments of principal and interest. These responsibilities have been revised and incorporated into standards for loan servicing for Lenders in new § 120.536. No comments were received regarding this proposed deletion. The existing regulation is therefore deleted.

Existing § 120.512 describes Lender responsibilities for servicing and liquidating an SBA loan in the 7(a) program once SBA has purchased its guaranteed interest. This regulation requires Lenders with loans for which SBA has purchased the guaranteed portion to submit liquidation plans on each loan to SBA for approval. The regulation also provides SBA with the discretionary authority to service or liquidate these loans and to have Lenders assign to SBA the related Loan Instruments. Lender liquidation responsibilities for all SBA loans have been reformatted as standards set forth in new § 120.535. The requirement for submission of liquidation plans for 7(a) guaranteed loans has been eliminated except for loans processed as CLP loans, which, by statute, still require the submission of liquidation plans to SBA. Finally, discretionary authority for SBA to service and liquidate loans where it has purchased the guaranteed portion has been incorporated into new § 120.535(d). No comments were received, thus in recognition of the revisions, SBA is deleting the existing regulation in § 120.512.

Current § 120.513 outlines servicing actions requiring SBA's prior written consent. The proposed rule amends these requirements and promulgates the revised regulations under new § 120.536. SBA received no comments and is therefore deleting the existing regulation.

In § 120.520, SBA proposed to amend the heading for the section; reuse the existing subsection, and add two new subsections. Section 120.520(a) detailed SBA's proposal to require Lenders in the 7(a) program to liquidate all collateral securing a defaulted SBA guaranteed loan prior to requesting SBA purchase of its guaranteed portion. The requirement to liquidate collateral first would only apply to loans made on or after May 14, 2007, with loans made prior to the date subject to SBA guarantee purchase provisions in place at the time the loan was approved. SBA received 62 comment letters opposing this proposal as written. The primary objection centered on the adverse financial effects imposed on Lenders arising from delaying guarantee purchase until all collateral recoveries have been exhausted. One commenter said Lenders will be forced to carry the SBA portion as a non-performing asset, and that this will require greater regulatory capital reserves. Another commenter stated that it would be detrimental to a potential borrower (and the local economy) for SBA guaranteed loans not to be made not because of the lack of a government backed guarantee, but because of the time and cost that it takes to claim the guarantee.

SBA has considered the arguments presented by the commenters and seeks a reasonable alternative that improves the Agency's ability to manage its portfolio without hampering the Lenders' ability to participate in the 7(a) program. SBA notes the high volume of loan activity generated by its Lenders over the last five years and seeks to effectively manage the increased volume with the Agency's limited program resources. In modifying processes and procedures, SBA is adapting to the changing environment for small business lending and allowing lenders to perform more lending functions on SBA's behalf. Nonetheless, streamlined delivery methods and SBA's greater reliance on its lending partners has not lessened the Agency's attention to its fiscal management responsibilities for its loan programs and to the public.

In recognition of the adverse financial impact that could be experienced by Lenders, SBA has decided to allow Lenders to request purchase without the full disposition of all related loan collateral. Since comments objecting to a full liquidation prior to SBA purchase cited the work effort and legal restrictions associated with real property collateral disposition, SBA will allow real property to be liquidated subsequent to purchase, but will still require all chattels (business personal property) to be liquidated prior to purchase. To ensure consistent interpretation with existing regulations, SBA will also allow Lenders to request purchase on a defaulted loan when the small business borrower files for bankruptcy protection and a period of at least 60 days has elapsed since the last full installment payment. SBA believes that a nine month period following purchase, after which Lenders will be deemed to have consented to SBA's sale of a purchased loan pursuant to new § 120.546, will generally provide Lenders with a reasonable period of time for addressing the activity needed to liquidate most remaining collateral in an orderly manner. Also, Lenders will

continue to have the option to delay submitting a purchase request if they desire to liquidate real estate collateral prior to an SBA loan sale. Section 120.520(a) is revised to incorporate these changes resulting from the comments received.

Proposed new § 120.520(b) codified existing SBA policy regarding documentation requirements sufficient for SBA to determine if purchase of the guarantee is warranted. One commenter objected to the rule stating that the determination of what is sufficient for SBA is somewhat vague, and that the regulation should direct the Lender to particular Agency procedures or instruction guides. SBA noted that the proposed rule referred to new § 120.524 as SBA's justification for determining if purchase is warranted and that this regulation included the Lenders' requirement to comply materially with any Loan Program Requirements including statutes, regulations, SOPs, SBA notices and applicable forms. SBA believes this level of instruction is sufficient for program participants. The regulation is therefore adopted as proposed.

New § 120.520(c) clarifies SBA policy that a Lender's failure to perform all necessary servicing and liquidation actions subsequent to SBA's purchase of the guaranteed portion of a loan from the secondary market may lead to initiation of action to recover money SBA paid to the Registered Holder. Thirty-five comments were received all opposing the proposed regulation. Some felt the action of Lenders to purchase the guaranteed portion of their loans from the secondary market would threaten the true sale nature of other guaranteed portions sold to Registered Holders. SBA believes this premise to be inaccurate inasmuch as SBA lenders have always had the option to purchase defaulted loans. SBA does not pressure lenders to purchase loans nor is it necessary for a lender to purchase loans to protect its reputation in the industry. SBA believes the comments mask the real issue of SBA's ability to seek out documentation in a post-purchase review, and the remedies available to the Agency if such documentation is not provided by Lenders that have already received payment of the guaranteed portion.

The regulation is a codification of a long standing policy where SBA has sought repayment from Lenders that did not properly process, close, and service loans sold in the secondary market. This regulation sets out the requirement that a Lender provide a loan status report as well as documentation that SBA deems necessary to make a determination that the loan was processed, closed, and serviced in compliance with SBA rules and regulations.

Therefore, we conclude that codification of this long-standing policy will have no effect on the true sale nature of secondary market transactions.

Lenders have always been required to provide documentation needed by the SBA to justify the purchase. As indicated, this rule merely codifies existing Lender responsibilities to assist SBA in providing the documentation requested by SBA to affirm that its purchase of the guaranteed portion was based on the Lender's compliance with program requirements. To reinforce SBA's need to provide timely submission of documents, the rule alerts Lenders that SBA will consider the Lender's actions in conjunction with their continued participation in the Secondary Market. SBA retains its rights to suspend or revoke Secondary Market participation if it feels the Lender is not in full compliance with this regulation. Accordingly, SBA has added a sentence to point out the importance of post-purchase document submission and the rule is otherwise adopted as proposed.

No substantive comments were received regarding new rule § 120.520(d) relating to SBA's retention of rights of recovery in connection with the new rule. The rule is adopted as proposed.

Revised § 120.522(b)(1) seeks to limit SBA's obligation to pay accrued interest on loans requested for guarantee purchase. This limit applies to loans made on or after October 1, 2006, and will limit interest purchased to be no more than 120 days. SBA received 42 comments opposing the proposed rule. Commenters stated that the time limit would unnecessarily force ill-advised liquidations instead of accommodating workouts with borrowers. SBA encourages its Lenders to continue to work with SBA borrowers through periods of temporary difficulty and to provide short-term deferments or other assistance in appropriate situations. However, this limitation on interest to be paid is intended to help streamline and standardize SBA's purchase review process for the benefit of its participant Lenders, and already is a part of program requirements for SBAExpress loans. For other types of loans under existing regulations, a Lender may receive payment from SBA for more than 120 days interest only if the Lender submits a complete purchase request to SBA within 120 days of the earliest uncured payment default. Lenders that have submitted complete purchase packages within 120 days of default have historically involved a small percentage of loans. Determinations as to what may constitute complete purchase requests in specific situations have unnecessarily delayed overall purchase processing to the detriment of Lenders as a whole. Accordingly, SBA is adopting the 120 day interest limitation as set forth in the proposed regulation, and is deleting existing § 120.522(d) as proposed.

Revised § 120.524(a)(1) amends the current provision in the regulations and codifies SBA policy that when a Lender is not in material compliance with the Loan Program Requirements as defined in § 120.10, SBA at its discretion may be released from liability under a loan guarantee. Seventeen comments were received in opposition to this proposed revision. One commenter said that this rule would discourage Lenders from taking collateral that is difficult to perfect, and that a denial of liability by the Agency for lender noncompliance absent a verifiable loss would decrease program participation. Another comment stated that wide gaps in interpretation will harm the liquidation process and that this proposed rule removes any rational flexibility. Another commenter felt the rule as drafted is far too broad and is not fair to the participants. SBA has thoroughly considered the comments, but has decided to retain the rule with no changes. The rule does nothing more than incorporate the new definition of Loan Program Requirements and thereby clarifies the intent of the existing regulation while making clear to Lenders what sources of authority will be applied. The view that SBA would look to use this revision to avail itself of its right to deny liability is strikingly narrow and inconsistent with the approach to guarantee purchases applied by the Agency. SBA continually strives for uniformity in its purchase processes, employing supervisory and legal reviews, and quality assurance assessments in the Agency's purchase centers. These factors have reduced the number of complaints received from Lenders regarding varied interpretations of SBA liquidation and guarantee purchase policy. SBA does not anticipate a significant change in the number of denials of liability annually as a result of this rule. The rule thus is retained as proposed.

Revised § 120.524(a)(8) proposed extending the time within which a Lender can request guarantee purchase to 180 days following the maturity date on the SBA loan, or the end of all liquidation and debt collection activities. SBA received one comment in support of this proposal and is adopting the rule as proposed.

SBA received no comments on proposed § 120.524(b) and (d) and is adopting them as proposed.

Proposed rule § 120.535 outlined the standards for the servicing and liquidation of SBA loans. Fewer than six comments were received for each subparagraph, all in opposition to some section of the rule. One commenter objected to the unilateral authority of the SBA to take over servicing and liquidation from a Lender; however, this authority exists already in the current regulations and also in the SBA Form 750, Loan Guarantee Agreement. Upon consideration of the comments provided, SBA adopts the rule as proposed with an additional sentence at the end of each subparagraph emphasizing that the standard applies to all Lenders and CDCs irrespective of whether or not they normally manage a non-SBA portfolio.

There were no substantial comments received in reference to proposed new § 120.536 and the rule is adopted as proposed.

The Proposed rule re-designated §1A120.540 as § 120.545 and added a new § 120.540 devoted to SBA loan liquidation. Amended § 120.540(a) described SBA's oversight responsibilities for monitoring efforts by Lenders and Authorized CDCs to dispose of collateral. No comments were received opposing the rule by which SBA seeks to clarify Lender liquidation reporting responsibilities. By statute, all SBA loans made through the CLP delivery process by Lenders authorized to make CLP loans require liquidation plans to be submitted to SBA for defaulted loans. This requirement is different from the liquidation wrap-up report required of all Lenders for their completed SBA defaulted loan recoveries. The rule therefore is adopted as proposed.

Proposed § 120.540(b) specified the requirement for submission of written liquidation plans for prior SBA approval. As proposed, all Authorized CDC Liquidators, and Lenders that have made an SBA loan under the CLP delivery method, are required to submit a written liquidation plan to SBA for prior approval. Twelve comments were received in opposition to this proposed rule. The focus of the commenters' objections centered on PLP lender liquidation activities and the need for SBA to exempt the PLP lender from this rule. The rule, however, pertains to loans approved under the CLP delivery method irrespective of the lender's designation. As mentioned above, CLP loan liquidations require the statutory submission of a liquidation plan for prior written approval. SBA is unable to change this practice without a change in legislation. SBA retains the text of the rule as proposed.

Proposed § 120.540(c) provided guidance on litigation involving SBA loans. Eighteen comments were received on this proposed rule, one in support and 17 in opposition. Comments in opposition tended to focus on the number of legal matters contained in the definition of Non-Routine litigation and its limit on costs and expenses of $10,000. Commenters acknowledged SBA's proposal to increase the dollar amount of legal fees considered to be for Routine Litigation, however, some comments sought an even higher threshold amount. SBA has reviewed the comments, but has retained the rule as proposed. It has been the Agency's experience that most legal matters in excess of $10,000 are in fact, non-routine and rarely involve actions that are not in dispute.

No substantive comments were received regarding amended § 120.540(d) regarding SBA's ability to take over debt collection litigation of a 7(a) or 504 loan and thus the regulation is adopted as written.

In amended § 120.540(e), SBA provided a process for Lenders and CDCs to amend previous liquidation and litigation plans. One comment opposed this proposed amendment stating that the litigation rules and procedures as revised by the proposal will continue to increase the need for SBA to review and approve litigation plans on a repeated basis during the course of a matter [which] will cause significant delays. SBA agrees with the suggestion that the revised regulations are likely to increase the work involving liquidation and litigation. SBA's experience, however, has been that in many non-routine litigation cases, the increase in fees was not cost effective to the Agency when compared with actual recoveries. This proposed rule therefore is necessary to protect the Agency and preserve taxpayer funds arising from liquidation recoveries. The rule is adopted with no changes.

No comments were received regarding amended §§ 120.540(f) and (g). Amended § 120.540(f) provided SBA with a waiver of requirements in amended paragraphs (b),(c) and (e) of this section in cases requiring immediate actions and decisions. New § 120.540(g) provided an appeals process for Lenders with CLP loans and for Authorized CDC Liquidators when they disagreed with a decision by SBA regarding a proposed liquidation plan. The rules are retained as proposed.

New § 120.541(a) provided timelines for SBA approval of liquidation and litigation plans submitted by Lenders and CDCs. This section also states the timelines for actions specified in new § 120.536(b)(5) and § 120.536(b)(6) which are established by statute with respect to CDCs. These timelines differ from the ten day timeline found in new § 120.541(c) which is mandated by § 7(a)(19) of the Small Business Act. SBA is making minor technical corrections to the cross-references stated in the proposed rules. One commenter objected to the proposed new rule citing the potential impact on recoveries that may result from CDCs waiting for a 15-day approval from SBA, and the potential for these approval periods to be extended indefinitely. The commenter is encouraged to review statutory requirements placed on SBA if it is unable to respond within 15 business days. § 510(c)(2)(E) of the Small Business Investment Act requires SBA to provide a written notice of no decision stating the reasons for the SBA's inability to act on the plan or request, along with an estimate of the additional time needed by SBA to act on the plan or request, and the nature of any additional information or documentation impeding the SBA from acting on the plan or request. Also, SBA reporting requirements to Congress as mandated in § 510(e)(2)(E) create a quality control check on SBA's progress in reaching an expedient decision to Lenders and CDCs. Thus, the rule is adopted as proposed.

New § 120.542 regulated the payment of legal fees and other expenses in conjunction with defaulted SBA loans. Thiry-four comments were received regarding this new rule, one in support and 33 in opposition. Twenty-eight of the 33 comments submitted in opposition are from CDC principals, or the industry's trade association representative. In the proposed rule, SBA had specifically requested comments from CDCs on this issue. Commenters objected to CDCs assuming risk and responsibilities for liquidation and litigation activity, yet not being adequately compensated for their additional involvement. One commenter could not understand why a CDC would request these new responsibilities under the proposed compensation scenario. Another commenter recommended that SBA define by task the items that it believes should be routine and under the $5,000 cap. A third commenter felt that in applying § 120.542(a)(2) of the proposed rule, conflicts may occur on whether SBA specifically directed CDCs to take action which could lead to a violation under proposed rule § 120.542 (b)(2). A fourth commenter felt that SBA

should compensate CDCs for the additional expenses associated with locating and selecting liability insurance protection for the work it will assume on SBA's behalf.

SBA has evaluated the comments provided and agrees that some form of compensation is warranted for requiring a CDC to incorporate the liquidation function into its CDC's practice. Commenters supported the position taken by the CDC trade association that involves compensation as a percentage of proceeds received from recoveries subject to a cap of $25,000. Having fees derived from recoveries and not from the unpaid principal balance on a loan is responsive to SBA's policy objective that liquidation fees paid to CDCs should be based on work performed in the recovery process. The suggestion of a monetary cap, while noteworthy in concept, would be counterproductive in practice. Authorized CDC liquidators could limit their liquidation activities to the $25,000 threshold, and would lose incentive to seek recoveries beyond this discrete limit. With much of a liquidator's upfront time and effort incurred irrespective of the loan size, SBA sees a real benefit to maximizing recoveries for Authorized CDC liquidators as well as the SBA. The Agency, however, recognizes a time element to liquidation in which, as time goes on, the additional recovery potential is overshadowed by a decrease in the value of the underlying asset. In an effort to retain a real incentive to liquidators while limiting the practice of avoiding final disposition of a collateral asset, SBA has agreed to allow Authorized CDC liquidators to use net recoveries on the defaulted CDC debenture as a base unit for computing a fee for liquidation activity. SBA initially will allow a percentage of net recoveries not to exceed 10%, with the fee dropping by at least 50% after the first $25,000 in fee income is realized. SBA will evaluate these fee percentages from time to time, and provide notice of a change in permissible fee percentages when appropriate through notice published in the **Federal Register**. SBA would also look for all liquidation activity to be completed within nine months of SBA's purchase of the CDC debenture. This would amount to eleven months after the date of default, and would conform to similar timetables for Lenders liquidating real property in the 7(a) program.

To accomplish this change, SBA has inserted a new § 120.542(c). SBA has re-designated proposed § 120.542(c) and § 120.542(d) as § 120.542(d) and § 120.542(e) and implements the section as proposed. The new § 120.542(c) would provide CDCs with guidance on the form of compensation acceptable to SBA for CDC loan liquidation activity. This would not include SBA compensating the CDC for liability insurance coverage. SBA views that element as a normal cost of doing business and provides no similar relief to Lenders in the 7(a) program.

The issue of legal fee compensation for work performed by Authorized CDC Liquidators on behalf of the Agency involves several factors. SBA welcomes the use of qualified counsel to address legal matters affecting the Agency's ultimate recovery. SBA is not, however, in a position to provide Authorized CDC Liquidators with unbridled authority to incur substantial legal fees. SBA needs to be able to weigh prospective recovery options against the costs of securing those recoveries and only approve those actions which best serve the needs of the Agency. Since SBA purchases the full amount of the defaulted CDC debenture, SBA is the sole financial beneficiary of the recovery efforts. Consequently SBA is unwilling to modify the proposed rules regarding payment by SBA of legal fees, and adopts §§ 120.542(a) and (b) as proposed.

New § 120.546 proposed conditions under which SBA would have the opportunity to include defaulted SBA loans in an asset sale process. SBA received one comment in support and 31 comments in opposition to the proposed rule. Commenters objected to new § 120.546(b)(1)(i) which provides for implied consent to an asset sale if Lenders request SBA to purchase the guaranteed portion of a loan directly from the Registered Holder in a secondary market transaction. The option to purchase a loan from the secondary market investor, which exists already, would be the only way for a Lender to avoid this outcome. Many small Lenders objected to this option, noting that the capital needed to purchase the guaranteed portion from the secondary market is comprised of funds that otherwise would have been available for additional small business lending. These same Lenders added that the increased level of non-performing assets would have detrimental capital consequences and would serve as the impetus for leaving the program. Other commenters stated that forced asset sales inevitably cause lenders to participate with a third party, not the SBA, and greatly reduces flexibility in reaching a workout with a small business. Comments also focused on whether these purchases from the secondary market jeopardize the accounting of these transactions as true sales, and if Lenders would have to retain the guaranteed portion of the loan on their books even if sold in a secondary market transaction.

SBA has evaluated the comments and has modified its proposal in this final rule with respect to 7(a) loans sold on the Secondary Market. SBA recognizes the possibility that under some circumstances recoveries from sales of collateral and foreclosure proceedings arranged prior to SBA's purchase of the loan from the Registered Holder might be higher than recoveries from a sale of that loan in an asset sale. In the final rule, SBA retains the provision that deems the Lender to have consented to an asset sale for loans approved on or after the effective date of this regulation for which the Lender subsequently sells the gurarantee portions in the secondary market that later default and are purchased by SBA from the Registered Holder. SBA, however, adds a new subparagraph which gives Lenders the option, regardless of the fact that they already are deemed to have consented to the asset sale, to request SBA withhold the loan from such a sale based on a pending sale of collateral or the existence of an existing foreclosure proceeding. The Lender will have 15 business days from the date of SBA's purchase to submit such a request. Liquidation actions contemplated but not underway at the time of SBA's purchase will not be sufficient justification for withholding a loan from inclusion in an asset sale. SBA will consider the Lender's request and, in SBA's sole discretion, SBA may provide the Lender with limited additional time to complete loan restructuring and/or liquidation activities.

SBA also revises § 120.546(b)(1) by adding two additional subparagraphs one to include defaulted SBA loans where SBA has purchased its guaranteed portion from the Lender and nine months have elapsed from the date of SBA's purchase, and the other to give Lenders the option of giving written consent to an asset sale for those Lenders that determine this form of asset disposition to be in their best interest.

Regardless of the circumstances leading up to an asset sale, the Lender is not released from its obligations to continue to properly service and liquidate the loan up to the point the loan is transferred in an asset sale. A new subparagraph (b)(4) has been added to the final rule to this effect. Finally, Lenders that wish to pursue additional recovery on loans after the nine-month period subsequent to purchase always have the option to repay the guaranty purchase amount disbursed by SBA,

and release SBA from further participation in the loan.

New § 120.546(c)(1) extends similar guidance on the sale of defaulted PCLP Loans. Since SBA purchases the full amount of the defaulted debenture, the rule does not require PCLP CDC consent. Thirteen comments were received, all in opposition to the regulation. One commenter stated that since PCLP CDCs have reserves established for loan losses, they should have some say in the decision to initiate an asset sale on a defaulted CDC loan. SBA's loss exposure in a defaulted CDC debenture is larger than that of the PCLP CDC. Therefore, the Agency believes it is in the SBA's best interest to take control of the disposition of the defaulted asset. In those instances where a PCLP CDC can demonstrate to SBA's satisfaction that an asset sale should be withheld in favor of an imminent liquidation event, SBA may further examine its avenues for recovery. Notwithstanding these circumstances, SBA will determine the course of disposition for the defaulted debenture. The regulation is therefore adopted without change.

New § 120.546(c)(2) grants SBA, upon its purchase of a Debenture, and in its sole discretion, the right to sell the defaulted SBA loan in an asset sale. Thirteen comments objecting to this proposed rule were received. The comments centered on the perceived loss of a local presence to coordinate an orderly liquidation of the loan and the diminution of value that would result from an SBA asset sale. However, SBA may solicit from the CDC that originated a particular loan the CDC's views concerning how to best maximize recovery from the loan with regard to the timing of including that loan in an asset sale. SBA will retain the provision in the final rule granting the Agency the authority, in its sole discretion, to sell a defaulted 504 loan in an asset sale.

Amended § 120.826 revises the basic requirements for operating a CDC to include, if authorized by SBA, liquidating and litigating 504 loans. SBA received one comment in support of the regulation and nine opposed to the proposal. Those opposed to the proposed revision cite a lack of preparedness, training and source of income for CDCs to perform these functions. One commenter felt that the agency must issue more specific Loan Program Requirements for CDCs before attempting to mandate that CDCs adhere to what are now somewhat general standards. Another stated that since there are published guidelines for liquidation, SBA should provide CDCs with a litigation plan format for use in submitting such plans. A small CDC acknowledged that it does not have the staff, expertise or funds to properly maintain litigation and liquidation functions, stating that if the CDC were to be forced to pay for the liquidation procedure out of pocket without compensation from the SBA, it would cause serious hardship for the CDC.

Much of the revised text in the regulation incorporates the Loan Program Requirements definition discussed above and the authorization of CDC liquidators. Commenters are concerned that some of the identified source documents are outdated and may lead to inadvertent confusion with CDCs attempting to assume liquidation and litigation activities. SBA is well aware of the need for CDC training and will work with the industry to develop comprehensive course materials to provide a baseline competency level. SBA legal staff likewise will assist in the development of training materials and reporting requirements to SBA. This support will help those CDCs that recognize the importance of their contribution to this exercise and give each CDC an opportunity to comply with this regulation. As noted above in the discussion of § 120.546, SBA has revised the rule to allow for compensation in some instances. In all other respects, SBA will retain the regulation as proposed.

Revised §§ 120.841, 120.845, and 120.846 were revised to make minor changes to incorporate the use of the Loan Program Requirements definition in the qualification for ALP and PCLP status. No substantive comments were received and the regulations are adopted as proposed.

Amended § 120.848 revised subparagraphs (a) and (f) to incorporate the use of the Loan Program Requirements definition and to cross-reference this regulation with the servicing regulations now contained in Subpart E. With just two comments received among the 138 respondents over the expanded 60 day review period, SBA adopts the regulation as proposed.

Section 120.854(a)(2) was amended in the proposed rule to identify material non-compliance with any Loan Program Requirement as grounds for enforcement action against a CDC. SBA received a number of general comments opposing this regulation on the grounds that the statement is too vague, open to interpretation, and needs clarification. The revised paragraph proposed is only a technical change in the wording of what is already established as the determinants for enforcement actions against a CDC. Thus, the regulation is adopted as proposed.

Amended § 120.970(a) was a minor revision proposed to incorporate the use of the Loan Program Requirements in the general subparagraph and to cross-reference this regulation with servicing regulations now contained in Subpart E. SBA received no substantive comments on this revision and adopts the text in the final rule.

New § 120.975 identified the CDC entities that are eligible to become Authorized CDC Liquidators. Section 120.975(a) covered those requirements for PCLP CDCs to be designated Authorized CDC Liquidators. Five comments were received in opposition to the proposed regulation, two were received in support. One commenter objecting to the proposed regulation stated that there is no rationale for requiring them to handle non-PCLP liquidation cases just because they are involved in the PCLP program. Another commenter said that all CDCs, not just PCLP CDCs, should be engaged in 504 loan liquidation and litigation either directly with qualified staff, or by agreement with a qualified third-party provider acceptable to SBA. Those commenters in support of the proposal have the existing capability to perform the functions and simply request that the compensation be reflective of the effort involved in the exercise.

In proposing the regulation, SBA adhered to the provisions of § 510(b)(1)(ii) of the Small Business Investment Act (''the SBI Act''). That statute specifies that all PCLP CDCs operating under § 508 of the SBI Act be deemed eligible, subject to having experienced staff or using an approved contractor. The statute does not limit PCLP CDCs to liquidating and litigating only PCLP loans. The regulation conditions PCLP CDCs' authority to liquidate and litigate their non-PCLP loans by requiring the entity to meet one of two operational criteria. SBA believes most, if not all PCLP CDCs, would meet one of these two criteria and would be required to use their delegated authority to liquidate and handle debt collection litigation. Given the diversity of opinion on this proposal, and the decreased SBA staff devoted to 504 loan liquidation and litigation activity, SBA has decided to retain § 120.975(a) as proposed in the final rule.

New § 120.975(b) provided guidance on all other CDCs becoming Authorized CDC Liquidators. Eight comments were filed on this subparagraph, two in support and six in opposition to the regulation. Some of those objecting to the proposal stressed the limited resources they have for fulfilling this

function and the hardship it will likely cause. Others felt no need to promulgate separate qualification requirements because they support having all CDCs as Authorized CDC Liquidators. Once again, the criteria followed the language of the SBI Act, and thus are retained as proposed. SBA recognizes the concerns expressed by smaller CDCs and will work closely with industry leaders to ensure that training resources are available and to identify qualified third-party providers for those unable to staff these functions internally.

New § 120.975(c) added a legal counsel qualification requirement to ensure that SBA is aware of the parties engaged in debt collection litigation on behalf of the Agency. No meaningful comments were received regarding this requirement and the regulation is adopted as proposed.

New § 120.975(d) established the process for CDCs to make application for authority to liquidate and litigate. No substantive comments were received on this subparagraph and the regulation is adopted as proposed.

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

Executive Order 12866

The Office of Management and Budget has determined that this rule constitutes a ''significant regulatory action'' under Executive Order 12866 thus requiring Regulatory Impact Analysis, as set forth below.

A. Regulatory Objective of the Final Rule

The objective of the final rule is to clarify and make uniform SBA's existing regulations governing lenders participating in the 7(a) business loan program (Lenders) and Certified Development Companies (CDCs) that are performing loan servicing, liquidation and debt collection litigation. Parts of the rule have been drafted in response to a statutory directive arising from Pub. L. 106–554. Other parts of the final rule have been written as a codification of both longstanding Agency policy, and new direction in the area of liquidation and debt collection. The final rule will promote better understanding of Agency requirements by Lenders and CDCs, and improve oversight and management by SBA of Lender and CDC liquidation and debt collection litigation.

B. Baseline Costs of Existing Regulatory Framework

SBA 7(a) loan programs presently require Lenders to submit liquidation plans for most defaulted loans, except for those made pursuant to the SBAExpress program. SBA estimates that these requirements currently result in the submission of about 4,000 liquidation plans per year. The approximate time needed for lenders to complete a liquidation plan is two hours at an average cost of $30 per hour, resulting in a total annual cost to Lenders of $240,000.

Presently, CDCs that are authorized to perform liquidation activities on 504 loans submit about 100 liquidation plans per year. The approximate time needed for CDCs to complete a liquidation plan is two hours at an average cost of $30 per hour, resulting in a total annual cost to CDCs of $6,000.

SBA's 7(a) loan programs also presently require Lenders to submit litigation plans to SBA for approval. Lenders currently submit to SBA approximately 3,000 litigation plans per year. Preparation of each plan takes about one hour, at an average cost of $150 per hour for private counsel time, for a total annual cost to Lenders of $450,000. SBA reimburses Lenders for their share of reasonable, customary and necessary attorney fees, including those incurred for the preparation of litigation plans. CDCs submit to SBA only a small number of litigation plans presently, because SBA currently handles most litigation involving 504 loans.

SBA takes an average of one hour to review and respond to each liquidation and litigation plan submitted by Lenders and CDCs. This equates to 4,000 hours for Lender liquidation plans at an average cost of $30 per hour, for a total of $120,000. For review of CDC liquidation plans by SBA, 100 hours is required at an average cost of $30 per hour, for a total of $3,000. For Lender litigation plans, 3,000 hours of SBA review time is required at an average cost of $30 per hour, for a total of $90,000. SBA processes approximately 54,000 servicing and liquidation actions per year for Lenders and CDCs. The average action takes one-half hour for SBA to process, for a total of 27,000 hours processing time. At $30 per hour, this equates to a total cost to SBA of $810,000. Therefore, the total administrative cost to SBA under the current regulatory framework for these activities is approximately $1,023,000.

C. Potential Benefits and Costs of the Final Rule

1. Potential Benefits and Costs to Lenders

The rule would provide benefits for Lenders because it reduces the costs associated with submitting liquidation plans to SBA for review and approval. The only subprogram unaffected by the final rule would be for those loans approved under the Certified Lenders Program which by statute require the submission of a liquidation plan to SBA. Submission of liquidation plans is currently required for most lending programs by SBA procedures and regulations. SBA estimates that ending this requirement will enable Lenders to eliminate the preparation and submission to SBA of at least 4,000 liquidation plans a year. The approximate time to complete and submit a plan to SBA is about two hours at an average cost of $30 per hour. Consequently, eliminating the requirement to submit liquidation plans will save Lenders about $240,000 per year.

Other benefits for Lenders would result from the proposal to raise the dollar threshold for non-routine litigation (for which submission to SBA for pre-approval is required) from $5,000 to $10,000. With the higher dollar threshold, Lenders would be required to submit fewer litigation plans to SBA. The Agency anticipates that approximately 500 fewer plans annually would be required to be submitted to the Agency as a result of this change. Because preparation of each plan takes about one hour at an average cost of $150 per hour, SBA estimates that the enactment of the final rule would result in a cost savings of $75,000.

Finally, the final rule would reduce the operational costs associated with preparing requests for loan servicing and liquidation actions taken by Lenders that require prior SBA approval. These changes would simplify and reduce the costs of loan servicing and liquidation processes for Lenders.

SBA does not know of any specific costs that would be imposed on Lenders as a result of this rule except for the loss of income that would result from the limitation of interest on guarantees purchased by SBA to 120 days. It has, however, been SBA's experience in tracking the receipt of completed guarantee purchase request filings that such a limitation would affect only a small percentage (estimated at around 10%) of SBA guaranty purchases. In review of the comments to the proposed rule, Lenders objected to this limitation, viewing it as an encroachment on a source of income. SBA would like to note that current accounting practices generally limit the accrual of interest on defaulted loans to 90 days, and that after that date the loan would be placed in non-accrual status. This loss expressed by Lenders in their comments to the proposed rule relates to SBA bringing its

program provisions into greater conformance with more traditional banking practices.

In the proposed rule, SBA sought comment on any monetized quantitative or qualitative costs of Lenders' compliance with the rule. One comment filed by the Chairman of the House Small Business committee felt the proposed rule did not properly detail the indirect effects of the rule on small businesses. The thrust of the comment centered on the adverse impact the rule would have on small lenders and CDCs, and consequently local small business concerns. The committee Chairman felt the increased administrative burden resulting from these proposed changes to existing regulations would drive Lenders and CDCs from the program thus contracting the available sources of small business capital. According to the comment, this second order level of analysis must be performed lest the Congress initiate legislation to enjoin the regulations from taking effect.

SBA wishes to thank the Chairman for providing comment to the proposed rule, and would like to outline its response. In his comment letter, the Chairman identified the proposed rule as a modification of the existing regulatory structure that has proven successful in implementing the Small Business Act and the Small Business Investment Act. As it is, the final rule pertaining to CDC liquidation and debt collection activity performed by qualified CDCs is consistent with the statutory requirements mandated by § 510 of the Small Business Investment Act. In the preamble to the proposed rule, SBA explained the basis for the lengthy delay in fulfilling the legal mandate to promulgate regulations consistent with the statute. This final rule fulfills the Agency's responsibility to Congress under the Act. CDCs will retain the option to conduct their own liquidation and debt collection activity or to utilize a services of another CDC. The final rule also devises a form of compensation that offsets the additional operational costs associated with implementation of a liquidation function.

SBA acknowledges the Chairman's comments regarding the adverse impact the proposed rules could have on small 7(a) lenders that would be required to liquidate all collateral before seeking SBA purchase of the guarantee. SBA has decided to modify the final rule to require only the liquidation of business personal property (chattels) prior to seeking purchase. If a Lender only has business real property pledged against the SBA loan, the Lender can seek either a request for guarantee purchase or may elect to liquidate the property first. This option is presently available in the existing regulations cited in the comments as being successful in implementing the Small Business Act and the Small Business Investment Act.

2. Potential Benefits and Costs to CDCs

As provided by statute, this final rule would enable qualified CDCs to seek authority to perform liquidation and debt collection litigation, and by doing so, qualified CDCs would be determining that the benefits of conducting their own recovery on defaulted loans would outweigh any burdens associated with the preparation and submission to SBA of liquidation and litigation plans as set forth in the final rule. Such benefits would include the ability to pursue quicker liquidations and possibly achieve higher recoveries as a result.

SBA expects that CDCs would incur some additional costs as a result of this rule. SBA anticipates that CDCs would be required to submit to the Agency for approval about 300 liquidation plans per year, an increase of 200 from the approximately 100 liquidation plans CDCs currently submit annually. SBA estimates that the average time for completion of each plan would consist of two hours at an average cost of $30 per hour. Therefore, the annual cost of submitting the plans under the final rule would be $18,000 per year, for an overall cost increase of $12,000 from the $6,000 annual cost under the current regulatory framework. CDCs that receive delegated liquidation authority under the final rule would also incur added costs through acquiring resources and creating the necessary internal structures to engage in liquidation and litigation activities. SBA had sought comments from the public on any other monetized, quantitative or qualitative costs of CDCs' compliance with this rule and has decided on a compensation structure detailed below.

3. Potential Benefits and Costs for SBA and the Federal Government

The final rule would benefit SBA because it would eliminate the need for most Lenders to submit liquidation plans to SBA (the exception is for Lenders under the Certified Lenders Program, which are required to submit liquidation plans by statute; the number of liquidation plans submitted by such Lenders currently is minimal, and SBA expects even further reduction under the rule). SBA estimates that ending this requirement would eliminate the need for SBA to review about 4,000 liquidation plans a year. The approximate time required for SBA to review a liquidation plan is one hour at an average cost of $30 per hour. Consequently, there would be a cost savings to SBA of $120,000 per year.

Another benefit for SBA would result from the proposal to raise the dollar threshold for non-routine litigation (for which submission to SBA for pre-approval is required) from $5,000 to $10,000. SBA anticipates that approximately 500 fewer plans annually would be required to be submitted to the Agency as a result of this change. Because review of each plan takes about one hour at an average cost of $30 per hour, SBA estimates that the final rule would result in a cost savings of $15,000. In addition, SBA would not be required to reimburse Lenders for the Agency's proportionate share of the costs incurred by Lenders in connection with the preparation of these litigation plans, resulting in a further savings of approximately $50,000.

Although under the final rule SBA would be required to review liquidation plans submitted by qualified CDCs (estimated at 300 liquidation plans per year), this would not represent a significant increase in SBA administrative costs because currently SBA reviews approximately 100 such plans per year as well as provides assistance to CDCs on the preparation of such plans.

The final rule would also reduce SBA administrative costs associated with oversight of the Agency's business loan assistance programs by delegating greater servicing and liquidation responsibilities to Lenders and CDCs, and reducing their need to seek the prior approval of SBA for their proposed recovery activities and for various specific liquidation actions. This would decrease the amount of time required for SBA personnel to manage these programs. It is estimated that reviews of at least 30% (16,200) of the approximately 54,000 servicing and liquidation actions SBA currently processes annually would be eliminated. This would save an average of one-half hour processing time per action for a total time savings of 8,100 hours at $30 per hour, or $243,000.

In addition to increasing consistency among SBA's loan programs and creating more uniformity in processing guaranty purchase requests, the final rule would save taxpayer dollars by limiting payment of interest on purchased loans to 120 days, except for loans where the guaranteed portion has been sold in the Secondary Market. This change would not be a burden on Lenders because Lenders typically place loans on interest non-accrual after 90 days of delinquency and SBA already

limits interest purchased to 120 days in the fastest growing program (SBAExpress). However, it is estimated that such a limitation in the proposed rule would affect only a small percentage (estimated at around 10%) of future SBA guaranty purchases.

Finally, the proposed rule would facilitate SBA's transformation initiative by enabling the sale of groups of 7(a) and 504 loans in asset sales. To this end, the rule provides that Lenders which do not purchase the guaranteed portion of a defaulted 7(a) loan from a Registered Holder in the Secondary Market and have SBA purchase the guaranteed portion will have provided their consent for SBA to include the loan in an asset sale. This may turn out to be the most cost-effective approach for Lenders, particularly those with limited capital or operational resources to complete the liquidation exercise. Asset sales would also be available to CDCs, including those operating with limited funding since a sale may be the most expedient approach to disposing of defaulted loans.

Costs imposed on SBA as a result of the rule would include personnel and administrative costs associated with implementing appeals processes to which Lenders and Authorized CDC Liquidators may be entitled under the final rule when they disagree with a decision by an SBA field office or servicing center regarding a liquidation or litigation plan, when they disagree with an SBA determination to deny reimbursement of liquidation or litigation fees or costs, or when SBA denies applications from non-PCLP CDCs requesting authority to handle liquidation and debt collection litigation.

D. Final Rule Is the Best Available Means To Reach the Regulatory Objective

This final rule is SBA's best available means for achieving its regulatory objective of clarifying and making uniform existing SBA regulations and policy, which currently only partially address liquidation and debt collection litigation and vary across Agency lending programs.

With respect to CDCs that are eligible for and request liquidations and debt collection authority from SBA, the rule merely implements § 307(b) of Pub. L. 106–554, which requires SBA to promulgate regulations to carry out § 510 of the SBI Act, 15 U.S.C. 697g, regarding CDC liquidation and debt collection litigation authority. SBA considers those statutory provisions applicable to CDCs to be mandatory, and SBA has not identified any reasonable alternative to this proposed rule implementing the statutory mandate.

Executive Order 12988

This final action meets applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. In particular, the regulations provide for rights of appeal to Lenders and CDCs in the event they are aggrieved by an Agency decision, thereby limiting the possibility of litigation by these entities. The final action does not have retroactive or preemptive effect.

Executive Order 13132

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that the rule has no federalism implications warranting preparation of a federalism assessment.

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

This rule directly affects only those CDCs that are eligible for and that request, authority from SBA to conduct liquidation and debt collection litigation, along with an unknown number of small lending institutions. SBA assumes, therefore, that this final rule may have an impact on a substantial number of small entities. However, the rule merely implements statutory mandates and, further, SBA has determined that the impact on entities affected by the rule will not be significant for the reasons set forth below.

The final rule would enable qualified CDCs to seek authority to perform liquidation and debt collection litigation, and by doing so, qualified CDCs would be determining that the benefits of conducting their own recovery on defaulted loans would outweigh any burdens associated with the preparation and submission to SBA of liquidation and litigation plans as set forth in these regulations. Such benefits include the ability to pursue liquidations more quickly and potentially achieve higher loan recoveries. In the loan liquidation pilot program established by the Small Business Programs Improvement Act of 1996, CDCs that conducted their own liquidation achieved a slightly higher overall recovery rate than did SBA in the comparison group of cases handled directly by the Agency.

Subject to the new provisions contained in § 120.542, SBA would also be reimbursing CDCs for their reasonable, customary and necessary expense disbursements related to liquidation activities on particular loans, which would include title reports and title insurance on real estate collateral; appraisals; costs for the care and preservation of collateral; fees for lien recordings, filings and lien searches; and fees for legal services provided by outside counsel in litigating on a particular loan account.

SBA anticipates that approximately 80 of the 270 SBA-approved Certified Development Companies will apply to become Authorized CDC Liquidators. CDCs participating in the Premier Certified Lenders Program (PCLP) would not be required to seek authority to conduct liquidation and debt collection litigation on their PCLP loans since they are already required to do so by statute and regulation. PCLPs, however, will be required to liquidate and litigate their non-PCLP loans by this rule if they are notified by SBA that they meet either of the requirements to be an Authorized CDC Liquidator in order to have one consistent standard for all their loans.

CDCs are expected, by statute, to submit liquidation plans to the Agency for prior written approval. It is also assumed that all CDCs would qualify as a small CDC based on SBA size standards for non-depository, credit intermediaries. Based on the level of current CDC liquidation activity, SBA estimates receiving an industry total of 300 liquidation plans per year compared with a portfolio of over 33,400 outstanding CDC debentures for $11.9 billion as of September 30, 2005. SBA estimates that the average time for completion of each plan will necessitate two hours at an average cost of $30 per hour, which is based on a mid-level professional salary level of $60,000 per year. Therefore, the total annual cost to the CDC industry for all plans submitted would be $18,000 per year. Using a 1 percent default rate on $11.9 billion in debentures outstanding (300 liquidations divided by 33,400 debentures times $11.9 billion outstanding) results in an estimated liquidation portfolio of $119 million. With their debentures representing no more than five percent of the outstanding CDC debenture portfolio at fiscal year end, small CDCs would be no more likely to assume the industry expense burden than larger CDCs. The additional costs from enacting the final rule could be recaptured in liquidation

recoveries equivalent to just 2.0% of the estimated debenture balance in default. Based on this assessment, SBA concludes that this final rule will not have a significant impact on small CDCs.

The rule would also not impose a significant economic impact on small lending institutions in the 7(a) program for similar reasons. SBA size standards for small banks, savings institutions and credit unions is up to $165 million in total assets. A current review of the outstanding 7(a) loans finds over 95% of the SBA portfolio held by 400 of 5,200 registered lender participants, each of them larger in size than the stated size standard for small depository lending institutions. Most liquidations will be undertaken by the more active lenders whose total assets or average annual receipts far exceed the size standard for credit intermediaries. Consequently, this group will also incur the majority of liquidation expenses associated with collateral dispositions, leaving small lending institutions marginally impacted by this final rule. Small lenders that decide to sell the guaranteed portion of an SBA loan in the secondary market could actually benefit from the savings associated with the use of an asset sales mechanism. This benefit is derived from the availability of an asset disposition alternative that may be less costly for small lenders than the effort and expenses involved in planning, preparing and implementing a loan liquidation exercise. The low level of loan activity from small lenders may have a marginal overall effect on the program, but for individual small lenders the savings may be meaningful.

SBA recognizes that not all small lenders will opt for implied consent and will purchase the guaranteed interest from the secondary market. This purchase exercise, and the related cost of liquidating the SBA loan could increase the marginal costs of operating in the program; however, until SBA has more definitive data on which of the two options small lenders actually select, the impact on small lenders is indeterminate. SBA will monitor small lender liquidation activity for the next 2 years following enactment of the final rule and will re-examine its burden analysis on small lenders at that time to determine if changes are necessary.

SBA's assessment of the impact on small lenders filing a written request to have SBA to refrain from selling the unguaranteed portion of a defaulted loan in an asset sale is referenced in the discussion of the Paperwork Reduction Act detailed below.

Lenders would also realize a cost savings associated with eliminating the need to submit liquidation plans to SBA (except for Lenders under the Certified Lenders Program which are required to submit liquidation plans by statute), which is currently required by SBA procedures and regulations. SBA estimates that ending this requirement will enable Lenders to eliminate the preparation and submission to SBA of at least 4,000 liquidation plans a year. The approximate time to complete and submit these plans to SBA is about two hours at an average cost of $30 per hour. The average cost is based on a mid-level professional salary level of $60,000 per year. Consequently, eliminating the requirement to submit liquidation plans will save Lenders about $240,000 per year. The rule also reduces the number of loan servicing and liquidation actions taken by Lenders that require prior SBA approval as compared with existing SBA requirements, and makes the remaining prior approval requirements similar among the various SBA loan programs, thereby simplifying the loan servicing and liquidation process for SBA participating Lenders. In addition, as pointed out above, small lending institutions will be required to submit fewer litigation plans since the proposed rule raises the dollar threshold for Non-Routine Litigation from $5,000 to $10,000. SBA anticipates that approximately 500 fewer plans will be required to be submitted to the Agency as a result of this change. Since preparation of each plan takes about one hour at an average cost of $150 per hour, which is based on a nationwide estimate of the billing level for attorneys qualified to perform this type of work, SBA estimates that the final rule will result in a cost savings of $75,000.

In addition, this regulation merely codifies the existing SBA practice of requiring the submission of liquidation and litigation plans by Lenders and CDCs, but reduces any burden from this requirement as to litigation plans by raising the dollar threshold for Non-Routine Litigation from $5,000 to $10,000, as noted above. Further, the performance standards for 7(a) and 504 loan servicing and liquidation contained in these regulations merely codify existing SBA policy as set forth in SOPs and currently existing lending standards. In addition, it is a prudent lending practice for Lenders to prepare plans prior to undertaking liquidation and debt collection litigation. Therefore, this rule does not impose any new or unnecessary requirements on these small entities.

It is for these aforementioned reasons that SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The Paperwork Reduction Act

SBA has determined that this rule imposed additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Ch. 35; (1) Application for Liquidation Authority; (2) the Liquidation Plan; (3) the Litigation Plan; and (4) Request for Emergency Waiver. SBA received twenty comments objecting to the estimates used by SBA in its Paperwork Reduction Act analysis pertaining to authorizing CDCs to liquidate and litigate, and preparing liquidation and litigation plans acceptable to SBA. In complying with the Paperwork Reduction Act, SBA is obligated to address the estimated time taken by the public to complete the forms recommended for use. The information requested by SBA is maintained by Lenders in the normal course of their daily liquidation activity. SBA is requesting the Lenders disclose what they would readily have available in operating a liquidation function of a commercial lending practice. SBA is cognizant of the preparation work involved in a liquidation report filing, but does not view the form filing as taking more than 2 hours of work by a mid-level professional.

When evaluating the burden associated with filing litigation plans, SBA looks only to those instances when loan recovery through litigation is probable. SBA is also considering only those contemplated legal actions as non-routine in nature. When this level of filtering is applied to an estimate of the annual number of initial liquidations filed with SBA, the total cost estimate of $450,000 per year is reasonable.

The final rule provides Lenders with a limited opportunity to request SBA refrain from including the unguaranteed portion of an SBA loan with the SBA-purchased guaranteed portion in an asset sale conducted or overseen by SBA. This written notice would include an explanation supporting the Lender's request and would take the form of a simple letter. SBA has determined that this level of effort does not give rise to a cost analysis under the Paperwork Reduction Act.

Thus, based on its review of these proposed liquidation activities, SBA maintains that its estimates used in determining the costs of additional reporting or recordkeeping requirements under the Paperwork Reduction Act are accurate. SBA therefore makes no changes to the information collections in this final rule. In addition, SBA has

submitted these information collections to OMB for review and will publish a notice in the **Federal Register** announcing the results of the review.

List of Subjects in 13 CFR Part 120

Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons set forth above, SBA amends 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

■ 1. The authority citation for part 120 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(a) and (h), 696(3), 697(a)(2), and 697(g).

■ 2. Amend § 120.10 by adding the definitions of ''Authorized CDC Liquidator'' and ''Loan Program Requirements'', and by adding a sentence to the end of the definition of ''SOPs'' as follows:

§ 120.10 Definitions.

* * * * *

Authorized CDC Liquidator is a CDC in good standing with authority under the Act and SBA regulations to conduct liquidation and certain debt collection litigation in connection with 504 loans, as authorized by § 120.975.

* * * * *

Loan Program Requirements are requirements imposed upon Lenders or CDCs by statute, SBA regulations, any agreement the Lender or CDC has executed with SBA, SBA SOPs, official SBA notices and forms applicable to the 7(a) and 504 loan programs, and loan authorizations, as such requirements are issued and revised by SBA from time to time. For CDCs, this term also includes requirements imposed by Debentures, as that term is defined in § 120.802.

* * * * *

SOPs * * * SOPs are publicly available on SBA's Web site at *http://www.sba.gov* in the online library.

Subpart A—Policies Applying to All Business Loans

■ 3. Amend the undesignated center heading immediately preceding § 120.180 to read as follows:

Applicability and Enforceability of Loan Program Requirements

■ 4. Revise § 120.180 to read as follows:

§ 120.180 Lender and CDC compliance with Loan Program Requirements.

Lenders must comply and maintain familiarity with Loan Program Requirements for the 7(a) program, as such requirements are revised from time to time. CDCs must comply and maintain familiarity with Loan Program Requirements for the 504 program, as such requirements are revised from time to time. Loan Program Requirements in effect at the time that a Lender or CDC takes an action in connection with a particular loan govern that specific action. For example, although loan closing requirements in effect when a Lender or CDC closes a loan will govern the closing actions, a Lender or CDC's liquidation actions on the same loan are subject to the liquidation requirements in effect at the time that a liquidation action is taken.

■ 5. Add § 120.181 to read as follows:

§ 120.181 Status of Lenders and CDCs.

Lenders, CDCs and their contractors are independent contractors that are responsible for their own actions with respect to a 7(a) or 504 loan. SBA has no responsibility or liability for any claim by a borrower, guarantor or other party alleging injury as a result of any allegedly wrongful action taken by a Lender, CDC or an employee, agent, or contractor of a Lender or CDC.

■ 6. Revise the undesignated center heading immediately preceding § 120.195 to read as follows:

Reporting

■ 7. Add § 120.197 to read as follows:

§ 120.197 Notifying SBA's Office of Inspector General of suspected fraud.

Lenders, CDCs, Borrowers, and others must notify the SBA Office of Inspector General of any information which indicates that fraud may have occurred in connection with a 7(a) or 504 loan. Send the notification to the Assistant Inspector General for Investigations, Office of Inspector General, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

Subpart D—Lenders

■ 8. Amend § 120.440 by revising the section heading and the first sentence to read as follows:

§ 120.440 The Certified Lenders Program.

Under the Certified Lenders Program (CLP), designated Lenders process and close 7(a) loans and service and liquidate such loans in accordance with subpart E of this part. * * *

■ 9. Revise § 120.453 to read as follows:

§ 120.453 Responsibilities of PLP Lenders for servicing and liquidating 7(a) loans.

Servicing and Liquidation responsibilities for PLP Lenders are set forth in subpart E of this part.

■ 10a. Revise the heading of subpart E to read as follows:

Subpart E—Servicing, Liquidation and Debt Collection Litigation of 7(a) and 504 Loans

■ 10b. Remove § 120.500 and §§ 120.510 through § 120.513, and the undesignated center heading immediately preceding § 120.510 entitled ''Servicing''.

■ 11. Revise § 120.520 to read as follows:

§ 120.520 Purchase of 7(a) loan guarantees.

(a) *When SBA will purchase*—(1) *For loans approved on or after May 14, 2007.* A Lender may demand in writing that SBA honor its guarantee if the Borrower is in default on any installment for more than 60 calendar days (or less if SBA agrees) and the default has not been cured, provided all business personal property securing the defaulted SBA loan has been liquidated. A Lender may also submit a request for purchase of a defaulted 7(a) loan when a Borrower files for federal bankruptcy once a period of at least 60 days has elapsed since the last full installment payment. If a Borrower cures a default before a Lender requests purchase by SBA, the Lender's right to request purchase on that default lapses. SBA considers liquidation of business personal property collateral to be completed when a Lender has exhausted all prudent and commercially reasonable efforts to collect upon these assets. In addition, SBA, in its sole discretion, may purchase the guaranteed portion of a loan at any time whether in default or not, with or without the request from a Lender.

(2) *For loans approved before May 14, 2007.* The regulations applicable to the time that a Lender may make demand for purchase that were in effect immediately prior to this date will govern such loans.

(b) *Documentation for purchase.* SBA will not purchase its guaranteed portion of a loan from a Lender unless the Lender has submitted to SBA documentation that SBA deems sufficient to allow SBA to determine whether purchase of the guarantee is warranted under § 120.524.

(c) *Purchase of loans sold in Secondary Market.* When the Lender has sold the guaranteed portion of a loan in the Secondary Market, under subpart F of this part, Lenders must perform all necessary servicing and liquidation actions for such loan even after SBA has purchased the guaranteed portion of such loan from a Registered Holder (as that term is defined in § 120.600(i)). In the event that SBA purchases its guaranteed portion of such a loan from the Registered Holder, Lenders must

provide SBA with a loan status report within 15 business days of such purchase. This report should include but not be limited to, a status report on the borrower and current condition of the collateral, plans for any type of loan workout or loan restructuring, existing liquidation activities including the sale of loan collateral, or the status of ongoing foreclosure proceedings. The report should accompany requested documentation that SBA deems sufficient to be able to review the Lender's administration of the loan under § 120.524. A Lender's failure to provide sufficient documentation may constitute a material failure to comply with SBA requirements under § 120.524(a)(1), and may lead to initiation of an action for recovery from the Lender of all or some of the moneys SBA paid to a Registered Holder on a guarantee. SBA will also evaluate the Lender's continued participation in the Secondary Market and may restrict further sale of guaranteed portions into the Secondary Market until SBA determines that the Lender has provided sufficient documentation for purchases.

(d) *No waiver of SBA's rights.* Purchase by SBA of the guaranteed portion of a loan, or of a portion of SBA's guarantee of a loan, either through a negotiated agreement with a Lender or otherwise, does not waive any of SBA's rights to recover from the responsible Lender any money paid on the guarantee based upon the occurrence of any of the events set forth in § 120.524(a) in connection with that loan.

■ 12. Amend § 120.522 by revising the section heading and paragraph (b), and removing paragraph (d), to read as follows:

§ 120.522 Payment of accrued interest to the Lender or Registered Holder when SBA purchases the guaranteed portion.

* * * * *

(b) *Payment to Lender*—(1) *For loans approved on or after May 14, 2007.* SBA will pay up to a maximum of 120 days interest to a Lender at the time of guarantee purchase.

(2) *For loans approved before May 14, 2007.* The regulations applicable to the amount of interest that SBA will pay to a Lender upon loan default that were in effect immediately prior to this date will govern such loans.

* * * * *

■ 13. Amend § 120.524 by revising paragraphs (a)(1), (a)(8), and (b) through (d) to read as follows:

§ 120.524 When is SBA released from liability on its guarantee on loans?

(a) * * *

(1) The Lender has failed to comply materially with any Loan Program Requirement for 7(a) loans.

* * * * *

(8) The Lender has failed to request that SBA purchase a guarantee within 180 days after maturity of the loan. However, if the Lender is conducting liquidation or debt collection litigation in connection with a loan that has matured, SBA will be released from its guarantee only if the Lender fails to request that SBA purchase the guarantee within 180 days after the completion of the liquidation or debt collection litigation;

* * * * *

(b) If SBA determines, at any time, that any of the events set forth in paragraph (a) of this section occurred in connection with that loan, SBA is entitled to recover any moneys paid on the guarantee plus interest from the Lender responsible for those events.

(c) If the Lender's loan documentation or other information indicates that one or more of the events in paragraph (a) of this section occurred, SBA may undertake such investigation as it deems necessary to determine whether to honor or deny the guarantee, and may withhold a decision on whether to honor the guarantee until the completion of such investigation.

(d) Any information provided to SBA by a Lender or other party will not prejudice, or be construed as effecting any waiver of, SBA's right to deny liability for a guarantee if one or more of the events listed in paragraph (a) of this section occur.

* * * * *

■ 14. Remove the undesignated center heading immediately preceding § 120.530.

■ 15. Add the following new § 120.535 through § 120.536 to read as follows:

§ 120.535 Standards for Lender and CDC loan servicing, loan liquidation and debt collection litigation.

(a) *Service using prudent lending standards.* Lenders and CDCs must service 7(a) and 504 loans in their portfolio no less diligently than their non-SBA portfolio, and in a commercially reasonable manner, consistent with prudent lending standards, and in accordance with Loan Program Requirements. Those Lenders and CDCs that do not maintain a non-SBA loan portfolio must adhere to the same prudent lending standards for loan servicing followed by commercial lenders on loans without a government guarantee.

(b) *Liquidate using prudent lending standards.* Lenders and Authorized CDC Liquidators must liquidate and conduct debt collection litigation for 7(a) and 504 loans in their portfolio no less diligently than for their non-SBA portfolio, and in a prompt, cost-effective and commercially reasonable manner, consistent with prudent lending standards, and in accordance with Loan Program Requirements and with any SBA approval of either a liquidation or litigation plan or any amendment of such a plan. Lenders and CDCs that do not maintain a non-SBA loan portfolio must adhere to the same prudent lending standards followed by commercial lenders that liquidate loans without a government guarantee. They are also to operate in accordance with Loan Program Requirements and with any SBA approval of either a liquidation or litigation plan or any amendment of such a plan.

(c) *Absence of actual or apparent conflict of interest.* A CDC must not take any action in the liquidation or debt collection litigation of a 504 loan that would result in an actual or apparent conflict of interest between the CDC (or any employee of the CDC) and any Third Party Lender, associate of a Third Party Lender, or any person participating in a liquidation, foreclosure or loss mitigation action.

(d) *SBA rights to take over servicing or liquidation.* SBA may, in its sole discretion, undertake the servicing, liquidation and/or litigation of any 7(a) or 504 loan. If SBA elects to service, liquidate and/or litigate a loan, it will notify the relevant Lender or CDC in writing, and, upon receiving such notice, the Lender or CDC must assign the Loan Instruments to SBA and provide any needed assistance to allow SBA to service, liquidate and/or litigate the loan. SBA will notify the Borrower of the change in servicing. SBA may use contractors to perform these actions.

§ 120.536 Servicing and liquidation actions that require the prior written consent of SBA.

(a) *Actions by Lenders and CDCs.* Except as otherwise provided in a Supplemental Guarantee Agreement with a Lender or an Agreement with a CDC, SBA must give its prior written consent before a Lender or CDC takes any of the following actions:

(1) Increases the principal amount of a loan above that authorized by SBA at loan origination.

(2) Confers a Preference on the Lender or CDC or engages in an activity that creates a conflict of interest.

(3) Compromises the principal balance of a loan.

(4) Takes title to any property in the name of SBA.

(5) Takes title to environmentally contaminated property, or takes over operation and control of a business that handles hazardous substances or hazardous wastes.

(6) Transfers, sells or pledges more than 90% of a loan.

(7) Takes any action for which prior written consent is required by a Loan Program Requirement.

(b) *Actions by CDCs only (other than PCLP CDCs).* SBA must give its prior written consent before a CDC, other than a PCLP CDC, takes any of the following actions with respect to a 504 loan:

(1) Alters substantially the terms or conditions of any Loan Instrument.

(2) Releases collateral having a cumulative market value in excess of 10 percent of the Debenture amount or $10,000, whichever is less.

(3) Accelerates the maturity of the note.

(4) Compromises or releases any claim against any Borrower or obligor, or against any guarantor, standby creditor, or any other person that is contingently liable for moneys owed on the loan.

(5) Purchases or pays off any indebtedness secured by the property that serves as collateral for a defaulted 504 loan, such as payment of the debt(s) owed to a lien holder or lien holders with priority over the lien securing the loan.

(6) Accepts a workout plan to restructure the material terms and conditions of a loan that is in default or liquidation.

(7) Takes any action for which prior written consent is required by a Loan Program Requirement.

(c) *Documentation requirements.* For all servicing/liquidation actions not requiring SBA's prior written consent, Lenders and CDCs must document the justifications for their decisions and retain these and supporting documents in their file for future SBA review to determine if the actions taken by the Lender or CDC were prudent, commercially reasonable, and complied with all Loan Program Requirements.

■ 16. Remove the undesignated center heading before § 120.540 entitled ''Liquidation of Collateral.''

§ 120.540 [Redesignated as § 120.545]

■ 17. Redesignate § 120.540 as § 120.545, and remove paragraph (f) from newly designated § 120.545.

■ 18. Add new § 120.540 through § 120.542 to read as follows:

§ 120.540 Liquidation and litigation plans.

(a) *SBA oversight.* SBA may monitor or review liquidation through the review of liquidation plans which all Authorized CDC Liquidators and certain Lenders must submit to SBA for approval prior to undertaking liquidation, and through liquidation wrap-up reports which Lenders must submit to SBA at the completion of liquidation. SBA will monitor debt collection litigation, such as judicial foreclosures, bankruptcy proceedings and other state and federal insolvency proceedings, through the review of litigation plans, as set forth in this section.

(b) *Liquidation plan.* An Authorized CDC Liquidator and a Lender for a loan made under its authority as a CLP Lender must, prior to undertaking any liquidation, submit a written proposed liquidation plan to SBA and receive SBA's written approval of that plan.

(c) *Litigation plan.* An Authorized CDC Liquidator and a Lender must obtain SBA's prior approval of a litigation plan before proceeding with any Non-Routine Litigation, as defined in paragraph (c)(1) of this section. SBA's prior approval is not required for Routine Litigation, as defined in paragraph (c)(2) of this section.

(1) Non-Routine Litigation includes:

(i) All litigation where factual or legal issues are in dispute and require resolution through adjudication;

(ii) Any litigation where legal fees are estimated to exceed $10,000;

(iii) Any litigation involving a loan where a Lender or Authorized CDC Liquidator has an actual or potential conflict of interest with SBA; and

(iv) Any litigation involving a 7(a) or 504 loan where the Lender or CDC has made a separate loan to the same borrower which is not a 7(a) or 504 loan.

(2) Routine Litigation means uncontested litigation, such as non-adversarial matters in bankruptcy and undisputed foreclosure actions, having estimated legal fees not exceeding $10,000.

(d) *Decision by SBA to take over litigation.* If a Lender or Authorized CDC Liquidator is conducting, or proposes to conduct, debt collection litigation on a 7(a) loan or 504 loan, SBA may take over the litigation if SBA determines that the outcome of the litigation could adversely affect SBA's administration of the loan program or that the Government is entitled to legal remedies that are not available to the Lender or Authorized CDC Liquidator. Examples of cases that could adversely affect SBA's administration of a loan program include, but are not limited to, situations where SBA determines that:

(1) The litigation involves important governmental policy or program issues.

(2) The case is potentially of great precedential value or there is a risk of adverse precedent to the Government.

(3) The Lender or Authorized CDC Liquidator has an actual or potential conflict of interest with SBA.

(4) The legal fees of the Lender or Authorized CDC Liquidator's outside counsel are unnecessary, unreasonable or not customary in the locality.

(e) *Amendments to a liquidation or litigation plan.* Lenders and Authorized CDC Liquidators must submit an amended liquidation or litigation plan to address any material changes arising during the course of the liquidation or litigation that were not addressed in the original plan or an amended plan. Lenders and Authorized CDC Liquidators must obtain SBA's written approval of the amended plan prior to taking any further liquidation or litigation action. Examples of such material changes that would require the approval of an amended plan include, but are not limited to:

(1) Changes arising during the course of Routine Litigation that transform the litigation into Non-Routine Litigation, such as when the debtor contests a foreclosure or when the actual legal fees incurred exceed $10,000.

(2) If SBA has approved a litigation plan where anticipated legal fees exceed $10,000, or has approved an amended plan, and thereafter the anticipated or actual legal fees increase by more than 15 percent.

(3) If SBA has approved a liquidation plan, or an amended plan, and thereafter the anticipated or actual costs of conducting the liquidation increase by more than 15 percent.

(f) *Limited waiver of need for a written liquidation or litigation plan.* SBA may, in its discretion, and upon request by a Lender or Authorized CDC Liquidator, waive the requirements of paragraphs (b), (c) or (e) of this section, if one of the following extraordinary circumstances warrant such a waiver: the need for expeditious action to avoid the potential risk of loss on the loan or dissipation of collateral exists; an immediate response is required to litigation by a borrower, guarantor or third party; or another urgent reason arises. The Lender or Authorized CDC Liquidator must obtain SBA's written consent to such waiver before undertaking the Emergency action, if at all practicable. SBA's waiver will apply only to the specific action(s) which the Lender or Authorized CDC Liquidator has identified to SBA as being necessary to address the Emergency. The Lender or Authorized CDC Liquidator must, as soon after the Emergency as is practicable, submit a written liquidation or litigation plan to SBA or, if appropriate, a written amended plan, and may not take further liquidation or litigation action without

written approval of such plan or amendment by SBA.

(g) *Appeals.* A Lender for loans made under its authority as a CLP Lender or an Authorized CDC Liquidator that disagrees with an SBA office's decision pertaining to an original or amended liquidation plan, other than such portions of the plan that address litigation matters, may submit a written appeal to the AA/FA within 30 days of the decision. The AA/FA or designee will make the final Agency decision in consultation with the Associate General Counsel for Litigation. A Lender or Authorized CDC Liquidator that disagrees with an SBA office's decision pertaining to an original or amended litigation plan, or the portion of a liquidation plan addressing litigation matters, may submit a written appeal to the Associate General Counsel for Litigation within 30 days of the decision. The Associate General Counsel for Litigation will make the final Agency decision in consultation with the AA/FA.

§ 120.541 Time for approval by SBA.

(a) Except as set forth in paragraph (c) of this section, in responding to a request for approval under §§ 120.540(b), 120.540(c), 120.536(b)(5) or 120.536(b)(6), SBA will approve or deny the request within 15 business days of the date when SBA receives the request. If SBA is unable to approve or deny the request within this 15-day period, SBA will provide a written notice of no decision to the Lender or Authorized CDC Liquidator, stating the reason for SBA's inability to act; an estimate of the additional time required to act on the plan or request; and, if SBA deems appropriate, requesting additional information.

(b) Except as set forth in paragraph (c) of this section, unless SBA gives its written consent to a proposed liquidation or litigation plan, or a proposed amendment of a plan, or any of the actions set forth in § 120.536(b)(5) or § 120.536(b)(6), SBA will not be deemed to have approved the proposed action.

(c) If a Lender seeks to perform liquidation on a loan made under its authority as a CLP Lender by submitting a liquidation plan to SBA for approval, SBA will approve or deny such plan within ten business days. If SBA fails to approve or deny the plan within ten business days, SBA will be deemed to have approved such plan.

§ 120.542 Payment by SBA of legal fees and other expenses.

(a) *Legal fees SBA will not pay.* (1) SBA will not pay legal fees or other costs that a Lender or Authorized CDC Liquidator incurs:

(i) In asserting a claim, cross claim, counterclaim, or third-party claim against SBA or in defense of an action brought by SBA, unless payment of such fees or costs is otherwise required by federal law.

(ii) In connection with actions of a Lender or Authorized CDC Liquidator's outside counsel for performing non-legal liquidation services, unless authorized by SBA prior to the action.

(iii) In taking actions which solely benefit a Lender or Authorized CDC Liquidator and which do not benefit SBA, as determined by SBA.

(2) SBA will not pay legal fees or other costs a Lender or CDC incurs in the defense of, or pay for any settlement or adverse judgment resulting from, a suit, counterclaim or other claim by a borrower, guarantor, or other party that seeks damages based upon a claim that the Lender or CDC breached any duty or engaged in any wrongful actions, unless SBA expressly directed the Lender or CDC to undertake the allegedly wrongful action that is the subject of the suit, counterclaim or other claim.

(b) *Legal fees SBA may decline to pay.* In addition to any right or authority SBA may have under law or contract, SBA may, in its discretion, decline to pay a Lender or Authorized CDC Liquidator for all, or a portion, of legal fees and/or other costs incurred in connection with the liquidation and/or litigation of a 7(a) loan or 504 loan under any of the following circumstances:

(1) SBA determines that the Lender or Authorized CDC Liquidator failed to perform liquidation or litigation promptly and in accordance with commercially reasonable standards, in a prudent manner, or in accordance with any Loan Program Requirement or SBA approvals of either a liquidation or litigation plan or any amendment of such a plan.

(2) A Lender or Authorized CDC Liquidator fails to obtain prior written approval from SBA for any liquidation or litigation plan, or for any amended liquidation or litigation plan, or for any action set forth in § 120.536, when such approval is required by these regulations or a Loan Program Requirement.

(3) If SBA has not specifically approved fees or costs identified in an original or amended liquidation or litigation plan under § 120.540, and SBA determines that such fees or costs are not reasonable, customary or necessary in the locality in question. In such cases, SBA will pay only such fees as it deems are necessary, customary and reasonable in the locality in question.

(c) *Fees for liquidation actions performed by Authorized CDC Liquidators.* Subject to paragraph (d) of this section, SBA will compensate Authorized CDC Liquidators for their liquidation actions on 504 loans, whether such actions are performed by the CDC or the CDC's contractor retained in accordance with § 120.975(a)(2) or (b)(2)(ii). The compensation fee will be a percentage (to be published in the **Federal Register** from time to time, but not to exceed 10%) of the net recovery proceeds realized from the sale of collateral or other liquidation actions on an individual loan, up to a fee of $25,000 for such loan, and a lower percentage (also to be published in the **Federal Register** from time to time, but not to exceed 5%) of the realized net recovery proceeds above such amounts. The compensation fee limits set forth in this paragraph (c) do not include reasonable, customary and necessary administrative costs related to liquidation activities on such loan that are incurred in accordance with the liquidation plan, or amendments thereto, approved by SBA pursuant to § 120.540(b). The Authorized CDC Liquidator may compensate its contractor up to the amount it receives from SBA. All requests for compensation fees must be received by SBA within nine months from the date of SBA's purchase of the defaulted debenture. Fee requests not received within such timeframe will be automatically rejected.

(d) *Appeals—liquidation costs.* A Lender or Authorized CDC Liquidator that disagrees with a decision by an SBA office to decline to reimburse all, or a portion, of the fees and/or costs incurred in conducting liquidation may appeal this decision in writing to the AA/FA within 30 days of the decision. The decision of the AA/FA or designee will be made in consultation with the Associate General Counsel for Litigation, and will be the final Agency decision.

(e) *Appeals—litigation costs.* A Lender or Authorized CDC Liquidator that disagrees with a decision by SBA to decline to reimburse all, or a portion, of the legal fees and/or costs incurred in conducting debt collection litigation may appeal this decision in writing to the Associate General Counsel for Litigation within 30 days of the decision. The decision of the Associate General Counsel for Litigation will be made in consultation with the AA/FA, and will be the final Agency decision.

■ 19. Add a new § 120.546 to read as follows:

§ 120.546 Loan asset sales.

(a) *General.* Loan asset sales are governed by § 120.545(b)(4) and by this section.

(b) *7(a) loans*—(1) *For loans approved on or after May 14, 2007.* The Lender will be deemed to have consented to SBA's sale of the loan (guaranteed and unguaranteed portions) in an asset sale conducted or overseen by SBA upon the occurrence any of the following:

(i) SBA's purchase of the guaranteed portion of the loan from the Registered Holder for a loan where the guaranteed portion has been sold in the Secondary Market pursuant to subpart F of this part and after default, the Lender has not exercised its option to purchase such guaranteed portion; or

(ii) SBA's purchase of the guaranteed portion from the Lender, provided however, that if SBA purchased the guaranteed portion pursuant to § 120.520(a)(1) prior to the Lender's completion of liquidation for the loan, then SBA will not sell such loan in an asset sale until nine months from the date of SBA's purchase; or

(iii) SBA receives written consent from the Lender.

(2) For loans identified in paragraph (b)(1)(i) of this section, the Lender may request that SBA withhold the loan from an asset sale if the Lender submits a written request to SBA within 15 business days of SBA's purchase of the guaranteed portion of the loan from the Registered Holder and if such request addresses the issues described in this subparagraph. The Lender's written request must advise SBA of the status of the loan, the Lender's plans for workout and/or liquidation, including and pending sale of loan collateral or foreclosure proceedings arranged prior to SBA's purchase that already are underway, and the Lender's estimated schedule for restructuring the loan or liquidating the collateral. SBA will consider the Lender's request and, based on the circumstances, SBA in its sole discretion may elect to defer including the loan in an asset sale in order to provide the Lender additional time to complete the planned restructuring and/or liquidation actions.

(3) *For loans approved before May 14, 2007.* SBA must obtain written consent from the Lender for the sale of such loans in an asset sale.

(4) After SBA has purchased the guaranteed portion of a loan from the Registered Holder or from the Lender, the Lender must continue to perform all necessary servicing and liquidation actions for the loan up to the point the loan is transferred to the purchaser in an asset sale. The Lender also must cooperate and take all necessary actions to effectuate both the asset sale and the transfer of the loan to the purchaser in the asset sale.

(c) *504 loans*—(1) *PCLP Loans.* After SBA's purchase of a Debenture, SBA may at its sole discretion sell a defaulted PCLP Loan in an asset sale conducted or overseen by SBA, after providing to the PCLP CDC that made the loan advance notice of not less than 90 days before the date upon which SBA first makes its records concerning such loan available to prospective purchasers for examination.

(2) *All other 504 loans.* After SBA's purchase of a Debenture, SBA may at its sole discretion sell a defaulted 504 loan in an asset sale conducted or overseen by SBA.

Subpart H—Development Company Loan Program (504)

■ 20. Revise § 120.826 to read as follows:

§ 120.826 Basic requirements for operating a CDC.

A CDC must operate in accordance with all Loan Program Requirements. In its Area of Operations, a CDC must market the 504 program, package and process 504 loan applications, close and service 504 loans, and if authorized by SBA, liquidate and litigate 504 loans. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain all records and submit all reports required by SBA.

■ 21. Amend § 120.841 by revising paragraph (c) to read as follows:

§ 120.841 Qualifications for the ALP.

* * * * *

(c) *Current reviews in compliance.* SBA-conducted oversight reviews must be current (within past 12 months) for applicants for ALP status, and these reviews must have found the CDC to be in compliance with Loan Program Requirements.

* * * * *

■ 22. Amend § 120.845 by revising the first sentence of paragraph (c)(1) to read as follows:

§ 120.845 Premier Certified Lenders Program (PCLP).

* * * * *

(c) * * *

(1) The CDC must be an ALP CDC in substantial compliance with Loan Program Requirements or meet the criteria to be an ALP CDC set forth in § 120.841(a) through (h).* * *

* * * * *

■ 23. Amend § 120.846 by revising paragraph (a)(3) to read as follows:

§ 120.846 Requirements for maintaining and reviewing PCLP Status.

(a) * * *

(3) Substantially comply with all Loan Program Requirements.

* * * * *

■ 24. Amend § 120.848 by revising paragraphs (a) and (f) to read as follows:

§ 120.848 Requirements for 504 loan processing, closing, servicing, liquidating and litigating by PCLP CDCs.

(a) *General.* In processing closing, servicing, liquidating and litigating 504 loans under the PCLP (''PCLP Loans''), the PCLP CDC must comply with Loan Program Requirements and conduct such activities in accordance with prudent and commercially reasonable lending standards.

* * * * *

(f) *Servicing, liquidation and litigation responsibilities.* The PCLP CDC generally must service, liquidate and litigate its entire portfolio of PCLP Loans, although SBA may in certain circumstances elect to handle such duties with respect to a particular PCLP Loan or Loans. Additional servicing and liquidation requirements are set forth in subpart E of this part.

* * * * *

■ 25. Amend § 120.854 by revising paragraph (a)(2) to read as follows:

§ 120.854 Grounds for taking enforcement action against a CDC.

* * * * *

(a) * * *

(2) The CDC has failed to comply materially with any Loan Program Requirement.

* * * * *

■ 26. Amend § 120.970 by revising paragraphs (a) and (h) to read as follows:

§ 120.970 Servicing of 504 loans and Debentures.

(a) In servicing 504 loans, CDCs must comply with Loan Program Requirements and in accordance with prudent and commercially reasonable lending standards.

* * * * *

(h) Additional servicing requirements are set forth in subpart E of this part.

■ 27. Add a new undesignated center heading after § 120.972 to read as follows:

Authority of CDCs To Perform Liquidation and Debt Collection Litigation

■ 28. Add § 120.975 to read as follows:

§ 120.975 CDC Liquidation of loans and debt collection litigation.

(a) *PCLP CDCs.* If a CDC is designated as a PCLP CDC under § 120.845, the CDC must liquidate and handle debt collection litigation with respect to all PCLP Loans in its portfolio on behalf of SBA as required by § 120.848(f), in accordance with subpart E of this part. With respect to all other 504 loans that a PCLP CDC makes, the PCLP CDC is an Authorized CDC Liquidator and must exercise its delegated authority to liquidate and handle debt-collection litigation in accordance with subpart E of this part for such loans, if the PCLP CDC is notified by SBA that it meets either of the following requirements to be an Authorized CDC Liquidator, as determined by SBA:

(1) The PCLP CDC has one or more employees who have not less than two years of substantive, decision-making experience in administering the liquidation and workout of defaulted or problem loans secured in a manner substantially similar to loans funded with 504 loan program debentures, and who have completed a training program on loan liquidation developed by the Agency in conjunction with qualified CDCs that meet the requirements of this section; or

(2) The PCLP CDC has entered into a contract with a qualified third party for the performance of its liquidation responsibilities and obtains the approval of SBA with respect to the qualifications of the contractor and the terms and conditions of the contract.

(b) *All other CDCs.* A CDC that is not authorized under paragraph (a) of this section may apply to become an Authorized CDC Liquidator with authority to liquidate and handle debt collection litigation with respect to 504 loans on behalf of SBA, in accordance with subpart E of this part, if the CDC meets the following requirements:

(1) The CDC meets either of the following criteria:

(i) The CDC participated in the loan liquidation pilot program established by the Small Business Programs Improvement Act of 1996 prior to October 1, 2006; or

(ii) During the three fiscal years immediately prior to seeking such authority, the CDC made an average of not less than ten 504 loans per year; and

(2) The CDC meets either of the following requirements:

(i) The CDC has one or more employees who have not less than two years of substantive, decision-making experience in administering the liquidation and workout of defaulted or problem loans secured in a manner substantially similar to loans funded with 504 loan program debentures, and who have completed a training program on loan liquidation developed by the Agency in conjunction with qualified CDCs that meet the requirements of this section; or

(ii) The CDC has entered into a contract with a qualified third party for the performance of its liquidation responsibilities and obtains the approval of SBA with respect to the qualifications of the contractor and the terms and conditions of the contract.

(c) *CDC counsel.* To perform debt collection litigation under paragraphs (a) or (b) of this section, a CDC must also have either in-house counsel with adequate experience as approved by SBA or entered into a contract for the performance of debt collection litigation with an experienced attorney or law firm as approved by SBA.

(d) *Application for authority to liquidate and litigate.* To seek authority to perform liquidation and debt collection litigation under paragraphs (b) and (c) of this section, a CDC other than a PCLP CDC must submit a written application to SBA and include documentation demonstrating that the CDC meets the requirements of paragraph (b) and (c) of this section. If a CDC intends to use a contractor to perform liquidation, it must obtain approval from SBA of both the qualifications of the contractor and the terms and conditions in the contract covering the CDC's retention of the contractor. SBA will notify a CDC in writing when the CDC can begin to perform liquidation and/or debt collection litigation under this section.

Dated: April 9, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–6946 Filed 4–11–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM370; Special Conditions No. 25–349–SC]

Special Conditions: Dassault Aviation Model Falcon 7X Airplane; Side Stick Controllers, Electronic Flight Control System: Lateral-Directional and Longitudinal Stability, Low Energy Awareness, Flight Control Surface Position Awareness, and Flight Characteristics Compliance Via the Handling Qualities Rating Method; Flight Envelope Protection: General Limiting Requirements, High Incidence Protection Function, Normal Load Factor (g) Limiting, and Pitch, Roll, and High Speed Limiting Functions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Dassault Aviation Model Falcon 7X airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include side stick controllers, electronic flight control systems, and flight envelope protections. These special conditions pertain to control and handling qualities of the airplane and protection limits within the normal flight envelope. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: April 4, 2007.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2011; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2002, Dassault Aviation, 9 rond Point des Champs Elysees, 75008, Paris, France, applied for FAA type certificate for its new Model Falcon 7X airplane. The Dassault Model Falcon 7X airplane is a 19 passenger transport

category airplane powered by three aft mounted Pratt & Whitney PW307A high bypass ratio turbofan engines. Maximum takeoff weight will be 63,700 pounds, and maximum certified altitude will be 51,000 feet with a range of 5,700 nautical miles. The airplane is operated using a fly-by-wire (FBW) primary flight control system. This will be the first application of a FBW primary flight control system in an airplane primarily intended for private/corporate use.

The Dassault Aviation Model Falcon 7X design incorporates equipment that was not envisioned when part 25 was created. This equipment includes side stick controllers, and an electronic flight control system that provides flight envelope protection. Therefore, special conditions are required that provide the level of safety equivalent to that established by the regulations.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Dassault Aviation must show that the Model Falcon 7X airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–108.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Model Falcon 7X airplane because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Dassault Model Falcon 7X airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, these special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Dassault Falcon 7X airplane will incorporate the following novel or unusual design features:

- Side stick controllers;
- Electronic flight control system: lateral-directional and longitudinal stability, low energy awareness,
- Electronic flight control system: flight control surface position awareness,
- Electronic flight control system: flight characteristics compliance via the handling qualities rating method (HQRM);
- Flight envelope protection: general limiting requirements,
- Flight envelope protection: high incidence protection function,
- Flight envelope protection: normal load factor (g) limiting,
- Flight envelope protection: pitch, roll, and high speed limiting functions.

Because of these rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions address equipment which may affect the airplane's structural performance, either directly or as a result of failure or malfunction. These special conditions are identical or nearly identical to those previously required for type certification of other airplane models.

Discussion

Because of these rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. Therefore, in addition to the requirements of part 25, subparts C and D, the following special conditions apply.

Special Condition No. 1. Side Stick Controllers

The Falcon 7X will use side stick controllers for pitch and roll control. Regulatory requirements for conventional wheel and column controllers, such as requirements pertaining to pilot strength and controllability, are not directly applicable to side stick controllers. Certain ergonomic considerations such as armrest support, freedom of arm movement, controller displacement, handgrip size and accommodations for a range of pilot sizes are not addressed in the regulations. In addition, pilot control authority may be uncertain, because the side sticks are not mechanically interconnected as with conventional wheel and column controls. Pitch and roll control force and displacement sensitivity must be compatible, so that normal inputs on one control axis will not cause significant unintentional inputs on the other.

These special conditions require that the unique features of the side stick must be demonstrated through flight and simulator tests to have suitable handling and control characteristics.

Special Condition No. 2. Electronic Flight Control System: Lateral-Directional Stability, Longitudinal Stability, and Low Energy Awareness

In lieu of compliance with the regulations pertaining to lateral-directional and longitudinal stability, these special conditions ensure that the Model Falcon 7X will have suitable airplane handling qualities throughout the normal flight envelope.

The unique features of the Model Falcon 7X flight control system and side stick controllers, when compared with conventional airplanes with wheel and column controllers, do not provide conventional awareness to the flightcrew of a change in speed or a change in the direction of flight. These special conditions require that adequate awareness be provided to the pilot of a low energy state (low speed, low thrust, and low altitude) below normal operating speeds.

a. *Lateral-Directional Static Stability:* The electronic flight control system (EFCS) on the Falcon 7X contains fly-by-wire control laws that result in neutral lateral-directional static stability. Therefore, the conventional requirements of the regulations are not met.

The Model Falcon 7X airplane has a flight control design feature within the normal operational envelope in which side stick deflection in the roll axis commands roll rate. As a result, the stick force in the roll axis will be zero (neutral stability) during the straight, steady sideslip flight maneuver of § 25.177(c) and will not be ''substantially proportional to the angle of sideslip,'' as required by the regulation.

With conventional control system requirements, positive static directional stability is defined as the tendency to recover from a skid with the rudder free. Positive static lateral stability is defined as the tendency to raise the low wing in a sideslip with the aileron controls free. These special conditions are intended to accomplish the following:

- Provide additional cues of inadvertent sideslips and skids through control force changes.
- Ensure that short periods of unattended operation do not result in any significant changes in yaw or bank angle.
- Provide predictable roll and yaw response.
- Provide acceptable level of pilot attention (i.e., workload) to attain and maintain a coordinated turn.

b. *Longitudinal Static Stability:* The longitudinal flight control laws for the Falcon 7X provide neutral static stability within the normal operational envelope. Therefore, it is inappropriate to require the airplane design to comply with the static longitudinal stability requirements of §§ 25.171, 25.173, and 25.175.

Static longitudinal stability on conventional airplanes with mechanical links to the pitch control surface means that a pull force on the controller will result in a reduction in speed relative to the trim speed, and a push force will result in higher than trim speed. Longitudinal stability is required by the regulations for the following reasons:

- Speed change cues are provided to the pilot through increased and decreased forces on the controller.
- Short periods of unattended control of the airplane do not result in significant changes in attitude, airspeed, or load factor.
- A predictable pitch response is provided to the pilot.
- An acceptable level of pilot attention (i.e., workload) to attain and maintain trim speed and altitude is provided to the pilot.
- Longitudinal stability provides gust stability.

The pitch control movement of the side stick is a normal load factor or ''g'' command which results in an initial movement of the elevator surface to attain the commanded load factor. That movement is followed by integrated movement of the stabilizer and elevator to automatically trim the airplane to a neutral (1g) stick-free stability. The flight path commanded by the initial side stick input will remain stick-free until the pilot gives another command. This control function is applied during ''normal'' control law within the speed range from the speed at the angle of attack protection limit to initiation of the angle of attack protection limit. Once outside this speed range, the control laws introduce the conventional longitudinal static stability as described above.

As a result of neutral static stability, the Falcon 7X does not meet the part 25 requirements for static longitudinal stability. It would not be appropriate to apply the conventional part 25 requirements for static longitudinal stability to the unconventional control systems of the Falcon 7X. These special conditions require that the airplane be shown to have suitable static longitudinal stability in any condition normally encountered in service.

c. *Low Energy Awareness:* Static longitudinal stability provides an awareness to the flightcrew of a low energy state (low speed and thrust at low altitude). Past experience on airplanes fitted with a flight control system which provides neutral longitudinal stability shows there are insufficient feedback cues to the pilot of excursion below normal operational speeds. The maximum angle of attack protection system limits the airplane angle of attack and prevents stall during normal operating speeds, but this system is not sufficient to prevent stall at low speed excursions below normal operational speeds. Until intervention, there are no stability cues because the airplane remains trimmed. Additionally, feedback from the pitching moment due to thrust variation is reduced by the flight control laws. Recovery from a low speed excursion may become hazardous when the low speed is associated with low altitude and the engines are operating at low thrust or with other performance limiting conditions.

Because § 25.173 requires that the pilot receive speed change cues through increased or decreased forces on the controller, it would be inappropriate to apply those requirements for feedback cues to the Falcon Model 7X systems. These special conditions require that the airplane provide adequate awareness of a low energy state to the pilot.

Special Condition No. 3. Electronic Flight Control System: Flight Control Surface Position Awareness

With a response-command type of flight control system and no direct mechanical coupling from cockpit controller to control surface, the controller does not provide the Falcon 7X pilot with an awareness of the actual surface deflection position during flight maneuvers. Some unusual flight conditions, arising from atmospheric conditions or airplane or engine failures or both, may result in full or nearly full surface deflection. Unless the flightcrew is made aware of excessive deflection or impending control surface deflection limiting, the pilot or auto-flight system may encounter situations where loss of control or other unsafe handling or performance characteristics occur.

These special conditions require that suitable annunciation be provided to the flightcrew when a flight condition exists in which nearly full control surface deflection occurs. Suitability of such a display must take into account that some pilot-demanded maneuvers (e.g., rapid roll) are necessarily associated with intended full or nearly full control surface deflection. Therefore, simple alerting systems which function in both intended or unexpected control-limiting situations must be properly balanced between needed crew awareness and nuisance warnings.

Special Condition No. 4. Electronic Flight Control System: Flight Characteristics Compliance Via the Handling Qualities Rating Method (HQRM)

The Model Falcon 7X airplane will have an electronic flight control system (EFCS). This system provides an electronic interface between the pilot's flight controls and the flight control surfaces (for both normal and failure states). The system also generates the actual surface commands that provide for stability augmentation and control about all three airplane axes. Because EFCS technology has outpaced existing regulations-written essentially for unaugmented airplanes with provision for limited ON/OFF augmentation-suitable special conditions and a method of compliance are required to aid in the certification of flight characteristics.

These special conditions and the method of compliance presented in Appendix 7, FAA Handling Qualities Rating Method, of AC 25–7A, Flight Test Guide Certification of Transport Category Airplanes, provide a means to evaluate flight characteristics—for example, ''satisfactory,'' ''adequate,'' or ''controllable''—to determine compliance with the regulations. The HQRM in Appendix 7 was developed for airplanes with control systems having similar functions and is employed to aid in the evaluation of the following:

- All EFCS/airplane failure states not shown to be extremely improbable and where the envelope (task) and atmospheric disturbance probabilities are each 1.
- All combinations of failures, atmospheric disturbance level, and flight envelope not shown to be extremely improbable.
- Any other flight condition or characteristic where 14 CFR part 25 proves to be inadequate for proper assessment of unique Falcon Model 7X flight characteristics.

The Handling Qualities Rating Method provides a systematic approach to the assessment of handling qualities. It is not intended to dictate program size or need for a fixed number of pilots to achieve multiple opinions. The airplane design itself and success in defining critical failure combinations from the many reviewed in Systems Safety Assessments dictate the scope of any HQRM application.

Handling qualities terms, principles, and relationships familiar to the aviation community have been used to

formulate the HQRM. For example, we have established that the well-known COOPER–HARPER rating scale and the FAA three-part rating system are similar. This approach on the flying qualities of highly augmented/ relaxed static stability airplanes in relation to regulatory and flight test guide requirements is reported in DOT/FAA/CT–82/130, Flying Qualities of Relaxed Static Stability Aircraft, Volumes I and II.

Special Condition No. 5. Flight Envelope Protection: General Limiting Requirements

These special conditions and the following ones-pertaining to flight envelope protection-present general limiting requirements for all the unique flight envelope protection features of the basic Model Falcon 7X Electronic Flight Control System (EFCS) design. Current regulations do not address these types of protection features. The general limiting requirements are necessary to ensure a smooth transition from normal flight to the protection mode and adequate maneuver capability. The general limiting requirements also ensure that the structural limits of the airplane are not exceeded. Furthermore, failure of the protection feature must not create hazardous flight conditions. Envelope protection parameters include angle of attack, normal load factor, pitch angle, and speed. To accomplish these envelope protections, one or more significant changes occur in the EFCS control laws as the normal flight envelope limit is approached or exceeded.

Each specific type of envelope protection is addressed individually in the special conditions that follow.

Special Condition No. 6. Flight Envelope Protection-High Incidence Protection Function

The Falcon 7X is equipped with a high incidence protection function that limits the angle of attack at which the airplane can be flown during normal low speed operation and that cannot be overridden by the flightcrew. This function prevents the airplane from stalling and therefore, the stall warning system is not needed during normal flight conditions. If there is a failure of the high incidence protection function that is not shown to be extremely improbable, the flight characteristics at the angle of attack for C_{LMAX} must be suitable in the traditional sense, and stall warning must be provided in a conventional manner. These special conditions address these and other unique features of this function on the Model Falcon 7X.

These special conditions define a minimum steady flight speed, V_{MIN}, to be demonstrated during flight test, at which the airplane can develop lift normal to the flight path and equal to its weight at the angle of attack limit of the protection function. It further defines procedures for establishing the reference stall speed, V_{SR}, to be used for defining reference speeds during takeoff and landing.

In the absence of specific regulations in 14 CFR part 25, these special conditions present High Incidence Protection Function requirements for the capability and reliability of the function, stall warning with a failure condition, handling qualities and characteristics at high incidence or angle of attack flight maneuvers, and specific applications of the newly defined V_{MIN} in lieu of current regulations.

Special Condition No. 7. Flight Envelope Protection: Normal Load Factor (G) Limiting

The Falcon 7X flight control system design incorporates a normal load factor limiting function on a full time basis that will prevent the pilot from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. This limiting feature is active in the normal flight control mode and cannot be overridden by the pilot. There is no requirement in the regulations for this limiting feature.

This normal load factor limit is unique in that traditional airplanes with conventional flight control systems (mechanical linkages) are limited in the pitch axis only by the elevator surface area and deflection limit. The elevator control power is normally derived for adequate controllability and maneuverability at the most critical longitudinal pitching moment. The result is that traditional airplanes have a significant portion of the flight envelope in which maneuverability in excess of limit structural design values is possible.

Part 25 does not require a demonstration of maneuver control or handling qualities beyond the design limit structural loads. Nevertheless, some pilots have become accustomed to the availability of this excess maneuver capacity in case of extreme emergency, such as upset recoveries or collision avoidance.

Because Dassault has chosen to include this optional design feature on the Falcon 7X, for which part 25 does not contain adequate or appropriate safety standards, special conditions pertaining to this feature are included. These special conditions establish minimum load factor requirements to ensure adequate maneuver capability during normal flight. Other limiting features of the normal load factor limiting function, as discussed above, that affect the upper load limits are not addressed in these special conditions. The phrase ''in the absence of other limiting factors'' has been added relative to past similar special conditions to clarify that while the main focus is on the lower load factor limits, there are other limiting factors that must be considered in the load limiting function.

Special Condition No. 8. Flight Envelope Protection: Pitch, Roll, and High Speed Limiting Functions

The Model Falcon 7X will incorporate pitch attitude and high speed limiting functions via the Electronic Flight Control System (EFCS) normal operating mode. In addition, positive spiral stability and partial pitch compensation will be introduced in the lateral and pitch axes through the control laws for bank angles greater than 35 degrees.

The purpose of the pitch attitude limiting function, in conjunction with the high incidence protection function, is to prevent airplane stall during low speed, high angle of attack excursions.

The high speed limiting protection function prevents the pilot from inadvertently or intentionally exceeding the airplane maximum design speeds, V_D/M_D. Part 25 does not address such a function that would limit or modify flying qualities in the high speed region.

There are no specific hard limits on the Falcon 7X for bank angle. At bank angles up to 35 degrees, side movement of the controller commands roll rate depending on the amount of deflection. Bank angle is immediately accomplished by the control law function and deflection of the control surfaces. With the stick released to its neutral point, the airplane will maintain the commanded bank angle (neutral spiral stability). Positive spiral stability is introduced at and above 35 degrees band angle such that a stick force is required to maintain bank angle, and releasing the stick will return the airplane to 35 degrees.

In addition to the requirements of § 25.143, this special condition establishes requirements to ensure that pitch and high speed limiting functions do not impede normal maneuvering and that pitch and roll limiting functions do not restrict or prevent attaining bank angles necessary for emergency maneuvering.

Discussion of Comments

Notice of proposed special conditions No. 25–07–06–SC for the Dassault

Aviation Model Falcon 7X airplanes was published in the **Federal Register** on February 26, 2007 (72 FR 8296). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Dassault Aviation Model Falcon 7X airplanes. Should Dassault Aviation apply at a later date for a change to the type certificate to include another model on the same type certificate incorporating the same novel or unusual design features, these special conditions would apply to that model as well.

For Final Special Conditions Effective Upon Issuance

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Dassault Aviation Model Falcon 7X airplanes is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on model Falcon 7X airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Dassault Aviation Model Falcon 7X airplanes.

1. Side Stick Controllers

In the absence of specific requirements for side stick controllers, the following special conditions apply:

a. *Pilot strength:* In lieu of the ''strength of pilots'' limits shown in § 25.143(c) for pitch and roll, and in lieu of the specific pitch force requirements of §§ 25.145(b) and 25.175(d), it must be shown that the temporary and maximum prolonged force levels for the side stick controllers are suitable for all expected operating conditions and configurations, whether normal or non-normal.

b. *Pilot control authority:* The electronic side stick controller coupling design must provide for corrective and/or overriding control inputs by either pilot with no unsafe characteristics. Annunciation of the controller status must be provided, and must not be confusing to the flightcrew.

c. *Pilot control:* It must be shown by flight tests that the use of side stick controllers does not produce unsuitable pilot-in-the-loop control characteristics when considering precision path control/tasks and turbulence. In addition, pitch and roll control force and displacement sensitivity must be compatible, so that normal inputs on one control axis will not cause significant unintentional inputs on the other.

d. *Autopilot quick-release control location:* In lieu of compliance with § 25.1329(d), autopilot quick release (emergency) controls must be on both side stick controllers. The quick release means must be located so that it can readily and easily be used by the flightcrew.

2. Electronic Flight Control System: Lateral-Directional and Longitudinal Stability, and Low Energy Awareness

In lieu of the requirements of §§ 25.171, 25.173, 25.175, and 25.177(c), the following special conditions apply:

a. The airplane must be shown to have suitable static lateral, directional, and longitudinal stability in any condition normally encountered in service, including the effects of atmospheric disturbance. The showing of suitable static lateral, directional and longitudinal stability must be based on the airplane handling qualities, including pilot workload and pilot compensation, for specific test procedures during the flight test evaluations.

b. The airplane must provide adequate awareness to the pilot of a low energy (low speed/low thrust/low height) state when fitted with flight control laws presenting neutral longitudinal stability significantly below the normal operating speeds. ''Adequate awareness'' means warning information must be provided to alert the crew of unsafe operating conditions and to enable them to take appropriate corrective action.

c. The static directional stability—as shown by the tendency to recover from a skid with the rudder free—must be positive for any landing gear and flap position and symmetrical power condition, at speeds from 1.13 V_{SR1} up to V_{FE}, V_{LE}, or V_{FC}/M_{FC} (as appropriate).

d. In straight, steady sideslips (unaccelerated forward slips), the rudder control movements and forces must be substantially proportional to the angle of sideslip, and the factor of proportionality must be between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles—up to the angle at which full rudder control is used or a rudder pedal force of 180 pounds (81.72 kg) is obtained—the rudder pedal forces may not reverse, and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has a suitable sideslip indication, there must be enough bank and lateral control deflection and force accompanying sideslipping to clearly indicate any departure from steady, unyawed flight.

3. Electronic Flight Control System: Flight Control Surface Position Awareness

In addition to the requirements of §§ 25.143, 25.671 and 25.672, the following special conditions apply:

a. A suitable flight control position annunciation must be provided to the crew in the following situation:

A flight condition exists in which—without being commanded by the crew—control surfaces are coming so close to their limits that return to normal flight and (or) continuation of safe flight requires a specific crew action.

b. In lieu of control position annunciation, existing indications to the crew may be used to prompt crew action, if they are found to be adequate.

Note: The term ''suitable'' also indicates an appropriate balance between nuisance and necessary operation.

4. Electronic Flight Control System: Flight Characteristics Compliance Via the Handling Quantities Rating Method (HQRM)

a. Flight characteristics compliance determination for electronic flight control system (EFCS) Failure Cases:

In lieu of compliance with § 25.672(c), the HQRM contained in Appendix 7, FAA Handling Qualities Rating Method, of the Flight Test Guide for Certification of Transport Category Airplanes, AC 25–7A (or an equivalent method of compliance found acceptable to the FAA), must be used for evaluation of EFCS configurations resulting from single and multiple failures not shown to be extremely improbable.

The handling qualities ratings are:

(1) *Satisfactory:* Full performance criteria can be met with routine pilot effort and attention.

(2) *Adequate:* Adequate for continued safe flight and landing; full or specified

reduced performance can be met, but with heightened pilot effort and attention.

(3) *Controllable:* Inadequate for continued safe flight and landing, but controllable for return to a safe flight condition, safe flight envelope and/or reconfiguration, so that the handling qualities are at least Adequate.

b. Handling qualities will be allowed to progressively degrade with failure state, atmospheric disturbance level, and flight envelope, as shown in Figure 12, ''Minimum HQ Requirements,'' of Appendix 7. Specifically, for probable failure conditions within the normal flight envelope, the pilot-rated handling qualities must be satisfactory in light atmospheric disturbance and adequate in moderate atmospheric disturbance. The handling qualities rating must not be less than adequate in light atmospheric disturbance for improbable failures.

Note: AC 25–7A, Appendix 7 presents a method of compliance and provides guidance for the following:

- Minimum handling qualities rating requirements in conjunction with atmospheric disturbance levels, flight envelopes, and failure conditions (Figure 12),
- Flight Envelope definition (Figures 5A, 6 and 7),
- Atmospheric Disturbance Levels (Figure 5B),
- Flight Control System Failure State (Figure 5C),
- Combination Guidelines (Figures 5D, 9 and 10), and
- General flight task list, from which appropriate specific tasks can be selected or developed (Figure 11).

5. Flight Envelope Protection: General Limiting Requirements

a. *General Requirements.*

(1) Onset characteristics of each envelope protection function must be smooth, appropriate to the phase of flight and type of maneuver, and not in conflict with the ability of the pilot to satisfactorily change the airplane flight path, speed, or attitude, as needed.

(2) Limit values of protected flight parameters (and if applicable, associated warning thresholds) must be compatible with the following:

(a) Airplane structural limits,

(b) Required safe and controllable maneuvering of the airplane, and

(c) Margins to critical conditions. Dynamic maneuvering, airframe and system tolerances (both manufacturing and in-service), and non-steady atmospheric conditions—in any appropriate combination and phase of flight—must not result in a limited flight parameter beyond the nominal design limit value that would cause unsafe flight characteristics.

(3) The airplane must be responsive to intentional dynamic maneuvering to within a suitable range of the parameter limit. Dynamic characteristics, such as damping and overshoot, must also be appropriate for the flight maneuver and limit parameter in question.

(4) When simultaneous envelope limiting is engaged, adverse coupling or adverse priority must not result.

b. *Failure States:* EFCS failures, including sensor failures, must not result in a condition where a parameter is limited to such a reduced value that safe and controllable maneuvering is no longer available. The crew must be alerted by suitable means, if any change in envelope limiting or maneuverability is produced by single or multiple failures of the EFCS not shown to be extremely improbable.

6. Flight Envelope Protection: High Incidence Protection Function

a. *Definitions.* For the purpose of this special condition, the following definitions apply:

Electronic Flight Control System (EFCS): The electronic and software command and control elements of the flight control system.

High Incidence Protection Function: An airplane level function that automatically limits the maximum angle of attack that can be attained to a value below that at which an aerodynamic stall would occur.

Alpha Limit: The maximum angle of attack at which the airplane stabilizes with the high incidence protection function operating and the longitudinal control held on its aft stop.

V_{MIN}: The minimum steady flight speed is the stabilized, calibrated airspeed obtained when the airplane is decelerated at an entry rate not exceeding 1 knot per second, until the longitudinal pilot control is on its stop with the high incidence protection function operating.

V_{MIN1g}: V_{MIN} corrected to 1g conditions. It is the minimum calibrated airspeed at which the airplane can develop a lift force normal to the flight path and equal to its weight when at an angle of attack not greater than that determined for V_{MIN}.

b. *Capability and Reliability of the High Incidence Protection Function*

(1) It must not be possible to encounter a stall during pilot induced maneuvers, and handling characteristics must be acceptable, as required by paragraphs e and f below, titled High Incidence Handling Demonstrations and High Incidence Handling Characteristics respectively.

(2) The airplane must be protected against stalling due to the effects of environmental conditions such as windshears and gusts at low speeds, as required by paragraph g, Atmospheric Disturbances, below.

(3) The ability of the high incidence protection function to accommodate any reduction in stalling incidence resulting from residual ice must be verified.

(4) The reliability of the function and the effects of failures must be acceptable, in accordance with § 25.1309 and Advisory Circular 25.1309–1A, System Design and Analysis.

(5) The high incidence protection function must not impede normal maneuvering for pitch angles up to the maximum required for normal maneuvering, including a normal all-engines operating takeoff plus a suitable margin to allow for satisfactory speed control.

c. *Minimum Steady Flight Speed and Reference Stall Speed.* In lieu of the requirements of § 25.103, the following special conditions apply:

(1) V_{MIN}: The minimum steady flight speed, for the airplane configuration under consideration and with the high incidence protection function operating, is the final stabilized calibrated airspeed obtained when the airplane is decelerated at an entry rate not exceeding 1 knot per second until the longitudinal pilot control is on its stop.

(2) The minimum steady flight speed, V_{MIN}, must be determined with:

(a) The high incidence protection function operating normally.

(b) Idle thrust.

(c) All combinations of flap settings and landing gear positions.

(d) The weight used when V_{SR} is being used as a factor to determine compliance with a required performance standard.

(e) The most unfavorable center of gravity allowable, and

(f) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

(3) V_{MIN1g} is V_{MIN} corrected to 1g conditions. V_{MIN1g} is the minimum calibrated airspeed at which the airplane can develop a lift force normal to the flight path and equal to its weight when at an angle of attack not greater than that determined for V_{MIN}. V_{MIN1g} is defined as follows:

$$V_{MIN1g} = \frac{V_{MIN}}{\sqrt{n_{zw}}}$$

Where—

n_{zw} = load factor normal to the flight path at V_{MIN}

(4) The Reference Stall Speed, V_{SR}, is a calibrated airspeed selected by the

applicant. V_{SR} may not be less than the 1g stall speed. V_{SR} is expressed as:

$$V_{SR} \geq V_{S1g} = \frac{V_{CL_{MAX}}}{\sqrt{n_{zw}}}$$

Where—

V_{CLMAX} = Calibrated airspeed obtained when the load factor-corrected lift coefficient

$$\left(\frac{n_{zw}W}{qS}\right)$$

is first a maximum during the maneuver prescribed in paragraph (5)(h) of this special condition.

n_{zw} = Load factor normal to the flight path at V_{CLMAX}

W = Airplane gross weight

S = Aerodynamic reference wing area, and

q = Dynamic pressure.

(5) V_{CLMAX} must be determined with the following conditions:

(a) Engines idling or—if that resultant thrust causes an appreciable decrease in stall speed—not more than zero thrust at the stall speed

(b) The airplane in other respects, such as flaps and landing gear, in the condition existing in the test or performance standard in which V_{SR} is being used.

(c) The weight used when V_{SR} is being used as a factor to determine compliance with a required performance standard.

(d) The center of gravity position that results in the highest value of reference stall speed.

(e) The airplane trimmed for straight flight at a speed achievable by the automatic trim system, but not less than 1.13 V_{SR} and not greater than 1.3 V_{SR}.

(f) [Reserved]

(g) The high incidence protection function adjusted to a high enough incidence to allow full development of the 1g stall.

(h) Starting from the stabilized trim condition, apply the longitudinal control to decelerate the airplane so that the speed reduction does not exceed one knot per second.

(6) The flight characteristics at the angle of attack for C_{LMAX} must be suitable in the traditional sense at FWD and AFT center of gravity in straight and turning flight at IDLE power. Although for a normal production EFCS and steady full aft stick this angle of attack for C_{LMAX} cannot be achieved, the angle of attack can be obtained momentarily under dynamic circumstances and deliberately in a steady state sense with some EFCS failure conditions.

(7) The reference stall speed, V_{SR}, is a calibrated airspeed defined by the applicant. If V_{SR} is chosen equal to V_{MIN1g}, an equivalent safety finding to the intent of § 25.103 may be considered to have been met. The applicant may choose V_{SR} to be less than V_{MIN1g} but not less than V_{S1g} if compensating factors are provided to ensure safe characteristics.

d. *Stall Warning.*

(1) *Normal Operation.* If the conditions of paragraph b, Capability and Reliability of the High Incidence Protection Function, of this special conditions are satisfied, a level of safety equivalent to that intended by § 25.207, Stall Warning, must be considered to have been met without provision of an additional, unique warning device.

(2) *Failure Cases.* Following failures of the high incidence protection function not shown to be extremely improbable, if the function no longer satisfies paragraph b, Capability and Reliability of the High Incidence Protection Function, paragraphs b(1), (2), and (3) of this special condition, stall warning must be provided in accordance with § 25.207. The stall warning should prevent inadvertent stall under the following conditions:

(a) Power off straight stall approaches to a speed 5 percent below the warning onset.

(b) Turning flight stall approaches with at least 1.5g load factor normal to the flight path at entry rate of at least 2 knots per second when recovery is initiated not less than one second after warning onset.

e. *High Incidence Handling Demonstrations.* In lieu of the requirements of § 25.201, the following special conditions apply:

Maneuvers to the limit of the longitudinal control in the nose up direction must be demonstrated in straight flight and in 30 degree banked turns under the following conditions:

(1) The high incidence protection function operating normally.

(2) Initial power condition of:

(a) Power off.

(b) The power necessary to maintain level flight at 1.5 V_{SR1}, where V_{SR1} is the reference stall speed with the flaps in the approach position, the landing gear retracted, and the maximum landing weight. The flap position to be used to determine this power setting is that position in which the stall speed, V_{SR1}, does not exceed 110% of the stall speed, V_{SR0}, with the flaps in the most extended landing position.

(3) [Reserved]

(4) Flaps, landing gear and deceleration devices in any likely combination of positions.

(5) Representative weights within the range for which certification is requested, and

(6) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

f. *High Incidence Handling Characteristics.* In lieu of the requirements of § 25.203, the following special conditions apply:

(1) In demonstrating the handling characteristics specified in paragraphs (2), (3), (4), and (5) below, the following procedures must be used:

(a) Starting at a speed sufficiently above the minimum steady flight speed to ensure that a steady rate of speed reduction can be established, apply the longitudinal control so that the speed reduction does not exceed one knot per second until the control reaches the stop.

(b) The longitudinal control must be maintained at the stop until the airplane has reached a stabilized flight condition and must then be recovered by normal recovery techniques.

(c) The requirements for turning flight maneuver demonstrations must also be met with accelerated rates of entry to the incidence limit, up to the maximum rate achievable.

(2) Throughout maneuvers with a rate of deceleration of not more than 1 knot per second, both in straight flight and in 30 degree banked turns, the airplane's characteristics must be as follows:

(a) There must not be any abnormal airplane nose-up pitching.

(b) There must not be any uncommanded nose-down pitching that would be indicative of stall. However, reasonable attitude changes associated with stabilizing the incidence at alpha limit as the longitudinal control reaches the stop would be acceptable. Any reduction of pitch attitude associated with stabilizing the incidence at the alpha limit should be achieved smoothly and at a low pitch rate, such that it is not likely to be mistaken for natural stall identification.

(c) There must not be any uncommanded lateral or directional motion, and the pilot must retain good lateral and directional control by conventional use of the cockpit controllers throughout the maneuver.

(d) The airplane must not exhibit buffeting of a magnitude and severity that would act as a deterrent to completing the maneuver.

(3) In maneuvers with increased rates of deceleration, some degradation of characteristics is acceptable, associated with a transient excursion beyond the stabilized alpha-limit. However, the airplane must not exhibit dangerous characteristics or characteristics that would deter the pilot from holding the longitudinal controller on the stop for a

period of time appropriate to the maneuvers.

(4) It must always be possible to reduce incidence by conventional use of the controller.

(5) The rate at which the airplane can be maneuvered from trim speeds associated with scheduled operating speeds, such as V_2 and V_{REF}, up to alpha-limit must not be unduly damped or significantly slower than can be achieved on conventionally controlled transport airplanes.

g. *Atmospheric Disturbances.* Operation of the high incidence protection function must not adversely affect aircraft control during expected levels of atmospheric disturbances or impede the application of recovery procedures in case of windshear. Simulator tests and analysis may be used to evaluate such conditions but must be validated by limited flight testing to confirm handling qualities at critical loading conditions.

h. *[Reserved]*

i. *Proof of Compliance.* In addition to the requirements of § 25.21, the following special conditions apply:

The flying qualities must be evaluated at the most unfavorable center of gravity position.

j. *Longitudinal Control:*

(1) In lieu of the requirements of § 25.145(a) and (a)(1), the following special conditions apply:

It must be possible—at any point between the trim speed for straight flight and V_{min}—to pitch the nose downward, so that the acceleration to this selected trim speed is prompt, with:

The airplane trimmed for straight flight at the speed achievable by the automatic trim system and at the most unfavorable center of gravity;

(2) In lieu of the requirements of § 25.145(b)(6), the following special conditions apply:

With power off, flaps extended and the airplane trimmed at 1.3 V_{SR1}, obtain and maintain airspeeds between V_{min} and either 1.6 V_{SR1} or V_{FE}, whichever is lower.

k. *Airspeed Indicating System.* (1) In lieu of the requirements of § 25.1323(c)(1), the following special conditions apply: V_{MO} to V_{min} with the flaps retracted.

(2) In lieu of the requirements of § 25.1323(c)(2), the following special conditions apply: V_{min} to V_{FE} with flaps in the landing position.

7. Flight Envelope Protection: Normal Load Factor (g) Limiting

In addition to the requirements of § 25.143(a)—and in the absence of other limiting factors—the following special conditions apply:

a. The positive limiting load factor must not be less than:

(1) 2.5g for the Electronic Flight Control System (EFCS) normal state.

(2) 2.0g for the EFCS normal state with the high lift devices extended.

b. The negative limiting load factor must be equal to or more negative than:

(1) Minus 1.0g for the EFCS normal state.

(2) 0.0g for the EFCS normal state with high lift devices extended.

Note: This special condition does not impose an upper bound for the normal load factor limit, nor does it require that the limit exist. If the limit is set at a value beyond the structural design limit maneuvering load factor ''n,'' indicated in §§ 25.333(b) and 25.337(b) and (c), there should be a very positive tactile feel built into the controller and obvious to the pilot that serves as a deterrent to inadvertently exceeding the structural limit.

8. Flight Envelope Protection: Pitch, Roll, and High Speed Limiting Functions

In addition to § 25.143, the following special conditions apply:

a. Operation of the high speed limiter during all routine and descent procedure flight must not impede normal attainment of speeds up to the overspeed warning.

b. The pitch limiting function must not impede airplane maneuvering, including an all-engines operating takeoff, for pitch angles up to the maximum required for normal operations plus a suitable margin in the pitch axis to allow for satisfactory speed control.

c. The high speed limiting function must not impede normal attainment of speeds up to V_{MO}/M_{MO} during all routine and descent procedure flight conditions.

d. The pitch and roll limiting functions must not restrict nor prevent attaining bank angles up to 65 degrees and pitch attitudes necessary for emergency maneuvering. Positive spiral stability, which is introduced above 35 degrees bank angle, must not require excessive pilot strength on the side stick controller to achieve bank angles up to 65 degrees. Stick force at bank angles greater than 35 degrees must not be so light that over-control would lead to pilot-induced oscillations.

Issued in Renton, Washington, on April 4, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–6888 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM371; Special Conditions No. 25–350–SC]

Special Conditions: Dassault Aviation Model Falcon 7X Airplane; Sudden Engine Stoppage, Operation Without Normal Electrical Power, and Dive Speed Definition With Speed Protection System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Dassault Aviation Model Falcon 7X Airplane; Sudden Engine Stoppage, Operation Without Normal Electrical Power, and Dive Speed Definition with Speed Protection System. This airplane will have novel or unusual design features that include engine size and torque load, which affect sudden engine stoppage; electrical and electronic systems which perform critical functions, which affect operation without normal electrical power; and dive speed definition with speed protection system. These special conditions pertain to their effects on the structural performance of the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: April 4, 2007.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1503; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2002, Dassault Aviation, 9 rond Point des Champs Elysees, 75008, Paris, France, applied for an FAA type certificate for its new Model Falcon 7X airplane. The Dassault Model Falcon 7X airplane is a 19 passenger transport category airplane powered by three aft mounted Pratt & Whitney PW307A high bypass ratio turbofan engines. Maximum takeoff weight will be 63,700 pounds, and maximum certified altitude

will be 51,000 feet with a range of 5,700 nautical miles. The airplane is operated using a fly-by-wire (FBW) primary flight control system. This will be the first application of a FBW primary flight control system in an airplane primarily intended for private/corporate use.

The Dassault Aviation Model Falcon 7X design incorporates equipment that was not envisioned when part 25 was created. This equipment affects sudden engine stoppage, operation without normal electrical power, and dive speed definition with speed protection system. Therefore, special conditions are required that provide the level of safety equivalent to that established by the regulations.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Dassault Aviation must show that the Model Falcon 7X airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–108.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Model Falcon 7X airplane because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Dassault Model Falcon 7X airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Dassault Aviation Model Falcon 7X airplane will incorporate novel or unusual design features that will affect:

- Sudden engine stoppage.
- Operation without normal electrical power.
- Dive speed definition with speed protection system.

These special conditions address equipment which may affect the airplane's structural performance, either directly or as a result of failure or malfunction. These special conditions are identical or nearly identical to those previously required for type certification of other airplane models.

Discussion

Because of these rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. Therefore, in addition to the requirements of part 25, subparts C and D, the following special conditions apply.

Special Conditions for Sudden Engine Stoppage

The Dassault Model Falcon 7X will have high-bypass ratio turbofan engines. Engines of this size were not envisioned when § 25.361, pertaining to loads imposed by engine seizure, was adopted in 1965. Worst case engine seizure events become increasingly more severe with increasing engine size because of the higher inertia of the rotating components.

Section 25.361(b)(1) requires that for turbine engine installations, the engine mounts and the supporting structures must be designed to withstand a ''limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure.'' Limit loads are expected to occur about once in the lifetime of any airplane. Section 25.305 requires that supporting structures be able to support limit loads without detrimental permanent deformation, meaning that supporting structures should remain serviceable after a limit load event.

Since adoption of § 25.361(b)(1), the size, configuration, and failure modes of jet engines have changed considerably. Current engines are much larger and are designed with large bypass fans. In the event of a structural failure, these engines are capable of producing much higher transient loads on the engine mounts and supporting structures.

As a result, modern high bypass engines are subject to certain rare-but-severe engine seizure events. Service history shows that such events occur far less frequently than limit load events. Although it is important for the airplane to be able to support such rare loads safely without failure, it is unrealistic to expect that no permanent deformation will occur.

Given this situation, the Aviation Rulemaking Advisory Committee (ARAC) proposed a design standard for today's large engines. For the commonly-occurring deceleration events, the proposed standard requires engine mounts and structures to support maximum torques without detrimental permanent deformation. For the rare-but-severe engine seizure events such as loss of any fan, compressor, or turbine blade, the proposed standard requires engine mounts and structures to support maximum torques without failure, but allows for some deformation in the structure.

The FAA concludes that modern large engines, including those on the Model Falcon 7X, are novel and unusual compared to those envisioned when § 25.361(b)(1) was adopted and thus warrant a special condition. The special condition contains design criteria recommended by ARAC. The ARAC proposal was to revise the wording of § 25.361(b), including §§ 25.361(b)(1) and (b)(2), removing language pertaining to structural failures and moving it to a separate requirement that discusses the reduced factors of safety that apply to these failures.

Special Conditions for Operation Without Normal Electrical Power

The Dassault Aviation Model Falcon 7X airplane will have electrical and electronic systems which perform critical functions. The Model Falcon 7X airplane is a fly-by-wire control system that requires a continuous source of electrical power for the flight control system to remain operable, since the loss of all electrical power may be catastrophic to the airplane. The airworthiness standards of part 25 do not contain adequate or appropriate standards for the protection of the Electronic Flight Control System from the adverse effects of operations without normal electrical power.

Section 25.1351(d), ''Operation without normal electrical power,'' requires safe operation in visual flight rule (VFR) conditions for at least five minutes with inoperative normal power. This rule was structured around a traditional design utilizing mechanical control cables for flight control surfaces and the pilot controls. Such traditional designs enable the flightcrew to maintain control of the airplane, while providing time to sort out the electrical failure, re-start the engines if necessary, and re-establish some of the electrical power generation capability.

The Dassault Aviation Model Falcon 7X airplane, however, will utilize an Electronic Flight Control System for the pitch and yaw control (elevator, stabilizer, and rudder). There is no mechanical linkage between the pilot controls and these flight control surfaces. Pilot control inputs are converted to electrical signals, which are processed and then transmitted via wires to the control surface actuators. At the control surface actuators, the

electrical signals are converted to an actuator command, which moves the control surface.

To maintain the same level of safety as that associated with traditional designs, the Dassault Model 7X airplanes with electronic flight controls must not be time limited in their operation, including being without the normal source of electrical power generated by the engine or the Auxiliary Power Unit (APU) generated electrical power.

Service experience has shown that the loss of all electrical power generated by the airplane's engine generators or APU is not extremely improbable. Thus, it must be demonstrated that the airplane can continue safe flight and landing—including steering and braking on ground for airplanes using steer/brake-by-wire—after total loss of normal electrical power with the use of its emergency electrical power systems. These emergency electrical power systems must be able to power loads that are essential for continued safe flight and landing.

Special Conditions for Dive Speed Definition With Speed Protection System

Dassault Aviation proposed to reduce the speed margin between V_C and V_D required by § 25.335(b), based on the incorporation of a high speed protection system in the Model Falcon 7X flight control laws. The Falcon 7X is equipped with a high speed protection system which limits nose down pilot authority at speeds above V_C/M_C and prevents the airplane from actually performing the maneuver required under § 25.335(b)(1).

Section 25.335(b)(1) is an analytical envelope condition which was originally adopted in Part 4b of the Civil Air Regulations to provide an acceptable speed margin between design cruise speed and design dive speed. Freedom from flutter and airframe design loads is affected by the design dive speed. While the initial condition for the upset specified in the rule is 1g level flight, protection is afforded for other inadvertent overspeed conditions as well. Section 25.335(b)(1) is intended as a conservative enveloping condition for all potential overspeed conditions, including non-symmetric ones.

To establish that all potential overspeed conditions are enveloped, the applicant will demonstrate that the dive speed will not be exceeded during pilot-induced or gust-induced upsets in non-symmetric attitudes.

In addition, the high speed protection system in the Falcon 7X must have a high level of reliability.

Discussion of Comments

Notice of proposed special conditions No. 25–07–07–SC for the Dassault Aviation Model Falcon 7X airplanes was published in the **Federal Register** on March 1, 2007 (72 FR 9273). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Dassault Aviation Model Falcon 7X airplane. Should Dassault Aviation apply at a later date for a change to the type certificate to include another model on the same type certificate incorporating the same novel or unusual design features, these special conditions would apply to that model as well.

For Final Special Conditions Effective Upon Issuance

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Dassault Model Falcon 7X is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on model Falcon 7X airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Dassault Aviation Model Falcon 7X airplanes.

1. Sudden Engine Stoppage

In lieu of the requirements of § 25.361(b) the following special condition applies:

(a) *For turbine engine installations*, the engine mounts, pylons and adjacent supporting airframe structure must be designed to withstand 1 g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(1) Sudden engine deceleration due to a malfunction which could result in a temporary loss of power or thrust; and

(2) The maximum acceleration of the engine.

(b) *For auxiliary power unit installations*, the power unit mounts and adjacent supporting airframe structure must be designed to withstand 1 g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(1) Sudden auxiliary power unit deceleration due to malfunction or structural failure; and

(2) The maximum acceleration of the power unit.

(c) *For engine supporting structures*, an ultimate loading condition must be considered that combines 1 g flight loads with the transient dynamic loads resulting from:

(1) The loss of any fan, compressor, or turbine blade; and separately

(2) where applicable to a specific engine design, any other engine structural failure that results in higher loads.

(d) The ultimate loads developed from the conditions specified in paragraphs (c)(1) and (2) above are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure. In addition, the airplane must be capable of continued safe flight considering the aerodynamic effects on controllability due to any permanent deformation that results from the conditions specified in paragraph (c), above.

2. Operation Without Normal Electrical Power

In lieu of the requirements of 14 CFR 25.1351(d), the following special condition applies:

It must be demonstrated by test or combination of test and analysis that the airplane can continue safe flight and landing with inoperative normal engine and APU generator electrical power (i.e., electrical power sources, excluding the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines and maintain flight for the maximum diversion time capability being certified.

3. Dive Speed Definition With Speed Protection System

In lieu of the requirements of § 25.335(b)(1)—if the flight control system includes functions which act automatically to initiate recovery before

the end of the 20 second period specified in § 25.335(b)(1)—the following special condition applies.

The greater of the speeds resulting from the conditions of paragraphs (a) and (b), below, must be used.

(a) From an initial condition of stabilized flight at V_C/M_C, the airplane is upset so as to take up a new flight path 7.5 degrees below the initial path. Control application, up to full authority, is made to try and maintain this new flight path. Twenty seconds after initiating the upset, manual recovery is made at a load factor of 1.5 g (0.5 acceleration increment) or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. The speed increase occurring in this maneuver may be calculated, if reliable or conservative aerodynamic data is used. Power, as specified in § 25.175(b)(1)(iv), is assumed until recovery is made, at which time power reduction and the use of pilot controlled drag devices may be used.

(b) From a speed below V_C/M_C with power to maintain stabilized level flight at this speed, the airplane is upset so as to accelerate through V_C/M_C at a flight path 15 degrees below the initial path—or at the steepest nose down attitude that the system will permit with full control authority if less than 15 degrees.

Note: The pilot's controls may be in the neutral position after reaching V_C/M_C and before recovery is initiated.

(c) Recovery may be initiated three seconds after operation of high speed warning system by application of a load of 1.5 g (0.5 acceleration increment) or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power may be reduced simultaneously. All other means of decelerating the airplane, the use of which is authorized up to the highest speed reached in the maneuver, may be used. The interval between successive pilot actions must not be less than one second.

(d) The applicant must also demonstrate that the design dive speed, established above, will not be exceeded during pilot-induced or gust-induced upsets in non-symmetric attitudes.

(e) The occurrence of any failure condition that would reduce the capability of the overspeed protection system must be improbable (less than 10^{-5} per flight hour).

Issued in Renton, Washington, on April 4, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–6889 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27552; Directorate Identifier 2007–NE–11–AD; Amendment 39–15019; AD 2007–08–02]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Model HC–E4A–3( )/E10950( ) Propellers

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Hartzell Propeller Inc. model HC–E4A–3( )/E10950( ) propellers. This AD requires initial and repetitive inspections and rework of the propeller blade retention radius, and replacement of the propeller blade thrust bearing, for each blade. This AD results from reports of excessive propeller vibration and of damaged or broken propeller blade thrust bearings found during routine and investigative propeller disassembly. We are issuing this AD to prevent propeller blade separation, damage to the airplane, and possible loss of airplane control.

DATES: This AD becomes effective April 27, 2007. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 27, 2007.

We must receive any comments on this AD by June 11, 2007.

ADDRESSES: Use one of the following addresses to comment on this AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tim Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; e-mail: *tim.smyth@faa.gov; telephone:* (847) 294–7132; fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION: We have received reports of excessive propeller vibration, and of damaged or broken propeller blade thrust bearings on Hartzell Propeller Inc. model HC–E4A–3( )/E10950( ) propellers found during routine and investigative propeller disassembly. At least 15 propellers have been reported with broken propeller blade thrust bearings. During teardowns, instances of bearing failures have been progressively more severe, with more internal damage to the hub noted. Service history shows the propellers can safely accumulate 2,000 operating hours time-since-overhaul (TSO) before the unsafe conditions start to appear. A broken thrust bearing can lead to damage to the propeller hub and blade shank, and blade separation from the hub. These damaged or broken parts can also lead to damage to the internal propeller pitch change mechanism, resulting in loss of propeller pitch control or in difficulty in feathering the propeller. This condition, if not corrected, could result in propeller blade separation, damage to the airplane, and possible loss of airplane control. Repairing the propeller blade retention radius using the instructions cited in Hartzell Propeller Inc. Service Bulletin (SB) No. HC–SB–61–287, Revision 2, dated October 24, 2006, allows the propeller to safely operate for 3,000 hours before requiring bearing replacement.

Relevant Service Information

We reviewed and approved the technical contents of Hartzell Propeller Inc. SB No. HC–SB–61–287, Revision 2, dated October 24, 2006. That SB describes procedures for initial and repetitive propeller blade inspection, rework, and thrust bearing replacement, for each blade.

Differences Between This AD and the Service Information

Hartzell Propeller Inc. SB No. HC–SB–61–287, Revision 2, dated October 24, 2006, states in paragraph 3.G.(6) of the Accomplishment Instructions, to install new blade thrust bearings if required. However, this AD removes the option of ''if required,'' and mandates that operators must always install new blade thrust bearings.

FAA's Determination and Requirements of this AD

The unsafe condition described previously is likely to exist or develop on other Hartzell Propeller Inc. model HC–E4A–3( )/E10950( ) propellers of the same type design. For that reason, we are issuing this AD to prevent propeller blade separation, damage to the airplane, and possible loss of airplane control. You must use the service information described previously to perform the actions required by this AD.

This AD requires:

- For propellers with 4,000 or more operating hours TSO, initial inspection and rework of the propeller blade retention radius and replacement of the propeller thrust bearing for each blade, within 100 operating hours after the effective date of the AD; and
- For propellers with 2,000 or more operating hours TSO, but fewer than 4,000 operating hours TSO, inspection and rework of the propeller blade retention radius and replacement of the propeller thrust bearing, for each blade, at the next propeller disassembly; and
- Thereafter, after every 3,000 additional operating hours time-in-service, inspection and rework of the propeller blade retention radius and replacement of the propeller blade thrust bearing, for each blade.

You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2007–27552; Directorate Identifier 2007–NE–11–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Docket Management System (DMS) Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Authority for this Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2007–08–02 Hartzell Propeller Inc.: Amendment 39–15019; Docket No. FAA–2007–27552; Directorate Identifier 2007–NE–11–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 27, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hartzell Propeller Inc. model HC–E4A–3( )/E10950( ) propellers. These propellers are installed on, but not limited to, Raytheon Beechcraft 1900D airplanes.

(d) The parentheses appearing in the propeller model number indicates the presence or absence of an additional letter(s) that varies the basic propeller model. This AD still applies regardless of whether these letters are present or absent in the propeller model designation.

Unsafe Condition

(e) This AD results from reports of excessive propeller vibration and of damaged or broken propeller blade thrust bearings found during routine and investigative propeller disassembly. We are issuing this AD to prevent propeller blade separation, damage to the airplane, and possible loss of airplane control.

Interim Action

(f) These actions are interim actions and we may take further rulemaking actions in the future.

Compliance

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

Initial Inspection, Rework, and Replacement

(h) For propellers with 4,000 or more operating hours time-since-overhaul (TSO, initially inspect and rework the propeller blade retention radius and replace the propeller thrust bearing for each blade, within 100 operating hours.

(i) For propellers with 2,000 or more operating hours TSO, but fewer than 4,000 operating hours TSO, inspect and rework the propeller blade retention radius and replace the propeller thrust bearing, for each blade, at the next propeller disassembly.

(j) Use paragraphs 3.G.(1) through 3.G.(8) of the Accomplishment Instructions of Hartzell Propeller Inc. Service Bulletin No. HC–SB–61–287, Revision 2, dated October 24, 2006, to do the actions in paragraphs (h) and (i) of this AD.

(k) Although Hartzell Propeller Inc. SB No. HC–SB–61–287, Revision 2, dated October 24, 2006, states in paragraph 3.G.(6) of the Accomplishment Instructions, to install new blade thrust bearings if required, this AD requires always installing new blade thrust bearings.

Repetitive Inspection, Rework, and Replacement

(l) Thereafter, after every 3,000 additional operating hours time-in-service, inspect and rework the propeller blade retention radius and replace the propeller blade thrust bearing, for each blade.

(m) Use paragraphs 3.G.(1) through 3.G.(8) of the Accomplishment Instructions of Hartzell Propeller Inc. SB No. HC–SB–61–287, Revision 2, dated October 24, 2006, to do these actions.

(n) Although paragraph 3.G.(6) of the Accomplishment Instructions of Hartzell Propeller Inc. SB No. HC–SB–61–287, Revision 2, dated October 24, 2006, states to install new blade thrust bearings if required, this AD requires always installing new blade thrust bearings.

Definition

(o) For the purpose of this AD, next propeller disassembly is defined as any maintenance requiring separating of the propeller hub halves.

Previous Credit

(p) Previous credit is allowed for inspections, rework, and replacements that were done using the Original or Revision 1 of Hartzell Propeller Inc. SB No. HC–SB–61–287, before the effective date of this AD.

Alternative Methods of Compliance

(q) The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(r) Contact Tim Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; e-mail: *tim.smyth@faa.gov;* telephone: (847) 294–7132; fax: (847) 294–7834, for more information about this AD.

Material Incorporated by Reference

(s) You must use the Hartzell Propeller Inc. service information specified in Table 1 of this AD to perform the checks required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 1 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391, for a copy of this service information. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 1.—INCORPORATION BY REFERENCE

Hartzell Propeller Inc. Service Bulletin No.	Page	Revision	Date
HC–SB–61–287, Total Pages: 32	ALL	2	October 24, 2006.
Appendix to HC–SB–61–287, Total Pages: 2	ALL	2	October 24, 2006.

Issued in Burlington, Massachusetts, on April 3, 2007.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–6586 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22898; Directorate Identifier 2005–NE–10–AD; Amendment 39–15021; AD 2007–08–04]

RIN 2120–AA64

Airworthiness Directives; McCauley Propeller Systems Models 3A32C406/82NDB–X and D3A32C409/82NDB–X Propellers

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for McCauley Propeller Systems models 3A32C406/82NDB–X and D3A32C409/82NDB–X propellers, installed on Teledyne Continental Motors (TCM) IO–520, TSIO–520, or IO–550 reciprocating engines. These propellers are herein referred to as C406 and C409 propellers, respectively. This AD requires adding an operational revolutions per minute (RPM) restriction on the C406 and C409 propellers, and installing an RPM restriction placard in the cockpit. This AD also adds a 10,000-hour total time-in-service (TIS) life limit for these propellers. This AD also removes from

service any propeller that has 10,000 hours or more total TIS, or that has an unknown total TIS. Also, this AD requires initial and repetitive propeller blade inspections for damage, and repair if necessary. This AD results from testing by the manufacturer that identified stress conditions that affect the fatigue life and damage tolerance of C406 and C409 propellers, when installed on TCM IO–520, TSIO–520, or IO–550 reciprocating engines. We are issuing this AD to prevent blade or hub failure that could result in separation of a propeller blade and loss of control of the airplane.

DATES: This AD becomes effective May 17, 2007. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 17, 2007.

ADDRESSES: You can get the service information identified in this AD from McCauley Propeller Systems, P.O. Box 7704, Wichita, KS 67277–7704; telephone (800) 621–7767.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeff D. Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Wichita, KS 67209, *telephone:* 316–946–4148, *fax:* 316–946–4107.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to McCauley Propeller Systems C406 and C409 propellers, installed on TCM IO–520, TSIO–520, or IO–550 reciprocating engines. We published the proposed AD in the **Federal Register** on Nov. 16, 2005 (70 FR 69472). That action proposed to require adding an operational RPM restriction on the C406 and C409 propellers, and installing an RPM restriction placard in the cockpit. We coordinated the proposed placard placement with the responsible Aircraft Certification Offices within the Small Airplane Directorate, and all proposed installations include a manifold pressure gauge. That action also proposed to add a 10,000-hour total time-in-service (TIS) life limit for these propellers. That action also proposed to remove from service any propeller that has 10,000 hours or more total TIS, or that has an unknown total TIS. Finally, that action proposed to require initial and repetitive propeller blade inspections for damage, and repair if necessary.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Financial Burden and Potential Unsafe Condition

One commenter states that this AD will impose a financial burden on owners and operators of airplanes with this propeller installation because of the increased number of inspections and additional wear on the propeller system increasing the probability of the propeller system failing. The commenter also suggests that stamping a letter on the propeller model to designate a life-limited propeller could create a potentially unsafe condition because the stamping can create stress risers and if improperly treated after stamping, could contribute to corrosion. The commenter also notes that the airplane model designations are incorrect and we omitted one model from the airplane model listing. Finally, the commenter asks why we did not immediately ground the fleet using this propeller because of the described severity of the unsafe condition. We partially agree with the comments. Each is addressed in turn. The increased inspections required by this AD are necessary to resolve the unsafe condition. Owner operators must maintain their aircraft in an airworthy condition, which includes paying for maintenance. We considered that cost and discussed it in the cost section below. We did not change the AD.

This AD will not result in additional wear and tear on the propellers, or in increased failures. This AD resolves an unsafe condition. All actions required are either performed with the propeller installed, or coincident with the next overhaul or major disassembly. An experienced, appropriately rated mechanic can do the inspection and rework without removing the propeller. We did not change the AD.

The manufacturer carefully considered where to stamp the life limit indication to minimize any stress riser. We have no indications that his choice was wrong. We did not change the AD.

We agree that this AD should include additional models. We changed the AD to include the Beech 35–A33 and 35–B33. The Beech 35–A33 and 35–B33 are now included in Applicability paragraph (c) Table (1).

Grounding the fleet that has the suspect propellers installed is not required. The unsafe condition identified is due to material fatigue. The actions required by this AD adequately address the unsafe condition. We did not change the AD.

Eliminate the Repetitive Inspections of This AD

Another commenter states that the AD does not include a terminating action to eliminate the recurring inspections necessary to comply with it. Even if an operator replaces the existing propeller with a new propeller, the recurring inspections are necessary as long as the replacement propeller is one of same models identified in the airworthiness directive. Additionally, the commenter notes that aircraft performance is also a consideration. This AD will require operating the engine and propeller combination in a less than full engine power regime, which could compromise safety in particular situations associated with departures, arrivals and clearing obstacles. We partially agree.

This AD imposes the RPM and life limit to correct an unsafe condition. The recurring inspections are required to enhance safety. The RPM restriction, imposed propeller life limit, and periodic propeller blade inspection/rework provide a cost effective means to correct the unsafe condition without prematurely retiring the propeller. The RPM restriction does not affect the engine full power ratings. Takeoff, climb, and descent values remain unchanged. Therefore, this AD does not compromise safety during departures, arrivals, and in clearing obstacles. We did not change the AD.

Recall Impacted Propellers

Another commenter believes that the FAA should require a recall of all propeller models listed in the AD so the manufacturer will be responsible for the cost of repair and replacement. We do not agree.

The FAA cannot dictate commercial business decisions related to AD actions. We identified the unsafe condition and are imposing appropriate corrective action. We did not change the AD.

Extend the Comment Period

Two commenters asked that we extend the comment period for the proposed rule to give the general aviation community added time to review non-proprietary data used to substantiate the proposed action and to make additional comments. We agree, and extended the comment period to give the aviation community time to respond. The comments that we responded to above include any additional comments that came in.

Correct Date of Service Bulletin

The proposed rule referenced McCauley Propeller Systems Alert Service Bulletin (ASB) No. ASB248, dated January 17, 2005. The correct date is April 19, 2005. We changed the AD to indicate the correct date of the service bulletin.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD will affect about 2,350 C406 and C409 propellers installed on airplanes of U.S. registry. We estimate it will take three work-hours per propeller to perform the proposed inspections and repairs. We also estimate it will take about 0.5 work-hour to install the proposed cockpit placard, and about 950 airplanes will require the placard. The average labor rate is $80 per work-hour. A replacement propeller blade set will cost about $5,200. We estimate 500 propellers in the fleet (or about 21 percent) would require propeller blade set replacement. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $3,202,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2007–08–04 McCauley Propeller Systems: Amendment 39–15021. Docket No. FAA–2005–22898; Directorate Identifier 2005–NE–10–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 17, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McCauley Propeller Systems models 3A32C406/82NDB–X and D3A32C409/82NDB–X propellers, herein referred to as C406 and C409 propellers, respectively. These propellers are installed on, but not limited to, the airplanes in the following Table 1:

TABLE 1.—AIRPLANES THAT PROPELLERS ARE INSTALLED ON, BUT NOT LIMITED TO

Airplane models	With engine model
Beech: A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 35–33, 35–A33, 35–B33, 35–C33, 35–C33A, E33, E33A, E33C, F33, F33A, F33C, 36, A36, A45, and D45.	Teledyne Continental Motors (TCM) IO–520 series and IO–550 series reciprocating engines.
Beech: A36TC, B36TC, S35, V35A, V35B	TCM TSIO–520 series reciprocating engines.
Navion: A (L–17B, C), B, D, E, F, G, and H	TCM IO–550 and TSIO–520 series reciprocating engines.

Unsafe Condition

(d) This AD results from testing by the manufacturer that identified stress conditions that affect the fatigue life and damage tolerance of C406 and C409 propellers, when installed on TCM IO–520, TSIO–520, or IO–550 reciprocating engines. We are issuing this AD to prevent blade or hub failure that could result in separation of a propeller blade and loss of control of the airplane.

Compliance

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

Installation of Cockpit Placard for RPM Restriction

(f) Within 10 hours time-in-service (TIS) after the effective date of this AD, install a placard on the instrument panel as close to the tachometer as possible, that states, in ⅛ inch-high or higher characters, ''Continuous operation between 2,350–2,450 RPM at or above 24″ manifold pressure is prohibited''.

The placard shall have red letters, on a white contrasting background with a red border. For example:

Continuous operation between 2,350–2,450 RPM at or above 24″ manifold pressure is prohibited

Propellers With Unknown Total Hours TIS, or 10,000 or More Hours Total TIS on the Effective Date of This AD

(g) For propellers that the total TIS is unknown, or that have 10,000 or more hours total TIS on the effective date of this AD, remove the propeller from service within 50 hours TIS after the effective date of this AD.

Propellers With Fewer Than 10,000 Hours Total TIS on the Effective Date of This AD

(h) For propellers with fewer than 10,000 total hours TIS on the effective date of this AD, do the following:

(1) Perform an inspection of the propeller blades and repair if necessary, within 100 hours after the effective date of this AD, using paragraphs 2.B. through 2.F. of Accomplishment Instructions of McCauley Propeller Systems Alert Service Bulletin (ASB) No. ASB248, dated April 19, 2005.

(2) At the next propeller overhaul or next major propeller disassembly, life-limit-stamp the letter ''L'' on the propeller hub and blades, using paragraph 3 of Accomplishment Instructions of McCauley Propeller Systems ASB No. ASB248, dated April 19, 2005.

(3) Thereafter, within every 100 hours TIS or at next annual inspection, whichever occurs first, inspect, and repair if necessary, the propeller blades using paragraphs 2.B. through 2.F. of Accomplishment Instructions of McCauley Propeller Systems ASB No. ASB248, dated April 19, 2005.

(4) Remove the propeller from service upon reaching the life limit of 10,000 hours total TIS.

Alternative Methods of Compliance

(i) The Manager, Wichita Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Contact Jeff D. Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Wichita, KS 67209; telephone: 316–946–4148, fax: 316–946–4107, for more information about this AD.

Material Incorporated by Reference

(k) You must use McCauley Propeller Systems Alert Service Bulletin No. ASB248, dated April 19, 2005, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact McCauley Propeller Systems, P.O. Box 7704, Wichita, Kansas; telephone (800) 621–7767, for a copy of this service information. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on April 4, 2007.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–6831 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27709; Directorate Identifier 2007–CE–028–AD; Amendment 39–15020; AD 2007–08–03]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 172R, 172S, 182T, T182T, 206H, and T206H Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) to supersede AD 2006–17–04, which applies to certain Cessna Aircraft Company (Cessna) Models 172R, 172S, 182T, T182T, 206H, and T206H airplanes. AD 2006–17–04 currently requires you to inspect the two end fittings on each of the flexible fuel hoses located in the engine compartment for the correct torque values, and, if any incorrect torque values are found during the inspection, tighten the hose end fittings to the correct torque values. This AD results from four reports of loose fuel lines connected to the fuel servo or fuel flow transducer. Two reports were of in-flight engine failure on a Model T182T airplane. A third report was of in-flight engine failure on a Model 206H airplane. A fourth report was of a Model 172S airplane losing engine power on final approach. Consequently, this AD would require you to establish the correct torque values of the end fittings on fuel hoses for certain Cessna Models 172R, 172S, 182T, T182T, 206H, and T206H airplanes. This AD clarifies that the torque values need to be physically established and visual inspection only is not sufficient. We are issuing this AD to detect and correct potential loss of fuel flow, which may result in partial or complete loss of engine power and/or uncontrolled engine compartment fire due to fuel leakage forward of the firewall.

DATES: This AD becomes effective on May 2, 2007.

On May 2, 2007 the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive any comments on this AD by June 11, 2007.

ADDRESSES: Use one of the following addresses to comment on this AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

To get the service information identified in this AD, contact The Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277–7706; telephone: (316) 517–5800; facsimile: (316) 942–9006.

To view the comments to this AD, go to *http://dms.dot.gov.* The docket number is FAA–2007–27709; Directorate Identifier 2007–CE–028–AD.

FOR FURTHER INFORMATION CONTACT: Trenton Shepherd, Aerospace Engineer, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4143; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

One report of loose fuel hose connections to the fuel injector servo on a Cessna Model 172S airplane caused us to issue AD 2006–17–04, Amendment 39–14725 (71 FR 47711, August 18, 2006). AD 2006–17–04 on certain Cessna Models 172R, 172S, 182T, T182T, 206H, and T206H airplanes, currently requires you to:

- Inspect the two end fittings on each of the flexible fuel hoses located in the

engine compartment for the correct torque values; and

• Tighten the hose end fittings to the correct torque values, if any incorrect torque values are found during the inspection.

Since issuing AD 2006–17–04, we have received four additional reports of loose fuel lines connected to the fuel servo or fuel flow transducer. Two reports were of in-flight engine failure on a Model T182T airplane. A third report was of in-flight engine failure on a Model 206H airplane. A fourth report was of a Model 172S airplane that lost engine power on final approach.

In issuing AD 2006–17–04, our intent was for the torque values provided in Table 4 of the AD to be verified. However, the actions we specified in AD 2006–17–04 resulted in visual-only inspections being accomplished in some cases. Visual inspection of torque paint or putty is not sufficient to address the unsafe condition. This AD clarifies that the torque values need to be physically established.

This condition, if not corrected, could result in loss of fuel flow resulting in partial or complete loss of engine power and/or uncontrolled engine compartment fire due to fuel leakage forward of the firewall.

Relevant Service Information

We reviewed Cessna Service Bulletin No. SB07–71–01, original issue dated March 2, 2007, Revision 1, dated March 16, 2007. The service information describes procedures for a physical inspection of the fuel hose connections on each of the hoses by loosening each connection and then reapplying the correct torque value to make sure that they are correctly torqued.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This AD requires you to establish the correct torque values of the end fittings on fuel hoses for certain Cessna Models 172R, 172S, 182T, T182T, 206H, and T206H airplanes. This AD clarifies that the torque values need to be physically established and visual inspection only is not sufficient.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included a discussion of any information that may have influenced this action in the rulemaking docket.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2007–27709; Directorate Identifier 2007–CE–028–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2006–17–04, Amendment 39–14725 (71 FR 47711, August 18, 2006), and by adding a new AD to read as follows:

2007–08–03 Cessna Aircraft Company: Amendment 39–15020; Docket No. FAA–2007–27709; Directorate Identifier 2007–CE–028–AD.

Effective Date

(a) This AD becomes effective on May 2, 2007.

Affected ADs

(b) This AD supersedes AD 2006–17–04; Amendment 39–14725.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

TABLE 1.—APPLICABILITY

Model	Serial Nos.
(i) 172R	17281244 through 17281364, 17281366 through 17281372, 17281374 through 17281376, and 17281379.
(ii) 172S	172S9809 through 172S10349, 172S10351 through 172S10374, 172S10376 through 172S10423, 172S10425 through 172S10426, 172S10428 through 172S10430, 172S10432 through 172S10444, 172S10446 through 172S10450, and 172S10452 through 172S10454.
(iii) 182T	18281527 through 18281889, 18281892, 18281895, 18281897, 18281899, 18281901, and 18281904.
(iv) T182T	T18208381 through T18208659, T18208661, T18208663 through T18208678, T18208680 through T18208686, T18208689, and T18208690.
(v) 206H	20608231 through 20608285.
(vi) T206H	T20608515 through T20608662, T20608664 through T20608697, T20608699 through T20608714, and T20608717.

Unsafe Condition

(d) This AD is the result of four reports of loose fuel lines connected to the fuel servo or fuel flow transducer. Two reports were of in-flight engine failure on a Model T182T airplane. A third report was of in flight-engine failure on a Model 206H airplane. A fourth report was of a Model 172S airplane that lost engine power on final approach. We are issuing this AD to detect and correct potential loss of fuel flow, which may result in partial or complete loss of engine power and/or uncontrolled engine compartment fire due to fuel leakage forward of the firewall.

Compliance

(e) To address this problem, you must do the following, unless already done:

TABLE 2.—ACTIONS, COMPLIANCE, AND PROCEDURES

Actions	Compliance	Procedures
(1) *For all airplanes not equipped with the Garmin G1000 System:* Establish the correct torque values of the end fittings on each of the following hoses in the engine compartment: (i) Fuel strainer to engine fuel pump. (ii) Engine fuel pump to fuel injector servo (except T206H). (iii) T206H only: Engine fuel pump to the union at the aft vertical cooling baffle. (iv) T206H only: Union at the aft vertical cooling baffle to the fuel injector servo. (v) Fuel injector servo to fuel manifold valve (except turbo models). (vi) Turbo models only: Fuel injector servo to fuel flow transducer. (vii) Turbo models only: Fuel flow transducer to fuel manifold valve. (viii) Fuel injector servo fuel return to firewall fitting.	Within the next 5 hours time-in-service (TIS) after May 2, 2007 (the effective date of this AD).	Follow Cessna Service Bulletin No. SB07–71–01, Revision 1, dated March 16, 2007; the procedures of the appendix to this AD; and the torque values from the table *Torque Values for Hose End Fittings* in the appendix to this AD.
(2) *For all airplanes equipped with the Garmin G1000 System:* Establish the correct torque values of the end fittings on each of the following hoses in the engine compartment: (i) Fuel strainer to engine fuel pump. (ii) Engine fuel pump to fuel injector servo (except T206H). (iii) T206H only: Engine fuel pump to the union at the aft vertical cooling baffle. (iv) T206H only: Union at the aft vertical cooling baffle to the fuel injector servo. (v) Fuel injector servo to fuel flow transducer. (vi) Fuel flow transducer to fuel manifold valve. (vii) Fuel injector servo fuel return to firewall fitting.	Within the next 5 hours TIS after May 2, 2007 (the effective date of this AD).	Follow Cessna Service Bulletin No. SB07–71–01, Revision 1, dated March 16, 2007; the procedures of the appendix to this AD; and the torque values from the table *Torque Values for Hose End Fittings* in the appendix to this AD.

Special Flight Permit

(f) Under 14 CFR 39.23, we are allowing special flight permits for the purpose of compliance with this AD under the following conditions: Only operate under day visual flight rules (VFR).

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Wichita Aircraft Certification Office (ACO), FAA, ATTN: Trenton Shepherd, Aerospace Engineer, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4143; fax: (316) 946–4107, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(h) AMOCs approved for AD 2006–17–04 are not approved for this AD.

Material Incorporated by Reference

(i) You must use Cessna Service Bulletin No. SB07–71–01, Revision 1, dated March 16, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact The Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277–7706; telephone: (316) 517–5800; facsimile: (316) 942–9006.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Appendix to AD 2007–08–03—Inspection Instructions—Cessna Aircraft Company Models 172R, 172S, 182T, T182T, 206H, and T206H Airplanes

1. Remove upper and side cowlings to perform torque procedure.
2. Remove all signs of old torque putty or paint.
3. Using a suitable tool loosen the hose end fitting of each joint, while using a suitable tool to restrain the other end fitting of the joint to preclude rotation.
4. Using the applicable fitting torque from the table Torque Values for Hose End Fittings of this appendix to AD 2007–08–03, torque the hose end fitting to the proper torque, while using a suitable tool to restrain the other end fitting of the joint to preclude rotation.
5. After proper torque has been applied to the hose end fitting, apply the applicable torque paint or putty to the hose end fitting joint.
6. If during any torque procedure any of the non-hose end fittings rotate, stop the torque procedure. Totally disconnect the hose end joint and remove any fitting that has rotated. After the cleaning, visual examination, and/or replacement of the fitting and/or any seals or sealant, reinstall the fitting and torque it to the applicable requirement. Then reconnect the hose end fitting and repeat Step 4. of this appendix to AD 2007–08–03.
7. Use the table below *Torque Values for Hose End Fittings* for the correct torque values to tighten the hose end fittings as required in paragraphs (e)(1) and (e)(2) of this AD:

TORQUE VALUES FOR HOSE END FITTINGS

Flare hex sizes in fractions of an inch	Hose size	Correct torque in inch-pounds	
		Minimum	Maximum
9/16	−4	135	150
11/16	−6	270	300
7/8	−8	450	500

Issued in Kansas City, Missouri, on April 5, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–6826 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27110; Airspace Docket No. 07–AGL–1]

Modification of Class E Airspace; Peru, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Peru, IL.

EFFECTIVE DATE: 0901 UTC, May 10, 2007.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2522.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 26, 2007 (72 FR 8266). The FAA uses the direct final rulemaking procedures for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 10, 2007. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Forth Worth, Texas, on March 21, 2007.

Ronnie L. Uhlenhaker,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–1803 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25997; Airspace Docket No. 06–ANM–5]

Revision of Class E Airspace; Redmond, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will revise the Class E airspace at Redmond, OR. Additional Class E airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard

Instrument Approach Procedure (SIAP) at City-County Airport, Madras, OR. This will improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS SIAP at City-County Airport, Madres, OR.

EFFECTIVE DATE: 0901 UTC, July 05, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Western Service Area, System Support, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 917–6714.

SUPPLEMENTARY INFORMATION:

History

On February 23, 2007, the FAA published in the **Federal Register** a notice of proposed rulemaking to revise Class E airspace at Redmond, OR (72 FR 8137). This action would improve the safety of IFR aircraft executing this new RNAV GPS approach procedure at City-County Airport, Madras, OR. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Redmond, OR. Additional controlled airspace is necessary to accommodate IFR aircraft executing a new RNAV (GPS) approach procedure at City-County Airport, Madras, OR.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM OR E5 Redmond, OR [Revised]

Redmond, Roberts Field, OR
(Lat. 44°15′15″ N, long. 121°09′00″ W)
City-County Airport, Madras, OR
(Lat. 44°40′13″ N, long. 121°09′19″ W)
Deschutes VORTAC
(Lat. 44°15′10″ N, long. 121°18′13″ W)

That airspace extending upward from 700 feet above the surface within 1.8 miles north and 11.8 miles south of the Deschutes VORTAC 059° radial to 28.8 miles east of the VORTAC, and within 1.8 miles each side of the 230° bearing from the Roberts Field Airport extending 8.7 miles southwest of the airport, and within 1.8 miles each side of Deschutes VORTAC 162° radial extending from the VORTAC to 4.3 miles south of the VORTAC, and within 1.8 miles each side of the Deschutes VORTAC 281° radial extending from the VORTAC to 4.3 miles west of the VORTAC, and within 3.5 miles west and 7.0 miles east of the Deschutes VORTAC 014° radial extending from 9.5 miles north of the VORTAC to 30.5 miles north; that airspace extending upward from 1,200 feet above the surface within a 32.2-mile radius of the VORTAC between the 006° and 048° radials, within a 27-mile radius of the VORTAC between the 048° radial and a line 5.3 miles west of and parallel to the 189° radial; that airspace extending upward from 1,700 feet above the surface within a line beginning at Deschutes VORTAC extending north on V–25 to V–112, east on V–112 to V–4, southeast on V–4 to V–357, southwest on V–357 to V–122, west on V–122 to V–452, northwest on V–452 to V–269, east on V–269 to the Deschutes VORTAC.

* * * * *

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

Steven M. Osterdahl,

Director of Operations, En Route and Oceanic, Western Service Area.

[FR Doc. E7–6882 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30547; Amdt. No. 467]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATES: 0901 UTC, May 10, 2007.

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

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on April 5, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, May 10, 2007.

■ 1. The authority citation for part 95 continues to read as follows:

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

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 467, effective date May 10, 2007]

From	To	MEA
§ 95.6001 VICTOR ROUTES—U.S.		
§ 95.6018 VOR Federal Airway V18 Is Amended to Read in Part		
BAETT, MS FIX	CONEE, MS FIX	2500
§ 95.6026 VOR Federal Airway V26 Is Amended to Read in Part		
REDWOOD FALLS, MN VOR/DME *2500—MOCA	BEEGR, MN FIX	*3000
BEEGR, MN FIX *2400—MOCA	LYDIA, MN FIX	*5500
LYDIA, MN FIX *2500—MOCA	FARMINGTON, MN VORTAC	*3500
FARMINGTON, MN VORTAC *2800—MOCA	PRESS, WI FIX	*3500
PRESS, WI FIX *2600—MOCA	ELPAS, WI FIX	*5500
ELPAS, WI FIX *2800—MOCA	EAU CLAIRE, WI VORTAC	*3500
§ 95.6084 VOR Federal Airway V84 Is Amended to Read in Part		
PIVOT, MI FIX *4000—MRA **1900—MOCA	*JYBEE, MI FIX	**4000
*JYBEE, MI FIX *4000—MRA **2200—MOCA	PULLMAN, MI VOR/DME	**4000
§ 95.6191 VOR Federal Airway V191 Is Amended to Read in Part		
DECATUR, IL VORTAC	ROBERTS, IL VOR/DME	2800
NEWTT, IL FIX *2100—MOCA	BOJAK, IL FIX	*5000
§ 95.6481 VOR Federal Airway V481 Is Amended to Read in Part		
JOHNSTONE POINT, AK VOR/DME	FIDAL, AK FIX.	
	S BND	5000
	N BND	10000
FIDAL, AK FIX	ROBES, AK FIX.	

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 467, effective date May 10, 2007]

From	To	MEA
	S BND	8000
	N BND	10000
KLUNG, AK FIX	GULKANA, AK VOR/DME.	
	N BND	6500
	S BND	10000
GULKANA, AK VOR/DME	DOZEY, AK FIX.	
	N BND	12000
	S BND	4000
DOZEY, AK FIX	PAXON, AK FIX.	
	S BND	7000
	N BND	12000
PAXON, AK FIX	DONEL, AK FIX	*12000
*11500—MOCA		
DONEL, AK FIX	*BIG DELTA, AK VORTAC.	
	N BND	7000
	S BND	12000
*7800—MCA BIG DELTA, AK VORTAC, S BND		
*10500—MCA DONEL, AK S BND		

[FR Doc. E7–6886 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9323]

RIN 1545–BF64

Revisions to Regulations Relating to Repeal of Tax on Interest of Nonresident Alien Individuals and Foreign Corporations Received From Certain Portfolio Debt Investments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under sections 871 and 881 of the Internal Revenue Code (Code) relating to the exclusion from gross income of portfolio interest paid to a nonresident alien individual or foreign corporation. These regulations clarify how the portfolio interest rules apply with respect to interest paid to a partnership (or simple or grantor trust) that has foreign partners (or beneficiaries or owners). These regulations also retroactively remove the rule in Treasury Regulation § 1.1441–1(b)(7)(iii) that would impose interest under section 6601 when no underlying tax liability is due.

DATES: *Effective Date:* These regulations are effective on April 12, 2007.

Applicability Dates: The regulations relating to the application of the 10-percent shareholder test for interest paid to partnerships applies to interest paid after April 12, 2007. However, taxpayers may choose to apply the rules in the final regulations to interest paid during any taxable year which is not closed by the period of limitations, provided they do so consistently with respect to all relevant partnerships during such years. The regulations removing the rule imposing interest and penalties on withholding agents when no underlying tax has in fact been imposed apply to payments made after December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn Holman of the Office of the Associate Chief Counsel (International), (202) 622–3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 871(a) of the Code imposes a tax of 30 percent on U.S. source fixed or determinable annual or periodic (FDAP) income, including interest, received by a nonresident alien individual to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States. Section 881(a) imposes a similar tax with respect to FDAP income, including interest, received by a foreign corporation. Both sections 871(h)(3)(A) and 881(c)(3)(B) provide, among other limitations, that portfolio interest does not include interest received by a 10-percent shareholder, as defined in section 871(h)(3)(B).

Explanation of Provisions and Summary of Comments

The IRS and the Treasury Department issued proposed regulations (REG–118775–06) under sections 871(h) and 881(c) in the **Federal Register** (71 FR 34047) on June 13, 2006. The proposed regulations address the application of the 10-percent shareholder test when U.S. source interest is paid to a partnership that has a nonresident alien individual or foreign corporation as a partner. The proposed regulations provide that, for interest paid on obligations issued on or after the date that final regulations are published, the 10-percent shareholder test is to be applied only at the partner level and at the time that the withholding agent would otherwise be required to withhold.

No public hearing was requested or held. However, a few comments were received. After consideration of the comments, the proposed regulations are adopted in these final regulations, with two modifications. In addition, these final regulations implement section 5 of Notice 2006–99 (46 IRB 907) (See § 601.601(d)(2) of this chapter), modifying § 1.1441–1(b)(7)(iii), as discussed below.

1. Time for Applying the 10-Percent Shareholder Test

The proposed regulations provide that the 10-percent shareholder test applies at the time the withholding agent would otherwise be required to withhold. The regulations then provide an example in which the test is stated to apply on the ''earliest'' of when the interest is distributed, the date the statement under section 6031(c) is mailed, or the due date for furnishing the statement. In order to make clear that the test may be applied on multiple dates (and not only on the date of a first partial distribution of such interest), the example has been

rephrased. The example now states that the 10-percent shareholder test is applied when any distributions that include the interest are made to a foreign partner and, to the extent that a foreign partner's distributive share of the interest has not actually been distributed, on the earlier of the date that the statement required under section 6031(c) is mailed or otherwise provided to such partner, or the due date for furnishing such statement. This change conforms more closely to the language of § 1.1441–5(c)(2).

2. Effective Date of the Regulation

The new provisions set forth in the proposed regulations were proposed to apply to interest paid on obligations issued after the date that final regulations are published. One commentator stated that, in order to provide for consistency and to eliminate uncertainty and avoid possible disputes with respect to interest paid to partnerships prior to the date that the final regulations are published, the final regulations should apply to interest paid after July 18, 1984, with respect to obligations issued after July 18, 1984, the effective date of the portfolio interest provisions. Another commentator stated that the final regulations should apply to interest paid after the date the final regulations are issued.

The IRS and the Treasury Department agree that taxpayers should be able to apply the regulations to interest paid in certain prior taxable years. Accordingly, while the final regulations generally provide that the provisions relating to the 10-percent shareholder test for interest paid to partnerships are to apply to interest paid after the date the regulations are published as final regulations, the regulations also permit taxpayers to choose to apply the provisions to interest paid in any taxable year that is not closed by the period of limitations, provided that the taxpayer consistently applies the provisions to all relevant partnerships during such years.

3. Interest Imposed When No Tax Due

Treasury Regulation § 1.1441–1(b)(7)(iii) provides that a withholding agent that has failed to withhold tax other than based on reliance on the appropriate presumptions is not relieved from liability for interest under section 6601. It further provides that such liability exists even when there is no underlying tax that is ultimately shown to be due. That is, the regulation imposes an interest charge under section 6601 on a withholding agent for an amount of tax that has not in fact been imposed. Treasury Regulation § 1.1441–1(b)(7)(v) sets forth two examples that illustrate the operation of this rule.

In Notice 2006–99 (2006–46 IRB 907), the IRS and the Treasury Department announced their intention to remove the rule in Treasury Regulation § 1.1441–1(b)(7)(iii), and the accompanying examples illustrating the rule in Treasury Regulation § 1.1441–1(b)(7)(v), that impose interest under section 6601 when no underlying tax liability is imposed. Further, the Notice announced that the IRS and the Treasury Department intend to clarify that, like interest, penalties that are computed based on underpayments of tax will not be imposed when no tax has in fact been imposed.

These final regulations retroactively remove, in accordance with Notice 2006–99, the rule in § 1.1441–1(b)(7)(iii) that would impose interest and penalties based on hypothetical underpayments of tax when in fact no tax has been imposed. The examples illustrating this rule in Treasury Regulation § 1.1441–1(b)(7) are also removed.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.871–14 is amended as follows:

■ 1. Paragraphs (g) and (h) are redesignated as paragraphs (h) and (i), respectively.

■ 2. New paragraph (g) is added.

■ 3. Newly-designated paragraph (i)(1) is amended by adding two sentences at the end of the paragraph.

The additions read as follows:

§ 1.871–14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

* * * * *

(g) *Portfolio interest not to include interest received by 10-percent shareholders*—(1) *In general.* For purposes of section 871(h), the term *portfolio interest* shall not include any interest received by a 10-percent shareholder.

(2) *Ten-percent shareholder*—(i) *In general.* The term *10-percent shareholder* means—

(A) In the case of an obligation issued by a corporation, any person who owns 10-percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote; or

(B) In the case of an obligation issued by a partnership, any person who owns 10-percent or more of the capital or profits interest in such partnership.

(ii) *Ownership*—(A) *Stock ownership.* For purposes of paragraph (g)(2)(i)(A) of this section, *stock owned* means stock directly or indirectly owned and stock owned by reason of the attribution rules of section 318(a), as modified by section 871(h)(3)(C).

(B) *Ownership of partnership interest.* For purposes of paragraph (g)(2)(i)(B) of this section, rules similar to the rules in paragraph (g)(2)(ii)(A) of this section shall be applied in determining the ownership of a capital or profits interest in a partnership.

(3) *Application of 10-percent shareholder test to partners receiving interest through a partnership*—(i) *Partner level test.* Whether interest paid to a partnership and included in the distributive share of a partner that is a nonresident alien individual or foreign corporation is received by a 10 percent shareholder shall be determined by applying the rules of this paragraph (g) only at the partner level.

(ii) *Time at which 10-percent shareholder test is applied.* The

determination of whether a nonresident alien individual or foreign corporation that is a partner in a partnership is a 10-percent shareholder under the rules of section 871(h)(3), section 881(c)(3), and this paragraph (g) with respect to interest paid to such partnership shall be made at the time that the withholding agent, absent the provisions of section 871(h), 881(c) and the rules of this paragraph, would otherwise be required to withhold under sections 1441 and 1442 with respect to such interest. For example, in the case of U.S. source interest paid by a domestic corporation to a domestic partnership or withholding foreign partnership (as defined in § 1.1441–5(c)(2)), the 10-percent shareholder test is applied when any distributions that include the interest are made to a foreign partner and, to the extent that a foreign partner's distributive share of the interest has not actually been distributed, on the earlier of the date that the statement required under section 6031(c) is mailed or otherwise provided to such partner, or the due date for furnishing such statement. See § 1.1441–5(b)(2) and (c)(2)(iii).

(4) *Application of 10-percent shareholder test to interest paid to a simple trust or grantor trust.* Whether interest paid to a simple trust or grantor trust and distributed to or included in the gross income of a nonresident alien individual or foreign corporation that is a beneficiary or owner of such trust, as the case may be, is received by a 10-percent shareholder shall be determined by applying the rules of this paragraph (g) only at the beneficiary or owner level. The 10-percent shareholder test is applied with respect to a nonresident alien individual or foreign corporation that is a beneficiary of a simple trust or an owner of a grantor trust at the time that a withholding agent, absent any exceptions, would otherwise be required to withhold under sections 1441 and 1442 with respect to such interest.

* * * * *

(i) * * * (1) * * * The rules of paragraph (g) apply to interest paid after April 12, 2007. Taxpayers may choose to apply the rules of paragraph (g) to interest paid in any taxable year not closed by the period of limitations as of April 12, 2007, provided they do so consistently for all relevant partnerships during such years.

■ **Par. 3.** Section 1.881–2 (a)(6) is added to read as follows:

§ 1.881–2 Taxation of foreign corporations not engaged in U.S. business.

(a) * * *

(6) Interest received by a foreign corporation pursuant to certain portfolio debt instruments is not subject to the flat tax of 30 percent described in paragraph (a)(1) of this section. For rules applicable to a foreign corporation's receipt of interest on certain portfolio debt instruments, see sections 871(h), 881(c), and § 1.871–14.

* * * * *

■ **Par. 4.** Section 1.1441–1(b)(7) is amended as follows:

■ 1. Paragraph (b)(7)(iii) is revised.

■ 2. Paragraph (b)(7)(v) is removed.

The revision reads as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(b) * * *

(7) * * *

(iii) *Liability for interest and penalties.* For payments made after December 31, 2000, if a withholding agent fails to deduct and withhold any tax imposed under sections 1441 or 1442, and the tax against which such tax may be credited under section 1462 is paid, then the amount of tax required to be deducted and withheld shall not be collected from the withholding agent. However, the withholding agent is not relieved from liability for interest or any penalties or additions to the tax otherwise applicable in respect of the failure to deduct and withhold. See section 1463. Further, in the event that a tax liability is assessed against the beneficial owner under section 871, 881, or 882 and interest under section 6601(a) is assessed against, and collected from, the beneficial owner, the interest charge imposed on the withholding agent shall be abated to that extent so as to avoid the imposition of a double interest charge.

* * * * *

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: March 30, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–6766 Filed 4–11–07; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

New Standards for Mailing Adult Fowl

AGENCY: Postal Service

ACTION: Final rule.

SUMMARY: The Postal Service revises the requirements for containers used for mailing adult chickens. The new standards require all mailable adult fowl, including chickens, to be mailed in containers approved by the manager of Mailing Standards.

EFFECTIVE DATES: April 12, 2007.

FOR FURTHER INFORMATION CONTACT: Bert Olsen, 202–268–7276.

SUPPLEMENTARY INFORMATION: The Postal Service published a proposal in the **Federal Register** (71 FR 32, February 16, 2007) to revise the standards for mailing containers when shipping chickens. The revised mailing standards would promote the safety of our employees, customers, and all mailed adult fowl.

Comments Received

We received one comment. The commenter stated that no birds should be mailed in the United States because of a chance of spreading bird diseases.

We have accepted birds in the mail for many years without incident, and we are comfortable in continuing to provide service to bird industries as well as individual customers. We are aware of concerns associated with handling bird containers in transit, and we will continually monitor and revise our mailing requirements to mitigate potential risk.

We adopt the following amendments to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

600 Basic Standards for All Mailing Services

601 Mailability

* * * * *

9.0 Perishables

* * * * *

9.3 Live Animals

* * * * *

9.3.4 Adult Fowl

[*Revise 9.3.4 as follows:*]

Disease-free adult fowl may be mailed domestically when shipped under applicable law in accordance with 601.1.7. Adult chickens, turkeys, guinea fowl, doves, pigeons, pheasants, partridges, and quail as well as ducks, geese, and swans are mailable as follows:

a. The mailer must send adult fowl by Express Mail in secure containers approved by the manager of Mailing Standards (see 608.8.0 for address).

b. The number of birds per parcel must follow the container manufacturer limits and each bird must weigh more than 6 ounces.

c. Indemnity may be paid only for loss, damage, or rifling, and not for death of the birds in transit if there is no visible damage to the mailing container.

[*Delete 9.3.5,* Adult Chickens, *and renumber 9.3.6 through 9.3.13 as new 9.3.5 through 9.3.12.*]

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E7–6529 Filed 4–11–07; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0787–200621(a); FRL–8297–4]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Knox County Portion of the Tennessee State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the State Implementation Plan (SIP) submitted by the State of Tennessee, through Tennessee Department of Environment and Conservation (TDEC), on August 18, 1999 and July 16, 2001. The revisions pertain to the Knox County portion of the Tennessee SIP and include changes to the Knox County Air Quality Regulations (KCAQR) Section 51.0—Standards for Cement Kilns. These standards set nitrogen oxides (NO_X) emissions control, compliance demonstration, certification, record keeping, and reporting requirements for Portland cement kilns in the County. The revisions were initially reviewed by TDEC, which found them to be as stringent as the State's requirements. The proposed changes are part of the Knox County strategy to meet the national ambient air quality standards (NAAQS) by reducing the emissions of NO_X, a precursor of ozone formation. Because of the harmful health effects of ozone, EPA limits the amount of volatile organic compounds and NO_X that can be released into the atmosphere. This action is being taken pursuant to section 110 of the Clean Air Act (CAA).

DATES: This direct final rule is effective June 11, 2007 without further notice, unless EPA receives adverse comment by May 14, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2006–0787 by one of the following methods:

1. *www.regulations.gov*: Follow the online instructions for submitting comments.
2. *E-mail*: *louis.egide@epa.gov.*
3. *Fax*: (404) 562–9019.
4. *Mail*: ''EPA–R04–OAR–2006–0787,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Dr. Egide Louis, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12 floor U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2006–0787. 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 through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' systems, 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Egide Louis, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9240. Dr. Louis can also be reached via electronic mail at *louis.egide@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 27, 1998, EPA published a final rule known as ''NO_X SIP Call.'' (see 63 FR 57356). The NO_X SIP Call requires 22 states, including the State of Tennessee, and the District of Columbia to meet statewide NO_X emission budgets during the ozone season in order to reduce the amount of ground-level ozone that is transported across the eastern United States. The amounts of required reductions in NO_X emissions were set to equal the amounts that would be achieved by applying highly cost-effective control measures to source categories available in each state. The source categories identified and regulated in the NO_X SIP Call are electric generating units, non-electric generating units, internal combustion engines, and cement kilns.

In order to meet NO_X SIP Call requirements, the State of Tennessee submitted SIP revisions to EPA for approval on November 7, 2000, and additional materials on January 11, 2001 and October 04, 2001. These revisions established a NO_X allowance trading program for large electrical generating and industrial units, and NO_X reductions for cement kilns. To reduce NO_X emissions from cement kilns, the State proposed the addition of State Rule 1200–3–27–.04—Standards for Cement Kilns. EPA approved these revisions to Tennessee SIP on January 22, 2004. (See 69 FR 3015). This document addresses Knox County request to add a rule in the Knox County portion of the Tennessee SIP that is similar to the State's.

II. Analysis of State Submittals

On August 18, 1999, and July 16, 2001, the State of Tennessee, through TDEC, submitted revisions to the Tennessee SIP. The revisions pertain to the Knox County portion of the Tennessee SIP and include changes to KCAQR Section 51.0—Standards for Cement Kilns. These revisions were initially submitted by Knox County for review by TDEC, which found them to be as or more stringent than State's requirements. After conducting its own review of these revisions, EPA concurs with TDEC's finding. The rule changes became State effective on August 12, 1999 and July 11, 2001, respectively and are part of the Knox County's strategy to attain and maintain the NAAQS. They are approvable into the Knox County portion of the Tennessee SIP pursuant to section 110 of the CAA.

The August 18, 1999 SIP revisions proposed the addition of a new section to KCAQR, Section 51.0—Standards for Cement Kilns. The rules in this section were designed to reduce NO_X emissions by setting emissions control, compliance demonstration, certification, record keeping, and reporting requirements for Portland cement kilns in the County. In the July 16, 2001 SIP Submittal, Knox County proposed changes to KCAQR, Section 51.0 by adopting the same language used in the State's air regulations. For example, the County eliminated the definitions for the terms ''shutdown'' and ''startup'' as related Portland cement kilns in the original rule because they were not found in the State's rule on ''Standards for Cement Kilns''.

III. Final Action

EPA is approving the aforementioned changes to the Knox County portion of the Tennessee SIP. EPA has reviewed the Knox County's justification concerning the addition of the standards for cement kilns into the Knox County portion of the Tennessee SIP and concurs with the changes.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 11, 2007 without further notice, unless the Agency receives adverse comments by May 14, 2007.

If EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 11, 2007 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews:

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of

section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 11, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: March 29, 2007.

J.I. Palmer,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart RR Tennessee

■ 2. Section 52.2220(c) is amended by adding the entry ''Section 51.0'' in Table 3 of the Knox County portion of the Tennessee State Implementation Plan to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 3.—EPA APPROVED KNOX COUNTY, REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
51.0	Standards for Cement Kilns	07/11/01	04/12/2007 [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. E7–6717 Filed 4–11–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0779; FRL–8296–3]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is revising the Code of Federal Regulations (CFR) to give the Wisconsin Department of Natural Resources (WDNR) full regulatory responsibility for EPA-issued Prevention of Significant Deterioration (PSD) permits. WDNR has the necessary state legislative authority to take responsibility for the permits, and has demonstrated that it has adequate resources to maintain oversight of these permits.

DATES: This direct final rule will be effective June 11, 2007, unless EPA receives adverse comments by May 14, 2007. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0779, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: blakley.pamela@epa.gov.*
- *Fax:* (312) 886–5824.
- *Mail:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–0779. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically

captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Danny Marcus, Environmental Engineer, at (312) 353–8781 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Danny Marcus, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3000, *marcus.danny@epa.gov*.

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

I. What Should I Consider as I Prepare My Comments for EPA?
II. What Is Being Addressed in This Document?
III. What Action Is EPA Taking Today?
IV. Statutory and Executive Order Reviews

I. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI

Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What Is Being Addressed in This Document?

EPA is making a revision to the CFR for the purpose of giving WDNR full regulatory responsibility for EPA-issued PSD permits on non-tribal lands.

EPA first delegated the PSD program to WDNR on November 13, 1987, which was later amended by a February 16, 1989, delegation. The 1989 delegation included language which authorized WDNR to amend EPA-issued PSD permits. EPA granted final full approval to Wisconsin's PSD program on May 27, 1999 (64 FR 28745), which became effective and was approved into the State Implementation Plan (SIP) on June 28, 1999. However, EPA stated in 40 CFR 52.2581 that its approval did not extend to sources with Federal PSD permits and EPA retained authority to administer the PSD program for those permits.

EPA received a letter dated March 28, 2006, from WDNR regarding facilities within the state that have permits which require revision, modification, and/or updates. Allowing WDNR to have the authority to amend the EPA-issued PSD permits will enable WDNR to have direct access to modify these permits accordingly. This will facilitate permit tracking and identification of applicable requirements for WDNR permit engineers.

The Clean Air Act contains requirements that must be met when a State/Local/Tribe is adopting a plan requirement. Section 110(a)(2)(E)(i) requires that any government who wishes to carry out such implementation plan have ''adequate personnel, funding, and authority under State law.''.

In a letter sent to EPA dated July 19, 2006, WDNR demonstrated state legal authority to take responsibility for the permits. WDNR's authority to take responsibility for EPA-issued permits can be found under Wisconsin's Statutes in s. 285.67, Wis. Stat., which authorizes WDNR to promulgate rules for revising, suspending, and revoking air pollution control permits. Section NR 406.11, Wis. Adm. Code, authorizes WDNR to revise construction permits, including PSD permits. In the same letter, WDNR demonstrated that it has the adequate resources and funding to become the primary regulating agency of the EPA-issued PSD permits. WDNR has 19.5 full time employees to perform construction permit activities under a program that annually generates approximately two million dollars in program revenue.

None of the facilities with EPA-issued PSD permits which are the subject of this action are located in Indian Country. We do not anticipate that this action will have any affect on tribal rights within Indian country or in ceded territories.

With this action, the regulatory text in 40 CFR 52.2581 will be revised to reflect that WDNR has been given full regulatory responsibility for EPA-issued PSD permits.

III. What Action Is EPA Taking Today?

EPA is revising 40 CFR 52.2581 to give WDNR regulatory responsibility for EPA-issued PSD permits. The language, ''and sources with permits issued by EPA prior to the effective date of the state's rules,'' will be deleted. WDNR has demonstrated that it has the legal authority, and adequate resources, to take over full regulatory responsibility for the permits.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective June 11, 2007 without further notice unless we receive relevant adverse written comments by May 14, 2007. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective June 11, 2007.

IV. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

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

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

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

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

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

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

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

Executive Order 13132 Federalism

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

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

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

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

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

Congressional Review Act

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 11, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 27, 2007.

Mary A. Gade,

Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart YY—Wisconsin

■ 2. Section 52.2581 is amended by revising paragraph (d) to read as follows:

§ 52.2581 Significant deterioration of air quality.

* * * * *

(d) The requirements of sections 160 through 165 of the Clean Air Act are met, except for sources seeking permits to locate in Indian country within the State of Wisconsin.

* * * * *

[FR Doc. E7–6727 Filed 4–11–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–AR–0001; FRL–8297–6]

Approval and Promulgation of Air Quality Implementation Plans; Arkansas; Prevention of Significant Deterioration and New Source Review; Economic Development Zone for Crittenden County, AR; and Stage I Vapor Recovery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Arkansas State Implementation Plan (SIP) that include changes made to Arkansas regulations entitled, ''Regulations of the Arkansas Plan of Implementation for Air Pollution Control'' and ''Nonattainment New Source Review Requirements.'' The revisions amend the State's permitting rules in order to address revisions to the Federal New Source Review (NSR) regulations, which were promulgated by EPA on December 31, 2002 and reconsidered with minor changes on November 7, 2003 (collectively, these two final actions are called the ''2002 NSR Reform Rules''). Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NNSR) programs, together with the minor preconstruction permit program required by the Federal Clean Air Act (''Act''), are commonly referred to as the ''NSR programs.'' Arkansas revised its preconstruction permitting rules that affect major sources and major modifications to include provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits (PALs), and recordkeeping and reporting requirements. The revisions also include non-substantive revisions to previously SIP-approved regulations and new regulations for implementing the permitting provisions for the 8-Hour Ozone National Ambient Air Quality Standard-Phase 2, Economic Development Zone in Crittenden County, and Stage I Vapor Recovery. Finally, EPA is taking no action on provisions that relate to designated facilities. We are approving the revisions because we find the changes consistent with EPA's implementing regulations, guidance, and policy and with section 110(l) of the Act.

DATES: This final rule is effective on May 14, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2005–AR–0001. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act Review Room between the hours of 8:30 am and 4:30 pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Arkansas Department of Environmental Quality, Air Division, 8001 National Drive, P.O. Box 8913, Little Rock, Arkansas 72219–8913.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212; fax number (214) 665–7263; or e-mail address *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document any reference to ''we,'' ''us,'' or ''our'' shall mean the EPA.

Outline

I. What Action Is EPA Taking Today?
II. What Is the Background for This Action?
III. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

EPA is taking final action to approve revisions to the Arkansas SIP that were submitted on February 3, 2005, and July 3, 2006, by the Governor of Arkansas. The 2005 submittal consists of revisions to ''Regulation No. 19—Regulations of the Arkansas Plan of Implementation for Air Pollution Control.'' The 2006 submittal consists of further revisions to ''Regulation No. 19—Regulations of the Arkansas Plan of Implementation for Air Pollution Control'' and a new ''Regulation No. 31—Nonattainment New Source Review Requirements.'' The revisions were made to update the Arkansas NSR programs to make them consistent with changes to the Federal NSR regulations published on December 31, 2002 (67 FR 80186) and November 7, 2003 (68 FR 63021). These two EPA rulemakings are commonly referred to as the ''2002 NSR Reform Rules.''

These SIP revisions also add provisions for implementing the air permitting requirements for the 8-hour ozone national ambient air quality standard-phase 2 (promulgated November 29, 2005 (70 FR 71611)), Economic Development Zone rules that implement section 173(a)(1)(B) of the Act, and provisions for Stage I Vapor Recovery. In addition, Arkansas revised Regulation No. 19 to make the following non-substantive changes (which do not change the regulatory requirements): redesignated the subdivisions from ''Section'' to ''Reg.''; changed references to ''Arkansas Department of Pollution Control and Ecology'' to ''Arkansas Department of Environmental Quality''; corrected typographical errors and grammar; and improved readability and clarity. EPA is taking no action on Chapter 8 of Regulation No. 19 ''111(d) Designated Facilities.''

On December 1, 2006 (71 FR 69519), EPA published a proposed rulemaking in which we proposed to approve these SIP revisions. The December 1, 2006, proposal provides detailed information about the Arkansas SIP revisions that are being approved today. The proposal also provides a detailed analysis of EPA's rationale for approving the

Arkansas SIP revisions. In the proposal, we provided opportunity for public comment on the proposed action. The public comment period for this proposed rulemaking ended January 2, 2007. We received no comments, adverse or otherwise, on the proposed rulemaking. We are therefore finalizing our proposed approval without changes. For more details on these submittals, please refer to the proposed rulemaking described above and the Technical Support Document (TSD), which is in the docket for this action.

In summary, EPA is approving revisions to the Arkansas SIP (revisions to Regulation No. 19 and new Regulation No. 31) submitted by the State of Arkansas on February 3, 2005 and July 3, 2006. We are taking no action on Chapter 8 of Regulation No. 19.

II. What Is the Background for This Action?

On December 31, 2002, EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the Act's PSD and NNSR programs. See 67 FR 80186. On November 7, 2003, EPA published a final action on the reconsideration of the December 31, 2002 final rule changes. See 68 FR 63021. In the November 7th final action, EPA added the definition of ''replacement unit,'' and clarified an issue regarding PALs. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the ''2002 NSR Reform Rules.'' The purpose of today's action is to approve the SIP submittals from the State of Arkansas, which adopts EPA's 2002 NSR Reform Rules. For additional information on the 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002), and *http://www.epa.gov/nsr*.

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), various petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 5276, August 7, 1980). On June 24, 2005, the D.C. Circuit Court of Appeals issued a decision on the challenges to the 2002 NSR Reform Rules. See *New York* v. *United States*, 413 F.3d 3 (D.C. Cir. June 24, 2005), *rehearing en banc denied* (Dec 09, 2005). In summary, the Court vacated portions of the rules pertaining to Clean Units and Pollution Control Projects, remanded a portion of the rules regarding recordkeeping, e.g., 40 CFR 51.165(a)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. The EPA has not yet responded to the Court's remand regarding the recordkeeping provisions. Today's action is consistent with the decision of the D.C. Circuit Court of Appeals because Arkansas' submittal does not include any portions of the 2002 NSR Reform Rules that were vacated as part of the June 2005 decision.

The 2002 NSR Reform Rules require that state agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. See 40 CFR 51.166(a)(6)(i) (requiring state agencies to adopt and submit PSD SIP revisions within three years after new amendments are published in the **Federal Register**). State agencies may meet the requirements of 40 CFR part 51 and the 2002 NSR Reform Rules, with regulations that are different than, but equivalent to, Federal regulations. If, however, a state decides not to implement any of the new applicability provisions, that state must demonstrate that its existing program is at least as stringent as the Federal program. In adopting changes to Federal law, a state may write the Federal requirements into the state SIP or the state may incorporate the Federal rule into the SIP by referencing the citation of the Federal rule. As discussed in further detail in the proposed approval notice and in the TSD in the docket for this action, EPA determined the revisions contained in the Arkansas submittal are approvable for inclusion into the Arkansas SIP. The TSD includes a detailed evaluation of the Arkansas NSR SIP revisions, permitting provisions for implementing the 8-Hour Ozone NAAQs and the Crittenden County Economic Development Zone, Stage I Vapor Recovery rules, and non-substantive revisions to previously SIP-approved regulations. The TSD discusses how these regulations meet the applicable Federal requirements. We are approving the revisions because we find the changes consistent with EPA's implementing regulations, guidance, and policy and with section 110(l) of the Act.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on: one or more Indian tribes, the relationship between the Federal Government and Indian tribes, or the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. The EPA interprets Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it would approve a state program. Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. Because this rule merely approves a state rule implementing a Federal standard, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the

absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 11, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 2, 2007.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart E—Arkansas

■ 2. The table in § 52.170(c) entitled ''EPA-Approved Regulations in the Arkansas SIP'' is amended as follows:

■ a. By revising Regulation 19: Regulations of the Arkansas Plan of Implementation for Air Pollution Control.

■ b. By adding new entries for ''Regulation No. 31: Nonattainment New Source Review Requirements'' immediately following the entry for Section 26.604. The amendments read as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP

State citation	Title/subject	State submittal/ effective date	EPA approval date	Explanation
Regulation No. 19: Regulations of the Arkansas Plan of Implementation for Air Pollution Control Chapter 1: Title, Intent and Purpose				
Reg. 19.101	Title	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.102	Applicability	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.103	Intent and Construction	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.104	Severability	02/03/05	04/12/07 [Insert FR page number where document begins].	
Chapter 2: Definitions				
Chapter 2	Definitions	02/03/05	04/12/07 [Insert FR page number where document begins].	
Chapter 3: Protection of the National Ambient Air Quality Standards				
Reg. 19.301	Purpose	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.302	Department Responsibilities	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.303	Regulated Sources Responsibilities.	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.304	Delegated Federal Programs	07/03/06	04/12/07 [Insert FR page number where document begins].	
Chapter 4: Minor Source Review				
Reg. 19.401	General Applicability	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.402	Approval Criteria	02/03/05	04/12/07 [Insert FR page number where document begins].	

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP—Continued

State citation	Title/subject	State submittal/ effective date	EPA approval date	Explanation
Reg. 19.403	Owner/Operator's Responsibilities.	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.404	Required Information	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.405	Action on Application	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.406	Public Participation	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.407	Permit Amendments	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.408	Exemption from Permitting ..	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.409	Transition	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.410	Permit Revocation and Cancellation.	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.411	General Permits	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.412	Dispersion Modeling	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.413	Confidentiality	02/03/05	04/12/07 [Insert FR page number where document begins].	
Chapter 5: General Emission Limitations Applicability to Equipment				
Reg. 19.501	Purpose	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.502	General Regulations	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.503	Visible Emission Regulations	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.504	Stack Height/Dispersion Regulations.	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.505	Revised Emission Limitation	02/03/05	04/12/07 [Insert FR page number where document begins].	
Chapter 6: Upset and Emergency Conditions				
Reg. 19.601	Upset Conditions	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.602	Emergency Conditions	02/03/05	04/12/07 [Insert FR page number where document begins].	
Chapter 7: Sampling, Monitoring, and Reporting Requirements				
Reg. 19.701	Purpose	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.702	Air Emission Sampling	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.703	Continuous Emission Monitoring.	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.704	Notice of Completion	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.705	Recordkeeping and Reporting Requirements.	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.706	Public Availability of Emissions Data.	02/03/05	04/12/07 [Insert FR page number where document begins].	
Chapter 9: Prevention of Significant Deterioration				
Reg. 19.901	Title	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.902	Purposes	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.903	Definitions	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.904	Adoption of Regulations	02/03/05	04/12/07 [Insert FR page number where document begins].	

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP—Continued

State citation	Title/subject	State submittal/ effective date	EPA approval date	Explanation
Chapter 10: Regulations for the Control of Volatile Organic Compounds in Pulaski County				
Reg. 19.1001	Title	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.1002	Purpose	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.1003	Definitions	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.1004	General Provisions	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.1005	Provisions for Specific Processes.	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.1006	Severability	02/03/05	04/12/07 [Insert FR page number where document begins].	
Chapter 11: Major Source Permitting Procedures				
Chapter 11	Major Source Permitting Procedures.	02/03/05	04/12/07 [Insert FR page number where document begins].	
Chapter 13: Stage I Vapor Recovery				
Reg. 19.1301	Purpose	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.1302	Applicability	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.1303	Definitions	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.1304	Exemptions	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.1305	Prohibited Activities	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.1306	Record Keeping	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.1307	Inspections	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.1308	Vapor Recovery Systems	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.1309	Gasoline Delivery Vessels	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.1310	Owner/Operator Responsibility.	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.1311	Test Methods	02/03/05	04/12/07 [Insert FR page number where document begins].	
Reg. 19.1312	Effective Date	02/03/05	04/12/07 [Insert FR page number where document begins].	
Chapter 14: Effective Date				
Reg. 19.1401	Effective Date	02/03/05	04/12/07 [Insert FR page number where document begins].	
Appendix A: Insignificant Activities List				
Appendix A	Insignificant Activities List	02/03/05	04/12/07 [Insert FR page number where document begins].	
*	*	*	*	*
Section 26.604	Review of draft permit by affected States.	08/10/00	10/9/01 (66 FR 51312).	
Regulation No. 31: Nonattainment New Source Review Requirements Chapter 1: Title, Intent, and Purpose				
Reg. 31.101	Title	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.102	Applicability	07/03/06	04/12/07 [Insert FR page number where document begins].	

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP—Continued

State citation	Title/subject	State submittal/ effective date	EPA approval date	Explanation
Reg. 31.103	Severability	07/03/06	04/12/07 [Insert FR page number where document begins].	
			Chapter 2: Definitions	
Chapter 2	Definitions	07/03/06	04/12/07 [Insert FR page number where document begins].	
			Chapter 3: Preconstruction review	
Reg. 31.301	Requirement for a Permit	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.302	Required Information	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.303	Approval Criteria	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.304	Offsets	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.305	Zones Targeted for Economic Development.	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.306	Control Technology Information.	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.307	Approval to Construct	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.308	Applicability of Nonattainment Review.	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.309	Applicability of Other Regulations.	07/03/06	04/12/07 [Insert FR page number where document begins].	
			Chapter 4: Applicability Tests	
Reg. 31.401	Actual-to-Projected-Actual Applicability Test.	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.402	Actual-to-Potential Test	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.403	[Reserved]	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.404	[Reserved]	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.405	Emission Baseline Credits	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.406	Relaxation of Limits	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.407	Modifications to Existing Units.	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.408	Public Availability of Information.	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.409	Applicability of Nitrogen Oxides.	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.410	Offset Requirements	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.411	PM_{10} Precursors	07/03/06	04/12/07 [Insert FR page number where document begins].	
			Chapter 5: [Reserved] **Chapter 6: [Reserved]** **Chapter 7: [Reserved]**	
			Chapter 8: Actual PALS	
Reg. 31.801	Applicability	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.802	Definitions	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.803	Permit Application Requirements.	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.804	General Requirements for Establishing PALs.	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.805	Public Participation Requirement for PALs.	07/03/06	04/12/07 [Insert FR page number where document begins].	

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP—Continued

State citation	Title/subject	State submittal/ effective date	EPA approval date	Explanation
Reg. 31.806	Setting the 10-year Actuals PAL Level.	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.807	Contents of the PAL Permit	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.808	Reopening of the PAL Permit.	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.809	PAL Effective Period	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.810	Expiration of a PAL	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.811	Renewal of a PAL	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.812	Increasing a PAL During the PAL Effective Period.	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.813	Monitoring Requirements for PALs.	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.814	Recordkeeping Requirements.	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.815	Reporting and Notification Requirements.	07/03/06	04/12/07 [Insert FR page number where document begins].	
Reg. 31.816	Transition Requirements	07/03/06	04/12/07 [Insert FR page number where document begins].	
Chapter 9: Effective Date				
Reg. 31.901	Effective Date	07/03/06	04/12/07 [Insert FR page number where document begins].	
*	*	*	*	*	*	*

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[FR Doc. E7–6838 Filed 4–11–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 301

[Docket Number: 0612242667–7051–01]

RIN 0660–AA16

Rules to Implement and Administer a Coupon Program for Digital-to-Analog Converter Boxes; Correction

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Final rule; correction.

SUMMARY: On March 15, 2007, the National Telecommunications and Information Administration (NTIA) published a final rule (72 FR 12097) in the above-referenced proceeding (Final Rule). The dates heading on page 12097 incorrectly sets out the effective date as April 16, 2007. The correct effective date of the Final Rule is May 16, 2007.

DATES: The effective date of the Final Rule published March 15, 2007 (72 FR 12097) is corrected to May 16, 2007.

FOR FURTHER INFORMATION CONTACT: Milton Brown, NTIA (202) 482–1816.

SUPPLEMENTARY INFORMATION: On March 15, 2007, the National Telecommunications and Information Administration (NTIA) published a Final Rule (72 FR 12097). The dates heading on page 12097 incorrectly sets out the effective date as April 16, 2007. The correct effective date of the Final Rule is May 16, 2007.

Executive Order 12866: This rule correcting the effective date (Correcting Rule) is determined to be not significant under EO 12866.

Administrative Procedure Act: NTIA finds good cause to waive prior notice and an opportunity for public comment as it is impracticable and contrary to the public interest. The Final Rule indicated that the effective date of the Final Rule is April 16, 2007. It was NTIA's intent to have the rule come into effect on May 16, 2007. Due to an inadvertent error, the Final Rule reflected an incorrect effective date. If this Correcting Rule is delayed to allow for prior notice and an opportunity for public comment, the Final Rule would come into effect on an incorrect date, which would be contrary to the intent of NTIA and this Correcting Rule. In order to prevent the Final Rule from coming into effect on an incorrect date, NTIA finds good cause to waive the notice and comment rulemaking requirements for this Correcting Rule.

For the reasons above, NTIA waives under 5 U.S.C. § 553, the 30–day delay in effectiveness for the Correcting Rule. If this Correcting Rule was delayed for 30 days, the regulations promulgated by the Final Rule would be implemented on an incorrect effective date. To prevent the Final Rule from coming into effect on an incorrect date, NTIA finds good cause to waive the 30–day delay in effectiveness for the Correcting Rule.

Dated: April 9, 2007.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E7–6954 Filed 4–11–07; 8:45 am]

BILLING CODE 3510–60–S

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1523 and 1552

[EPA–HQ–OARM–2007–0102; FRL–8297–8]

EPAAR Prescription and Solicitation Provision—EPA Green Meetings and Conferences

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revising the EPA Acquisition Regulation (EPAAR) to establish policy and procedures for acquiring environmentally preferable meeting and conference services. This EPAAR revision adds a prescription and solicitation provision that Agency employees are required to use when soliciting quotes or offers for meeting and conference space and services. The solicitation provision requires meeting and conference venues to provide EPA with information about environmentally preferable features and practices in use at their facilities. As stated in the Federal Acquisition Regulation (FAR), environmentally preferable products and services are those ''that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose.'' The intent of this rule is to ensure that environmental preferability is considered in each purchase of commercial meeting and conference services, which furthers the EPA mission to protect human health and the environment. This action revises the EPAAR, but does not impose any new requirements on Agency contractors. The procedure requires Agency employees to request information from prospective meeting venues about their environmentally preferable (green) practices for consideration in the award decision, thus encouraging the industry to adopt more of these practices so that we will be more likely to do business with them. This rule imposes no requirement or standard that a facility must meet in order to do business with us.

DATES: This final rule is effective on May 1, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OARM–2007–0102. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 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 OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Tiffany Schermerhorn, Policy, Training and Oversight Division, Office of Acquisition Management, Mail Code 3802R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; e-mail address: *schermerhorn.tiffany@epa.gov*, telephone (202) 564–9902.

SUPPLEMENTARY INFORMATION:

I. General Information

The EPAAR additions are necessary so that the Agency can ensure that environmental preferability is considered in all purchases of commercial meeting and conference services. The new solicitation provision will not impose a substantial additional burden on meeting venues since they currently submit quotes or offers to the Agency in response to solicitations for meeting and conference services, and the rule will allow the information to be obtained electronically or orally when appropriate to the acquisition. The EPAAR changes are consistent with the FAR.

II. Statutory and Executive Order Reviews

A. Executive Order 12866

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. This rule does not impose any new information collection or other requirements on Agency contractors. Collection of information from prospective contractors via Agency solicitation is covered under existing active clearances OMB 9000–0136, Commercial Item Acquisitions—FAR Sections Affected: Part 12; 52.212–1 and 52.212–3, a Federal Acquisition Regulation clearance, in the case of commercial item simplified acquisitions; and OMB 2030–0006, Invitations for Bids and Request for Proposals (IFBs and RFPs), an EPA clearance, in the case of sealed bid or negotiated procurements. These clearances allow information to be collected from a quoter or offeror with the purpose of evaluating its capabilities for performing the contract requirements. In the case of this regulation, one of EPA's requirements is to purchase environmentally preferable meeting and conference services to the greatest extent practicable, so we will need to solicit from each facility a technical description of environmentally preferable measures it has in place.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any new requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules

with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132 (Federalism)

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, or on the relationship between the Federal government and Indian tribes, as specified in Executive Order 13175. The final rule amends acquisition regulations that are administrative and procedural in nature. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045

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

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risk.

H. Executive Order 13211 (Energy Effects)

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

I. National Technology Transfer and Advancement Act of 1995

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

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. While this rule establishes a procedure that will require Agency employees to request information from prospective meeting venues about their environmentally preferable (green) practices for consideration in the award decision, it imposes no requirement or standard that a facility must meet in order to do business with us, so it does not directly affect the level of protection

provided to human health or the environment.

K. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on May 1, 2007.

III. Response to Comments

We received comments from three commenters during the official comment period for the February 23, 2007 proposal. Minor revisions to the proposed language were made in response to these comments. The comments are summarized below in the order we received them along with EPA's responses.

Comment. The first commenter stated that meetings should be held on netmeeting software or by teleconference because travel for face-to-face meetings is costly and creates unnecessary pollution.

Response. Noted. The comment makes valid points as to the direction the Agency should go in minimizing travel through the use of telecommunication technology where feasible. EPA is keenly aware of its own environmental impact, and over time continues to seek new ways to minimize this impact, as well as reduce its burden on appropriated taxpayer funds. However, this rulemaking action revises Agency acquisition guidance, so any change to our travel policies are beyond the scope of this particular rule.

Comment. The second commenter expressed support for the proposed rule, but suggested that it could be stronger if environmentally preferable features were taken into account when deciding on a vendor for micropurchases.

Response. Partially concur. The rule requires that environmentally preferable features are considered in all purchases, including micropurchases. However, requiring at micropurchase level that environmental preferability must be used as an evaluation factor in selecting among competing venues would be inconsistent with the FAR. The procedure for micropurchases in paragraph (c) of 1523.703–1 requires use of the solicitation provision so that information on a meeting venue's environmental preferability may be considered, but no competition among vendors or best value determination is required. The procedure is consistent with micropurchase guidelines established in the FAR (13.202) in that it states that environmentally preferable meeting facilities must be purchased to the greatest extent practicable, but does not require solicitation of competitive quotations for micropurchases.

Comment. The second commenter also suggests revising the rule to include a question on the sourcing of food in the solicitation provision. For example, does the vendor make an effort to source food from local growers, thereby reducing the environmental impact of shipping large quantities of food long distances?

Response. Concur. EPA agrees that this is an important point to consider in evaluating vendor environmental performance, and has revised the language in the 1552.223–71 solicitation provision questions to incorporate this principle.

Comment. The third commenter expressed support for EPA's leadership and innovation in establishing a green meetings and conferences contracting program, but suggests that EPA add the following question to the solicitation provision in order to promote the use of biobased products under the Farm Security and Rural Investment Act: Do you use biobased or biodegradable products, including biobased cafeteriaware? Please describe.

Response. Concur. EPA agrees that this is an important point to consider in evaluating vendor environmental performance, and has revised the language in the 1552.223–71 solicitation provision questions to incorporate this principle.

Dated: April 5, 2007.

John C. Gherardini, III,

Acting Director, Office of Acquisition Management.

List of Subjects in 48 CFR Parts 1523 and 1552

Environmental protection, Government procurement.

■ For the reasons set forth in the preamble, chapter 15 of title 48 Code of Federal Regulations, parts 1523 and 1552 are amended as follows:

PART 1523—ENVIRONMENTAL, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 1. The authority citation for 48 CFR part 1523 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

■ 2. Add Subpart 1523.7 to read as follows.

Subpart 1523.7—Contracting for Environmentally Preferable Products and Services

Sec.
1523.703 Policies and procedures.
1523.703–1 Acquisition of environmentally preferable meeting and conference services.

§ 1523.703 Policies and procedures.

§ 1523.703–1 Acquisition of environmentally preferable meeting and conference services.

(a) *Scope.* This section establishes policy and procedures for acquiring environmentally preferable meeting and conference services. For purposes of this section, the term ''contracting officer'' refers to any EPA employee with purchasing authority. For the purposes of this section, the term ''meeting and conference services'' refers to any purchase by an EPA employee of the use of off-site commercial facilities for an EPA event, whether the event is a meeting, conference, training session, or other purpose.

(b) *Policy.* Contracting officers must purchase environmentally preferable meeting and conference services to the greatest extent practicable. Environmental preferability is defined at FAR 2.101. Environmental preferability shall be considered in all purchases of meeting and conference services.

(c) *Procedures for micropurchases.* The contracting officer shall request information on environmentally preferable features and practices from each meeting and conference services vendor solicited using the provision or language substantially the same as the provision at 1552.223–71.

(d) *Procedures for purchases exceeding micropurchase threshold.* The contracting officer shall request information on environmentally preferable features and practices from each meeting and conference services vendor using the provision or language substantially the same as the provision at 1552.223–71, and shall notify vendors that basis for award will be best value with price and other factors considered. Environmental preferability must be

considered among the other factors. The contracting officer shall determine the relative importance of price and other factors as appropriate to the acquisition.

(e) *Contractor support for meetings and conferences.* A contract, order, work assignment or purchasing agreement that includes contractor support for meeting and conference planning and logistics must include a green meeting and conference requirement. The contracting officer shall ensure language is included in the tasking document work statement that requires the contractor to use the provision at 1552.223–71, or language approved by the contracting officer that is substantially the same as the provision, when soliciting quotes or offers for meeting and conference services on behalf of the EPA.

(f) *Solicitation Provision.* The contracting officer shall insert the provision or language substantially the same as the provision at 1552.223–71, EPA Green Meetings and Conferences, in solicitations for meeting and conference services. Contracting officers issuing an oral solicitation must also use the provision, though it may be provided to the vendor orally or electronically. Contractors soliciting quotes or offers for meeting and conference services on behalf of EPA shall use the provision, or language approved by the contracting officer that is substantially the same as the provision.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. The authority citation for 48 CFR part 1552 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

■ 4. Add § 1552.223–71 to read as follows.

§ 1552.223–71 EPA Green Meetings and Conferences.

As prescribed in 1523.703–1, insert the following provision or language substantially the same as the provision in solicitations for meetings and conference services.

EPA GREEN MEETINGS AND CONFERENCES (May 2007)

(a) The mission of the EPA is to protect human health and the environment. We expect that all Agency meetings and conferences will be staged using as many environmentally preferable measures as possible. Environmentally preferable means products or services that have a lesser or reduced effect on the environment when compared with competing products or services that serve the same purpose.

(b) As a potential meeting or conference provider for EPA, we require information about environmentally preferable features and practices your facility will have in place for the EPA event described in the solicitation.

(c) The following list is provided to assist you in identifying environmentally preferable measures and practices used by your facility. More information about EPA's Green Meetings initiative may be found on the Internet at *http://www.epa.gov/oppt/greenmeetings/.* Information about EPA voluntary partnerships may be found at *http://www.epa.gov/partners/index.htm.*

(1) Do you have a recycling program? If so, please describe.

(2) Do you have a linen/towel reuse option that is communicated to guests?

(3) Do guests have easy access to public transportation or shuttle services at your facility?

(4) Are lights and air conditioning turned off when rooms are not in use? If so, how do you ensure this?

(5) Do you provide bulk dispensers or reusable containers for beverages, food and condiments?

(6) Do you provide reusable serving utensils, napkins and tablecloths when food and beverages are served?

(7) Do you have an energy efficiency program? Please describe.

(8) Do you have a water conservation program? Please describe.

(9) Does your facility provide guests with paperless check-in & check-out?

(10) Does your facility use recycled or recyclable products? Please describe.

(11) Do you source food from local growers or take into account the growing practices of farmers that provide the food? Please describe.

(12) Do you use biobased or biodegradable products, including biobased cafeteriaware? Please describe.

(13) Do you provide training to your employees on these green initiatives? Please describe.

(14) What other environmental initiatives have you undertaken, including any environment-related certifications you possess, EPA voluntary partnerships in which you participate, support of a green suppliers network, or other initiatives? Include ''Green Meeting'' information in your quotation so that we may consider environmental preferability in selection of our meeting venue.

[FR Doc. E7–6856 Filed 4–11–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 070402076–7076–01; I.D. 022007B]

RIN 0648–AV23

Illegal, Unreported, or Unregulated Fishing

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

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to satisfy the requirement in section 403 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) to publish a definition of the term ''illegal, unreported, or unregulated (IUU)'' fishing for purposes of the MSRA.

DATES: This final rule is effective April 12, 2007.

ADDRESSES: Dean Swanson, Chief, International Fisheries Affairs Division, Office of International Affairs, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Swanson at 301–713–2276, fax 301–713–2313.

SUPPLEMENTARY INFORMATION: Section 403 of the MSRA amends the High Seas Driftnet Fishing Moratorium Protection Act (Driftnet Moratorium Protection Act), 16 U.S.C. 1826d *et seq.*, by adding, among other things, a new section 609 that addresses illegal, unreported, or unregulated fishing. Section 609 requires the Secretary of Commerce (Secretary) to identify, and list in a biennial report to Congress, a nation if its fishing vessels are engaged, or have been engaged during the preceding 2 years, in illegal, unreported, or unregulated fishing. Section 609 also provides for notification to and consultation with nations and an ''IUU Certification Procedure'' for determining if a nation or relevant international fishery management organization has taken specified action to address the IUU fishing activities. As an initial step, section 609(e)(2) requires the Secretary to ''publish a definition of the term 'illegal, unreported, or unregulated fishing,' for purposes of this Act,'' within 3 months after the date of enactment of MSRA, i.e., by April 12, 2007. Publication of this definition is the focus of this rulemaking. NMFS intends to conduct separate rulemaking,

as needed, to implement other requirements such as the IUU certification procedure.

Section 609(e)(3) states that ''the Secretary shall include in the definition, at a minimum—

(A) fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, and bycatch reduction requirements; (B) overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; and (C) fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement.''

NMFS has decided to publish the definition exactly as set forth in section 403 of MSRA (new section 609(e)(3) of the Driftnet Moratorium Protection Act). As noted above, NMFS will initiate separate rulemaking for the IUU certification procedure, and if needed, may promulgate additional implementing regulations for the definition of ''illegal, unreported, or unregulated'' fishing as that procedure is developed.

Therefore, for purposes of the MSRA, this final rule defines ''illegal, unreported, or unregulated'' fishing as: (A) fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, and bycatch reduction requirements; (B) overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; or (C) fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement.

Classification

This final rule is published under the authority of the MSRA.

This rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary. This rule publishes verbatim a definition that is already set forth in a statute, and NMFS has no authority to publish a definition that does not include the specific elements set forth in the statute. Thus, public comment would be unnecessary. For the same reason, the Assistant Administrator finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1). This rule publishes verbatim a definition that is already set forth in a statute; thus, public comment would be unnecessary.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 300

Fisheries; Fishing; Fishing vessels; Illegal, unreported, or unregulated fishing; Foreign relations.

Dated: April 10, 2007.

William T. Hogarth

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart N—Definition of Illegal, Unreported, or Unregulated Fishing

■ 1. Subpart N, consisting of §§ 300.200 and 300.201, is added to read as follows:

Subpart N—Definition of Illegal, Unreported, or Unregulated Fishing

Sec.
300.200 Purpose.
300.201 Definition.

Subpart N—Definition of Illegal, Unreported, or Unregulated Fishing

Authority: 16 U.S.C. 1826d *et seq.*

§ 300.200 Purpose.

The purpose of this subpart is to satisfy the requirement in section 403 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (''Act'') to publish a definition of the term ''Illegal, unreported, or unregulated fishing'' for purposes of the Act.

§ 300.201 Definition.

Illegal, unreported, or unregulated fishing means:

(1) Fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, and bycatch reduction requirements;

(2) Overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; or

(3) Fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement.

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Proposed Rules

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

OFFICE OF SPECIAL COUNSEL

5 CFR Part 1820

Freedom of Information Act; Implementation

AGENCY: U.S. Office of Special Counsel.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Special Counsel (OSC) proposes to revise its regulations dealing primarily with the agency's implementation of the Freedom of Information Act (FOIA). The regulation, as revised, would implement provisions of the FOIA as amended, update information in the current regulation, and contain new and expanded information about the agency's processing of FOIA requests and appeals. Included in the revised regulation, as proposed, are provisions containing updated, revised, or new information about: publicly available records and information; requirements for making FOIA requests, including updated contact information; consultations with and referrals to other agencies; responses to requests, including information about multitrack and expedited processing; requirements for appealing initial decisions on requests, including updated contact information; fees, including new and revised cost information; and business information. Finally, the regulation, as revised, would address responses to demands by courts or other authorities to an OSC employee for production of official records or testimony in legal proceedings.

DATES: Comments on the proposed rule must be received by May 14, 2007.

FOR FURTHER INFORMATION CONTACT: Christopher Kurt, FOIA Officer, in writing at: U.S. Office of Special Counsel, Legal Counsel and Policy Division, 1730 M Street, NW., Suite 218, Washington, DC 20036-4505; by telephone at (202) 254-3600; or by facsimile at (202) 653-5151.

SUPPLEMENTARY INFORMATION: OSC proposes to revise its regulations at 5 C.F.R. Part 1820, dealing primarily with the agency's implementation of the FOIA. The regulation, as revised, would implement provisions of the FOIA, at 5 U.S.C. 552, as amended, update information in the current regulation, and contain new and expanded information about the agency's processing of FOIA requests and appeals. A description of proposed changes follows.

The title of part 1820 would be changed to reflect its primary focus on the agency's implementation of the FOIA, and its coverage of responses to certain demands for production of official records and testimony. Section 1820.1 would be substantially revised and updated to: outline the scope of part 1820; make clear that the part should be read together with provisions of the FOIA; provide readers with the address for the FOIA page of OSC's web site; and describe information publicly available without a FOIA request.

Section 1820.2 would be revised and enlarged to: describe requirements for FOIA requests; provide updated OSC contact information for such requests; and describe the agreement to pay fees implicit in FOIA requests, unless waived or specified otherwise.

Sections 1820.3-1820.7 of the current regulation, dealing with FOIA fees, would be consolidated into a new section 1820.7, to be described later in this notice. A new section 1820.3 would address consultations with and referrals to other agencies, describing circumstances in which OSC may consult with other agencies about a FOIA request and refer records to another agency for a disclosure decision.

A new section 1820.4 would deal with the timing of responses to FOIA requests, and incorporate including new regulatory provisions on multitrack and expedited processing of requests and appeals.

A new section 1820.5 would describe the types of responses to FOIA requests, including adverse determinations.

The current section of part 1820 dealing with appeals (1820.8), would be re-numbered as section 1820.6. The new section 1820.6 would: contain an expanded discussion of requirements for filing appeals of adverse FOIA determinations; provide updated OSC contact information for such appeals; extend the time for filing an appeal from 30 to 45 days from the date of the determination; and describe the nature of responses to appeals.

A new section 1820.7, as noted before, would incorporate updated and expanded provisions on fees associated with the processing of FOIA requests, including: a provision specifying that if a fee incurred for responding to a FOIA request is $20.00 or less, no fee will be charged to the requester; revision of labor rates for search and review time for clerical and professional personnel, reflecting current costs, and addition of a labor category for managerial personnel; inclusion of the cost of retrieving records from a Federal Records Center and expanded discussion of requirements and criteria for fee waiver or fee reduction requests.

A new section 1820.8 would implement the provisions of Executive Order No. 12600, and outline procedures to be followed in case OSC were to receive a FOIA request for business information.

A new section 1820.9 would provide that part 1820 should not be construed as entitling any person to any service or the disclosure of any record to which such person is not entitled under the FOIA.

Finally, section 1820.9 in the current regulation has been re-numbered as section 1820.10 and re-titled to clarify the scope of that section.

Procedural Determinations

Congressional Review Act: OSC has determined that these proposed revisions are non-major under the Congressional Review Act, and will submit a report on this final rule to Congress and the Government Accountability Office pursuant to the act.

Regulatory Flexibility Act Certification (5 U.S.C. 605): I certify that this regulation will not have a significant economic impact on a substantial number of small entities. OSC primarily handles matters involving individuals who are current or former Federal government employees, applicants for federal employment, certain state or local government employees, and representatives of these individuals. These regulations, as revised, would affect only the implementation of the Freedom of Information Act at OSC, and responses by OSC to certain demands for production of records or testimony.

These proposed revisions will not cause significant additional impact.

Unfunded Mandates Reform Act (UMRA): This proposed revision does not impose any Federal mandates on state, local, or tribal governments, or on the private sector within the meaning of the UMRA.

Paperwork Reduction Act: This revision does no impose any new recordkeeping, reporting or other information collection requirements on the public.

Executive Order 12866 (Regulatory Planning and Review): While not required to do so, OSC has reviewed this revision under Executive Order 12866 and anticipates that the economic impact of this revision will be insignificant. Thus, this proposed revision is not a significant regulatory action under §3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under §6(a)(3) of the order.

Executive Order 13132 (Federalism): This proposed revision does not have new federalism implications under Executive Order 13132. The Hatch Act, at title 5 of the U.S. Code, chapter 15, prohibits certain political activities of covered state and local government employees. OSC has jurisdiction to issue advisory opinions on political activity by those employees, and to bring enforcement action before the Merit Systems Protection Board for prohibited activity by a covered state or local government employee. These revised regulations affect only the implementation of the Freedom of Information Act at OSC, and responses by OSC to certain demands for production of records or testimony, and do not significantly change the rights of state and local government employees.

Executive Order 12988 (Civil Justice Reform): This proposed rule meets applicable standards of §§ 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 5 CFR Part 1820

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

For the reasons stated in the preamble, OSC proposes to revise 5 CFR Part 1820 to read as follows:

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

Sec.

1820.1 General provisions.
1820.2 Requirements for making FOIA requests.
1820.3 Consultations and referrals.
1820.4 Timing of responses to requests.
1820.5 Responses to requests.
1820.6 Appeals.
1820.7 Fees.
1820.8 Business information.
1820.9 Other rights and services.
1820.10 Production of official records or testimony in legal proceedings.

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

§ 1820.1 General provisions.

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

§ 1820.2 Requirements for making FOIA requests.

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

(b) Description of records sought. Requesters must describe the records sought in enough detail for them to be located with a reasonable amount of effort. When requesting records about an OSC case file, the case file number, name, and type (for example, prohibited personnel practice, Hatch Act, USERRA or other complaint; Hatch Act advisory opinion; or whistleblower disclosure) should be provided, if known. Whenever possible, requests should describe any particular record sought, such as the date, title or name, author, recipient, and subject matter.

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

§ 1820.3 Consultations and referrals.

When OSC receives a FOIA request for a record in the agency's possession, it may determine that another Federal agency is better able to decide whether or not the record is exempt from disclosure under the FOIA. If so, OSC will either: (1) respond to the request for the record after consulting with the other agency and with any other agency that has a substantial interest in the record; or (2) refer the responsibility for responding to the request to the other agency deemed better able to determine whether to disclose it. Consultations and referrals will be handled according to the date that the FOIA request was initially received by the first agency.

§ 1820.4 Timing of responses to requests.

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

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

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

(c) Expedited processing. (1) Requests and appeals will be taken out of order and given expedited treatment whenever OSC has established to its satisfaction that: (i) failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; (ii) with respect to a request made by a person primarily engaged in disseminating information,

an urgency exists to inform the public about an actual or alleged federal government activity; or (iii) records requested relate to an appeal that is pending before, or that the requester faces an imminent deadline for filing with, the Merit Systems Protection Board or other administrative tribunal or a court of law, seeking personal relief pursuant to a complaint filed by the requester with OSC, or referred to OSC pursuant to title 38 of the U.S. Code.

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

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

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

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

§ 1820.5 Responses to requests.

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

(b) Adverse determinations. A notification to a requester of an adverse determination on a request shall include: (1) a brief statement of the reason(s) for the denial of the request, including any FOIA exemption applied by OSC in denying the request; and (2) a statement that the denial may be appealed under section 1820.6(a), with a description of the requirements of that subsection.

§ 1820.6 Appeals.

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

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

§ 1820.7 Fees.

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

(b) Definitions. For purposes of this section:

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

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

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

(4) ''Educational institution'' means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(5) ''Non-commercial scientific institution'' means an institution that is not operated on a ''commercial'' basis, as that term is referenced in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research the

results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

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

(7) ''Review'' means the process of examining a record located in response to a request in order to determine whether any portion of the record is exempt from disclosure. It includes processing any record for disclosure - for example, doing all that is necessary to redact it and otherwise prepare it for disclosure. Review time also includes time spent obtaining and considering any formal objection to disclosure made by a business submitter under section 1820.8(f). It does not include time spent resolving general legal or policy issues about the application of exemptions. Review costs are properly charged in connection with commercial use requests even if a record ultimately is not disclosed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Notice of anticipated fees in excess of $25.00. When OSC determines or estimates that the fees to be charged under this section will amount to more than $25.00, OSC shall notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, OSC will advise the requester that the estimated fee may be only a portion of the total fee. In cases in which a requester has been notified that actual or estimated fees amount to more than $25.00, the request shall not be considered received and further work will not be done on it until the requester agrees to pay the anticipated total fee. A notice under this paragraph will offer the requester an opportunity to discuss the matter with OSC in order to reformulate the request to meet the requester's needs at a lower cost.

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

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

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

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

(2) Where OSC determines or estimates that a total fee to be charged under this section will be more than $250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester who has a history of prompt payment.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.'' A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. OSC ordinarily shall presume that where a news media requester has satisfied the public

interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

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

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

§ 1820.8 Business information.

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

(b) Definitions. For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1820.9 Other rights and services.

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

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

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

Dated: April 3, 2007

Scott J. Bloch,

Special Counsel.

[FR Doc. E7–6774 Filed 4–11–07; 8:45 am]

BILLING CODE 7405–01–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM372, Special Conditions No. 25–07–08–SC]

Special Conditions: Boeing Model 787–8 Airplane; Reinforced Flightdeck Bulkhead

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Boeing Model 787–8 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The Boeing Model 787–8 airplanes will have a flightdeck bulkhead incorporating ballistic- and intrusion-resistant features. While the regulations include standards for ballistic- and intrusion-resistant flightdeck doors, they do not yet incorporate the same standards for these features in the bulkhead. Therefore, special conditions are needed to address these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Boeing Model 787–8 airplanes.

DATES: Comments must be received on or before May 29, 2007.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM372, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM372. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA, Airframe/Cabin Safety, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2136; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

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

Background

On March 28, 2003, Boeing applied for an FAA type certificate for its new Boeing Model 787–8 passenger airplane. The Boeing Model 787–8 airplane will be an all-new, two-engine jet transport airplane with a two-aisle cabin. The maximum takeoff weight will be 476,000 pounds, with a maximum passenger count of 381 passengers.

Type Certification Basis

Under provisions of 14 CFR 21.17, Boeing must show that Boeing Model 787–8 airplanes (hereafter referred to as ''the 787'') meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–117, except §§ 25.809(a) and 25.812, which will remain at Amendment 25–115. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the 787 because of a novel or unusual design feature, special conditions are prescribed under provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 787 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The 787 will incorporate a number of novel or unusual design features. Because of rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions for the 787 contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

On January 15, 2002, the FAA promulgated 14 CFR 25.795(a) (Amendment 25–106), which specifies that the flightdeck door of a transport airplane be designed to resist forcible intrusion by unauthorized persons and penetration by small arms fire and fragmentation devices. At the time it was written, the regulation was limited to the flightdeck door to expedite a rapid retrofit of the existing airplanes required by operating rules to have a flightdeck door.

In addition to a reinforced flightdeck door, the 787 will have a flightdeck bulkhead which is reinforced to resist intrusion and ballistic penetration. The regulations do not adequately address the certification requirements for such a bulkhead, and appropriate certification standards are necessary. These proposed special conditions would require that the reinforced flightdeck bulkhead meet the same standards as those specified in § 25.795(a) for flightdeck doors. The proposed special conditions contain the minimum standards that the Administrator considers necessary to ensure that safety standards are

maintained after the aircraft enters into service.

On December 21, 2006, the FAA issued a notice of proposed rulemaking that proposes amending § 25.795(a) to require that a flightdeck bulkhead—and any other accessible barrier separating the flightcrew compartment from occupied areas—also be designed to resist intrusion or penetration. The methods of compliance described in the preamble of that notice and associated draft advisory material could be used to show compliance to these proposed special conditions.

For the 787, the reinforced bulkhead may be comprised of components such as the walls of adjacent lavatories, galleys, or crew rest areas. Those components would be covered by these proposed special conditions.

Applicability

As discussed above, these proposed special conditions are applicable to the 787. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action would affect only certain novel or unusual design features of the 787. It is not a rule of general applicability, and it would affect only the applicant that applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these Special Conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Administrator of the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 787–8 airplane.

In addition to the requirements of 14 CFR 25.795(a) governing protection of the flightdeck door, the following special conditions apply.

The reinforced bulkhead, including components that comprise the bulkhead, separating the flightcrew compartment from occupied areas must be designed to meet the following standards:

It must resist forcible intrusion by unauthorized persons and be capable of withstanding impacts of 300 Joules (221.3 foot-pounds) at critical locations on the bulkhead as well as a 1113 Newton (250 pound) constant tensile load on accessible handholds.

It must resist penetration by small arms fire and fragmentation devices to a level equivalent to level IIIa of the National Institute of Justice Standard (NIJ) 0101.04.

Issued in Renton, Washington, on April 4, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–6887 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27611; Directorate Identifier 2007–CE–024–AD]

RIN 2120–AA64

Airworthiness Directives; Sierra Hotel Aero, Inc. Models Navion (L–17A), Navion A (L–17B), (L–17C), Navion B, Navion D, Navion E, Navion F, Navion G, and Navion H Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Sierra Hotel Aero, Inc. (formally Navion Aircraft LLC) Models Navion (L–17A), Navion A (L–17B), (L–17C), Navion B, Navion D, Navion E, Navion F, Navion G, and Navion H airplanes. This proposed AD would require a one-time inspection of the entire fuel system and repetitive inspections of certain fuel selector valves. This proposed AD results from reports of airplane accidents associated with leaking or improperly operating fuel selector valves. We are proposing this AD to detect and correct fuel system leaks or improperly operating fuel selector valves, which could result in the disruption of fuel flow to the engine. This failure could lead to engine power loss.

DATES: We must receive comments on this proposed AD by July 11, 2007.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

For service information identified in this proposed AD, contact Sierra Hotel Aero, 1690 Aeronca Lane, South St. Paul, MN 55075; phone: (651) 306–1456; fax: (612) 677–3171; Internet: *http://www.navion.com/servicebulletins.html*; e-mail: *servicebulletinsupport@navion.com.*

FOR FURTHER INFORMATION CONTACT: Tim Smyth, Aerospace Engineer, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–7132; fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2007–27611; Directorate Identifier 2007–CE–024–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Discussion

We have received several recent reports of Navion series airplanes involved in accidents where loss of engine power was a contributing factor. In some of these accidents, the National Transportation Safety Board (NTSB) determined that the cause of engine power loss was defective fuel selector valves or gasolators that allowed air to be introduced into the fuel lines and disrupt the flow of fuel to the engine.

This condition, if not corrected, could result in engine power loss.

Relevant Service Information

We have reviewed the following service information:

- Sierra Hotel Aero, Inc. Navion Service Bulletin No. 106, dated February 27, 2007;
- Sierra Hotel Aero, Inc. Navion Service Bulletin No. 101A, dated August 23, 2005; and
- Navion Aircraft Corporation Navion Service letter # 87, dated February 20, 1965.

The service information describes procedures for:

- Performing a detailed inspection of the entire fuel system;
- Inspecting and testing the fuel selector valve;
- Replacing the fuel selector valve; and
- Replacing the fuel accumulator tank.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require a one-time inspection of the entire fuel system and repetitive inspections of certain fuel selector valves.

Costs of Compliance

We estimate that this proposed AD would affect 1,500 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
7 work-hours × $80 per hour = $560	N/A	$560	$840,000

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this repair/replacement:

Labor cost	Parts cost	Total cost per airplane
3 work-hours × $80 per hour = $240	$1,000	$1,240

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Sierra Hotel Aero, Inc. (Formally Navion Aircraft LLC): Docket No. FAA–2007–27611; Directorate Identifier 2007–CE–024–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by July 11, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models Navion (L–17A), Navion A (L–17B), (L–17C), Navion B, Navion D, Navion E, Navion F, Navion G, and Navion H airplanes, all serial numbers, that are certificated in any category.

Unsafe Condition

(d) This AD results from reported airplane accidents associated with leaking or improperly operating fuel system selector valves. We are issuing this AD to detect and correct fuel system leaks or improperly operating fuel selector valves, which could result in the disruption of fuel flow to the engine. This failure could lead to engine power loss.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect the fuel system, including inspecting and doing functional tests of the fuel selector valve.	Initially no later than 100 hours time-in-service (TIS) or 12 months, whichever occurs first, after the effective date of this AD. Repetitively thereafter inspect the fuel selector valve at intervals not to exceed 12 months until the replacement required by paragraph (e)(2) of this AD is done.	Follow Sierra Hotel Aero, Inc. Navion Service Bulletin No. 106, dated February 27, 2007.
(2) Perform any corrective actions required as specified in Sierra Hotel Aero, Inc. Navion Service Bulletin No. 106, dated February 27, 2007, including replacing the fuel selector valve with one of the following part numbers (P/N): (i) Navion P/N 147–30013–201 for airplanes equipped with ON/OFF fuel valves for the main tank. (ii) Navion P/N 147–30013–202 for airplanes equipped with main and auxiliary selectable tanks. (iii) Navion P/N 147–30013–203 for airplanes equipped with left tip, right tip and main tanks.	Before further flight after any inspection required by this AD where corrective actions are necessary.	Use the following service information: (A) Sierra Hotel Aero, Inc. Navion Service Bulletin No. 106, dated February 27, 2007. (B) Sierra Hotel Aero, Inc. Navion Service Bulletin No. 101A, dated August 23, 2005. (C) Navion Aircraft Corporation Navion Service letter # 87, dated February 20, 1965.
(3) As terminating action for the required repetitive inspections in paragraph (e)(1) of this AD, you may replace the fuel selector valve with the applicable P/N as specified in paragraphs (e)(2)(i), (e)(2)(ii), and (e)(2)(iii) of this AD.	At any time after the initial inspection required in paragraph (e)(1) of this AD; however, if replacement of the fuel selector valve is required as a corrective action as specified in Sierra Hotel Aero, Inc. Navion Service Bulletin No. 106, dated February 27, 2007, then you must replace before further flight.	Follow the procedures in Sierra Hotel Aero, Inc. Navion Service Bulletin No. 101A, dated August 23, 2005.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Chicago Aircraft Certification Office, FAA, ATTN: Tim Smyth, Aerospace Engineer, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–7132; fax: (847) 294–7834, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(g) To get copies of the service information referenced in this AD, contact Sierra Hotel Aero, 1690 Aeronca Lane, South St. Paul, MN 55075; phone: (651) 306–1456; fax: (612) 677–3171; Internet: *http://www.navion.com/servicebulletins.html;* e-mail: *servicebulletinsupport@navion.com.* To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* The docket number is Docket No. FAA–2007–27611; Directorate Identifier 2007–CE–024–AD.

Issued in Kansas City, Missouri, on April 6, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–6928 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27849; Directorate Identifier 2006–NM–249–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000EX and Falcon 900EX Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as some stringer reinforcements (F900DX) and some rivets (F900DX/F2000EX) missing from the skin panels on each side of the fuselage between frames 9 and 10 on certain Falcon 900DX and Falcon 2000EX EASy aircraft; this situation affects the structural integrity of the fuselage. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by May 14, 2007.

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

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–27849; Directorate Identifier 2006–NM–249–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency Airworthiness Directive 2006–0320–E, dated October 18, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states that following the incorporation of a design change to the Karman fairing, it has been determined that some stringer reinforcements (F900DX) and some rivets (F900DX/F2000EX) are missing from the skin panels on each side of the fuselage between frames 9 and 10 on certain Falcon 900DX and Falcon 2000EX EASy aircraft. This situation affects the structural integrity of the fuselage and may lead to an unsafe condition if left uncorrected. The MCAI was issued to recover the certificated structural strength by adding the missing rivets and checking the condition of the adjacent structure, and to add the missing stringer caps on F900DX (as appropriate). These actions include inspecting the area, including holes and structure, where missing rivets are found, and contacting the manufacturer if the holes are out-of-round beyond tolerance, or if cracks are found, as applicable.

Relevant Service Information

Dassault has issued Service Bulletin F900EX–308, dated October 18, 2006, and Service Bulletin Falcon F2000EX–133, dated September 28, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the proposed AD. These requirements, if ultimately adopted, will take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 2 products of U.S. registry. We also estimate that it would take about 170 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $27,200, or $13,600 per product.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2007–27849; Directorate Identifier 2006–NM–249–AD.

Comments Due Date

(a) We must receive comments by May 14, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 2000EX airplanes, S/N (serial number) 82; and Falcon 900EX (version F900DX) airplanes, S/Ns 601 through 605; certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that following the incorporation of a design change to the Karman fairing, it has been determined that some stringer reinforcements (F900DX) and some rivets (F900DX/F2000EX) are missing from the skin panels on each side of the fuselage between frames 9 and 10 on certain Falcon 900DX and Falcon 2000EX EASy aircraft. This situation affects the structural integrity of the fuselage and may lead to an unsafe condition if left uncorrected. The MCAI was issued to recover the certificated structural strength by adding the missing rivets and checking the condition of the adjacent structure, and to add the missing stringer caps on F900DX (as appropriate). These actions include inspecting the area, including holes and structure, where missing rivets are found, and contacting the manufacturer if the holes are out-of-round beyond tolerance, or if cracks are found, as applicable.

Actions and Compliance

(e) Within 3 months after the effective date of this AD, unless already done, do the following actions: Inspect and repair the aircraft in accordance with the instructions of Dassault Service Bulletin F900EX–308, dated October 18, 2006, for version F900DX, S/N 601 through 605; and Dassault Service Bulletin F2000EX–133, dated September 28, 2006, for Model F2000EX S/N 82.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, FAA, ATTN: Tom Rodriguez, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

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

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

Related Information

(g) Refer to MCAI EASA Emergency Airworthiness Directive 2006–0320–E, dated October 18, 2006; Dassault Service Bulletin F900EX–308, dated October 18, 2006; and Dassault Service Bulletin F2000EX–133, dated September 28, 2006, for related information.

Issued in Renton, Washington, on April 5, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–6932 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–144859–04]

RIN 1545–BD72

Section 1367 Regarding Open Account Debt

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document proposes amendments to the regulations relating to the treatment of open account debt between S corporations and their shareholders. These proposed regulations provide rules regarding the definition of open account debt and the adjustments in basis of any indebtedness of an S corporation to a shareholder under section 1367(b)(2) of the Internal Revenue Code (Code) for shareholder advances and repayments on advances of open account debt. The proposed regulations affect shareholders of S corporations and are necessary to provide guidance needed to comply with the applicable tax law. This document also provides notice of a public hearing.

DATES: Written or electronic comments and requests for a public hearing must be received by July 11, 2007. Outlines of topics to be discussed at the public hearing scheduled for July 31, 2007, at 10 a.m., must be received by July 10, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–144859–04), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions also may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–144859–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://*

www.regulations.gov (IRS REG–144859–04). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stacy L. Short or Deane M. Burke, (202) 622–3070; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst at (202) 622–2949 (TDD Telephone) (not toll free numbers) and his e-mail address is *Richard.A.Hurst@irscounsel.treas.gov*, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The recordkeeping requirement in these proposed regulations is in § 1.1367–2(a)(2)(i). This information must be maintained by the shareholder to ensure that the indebtedness of the S corporation to the shareholder continues to meet the definition of open account debt found in § 1.1367–2(a)(2)(i). The recordkeepers will be S corporation shareholders who have open account debt.

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on the information that is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

Estimated total annual recordkeeping burden: 250 hours.

Estimated average annual burden: Hours per recordkeeper varies from .75 to 1.25 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of recordkeepers: 250.

Estimated annual frequency of recordkeeping: On occasion.

Background

This document proposes to amend § 1.1367–2 of the Income Tax Regulations (26 CFR part 1) regarding the definition of open account debt and adjustments in basis of indebtedness for shareholder advances and repayments on advances of open account debt.

Section 1367(a)(1) provides that the basis of each shareholder's stock in an S corporation is increased by the shareholder's pro rata share of the S corporation's income (separately and nonseparately computed items of income) and the excess of the deductions for depletion over the basis of the property subject to depletion. Section 1367(a)(2) provides that the basis of each shareholder's stock in the S corporation is decreased by the shareholder's pro rata share of distributions not includible in income of the shareholder by reason of section 1368 (nontaxable distributions), losses and deductions (separately and non-separately computed losses), any expense of the corporation that is not deductible and not properly chargeable to capital account, and certain deductions for depletion for any oil and gas property held by the S corporation. Under section 1367(b)(2)(A), if for any taxable year the amounts specified in section 1367(a)(2) (other than distributions) exceed the amount which reduces the shareholder's basis to zero, such excess losses and deductions shall be applied to reduce (but not below zero) the shareholder's basis in any indebtedness of the S corporation to the shareholder. Section 1367(b)(2)(B) provides that if a shareholder's basis in indebtedness is reduced for any taxable year, any net increase (the amount by which the items described in section 1367(a)(1) exceed the items described in section 1367(a)(2)) for any subsequent taxable year is applied to restore the reduction in basis in indebtedness before any of the excess is used to increase basis in stock.

On January 3, 1994, the Treasury Department and the IRS published final regulations under section 1367 of the Code (TD 8508, 59 FR 12, amended on December 22, 1999 (TD 8852, 64 FR 71641)). Those final regulations relate, in part, to adjustments to basis in both stock of shareholders and indebtedness of an S corporation to its shareholders. Section 1.1367–2 of the Income Tax Regulations provides specific rules for required adjustments (reductions and restorations) to basis in any indebtedness of an S corporation to a shareholder. Section 1.1367–2(a) also provides that for purposes of adjustments to basis of indebtedness to shareholders, shareholder advances not evidenced by separate written instruments and repayments on the advances (open account debt) are treated as a single indebtedness. Further, § 1.1367–2(a) provides that the basis of indebtedness of the S corporation to a shareholder is reduced as provided in § 1.1367–2(b) and restored as provided in § 1.1367–2(c). Thus, the basis adjustment rules under the final regulations apply to all indebtedness of an S corporation to a shareholder, whether the indebtedness is evidenced by a written instrument or is open account debt.

Section 1.1367–2(b) provides the rules for the reduction of basis of indebtedness of an S corporation to a shareholder. Generally, under § 1.1367–2(b)(1), if the basis of a shareholder's stock in the S corporation has been reduced to zero under section 1367(a)(2), the excess of certain losses and deductions specified in section 1367(a)(2) is applied to reduce (but not below zero) the basis of any indebtedness of the S corporation to the shareholder held by the shareholder at the close of the S corporation's taxable year. Any indebtedness of the S corporation to the shareholder that has been satisfied by the S corporation, or disposed of or forgiven by the shareholder during the taxable year, is not held by the shareholder at the close of that year and is not subject to basis reduction. Further, § 1.1367–2(b)(2) provides that if the interest of the shareholder in the S corporation is terminated during the taxable year, the rules in § 1.1367–2(b) are applied to any indebtedness of the S corporation to the shareholder held by the shareholder immediately before the termination of the shareholder's interest in the S corporation. If a shareholder holds more than one indebtedness at the close of the taxable year (or, if applicable, immediately prior to the termination of the shareholder's interest in the corporation), the basis of each indebtedness is reduced under § 1.1367–2(b)(3) in the same proportion that the basis of each indebtedness bears to the aggregate bases of the indebtedness of the S corporation to the shareholder.

Section 1.1367–2(c) provides the rules for restoring basis of indebtedness of an S corporation to a shareholder. Generally, under § 1.1367–2(c)(1), if, for any taxable year of the S corporation, there has been a reduction in the basis of an indebtedness of the S corporation to a shareholder, any net increase in any subsequent taxable year of the S corporation is applied to restore that reduction. For purposes of § 1.1367–2, a

net increase is the amount by which the shareholder's pro rata share of S corporation items described in section 1367(a)(1) exceed the items described in section 1367(a)(2) for the taxable year. The restoration rules apply only to indebtedness held by the shareholder as of the beginning of the taxable year in which the net increase arises. Further, the reduction in basis of indebtedness must be restored before a net increase is used to restore the shareholder's basis in stock. The shareholder's basis in indebtedness may not be restored above the adjusted basis of the indebtedness under section 1016(a) (excluding any prior year's adjustments under section 1367), determined as of the beginning of the taxable year in which the net increase arises.

Under § 1.1367–2(c)(2), if a shareholder holds more than one indebtedness as of the beginning of an S corporation's taxable year, any net increase is applied first to restore the reduction of basis in any indebtedness repaid (in whole or in part) in that taxable year to the extent necessary to offset any gain that would otherwise be realized on the repayment. Any remaining net increase is applied to restore each outstanding indebtedness in proportion to the amount that the basis of each outstanding indebtedness has been reduced and not restored.

Section 1.1367–2(d) provides rules for the time at which adjustments to basis of indebtedness under section 1367(b)(2) are effective. Generally, under § 1.1367–2(d)(1) the amount of the adjustments to basis of indebtedness are determined and effective as of the close of an S corporation's taxable year. However, if the shareholder is not a shareholder in the S corporation at that time, the adjustments are effective immediately before the shareholder's interest in the S corporation is terminated. Moreover, if a debt is disposed of or repaid, in whole or in part, before the close of the taxable year, the basis of that debt is restored effective immediately before the disposition or the first repayment on the debt during the taxable year.

On August 25, 2005, the Tax Court issued its decision in *Brooks* v. *Commissioner,* TC Memo. 2005–204. In *Brooks,* the taxpayer borrowed money from a bank and advanced that money as open account debt to his S corporation in one taxable year and reduced basis in that open account debt for losses passed through to the taxpayer at the end of that same year. In the first few weeks of the subsequent taxable year, the S corporation repaid the open account debt (the taxpayer then repaid his debt for the borrowed money). Late in that subsequent year, the taxpayer advanced additional money (again, amounts borrowed from a bank) in an amount that offset the repayment of advances to avoid the recognition of gain from repayment of the indebtedness. Also, the taxpayer's advances increased the shareholder's basis in the indebtedness and allowed losses for that year to pass through to the taxpayer shareholder. Taxpayer and the S corporation made these repayments and advances for several taxable years and deferred indefinitely the recognition of income on any repayment of his open account debt.

The court in *Brooks* held ''that the basis of the open account indebtedness is properly computed by netting at the close of the year advances of open account debt during the year and repayments of open account debt during the year.''

Explanation of Provisions

The Treasury Department and the IRS believe that the concept of ''open account debt'' as defined in § 1.1367–2(a) was intended to provide administrative simplicity for S corporations but was not intended to permit the deferral allowed in *Brooks.* The IRS and Treasury Department are proposing these amendments to narrow the definition of open account debt and to modify the rules for adjustments of basis in indebtedness for the more narrowly defined open account debt.

In these proposed regulations, open account debt is defined as shareholder advances not evidenced by separate written instruments for which the principal amount of the aggregate advances (net of repayments on the advances) does not exceed $10,000 at the close of any day during the S corporation's taxable year. Included within that definition are separate advances under a line of credit agreement if the advances are not evidenced by a separate written instrument. Open account debt is treated as a single indebtedness. This $10,000 limitation on open account debt for the purposes of the § 1.1367–2 regulations is modeled after section 7872(c)(3) and the § 1.7872–9 proposed regulations, which provide a $10,000 de minimis exception to the treatment of loans with below-market interest rates for compensation-related or corporation-shareholder loans.

Under these proposed regulations, to determine whether shareholder advances and repayments on the advances exceed the $10,000 aggregate principal threshold on any day during the S corporation's taxable year for open account debt, the shareholder will have to maintain a ''running balance'' of those advances and repayments, and the outstanding principal amount of the open account debt. If the resulting aggregate principal of the running balance does not exceed $10,000 at the close of any day during the S corporation's taxable year, the advances and repayments on advances would constitute open account debt, would be treated as a single indebtedness, and would be accounted for at the close of the taxable year (as explained in this preamble). However, if the resulting aggregate principal of the running balance exceeds $10,000 at the close of any day during the S corporation's taxable year, the entire principal amount of that indebtedness would no longer constitute open account debt effective at the close of the day on the date the amount of the running balance exceeds $10,000. This principal amount would be treated as indebtedness evidenced by a written instrument for that taxable year, and would be accounted for according to the timing rules in § 1.1367–2(d) for that taxable year and subsequent taxable years. Any new shareholder advances not evidenced by a written instrument and repayments on those advances within the $10,000 aggregate principal threshold amount during the taxable year would constitute a new open account debt.

The proposed regulations also modify the manner in which repayments on open account debt are accounted for under the existing final § 1.1367–2 regulations. These rules are separate from the maintenance of a running balance of the advances and repayments to determine if a shareholder has exceeded the $10,000 threshold amount. For purposes of accounting for open account debt, each shareholder, at the end of the S corporation's taxable year, must determine if that shareholder has made a net advance or received a net repayment on open account debt for that taxable year. To determine if a net advance or a net repayment has occurred, each shareholder, at the end of the S corporation's taxable year, must net all advances and repayments made during the year without regard to the outstanding principal amount of the open account debt. If, at the end of the taxable year, a net repayment exists, the net repayment must be taken into account effective at the close of the S corporation's taxable year under the general basis adjustment rules in the existing final § 1.1367–2 regulations. If, at the end of the taxable year, a net advance exists, the net advance is combined with the outstanding

aggregate principal balance of the existing open account debt and that amount is carried forward to the beginning of the subsequent taxable year as the outstanding aggregate principal amount of the open account debt. If at any time during the taxable year the resulting aggregate principal of the running balance exceeds the $10,000 threshold amount so the entire principal amount of the indebtedness no longer constitutes open account debt, the running balance must be reconciled effective at the close of the day the balance exceeds $10,000 to determine the aggregate principal amount of the indebtedness, and for the remainder of the taxable year that principal amount is treated in the same manner as indebtedness evidenced by a written instrument for the purposes of this section.

Proposed Effective Date

The regulations, as proposed, apply to any shareholder advances to the S corporation made on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register** and repayments on those advances by the S corporation.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

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

A public hearing has been scheduled for July 31, 2007, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the ''**FOR FURTHER INFORMATION CONTACT**'' section of this preamble.

The rules of 26 CFR 606.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and time to be devoted to each topic (a signed original and eight (8) copies) by July 10, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Stacy L. Short and Deane M. Burke of the Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAX

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.1367–2 also issued under 26 U.S.C. 1367(b)(2). * * *

Par. 2. Section 1.1367–2 is amended as follows:

1. Paragraph (a) is revised.
2. Paragraphs (c)(2) and (d)(1) are revised.
3. Paragraph (d)(2) is redesignated as paragraph (d)(3).
4. New paragraph (d)(2) is added.
5. Paragraph (e) is amended by adding Examples 6 and 7.

The revisions and additions read as follows:

§ 1.1367–2 Adjustments to basis of indebtedness to shareholder.

(a) *In general*—(1) *Adjustments under section 1367.* This section provides rules relating to adjustments required by subchapter S to the basis of indebtedness (including open account debt as described in paragraph (a)(2) of this section) of an S corporation to a shareholder. The basis of indebtedness of the S corporation to a shareholder is reduced as provided in paragraph (b) of this section and restored as provided in paragraph (c) of this section in accordance with the timing rules in paragraph (d) of this section.

(2) *Open account debt*—(i) *General rule.* The term *open account debt* means shareholder advances not evidenced by separate written instruments and repayments on the advances, the aggregate outstanding principal of which does not exceed $10,000 of indebtedness of the S corporation to the shareholder at the close of any day during the S corporation's taxable year. Advances and repayments on open account debt are treated as a single indebtedness. For purposes of determining if shareholder advances not evidenced by separate written instruments and repayments on those advances exceed an aggregate outstanding principal of $10,000, a shareholder must maintain a running daily balance of all advances and repayments on those advances and the outstanding principal amount of the open account debt at the close of each day during the S corporation's taxable year.

(ii) *Exception.* If a shareholder's running balance exceeds an aggregate outstanding principal amount of $10,000 at the close of any day during the S corporation's taxable year, effective on the close of the day on which the shareholder's running balance exceeds $10,000, the running balance must be reconciled to determine the aggregate principal amount of indebtedness. For the remainder of the taxable year, that aggregate principal amount of indebtedness is treated in the same manner as indebtedness evidenced by a separate written instrument for purposes of this section. For the remainder of that taxable year and subsequent taxable years, the indebtedness is not open account debt and is subject to all basis adjustment rules applicable to basis of indebtedness of an S corporation to a shareholder in this section.

* * * * *

(c) * * * (1) * * *

(2) *Multiple indebtedness.* If a shareholder holds more than one

indebtedness (including any open account debt and any debt treated as a single indebtedness under paragraph (a)(2)(ii) of this section) as of the beginning of an S corporation's taxable year, any net increase is applied first to restore the reduction of basis in any indebtedness repaid (in whole or in part) in that taxable year to the extent necessary to offset any gain that would otherwise be realized on the repayment. Any remaining net increase is applied to restore each outstanding indebtedness (including any open account debt and any debt treated as a single indebtedness under paragraph (a)(2)(ii) of this section) in proportion to the amount that the basis of each outstanding indebtedness has been reduced under section 1367(b)(2)(A) and paragraph (b) of this section and not restored under section 1367(b)(2)(B) and this paragraph (c).

(d) *Time at which adjustments to basis of indebtedness are effective*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, the amounts of the adjustments to basis of indebtedness provided in section 1367(b)(2) and this section are determined as of the close of the S corporation's taxable year, and the adjustments are generally effective as of the close of the S corporation's taxable year. However, if the shareholder is not a shareholder in the S corporation at that time, these adjustments are effective immediately before the shareholder terminates his or her interest in the S corporation. If a debt (including any open account debt and any debt treated as a single indebtedness under paragraph (a)(2)(ii) of this section) is disposed of or repaid in whole or in part before the close of the taxable year, the basis of that indebtedness is restored under paragraph (c) of this section, effective immediately before the disposition or the first repayment on the debt (or the net repayment on open account debt) during the taxable year. To the extent any reduction of basis in indebtedness under paragraph (b) of this section that is disposed of or repaid (in whole or in part) during the taxable year is not restored completely under paragraph (c) of this section, gain is realized on the repayment effective immediately before the indebtedness is disposed of or repaid (in whole or in part).

(2) *Open account debt*—(i) *In general.* All advances and repayments on open account debt (as described in paragraph (a)(2)(i) of this section) during the taxable year are netted continuously as the advances and repayments occur. The amount of any net advance or net repayment on open account debt for the S corporation's taxable year is determined at the close of the taxable year. If the shareholder advances, and repayments on the advances, during the S corporation's taxable year result in a net advance or net repayment, the basis of the open account debt is reduced as provided in paragraph (b) of this section and restored as provided in paragraph (c) of this section effective at the close of the taxable year. To the extent any reduction of basis of open account debt under paragraph (b) of this section that is disposed of or repaid (in whole or in part) during the taxable year is not restored completely under paragraph (c) of this section, income is realized on the net repayment at the close of the taxable year in which the open account debt is disposed of or repaid (in whole or in part).

(ii) *Exception.* On the close of the day on which the shareholder's running balance exceeds an aggregate outstanding principal amount of $10,000, the shareholder's running balance is reconciled to determine an aggregate principal amount of indebtedness. The resulting aggregate principal amount of indebtedness is treated as the principal amount of a debt evidenced by a separate written instrument for the remainder of that taxable year and any subsequent taxable year, and is no longer subject to the open account debt provisions of this section.

* * * * *

(e) * * *

* * * * *

Example 6. Treatment of open account debt. (i) A has been the sole shareholder in Corporation S since 2000. In 2007, A advances S $8,000, which is not evidenced by a written instrument. The $8,000 advance is open account debt and remains outstanding at that amount during 2007. On December 31, 2007, the basis of A's stock is zero; and the basis of the open account debt is reduced under paragraph (b) of this section to $4,000. On April 1, 2008, S repays $3,000 of the open account indebtedness. On September 1, 2008, A advances S an additional $2,000, which is not evidenced by a written instrument. There is no net increase under paragraph (c) of this section in year 2007 or 2008.

(ii) At no time during the 2007 taxable year does the running balance of A's open account debt exceed $10,000. As of December 31, 2007, A's basis in the open account debt is reduced under paragraph (b) of this section to $4,000.

(iii) At no time during the 2008 taxable year does the running balance of A's open account debt exceed $10,000. On April 1, 2008, S's $3,000 repayment is applied to A's running balance for open account debt carried forward from 2007 in the amount of $8,000 to reduce the running balance to $5,000. On September 1, 2008, A's advance to S of $2,000, which is not evidenced by a written instrument, is applied to A's running balance to bring A's aggregate outstanding principal on A's open account indebtedness to $7,000.

(iv) At the close of the 2008 taxable year, the $3,000 April repayment S makes to A and A's $2,000 September advance are netted to result in a net repayment of $1,000 for the taxable year on A's $8,000 open account debt carried forward from 2007. Because there is no net increase in 2008, no basis of indebtedness is restored for the 2008 taxable year.

Example 7. Treatment of shareholder indebtedness not evidenced by a written instrument which exceeds $10,000. (i) The facts are the same as in Example 6, in addition to which, on February 1, 2008, S repays $1,000 of the open account debt and on March 1, 2008, A advances S $5,000, which is not evidenced by a written instrument.

(ii) At no time during the 2007 taxable year does the running balance of A's open account debt exceed $10,000. As of December 31, 2007, the basis of the open account debt is reduced under paragraph (b) of this section to $4,000.

(iii) The running balance of A's open account debt does exceed $10,000 during the 2008 taxable year. On February 1, 2008, S's $1,000 repayment is applied to A's running balance for open account debt carried forward from 2007 in the amount of $8,000 to reduce the running balance to $7,000. On March 1, 2008, A's advance to S of $5,000, which is not evidenced by a written instrument, is applied to A's running balance to bring A's aggregate outstanding principal on A's open account debt to $12,000. Because this amount exceeds the $10,000 threshold amount, effective at the close of the day on March 1, 2008, A's running balance must be reconciled to determine an aggregate principal amount of indebtedness.

(iv) As of March 1, 2008, S had made a $1,000 repayment on A's open account debt, and A had advanced an additional $5,000 which was not evidenced by a written instrument. To reconcile A's running balance, the $1,000 repayment and $5,000 advance are netted first to result in a $4,000 net advance that is then added with A's existing principal amount of open account debt of $8,000 to determine the aggregate principal amount of indebtedness of $12,000. As of March 1, 2008, S's indebtedness to A that is not evidenced by a written instrument has a principal balance of $12,000 and a basis of $8,000 ($4,000 basis on December 31, 2007 + $4,000 net advance). On April 1, 2008, S repays $3,000 of that new indebtedness.

(v) On September 1, 2008, A advances S an additional $2,000, which is not evidenced by a written instrument. The $2,000 advance is considered new open account debt. On December 31, 2008, A's basis in his stock is zero and the outstanding principal in the two remaining debts are as follows:

	3/1/08 principal	4/1/08 repayment	9/1/08 advance	12/31/08 principal
Indebtedness treated as if evidenced by written instrument	$12,000	$3,000	.....	$9,000
Open account debt	.....	.....	$2,000	2,000

Par. 3. Section 1.1367–3 is amended as follows:

1. The section heading is revised.
2. The first sentence of the paragraph is revised.
3. A new second and last sentence are added.

The revisions and additions read as follows:

§ 1.1367–3 Effective dates and transitional rules.

Section 1.1367–2(a), (c)(2), (d)(2), and (e) *Example 6* and *Example 7* apply to any shareholder advances to the S corporation made on or after the date these regulations are published as final regulations in the **Federal Register** and repayments on those advances by the S corporation.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–6764 Filed 4–11–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–031]

RIN 1625–AA08

Special Local Regulations for Marine Events; York River, Yorktown, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the ''Watermen's Heritage Festival Workboat Races,'' a marine event to be held July 15, 2007 on the waters of the York River, Yorktown, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the York River during the event.

DATES: Comments and related material must reach the Coast Guard on or before May 14, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Inspections and Investigations Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Fifth Coast Guard District, Inspections and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–07–031), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On July 15, 2007, the Watermen's Museum of Yorktown, VA will sponsor ''Watermen's Heritage Festival Workboat Races'' on the York River, immediately adjacent and north of the shoreline at Yorktown River Cliffs. The event will consist of approximately 40 traditional Chesapeake Bay deadrise workboats racing along a marked straight line race course in heats of 2 to 4 boats for a distance of approximately 1000 yards. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the York River, Yorktown, Virginia. The regulations will be in effect from 9 a.m. to 5:30 p.m. on July 15, 2007. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Vessel traffic will be allowed to transit the regulated area at slow speed between heats, when the Coast Guard Patrol Commander determines it is safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation will prevent traffic from transiting a portion of the York River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance

notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, area newspapers and local radio stations, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area at slow speed between heats, when the Coast Guard Patrol Commander deems it is safe to do so. In many cases vessel traffic will be able to transit around the regulated using the marked navigation channel along the York River.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the York River during the event.

Although this regulation prevents traffic from transiting a portion of the York River during the event, this proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—REGATTAS AND MARINE PARADES

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

Authority: 33 U.S.C. 1233.

2. Add a temporary § 100.35–T05–031 to read as follows:

§ 100.35–T05–031 York River, Yorktown, VA.

(a) *Regulated area.* The regulated area includes the waters of the York River, Yorktown, Virginia, bounded on the west by a line drawn along longitude 076°31′30″ West, bounded on the east by a line drawn along longitude 076°30′50″ West, bounded on the south by the shoreline and bounded on the north by a line drawn parallel and 400 yards north of the southern shoreline. All coordinates reference Datum NAD 1983.

(b) *Definitions:* The following definitions apply to this section:

(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Watermen's Heritage Festival Workboat races under the auspices of a Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Hampton Roads.

(c) *Special local regulations:* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Effective period:* This section will enforced from 9 a.m. to 5:30 p.m. on July 15, 2007.

Dated: March 29, 2007.

Larry L. Hereth,

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

[FR Doc. E7–6943 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–027]

RIN 1625–AA08

Special Local Regulations for Marine Events; Pasquotank River, Elizabeth City, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations for the ''Carolina Cup Regatta'', a power boat race to be held on the waters of the Pasquotank River, Elizabeth City, North Carolina. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions on the Pasquotank River adjacent to Elizabeth City, North Carolina during the power boat race.

DATES: Comments and related material must reach the Coast Guard on or before May 14, 2007.

ADDRESSES: You may mail comments and related material to Commander Fifth Coast Guard District (dpi), 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, fax them to (757)391–8149, or e-mail them to *Dennis.M.Sens@uscg.mil.* The Inspections and Investigations Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO Humphrey, Marine Event Coordinator, Coast Guard Sector North Carolina at (252)247–4525.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD05–07–027], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On June 9 and 10, 2007, the Virginia Boat Racing Association will sponsor the ''Carolina Cup Regatta'', on the waters of the Pasquotank River. The event will consist of approximately 60 inboard hydroplanes racing in heats counter clockwise around an oval race course. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard purposes to establish temporary special local regulations on specified waters on the Pasquotank River adjacent to Elizabeth City, North Carolina. The regulated area includes a section of the Pasquotank River approximately one mile long and bounded in width by each shoreline. This rule would be enforced from 7 a.m. to 7 p.m. on June 9 and 10, 2007, and would restrict general navigation in the regulated area during the power boat race. The Coast Guard, at its discretion, when practical would allow the passage of vessels when races are not taking place. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel would be allowed to enter or remain in the regulated area during the enforcement period.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this proposed regulation would prevent traffic from transiting a portion of the Pasquotank River adjacent to Elizabeth City, North Carolina during the event, the effects of this regulation would not be significant due to the limited duration that the regulated area would be in effect. Extensive advance notifications would be made to the maritime community via Local Notice to Mariners, marine information broadcast, and area newspapers, so mariners can adjust their plans accordingly. Vessel traffic would be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this section of the Pasquotank River during the event.

This purposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for only a short period, from 7 a.m. to 7 p.m. on June 9 and 10, 2007. The regulated area will apply to a segment of the Pasquotank River adjacent to the Elizabeth City waterfront. Marine traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area during the event, vessels will be required to proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. Before the enforcement period, we would issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Coast Guard at the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

2. Add temporary § 100.35–T05–027 to read as follows:

§ 100.35–T05–027 Pasquotank River, Elizabeth City, NC.

(a) *Regulated area.* The regulated area is established for the waters of the Pasquotank River, adjacent to Elizabeth City, NC, from shoreline to shoreline, bounded on the west by the Elizabeth City Draw Bridge and bounded on the east by a line originating at a point along the shoreline at latitude 36°17′54″ N., longitude 076°12′00″ W., thence southwesterly to latitude 36°17′35″ N., longitude 076°12′18″ W. at Cottage Point. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the ''Carolina Cup Regatta'' under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(c) *Special Local Regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 7 a.m. to 7 p.m. on June 9 and 10, 2007.

Dated: March 29, 2007.

Larry L. Hereth,

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

[FR Doc. E7–6939 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0787–200621(b); FRL–8297–3]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Knox County Portion of the Tennessee State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the State Implementation Plan (SIP) submitted by the State of Tennessee, through Tennessee Department of Environment and Conservation (TDEC), on August 18, 1999 and July 16, 2001. The revisions pertain to the Knox County portion of the Tennessee SIP and include changes to the Knox County Air Quality Regulations Section 51.0—Standards for Cement Kilns. These standards set nitrogen oxides (NO_X) emissions control, compliance demonstration, certification, record keeping, and reporting requirements for Portland cement kilns in the County. The revisions were initially reviewed by TDEC, which found them to be as

stringent as the State's requirements. After review of this submittal, EPA concurs with TDEC's finding. The proposed changes are part of the Knox County strategy to meet the national ambient air quality standards by reducing the emissions of NO_X, a precursor of ozone formation. Because of the harmful health effects of ozone, EPA limits the amount of volatile organic compounds and NO_X that can be released into the atmosphere. This action is being taken pursuant to section 110 of the Clean Air Act. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before May 14, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2006–0787 by one of the following methods:

1. *www.regulations.gov:* Follow the online instructions for submitting comments.
2. *E-mail: louis.egide@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2006–0787,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Dr. Egide Louis, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Dr. Egide Louis, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9240. Dr. Louis can also be reached via electronic mail at *louis.egide@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: March 29, 2007.

J.I. Palmer,

Regional Administrator, Region 4.

[FR Doc. E7–6718 Filed 4–11–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0779; FRL–8296–4]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revise the Code of Federal Regulations (CFR) for the purpose of giving the Wisconsin Department of Natural Resources (WDNR) full regulatory responsibility for EPA-issued Prevention of Significant Deterioration (PSD) permits. WDNR has the necessary state legislative authority to take responsibility for the permits, and has demonstrated that it has adequate resources to maintain oversight of these permits.

DATES: Comments must be received on or before May 14, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0779, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: blakley.pamela@epa.gov.*
- *Fax:* (312) 886–5824.
- *Mail:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Danny Marcus, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8781, *marcus.danny@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a non-controversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: March 27, 2007.

Mary A. Gade,

Regional Administrator, Region 5.

[FR Doc. E7–6728 Filed 4–11–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–AL–0002–200623; FRL–8298–1]

Approval and Promulgation of Implementation Plans: Alabama: Proposed Approval of Revisions to the Visible Emissions Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Visible Emissions portion of the State Implementation Plan (SIP) revision submitted to EPA, by the Alabama Department of Environmental Management (ADEM), on September 11, 2003 (the ''2003 ADEM submittal''), provided it is revised as described in this action and submitted as a SIP revision. The open burning portion of the submittal was previously approved in a separate action on March 9, 2006 (71 FR 12138).

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2005–AL–0002, by one of the following methods:

(a) *www.regulations.gov:* Follow the on-line instructions for submitting comments.

(b) *E-mail: harder.stacy@epa.gov.*

(c) *Fax:* 404–562–9019.

(d) *Mail:* ''EPA–R04–OAR–2005–AL–0002,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

(e) *Hand Delivery or Courier:* Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2005–AL–0002.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. 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 electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Proposing?

EPA is proposing an approval, under Section 110(k) of the Clean Air Act (CAA), of the Visible Emissions portion of the Alabama SIP revision submitted on September 11, 2003. This proposed approval is contingent upon Alabama submitting a revised SIP submission addressing EPA's concerns regarding impacts of the rule changes on attainment of the National Ambient Air Quality Standards (NAAQS). Because the necessary revisions would materially alter both the existing SIP approved rule and the submitted revision, the State must make a SIP submittal to effect the changes noted by EPA below. As with any SIP revision, the State must provide public notice of and a public hearing on the proposed changes. If, after consideration of public comments, EPA determines the revised SIP submission meets the requirements of the CAA and is consistent with the recommended changes outlined in this action, the Agency may proceed to publish its approval of the revised SIP in the **Federal Register**. Alabama's revised submittal must be consistent with the changes discussed in this action for EPA to approve its incorporation into the SIP. If the revised language does not conform specifically to the recommended changes, EPA will need to re-evaluate Alabama's submittal and, if the changes are approvable, re-propose approval of the SIP submittal.

II. Why Is EPA Proposing This Action?

EPA is taking this action in response to a request from ADEM to revise the Visible Emissions portion of Alabama's SIP rule pertaining to sources of particulate matter (PM) emissions. The request, submitted to EPA on September 11, 2003, would revise Alabama SIP rule 335–3–4–.01 (''Visible Emissions'') by amending the requirements for units

that operate continuous opacity monitoring systems (COMS) and that are not subject to any opacity limits other than those in rule 335–3–4–.01(1) (''Visible Emissions Restrictions for Stationary Sources'').

Under section 110(l) of the CAA, EPA may not approve revisions to SIPs if the revisions would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. In determining whether to approve a requested revision, EPA considers the relevant impacts of the proposed change in light of the type of requirement affected by the requested revision. In this instance, the State is proposing revisions to its opacity requirements. We define opacity as the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. (See 40 CFR 60.2).

A change in opacity standards may not necessarily impact on a State's ability to meet the PM NAAQS or any other applicable requirement of the Act because, as discussed further in this action, a reliable and direct correlation between opacity and PM emissions cannot be established without significant site-specific simultaneous testing of both PM emissions and opacity, particularly for short-term periods (e.g., 24 hours or less). Nonetheless, because there is at least an indirect relationship between opacity and PM emissions, including the use of opacity to track the effectiveness of PM control equipment operation, we considered the impact of Alabama's proposed revision on the NAAQS for PM10 and PM2.5, and on other applicable requirements. No changes are being proposed to revise the particulate mass limits in the Alabama SIP, and sources must continue to meet applicable emissions limits. EPA proposes to approve Alabama's revision, with our recommended changes, because we determined that, with the changes specified in this action, the SIP revision will not interfere with attainment of either of the PM NAAQS or with other applicable requirements.

III. What Is the Rationale for This SIP Revision?

Monitoring opacity by use of COMS provides far more data than EPA Reference Method 9, the compliance determination method specified by most SIPs, including Alabama's. Alabama adopted into the State's regulations the rule revision contained in the 2003 ADEM submittal on August 26, 2003, and has since operated under it as a State-only enforceable provision. The purpose of that rule revision was to make the State's regulation consistent with what had been its practice in exercising enforcement discretion with respect to use of COMS data since the early 1980's.

In addition to requiring corrective actions and prompt reporting of deviations from permit terms, the State has other oversight procedures in place that ensure long, continuous periods of high opacity are properly addressed by the source. ADEM receives quarterly emissions reports from plants that utilize COMS, which indicate the opacity of the emissions from sources subject to this rule revision. ADEM reviews the information and determines if further action should be taken due to any opacity exceedances. The data is required to be in a format that includes source operating time, monitor operating time, exempt opacity exceedances, and non-exempt opacity exceedances. The reports include daily opacity exceedances as well as a summary of the data for the entire quarter. In these reports, the sources also calculate the percentage of operating time in which they had non-exempt opacity exceedances as well as the percentage of operating time with any (total of exempt and non-exempt) opacity exceedances.

ADEM has developed a program that takes the summary data from the quarterly opacity reports and calculates the percentage of source operating time that the opacity of emissions from individual units (or multiple units with a common stack) exceeded the opacity standard due to non-exempt reasons during the calendar quarter. As a check on the quarterly calculations from the source, this program also calculates the percentage of operating time that the opacity of emissions from individual units exceeded the opacity standard for any reason. With this program, ADEM compares the performance of each unit to the historical performance of that unit as well as compares it to the performance of the other units at that plant and other similar plants in the State, and the performance of the unit to the two percent threshold in the Alabama submittal. If the performance of a unit is not consistent with its historical performance or the performance of other similar units in the State, ADEM can review the daily exceedances of the opacity standard for the unit in question to determine if the exceedances were sporadic, or grouped in consecutive hours or consecutive days. ADEM may also ask the company for a detailed explanation of the exceedances (or a subset of exceedances) during the calendar quarter. If, for a source subject to the new standard, the number of unexcused opacity exceedances is in excess of two percent of the source operating time for which the opacity standard was applicable during the quarter, formal enforcement action may proceed.

Opacity limitations have typically accompanied periodic Reference Method 5 particulate matter compliance tests (Method 5 tests) in SIPs. That is, where Method 5 tests are used to demonstrate compliance with filterable PM mass emission limitations, opacity limits and associated monitoring are commonly used as an indirect monitor for PM emissions and as indicators of good PM control equipment operation during the periods between Method 5 tests. EPA has long recognized opacity monitoring as a method of ensuring proper control device operation. *See* 39 FR 9308, 9309 (Mar. 8, 1974) (NSPS Additions and Miscellaneous Amendments discussing opacity as an indicator of whether control equipment is properly maintained and operated).

With use of continuous opacity monitors it is possible to have a continuous stream of opacity data. This results in the collection of many individual, short-term opacity measurements that reflect the full range of control device operating variability and, depending upon the amount of variability, may or may not be indicative of poor operation of control equipment and excess PM emissions. For example, coal-fired power generation facilities may experience sporadic opacity exceedances caused by variations in the constituents of coal burned. The revised Alabama rule shifts emphasis from isolated six-minute periods to longer periods that are more indicative of excess PM emissions and problems with operation and maintenance of control devices. As noted above, under the proposed revised rule, with the changes discussed in this action, an emissions unit is allowed: (1) Up to 100 percent opacity during periods of startup, shutdown, load change, and rate change or other short, intermittent periods upon terms approved by ADEM's Director and included in a state-issued permit; (2) up to 100 percent opacity for up to two percent of the operating time on a quarterly basis (less the exempted periods approved by ADEM's Director and included in a state-issued permit), for no more than 10 percent of the time on a daily basis; and (3) up to 20 percent opacity for the rest of the time in a quarter. EPA believes this approach, along with the monitoring and oversight safeguards discussed above, make appropriate use of COMS data for ensuring compliance with PM limits.

IV. What Does the Visible Emissions Rule in the Current SIP Require, and What Changes Are Requested by ADEM?

The subject Visible Emissions rule is in Chapter 335–3–4 (''Control of Particulate Emissions'') of the Alabama SIP. The currently approved Alabama Rule 335–3–4–.01, ''Visible Emissions,'' has a generally applicable limit of 20 percent on opacity level and provides that one six-minute period per hour of up to 40 percent opacity is exempted [1] from the 20 percent limit. The Director of ADEM may also grant, as part of a permit issued by the State, exemptions to the 20 percent limit during startup, shutdown, load change and rate change or other short, intermittent periods that are in addition to the hourly six-minute 40 percent exemption. These exemptions are provided by subparagraphs (1)(b) and (1)(c), respectively. Additional exemptions for circumstances not relevant to this rulemaking are provided by subparagraphs (1)(d) [2] and (1)(e).[3] The text of the current rule reads, in relevant part, as follows:

(1) Visible Emissions Restrictions for Stationary Sources.

(a) Except as provided in subparagraphs (b), (c), (d), or (e) of this paragraph, no person shall discharge into the atmosphere from any source of emission, particulate of an opacity greater than that designated as twenty percent (20%) opacity, as determined by a six (6) minute average.

(b) During one six (6) minute period in any sixty (60) minute period, a person may discharge into the atmosphere from any source of emission, particulate of an opacity not greater than that designated as forty percent (40%) opacity.

(c) The Director may approve exceptions to this Rule or specific sources which hold permits under Chapter 335–3–14; provided however, such exceptions may be made for startup, shutdown, load change, and rate change or other short, intermittent periods of time upon terms approved by the Director and made a part of such permit.

* * * * *

(2) Compliance with opacity standards in this Rule shall be determined by conducting observations in accordance with Reference Method 9 in Appendix A, 40 CFR Part 60, as the same may be amended requiring a six (6) minute average as determined by twenty-four (24) consecutive readings, at intervals of fifteen (15) seconds each.

The 2003 ADEM submittal would add three new paragraphs, (3), (4), and (5), to Alabama Rule 335–3–4–.01 that apply only to those emissions units that use COMS for measuring opacity, that operate such systems according to Federal specifications, and that are subject only to those opacity limits of the State's SIP (*e.g.*, not subject to opacity limits under any preconstruction permit or other regulation). The revision provides that these units will not be in violation of the State's generally applicable opacity limitation if the non-exempt excess emissions periods do not exceed two percent of the source operating hours for which the opacity standard is applicable and for which the COMS is indicating valid data, on a quarterly basis. The text of the proposed change reads as follows:

(3) The conditions in paragraph (4) of this Rule apply to each emissions unit that meets all of the following requirements:

(a) A Continuous Opacity Monitoring System (COMS) is used for indication of opacity of emissions;

(b) With respect to opacity limitations, the units are subject only to the opacity provisions stated in paragraph (1) of this Rule; and

(c) The COMS system utilized is required to comply with the requirements of 40 CFR 60.13 or 40 CFR 75.14 (if applicable) and is required to be certified in accordance with the requirements of 40 CFR 60, Appendix B, Performance Specification 1.

(4) During each calendar quarter, the permittee will not be deemed in violation of Rule 335–3–4–.01(1) if the non-exempt excess emissions periods do not exceed 2.0 percent of the source operating hours for which the opacity standard is applicable and for which the COMS is indicating valid data.

(5) Nothing in paragraph (4) of this Rule shall be construed to supercede the validity of opacity readings taken under paragraph (2) of this Rule.

In summary, under the 2003 submission, sources operating COMS would not be deemed in violation of the standard where emissions in excess of the 20 percent opacity were limited to: (1) One six-minute average per hour of up to 40 percent opacity; (2) periods of startup, shutdown, load change and rate change or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit; and (3) no more than two percent of the remaining operating time after subtracting out all periods qualifying under the previous two instances.

V. What Changes Does EPA Recommend to the Submittal?

As described above, under the Alabama SIP, Method 9 is the method specified for determining compliance with the 20 percent opacity limit. COMS are not specified as the method to determine compliance with the numerical opacity limit, although COMS data can be credible evidence of opacity. Opacity, both as measured by Method 9 and COMS, has been used as a proxy for particulate emissions and to indicate whether a company is following good air pollution control practices. ADEM has proposed amending its SIP to allow up to two percent of COMS readings to exceed 20 percent opacity during non-exempt periods, in part since the Alabama SIP provides no other exemption from the standard for malfunction.

The use of COMS increases data availability and provides a greater degree of reliability compared to the Method 9 procedure. Nonetheless, as currently written, the revision would allow a source to emit at a higher allowable average opacity percent level (as measured by COMS in six-minute increments) on a quarterly basis as well as allowing higher short term excursions than the current approved SIP allows. Because this potential for higher average opacity on a quarterly basis could indicate an increase in particulate matter emissions, and in the absence of a supporting demonstration of compliance with CAA requirements from the State, we believe that the 2003 SIP submittal is not approvable as submitted. The submission is also not clear about whether the new opacity standard for certain sources with COMS at 335–3–4–.01(3)–(5) applies in addition to, or in lieu of, the existing opacity standard in paragraphs 335–3–4–.01(1)(a)–(b), as measured under paragraph 335–3–4–.01(2). In addition, the purpose behind new paragraph 335–3–4–.01(5) is not clear.

EPA believes the State can revise the 2003 ADEM submittal by amending it to ensure that the allowable average quarterly opacity is at least as stringent as (i.e., equal to or lower than) that allowed by the current approved SIP, and by being clear that only a single version of the standard applies to any unit (although any credible evidence of opacity could be used to assess compliance with the applicable version of the standard). Accordingly, this proposed approval is contingent upon Alabama's submission of a revised rule with certain changes. The revision

[1] Alabama Rule 335–3–4–.01, ''Visible Emissions,'' provides four specific ''exceptions'' to compliance with the generally applicable opacity limit at subparagraphs 335–3–4–.01(b), (c), (d), and (e). To be consistent with more common terminology, in this notice we refer to these as ''exemptions.''

[2] Subparagraph (d) provides that ADEM's Director may approve exceptions to this Rule in the form of source-specific adjustments to the opacity standard, provided certain conditions are met demonstrating to the Director's satisfaction that, with the adjustment, the source would continue to comply with its SIP particulate matter mass emissions limit.

[3] Subparagraph (e) provides that the provisions of this Rule do not apply to combustion sources in single-family and duplex dwellings where such sources are used for heating or other domestic purposes.

would clearly indicate that a unit is covered by either the existing opacity standard at paragraphs 335–3–4–.01(1)(a)–(b), as measured under paragraph 335–3–4–.01(2), or by the new standard established in paragraphs 335–3–4–.01(1)(a), (3)–(4), as measured by the COMS referenced in those paragraphs—but not both.[4] The revision would also provide that the hourly 40 percent exemption under Alabama rule 335–3–4–.01(1)(b) does not apply to sources subject to the new paragraphs 335–3–4–.01(3) and 335–3–4–.01(4). Thus, the 40 percent exemption for up to 24 six-minute periods per day on an hourly basis would be replaced by the generally applicable 20 percent standard. The revision would allow a source to exceed the 20 percent standard (up to 100 percent opacity) during no more than 24 six-minute periods per day. In part this revision would replace the existing provision allowing one six-minute exceedance per hour at 40 percent opacity with a provision allowing up to 24 six-minute exceedances per calendar day at 100 percent opacity. However, under the revised provision, these exceedances would be part of, not in addition to, the exceedances allowed under 335–3–4–.01(4) (*i.e.*, two percent of operating time).

Thus, under the current SIP, a source is required to maintain 20 percent opacity, except that it may emit at up to 40 percent opacity for one six-minute average per hour, and may have emissions of up to 100 percent opacity as specified in a permit. Under the 2003 submission, certain sources using COMS would, in addition to the current SIP exemptions, also be allowed emissions of up to 100 percent opacity for up to two percent of the quarterly operating time that they are otherwise subject to the 20 percent opacity limit. Under the revision proposed for approval in this notice, these sources still would be allowed emissions of up to 100 percent opacity for up to two percent of quarterly operating time that they are subject to the 20 percent opacity limit (but not to exceed 10 percent of a calendar day), and they would not be allowed the 40 percent hourly exemption.[5]

Where currently any source may exceed the opacity limit for six minutes out of every hour (*i.e.*, 10 percent of the time, on an hourly basis), under the revision EPA is proposing would be approvable, a source using COMS subject to the new standard could exceed the opacity limit for 10 percent of the time on a daily basis (*i.e.*, up to 2.4 hours of consecutive opacity exceedances per calendar day), but for only two percent of the time on a quarterly basis. Under the current standard, the 40 percent opacity limit in theory allows a source to emit a total of approximately 219 hours of emissions in a quarter at up to 40 percent opacity, if the source uses one six-minute exemption for every hour of operation. Under the proposed revision, a source would be allowed to emit no more than 44 hours of excess emissions in a quarter (and no more than 2.4 hours in a day), but those emissions could have up to 100 percent opacity.[6]

As a result, the final rule would have the potential to increase the impact of opacity exceedances on a short-term basis by allowing exceedances of up to 100 percent opacity and also allowing those periods of excess opacity to be aggregated in up to 24 consecutive six-minute periods per day (as opposed to the current approved rule which provides an hourly 40 percent exemption, also for a total of 24 six-minute periods per day). However, the long-term cap of two percent serves to restrict the total amount of time a source is allowed to exceed the standard. As discussed below, EPA believes that the reduction in total duration of exceedances will reduce average opacity as compared to the current standard, even taking into consideration that the exemption in the current standard limits exceedances to 40 percent (not 100 percent) opacity.

Thus, under the proposed revised rule, with the changes discussed in this notice, an emissions unit covered by the new standard would be allowed: (1) Up to 100 percent opacity during periods of startup, shutdown, load change, and rate change or other short, intermittent periods upon terms approved by ADEM's Director and included in a state-issued permit; (2) up to 100 percent opacity for up to two percent of the operating time on a quarterly basis (where the amount of operating time does not include the exempted periods approved by ADEM's Director and included in a state-issued permit), but for no more than ten percent of the time on a daily basis; and (3) up to 20 percent opacity for the rest of the time in a quarter. The current federally-approved SIP opacity limit remains in effect. Any new exceptions proposed in this action do not take effect until EPA takes final action. Furthermore, any final rule would be prospective only. In addition, this proposal is not intended to affect on-going enforcement actions against sources that may be subject to the new standard, nor does it relieve affected sources in Alabama of their obligations to comply with any other federal, state, or local opacity requirements, or particulate matter control requirements.

VI. What Technical Analysis Was Used To Support Approval of This SIP Revision?

The existing Alabama SIP specifies Method 9 as the method for determining compliance with the generally applicable opacity limit for sources of PM emissions. *See* Ala. Admin. Code r. 335–3–4–.01(2). More frequent readings with COMS help determine whether a source is following good air pollution control practices between Method 9 or Method 5 tests. With the additional restrictions described above, the proposed SIP revision can be shown to be no less stringent in terms of average quarterly opacity than the existing SIP.

Today, we propose to approve Alabama's SIP revision contingent upon the revision including our recommended changes, based on a finding that the revision would not increase average quarterly opacity levels and thus would not interfere with attainment or maintenance of a NAAQS, RFP, or any other requirement of the Act. The relationship between changes in opacity and increases or decreases in ambient $PM_{2.5}$ levels cannot be quantified readily and is particularly uncertain for short term and site-specific analyses. There are several contributors to this uncertainty including (1) differences between combustion technology characteristics and fuel components, (2) differences in control technology types, temperatures at which they operate, and load characteristics, (3) the recognition that both opacity and mass emissions are subject to significant variability over short periods of time and fluctuations in one may not track fluctuations in the other, and (4) differences between what the ambient sampler collects and the mass of particles that exists at the point

[4] As noted elsewhere, the exemptions in paragraphs 335–3–4–.01(1)(c)–(e) are not impacted by the 2003 SIP revision and would continue to apply to either the existing or the revised standard.

[5] Although this new opacity standard would only apply to certain sources using COMS, EPA notes that, consistent with EPA's and ADEM's credible evidence rules, nothing in the rule should preclude the use of COMS to enforce the existing standard or the use of Method 9 to enforce the new standard.

[6] The director's discretion provisions under Alabama rule 335–3–4–.01(1)(c) and (d) would be unchanged by this SIP revision, so periods of excess emissions allowed in a permit pursuant to those provisions would continue to be allowed, in addition to the emissions allowed by the new provisions discussed herein. EPA notes that, as the director's discretion provisions are not being revised by ADEM or reviewed by EPA at present, nothing in this notice should be considered as approving those provisions.

of COMS measurement (*e.g.*, in the stack) and the direct $PM_{2.5}$ that forms immediately upon exiting the stack (that are related to fuel components more than to control technology).

In addition to these uncertainty factors, opacity is directly related to particle size, with particles of an aerodynamic diameter of approximately 1.0 micrometer having the greatest potential for impairment of visibility, or increased opacity. (See, e.g., Malm, William C. ''Introduction to Visibility,'' Cooperative Institute for Research in the Atmosphere, May 1999, Chap. 2, p. 8). As particles increase in size, their impact on opacity diminishes, despite the fact that their mass may increase. Thus for PM emissions of a given mass level, opacity can be greater or less depending on the particle size distribution.

Several past instances and State and Federal rules are instructive regarding the uncertainties in relating opacity to PM concentrations. EPA recognized and accounted for these uncertainties as early as the 1970s by permitting sources to adjust source-specific opacity standards under new source performance standards (NSPS) when they could demonstrate that they were in compliance with applicable PM limits at times when opacity limits were being exceeded. See, e.g., 44 FR 37960, 37961 (June 29, 1979). In EPA's own NSPS for glass manufacturing plants, (40 CFR 60.293(e)), and national emission standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants (40 CFR 61.163), EPA has written specific provisions into its standards permitting source owners or operators to redetermine opacity limitations where they can demonstrate compliance with emission limits in the applicable rules. More recently, when examining a study of COMS at a portland cement kiln, we have found that the plant's visible emissions readings were consistently below its allowable limit (20 percent) while PM emissions significantly exceeded the NSPS due to broken bags in its baghouse. Finally, a number of States have incorporated similar provisions into their regulations. (See, e.g., Indiana Administrative Code, 326 IAC 5–1–5(b); Wisconsin NR 431.07; Pima County, Arizona 2–8–300(C)).

The contributions to uncertainty described above lessen when applied to longer term averages and the relationship between ambient $PM_{2.5}$ measurements and changes in opacity are more reliable than for shorter term (e.g., daily) assessments. Therefore, for purposes of this proposal, EPA focused on analyzing the effects of the proposed change in the opacity limitations for facilities covered by the rule over quarterly periods. EPA believes that a quarterly basis is appropriate because correlations between opacity and PM control device operation are more readily generalized over a longer-term basis and, therefore, a quarterly average is more likely to reflect impacts on the ambient PM levels accurately than a daily average, and because ADEM's proposed rule includes a quarterly limit. By calculating and comparing the average quarterly opacities allowed by the current SIP approved rule, the 2003 ADEM submittal, and the 2003 ADEM submittal with required changes specified, we can determine which proposed SIP change, if any, provides an average quarterly opacity equivalent with, or more stringent than, the average quarterly opacity allowed by the current SIP approved rule. Proposed changes that provide average quarterly opacities more stringent than (or equivalent with) those allowed by the existing SIP rule are expected to be more stringent than (or equivalent to) the existing SIP rule.

EPA is not performing similar calculations comparing stringency of average daily opacity levels under the current rule and the proposed rule because a generally applicable relationship between opacity and PM mass emissions cannot be specified over short averaging times (e.g., 24 hours or less). Even with extensive testing, it is very difficult to establish reliable correlations between the magnitude of opacity measurements and PM mass emissions for short averaging times (e.g., 24 hours or less) that will remain reliable over a longer period of record (i.e., that will establish a direct daily correlation over a longer period, such as three or more months). Therefore, opacity may not be a reliable indicator of short-term emissions, or for use in projecting changes in short-term PM ambient air quality concentrations. Accordingly, we conclude that the proposed change in the allowed opacity will have no effect on attainment of the 24-hour PM NAAQS (35 $\mu g/m^3$ for $PM_{2.5}$ and 150 $\mu mg/m^3$ for PM_{10}) or (based on the quarterly stringency comparison) the annual PM NAAQS (15.0 μg/m for $PM_{2.5}$).

We can calculate the average allowable quarterly opacity for a unit by multiplying an allowed level of opacity by the duration for which that level of opacity is allowed, summing those products for each allowed level of opacity occurring over a quarter, and then dividing that total by the number of six-minute periods in a quarter. The average quarterly opacity for a unit is an opacity value equivalent with one single, constant opacity value emitted for each and every six-minute period of the quarter, allowing us to compare a unit with a longer period of lower opacity to one with a shorter period of higher opacity.

The general formula for calculating the allowable average quarterly opacity (i.e., the average opacity (percent) allowed by rule over a quarter) is:

$$\text{Allowable average quarterly opacity} = \frac{\sum_{i=1}^{n}(\text{opacity}_n)*(\text{duration}_n)}{21{,}900}$$

Where:
n = specific period of quarterly operation,
opacity = opacity (percent) related to that specific period,
duration = number of six-minute average periods related to the specific period, and
21,900 = number of six-minute average periods per quarter.

For the Alabama analysis, using the above general formula to determine the allowable average opacity over a quarter, we chose to use the maximum opacity allowed for each condition, the maximum duration allowed for each condition, and the maximum amount of time for unit operation when calculating the average allowable quarterly opacity. Although operation with opacity at the maximum level for the longest period allowed under a rule is not reflective of actual operations, such a conservative assumption provides a consistent basis for comparisons.

Usually calculation of allowable average quarterly opacity can be readily ascertained, since opacity limits and their associated condition durations are known explicitly. However, because ADEM allows an exemption from opacity limits during periods of startup, shutdown, load change and rate change or other short, intermittent periods upon

terms approved by ADEM's Director and included in a state-issued permit, and because the duration of those periods is not known, we used a variable, T_1, to represent the duration of those periods. In theory, the duration of those periods could range from 0, meaning no periods of exemption for a quarter, to 21,900, meaning all periods of the quarter are exempt.[7] In practice, one sample of units subject to the current SIP rule contains durations of about 400 periods per quarter for this exemption.

Relying on the variable T_1, calculation of allowable average quarterly opacities becomes straightforward. By way of example, the allowable average quarterly opacity for the 2003 ADEM Submittal is the sum of the ten percent of the quarter's duration at 40 percent opacity, the time (T_1) at 100 percent opacity due to exemptions, the two percent of the non-exempt time of the quarter's duration at 100 percent opacity, and the balance of the non-exempt time of the quarter's duration at 20 percent opacity, all divided by the number of six-minute periods in the quarter. The equation shown below provides the allowable average quarterly opacity for the 2003 ADEM Submittal for T_1 values of 0 to 19,710:

$$\text{Allowable average quarterly opacity} = \left[\frac{\left[\left(\frac{21,900}{10}\right)*40\right]+\left(T_1*100\right)+\left[\left(21,900-\frac{21,900}{10}-T_1\right)*\frac{2}{100}*100\right]+\left[\left(21,900-\frac{21,900}{10}-T_1\right)*\frac{98}{100}*20\right]}{21,900}\right].$$

We derived allowable average quarterly opacity equations for the current SIP-approved rule and the 2003 ADEM submittal, substituted various exemption durations (T_1) in the equations, determined the corresponding allowable average quarterly opacities, and organized the results as shown in Table 1 below.

TABLE 1.—CALCULATED ALLOWABLE AVERAGE QUARTERLY OPACITY LEVELS, FOR VARIOUS STARTUP, SHUTDOWN, LOAD CHANGE, AND RATE CHANGE DURATIONS (T_1), USING ALABAMA'S CURRENT SIP-APPROVED RULE, AND THE 2003 ADEM SUBMITTAL

	Calculated allowable average quarterly opacity (percent) for various startup, shutdown, load change and rate change durations (T_1)					
	T_1 = 0	T_1 = 1,000	T_1 = 10,000	T_1 = 17,520	T_1 = 19,710	T_1 = 21,900
Current SIP Approved Rule	22.00	25.65	58.53	86.00	94.00	100.00
2003 ADEM Submittal	23.44	27.02	59.24	86.16	94.00	100.00

As can be seen, under these conservative assumptions, the 2003 ADEM submittal would result in allowable average quarterly opacity levels that are slightly higher than those calculated from the current SIP rule for periods of startup, shutdown, load change and rate change, *i.e.* for where those durations are less than 19,710 six-minute averages.

In order to be approvable, we have recommended that ADEM eliminate the exemption for six-minutes at up to 40 percent opacity for up to ten percent of the operating time. The allowable average quarterly opacity for the 2003 ADEM Submittal With Required Changes Specified for all T_1 values =

$$\left[\frac{\left(T_1*100\right)+\left[\left(21,900-T_1\right)*\frac{2}{100}*100\right]+\left[\left(21,900-T_1\right)*\frac{98}{100}*20\right]}{21,900}\right].$$

We derived allowable average quarterly opacity equations for the current SIP approved rule and the 2003 ADEM submittal with recommended changes specified, substituted various exemption durations (T_1) in the equations, determined the corresponding allowable average quarterly opacities, and organized the results as shown in Table 2 below. As shown, the proposed revision to the SIP rule yields an allowable average quarterly opacity equivalent to or less than the allowable average quarterly opacity calculated from the current SIP rule in all cases.

[7] EPA does not intend to indicate that it would be appropriate or consistent with the SIP for an exemption period under 335–3–4.01(1)(c) to last for an extended period of time, but rather is utilizing conservative assumptions for the purpose of ensuring the requirements of section 110(l) will be met. EPA does not anticipate that a source would, in fact, operate at 100% opacity for all permissible excursion periods.

TABLE 2.—CALCULATED ALLOWABLE AVERAGE QUARTERLY OPACITY LEVELS, FOR VARIOUS STARTUP, SHUTDOWN, LOAD CHANGE, AND RATE CHANGE DURATIONS (T_1), USING ALABAMA'S CURRENT SIP-APPROVED RULE AND THE PROPOSED SIP REVISION WITH RECOMMENDED CHANGES SPECIFIED

	Calculated allowable average quarterly opacity (percent) for various startup, shutdown, load change and rate change durations (T_1)					
	T_1 = 0	T_1 = 1,000	T_1 = 10,000	T_1 = 17,520	T_1 = 19,710	T_1 = 21,900
Current SIP Approved Rule	22.00	25.65	58.53	86.00	94.00	100.00
2003 ADEM Submittal with Recommended Changes Specified	21.60	25.18	57.40	84.32	92.16	100.00

Therefore, by incorporating these recommended changes, Alabama would reduce uncertainties related to whether such a change could interfere with attainment, RFP or any other requirement of the Act. Accordingly, we conclude that the revision of Alabama's SIP rule to incorporate the 2003 ADEM submittal with our recommended changes specified in this action would not interfere with requirements of the CAA and would be approvable. Further details of this analysis are contained in the technical support document.

VII. What Happens Next?

EPA anticipates Alabama will submit a revised rule revision reflecting the changes discussed in section IV above. If Alabama's revised rule is submitted and considered approvable, after considering any comments received on today's proposed approval, EPA will publish a final rule in the **Federal Register** approving the State's requested rule revision and will also address in that rulemaking any comments received on this proposed approval. In addition, we plan to develop further criteria to aid EPA Regional Offices in evaluating future revisions to rules such as Alabama's and, in this regard, we expect to publish in the near future a request for information that will assist us in that effort.

VIII. Proposed Action

EPA is proposing to approve the Visible Emissions portion of a SIP revision submitted to EPA by Alabama on September 11, 2003, provided it is revised as described in section IV of this action and submitted as a SIP revision in accordance with the requirements of the CAA.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements, and imposes no additional requirements beyond those imposed by state law. Accordingly, I hereby certify that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to approve requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 97249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve State rule as consistent with Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 4, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E7–6948 Filed 4–11–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2006–0917; FRL–8298–3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Redesignation of the Richmond-Petersburg 8-Hour Ozone Nonattainment Area To Attainment and Approval of the Associated Maintenance Plan and 2002 Base-Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. The Virginia Department of Environmental Quality (VADEQ) is requesting that the Richmond-Petersburg ozone nonattainment area (''Richmond Area'' or ''Area'') be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). The Area is comprised of the Cities of Petersburg, Colonial Heights, Hopewell, and Richmond, and the Counties of Prince George, Chesterfield, Hanover, Henrico, and Charles City. EPA is proposing to approve the ozone redesignation request for the Richmond Area. In conjunction with its redesignation request, the Commonwealth submitted a SIP revision consisting of a maintenance plan for the Richmond Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that the Richmond Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality monitoring data for 2003–2005. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the Richmond Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). In addition, the Commonwealth of Virginia has also submitted a 2002 base-year inventory for the Richmond Area, and EPA is proposing to approve that inventory for the Richmond Area as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the maintenance plan for the Richmond Area for purposes of transportation conformity, and is also proposing to approve those MVEBs. EPA is proposing approval of the redesignation request and of the maintenance plan and 2002 base-year inventory SIP revisions in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before May 14, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0917 by one of the following methods:

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

B. *E-mail: morris.makeba@epa.gov.*

C. *Mail:* EPA–R03–OAR–2006–0917, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2006–0917. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *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.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or by e-mail at *caprio.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. What Are the Actions EPA Is Proposing To Take?

On September 20, 2006 the VADEQ formally submitted a request to redesignate the Richmond Area from nonattainment to attainment of the 8-hour NAAQS for ozone. On September 25, 2006 Virginia submitted a maintenance plan for the Richmond Area as a SIP revision to ensure continued attainment in the Area over the next 11 years. VADEQ also submitted a 2002 base-year inventory for the Richmond Area as a SIP revision on September 18, 2006 and supplements to the base-year inventory submittal on November 17, 2006 and February 13, 2007. The Richmond Area is comprised of the Cities of Petersburg, Colonial Heights, Hopewell, and Richmond, and the Counties of Prince George, Chesterfield, Hanover, Henrico, and Charles City. It is currently designated a marginal 8-hour ozone nonattainment area. EPA is proposing to determine that the Richmond Area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of the Richmond Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the Richmond maintenance plan as a SIP revision for the Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to ensure continued

attainment in the Richmond Area for the next 11 years. Concurrently, the Commonwealth is requesting that this 8-hour maintenance plan supersede the previous 1-hour maintenance plan. EPA is also proposing to approve the 2002 base-year inventory for the Richmond Area as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Richmond maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for the Richmond Area for transportation conformity purposes.

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Richmond Area was designated a marginal 8-hour ozone nonattainment area in a **Federal Register** notice signed on April 15, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years 2001–2003. On April 30, 2004, EPA issued a final rule (69 FR 23951, 23996) to revoke the 1-hour ozone NAAQS in the Richmond Area (as well as most other areas of the country) effective June 15, 2005. See 40 CFR 50.9(b); 69 FR at 23996 (April 30, 2004); and see 70 FR 44470 (August 3, 2005).

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006) (hereafter ''South Coast.''). The Court held that certain provisions of EPA's Phase I Rule were inconsistent with the requirements of the Clean Air Act. The Court rejected EPA's reasons for implementing the 8-hour standard in nonattainment areas under Subpart 1 in lieu of subpart 2 of Title I, part D of the Act. The Court also held that EPA improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) the certain conformity requirements for certain types of federal. The Court upheld EPA's authority to revoke the 1-hour standard provided there were adequate anti-backsliding provisions. Elsewhere in this document, mainly in section VI. B. ''The Richmond Area Has Met All Applicable Requirements under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA,'' EPA discusses its rationale why the decision in South Coast is not an impediment to redesignating the Richmond Area to attainment of 8-hour ozone NAAQS.

The CAA, title I, part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. In 2004, the Richmond Area was classified a marginal 8-hour ozone nonattainment area based on air quality monitoring data from 2001–2003. Therefore, the Richmond Area is subject to the requirements of subpart 2 of part D.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). See 69 FR 23857 (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data indicates that the Richmond Area has a design value of 0.082 ppm for the 3-year period of 2003–2005, using complete, quality-assured data. Therefore, the ambient ozone data for the Richmond Area indicates no violations of the 8-hour ozone standard.

B. The Richmond Area

Under the 1-hour ozone NAAQS, the Richmond Area consisted of the Cities of Colonial Heights, Hopewell, and Richmond, and the Counties of Chesterfield, Hanover, Henrico, and Charles City. Under the 8-hour ozone NAAQS, the Richmond Area was expanded to also include the City of Petersburg and Prince George County. Prior to its designation as an 8-hour ozone nonattainment area, the Richmond Area was a maintenance area for the 1-hour ozone NAAQS.[1] See November 17, 1997 (62 FR 61237).

On September 20, 2006 the VADEQ requested that the Richmond Area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the period of 2003–2005, indicating that the 8-hour NAAQS for ozone had been achieved in the Richmond Area. The data satisfies the CAA requirements that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value), must be less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area has attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA, allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

[1] Under the 1-hour ozone NAAQS the Richmond Area consisted of the Cities of Colonial Heights, Hopewell, and Richmond, the Counties of Chesterfield, Hanover, Henrico, and Charles City. See November 6, 1991 (58 FR 56694).

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The State containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, June 18, 1990;
- ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
- ''Technical Support Documents (TSDs) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' dated November 30, 1993;
- ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
- ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On September 20, 2006, the VADEQ requested redesignation of the Richmond Area to attainment for the 8-hour ozone standard. On September 25, 2006, VADEQ submitted a maintenance plan for the Richmond Area as a SIP revision, to ensure continued attainment of the 8-hour ozone NAAQS over the next 11 years, until 2018. Concurrently, Virginia is requesting that 8-hour maintenance plan submittal supersede the 1-hour maintenance plan requirements already in place and that the 8-hour maintenance plan meet the requirement of CAA section 175A(b) with respect to the 1-hour ozone maintenance plan update. EPA is proposing to approve the maintenance plan to fulfill the requirement of section 175A(b) for submission of a maintenance plan update eight years after the area was redesignated to attainment of the 1-hour ozone NAAQS. EPA believes that such an update must ensure that the maintenance plan in the SIP provides maintenance of the NAAQS for a period of 20 years after the area is initially redesignated to attainment. EPA can propose approval because the maintenance plan, which demonstrates maintenance of the 8-hour ozone NAAQS through 2018, also demonstrates maintenance of the 1-hour ozone NAAQS through 2018.

VADEQ also submitted a 2002 base-year inventory as a SIP revision on September 18, 2006 and supplements to that submittal on November 17, 2006 and February 13, 2007, which is an applicable requirement for the Richmond Area for purposes of redesignation. EPA has determined that the Richmond Area has attained the 8-hour ozone standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the official designation of the Richmond Area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Virginia SIP a 2002 base-year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the Richmond Area for the next 11 years, until 2018. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the NO_X and VOC MVEBs for transportation conformity purposes for the years 2011 and 2018. These MVEBs are displayed in the following table:

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

Year	VOC	NO_X
2011	32.343	43.661
2018	23.845	26.827

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

EPA is proposing to determine that the Richmond Area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The following is a description of how the VADEQ's September 20, 2006 (redesignation request), September 25, 2006 (maintenance plan and MVEBs), September 18, 2006 (base-year emissions inventory) and November 17, 2006 and February 13, 2007 (supplements to base-year inventory) submittals satisfy the requirements of section 107(d)(3)(E) of the CAA.

A. The Richmond Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the Richmond Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor, within the area, over each year must not exceed the ozone standard of 0.08 ppm. Based on

the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

There are four ozone monitors in the Richmond Area. As part of its redesignation request, Virginia referenced ozone monitoring data for the years 2003–2005 for the Richmond Area. This data has been quality assured and is recorded in the AQS. The fourth-high 8-hour daily maximum concentrations, along with the three-year averages are summarized in Table 2. The Hanover County monitoring site had the highest 3-year average of the fourth highest daily maximum 8-hour average and are therefore used to make air quality determinations.

TABLE 2.—RICHMOND AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES, RICHMOND MONITORS, PARTS PER MILLION (PPM)

Monitor	AQS ID #	2003	2004	2005	3-Year average
Chesterfield County	510410004	0.079	0.075	0.078	0.077
Henrico County	510870014	0.083	0.074	0.084	0.080
Hanover County	510850003	0.086	0.078	0.083	0.082
Charles City County	510360002	0.079	0.077	0.083	0.079

The average for the 3-year period 2003–2005 is 0.082 ppm.

The air quality data for 2003–2005 indicate that the Richmond Area has attained the standard with a design value of 0.082 ppm. The data collected at the Richmond Area monitors satisfy the CAA requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The VADEQ's request for redesignation for the Richmond Area indicates that the data is complete and was quality assured in accordance with 40 CFR part 58. The VADEQ uses the AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. In addition, as discussed below with respect to the maintenance plan, VADEQ has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by Virginia indicates that the Richmond Area has attained the 8-hour ozone NAAQS.

B. The Richmond Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that the Richmond Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under part D of Title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which requirements are applicable to the Richmond Area and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant CAA requirements that came due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA. *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR at 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

This section also sets forth EPA's views on the potential effect of the Court's ruling in *South Coast* on this redesignation action. For the reasons set forth below, EPA does not believe that the Court's ruling alters any requirements relevant to this redesignation action so as to preclude redesignation, and does not prevent EPA from finalizing this redesignation. EPA believes that the Court's decision, as it currently stands or as it may be modified based upon any petition for rehearing that has been filed, imposes no impediment to moving forward with redesignation of this area to attainment, because in either circumstance redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which includes enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to the following:

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and

• Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO_X SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25162). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the State.

Thus, we do not believe that these requirements are applicable requirements for purposes of redesignation. EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Richmond Area will still be subject to these requirements after it is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (*i.e.*, for redesignations) and oxygenated fuels requirement. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR at 53099, October 19, 2001). Similarly, with respect to the NO_X SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_X SIP Call rules are not ''an'' 'applicable requirement' for purposes of section 110(1) because the NO_X rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS.'' 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the Area's nonattainment status are not applicable for purposes of redesignation. As explained later in this notice, two part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to the submission of the redesignation request.

Because the Virginia SIP satisfies all of the applicable general SIP elements and requirements set forth in section 110(a)(2), EPA concludes that Virginia has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

2. Part D Nonattainment Requirements Under the 8-Hour Standard

The Richmond Area was classified a Subpart 2, marginal nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification.

The Richmond Area is classified as a Subpart 2, marginal nonattainment area. We do not believe that any part of the Court's opinion would require that this subpart 2 classification be changed upon remand to EPA. However, even assuming for present purposes that the Richmond Area would become subject to a different classification under a classification scheme created in a future rule in response to the court's decision, that would not prevent EPA from finalizing a redesignation for this area. For the reasons set forth below, we believe that any additional requirements that might apply based on that different classification would not be applicable for purposes of evaluating the redesignation request.

This belief is based upon (1) EPA's longstanding policy of evaluating redesignation requests in accordance with only the requirements due at the time the request was submitted; and (2) consideration of the inequity of applying retroactively any requirements that might be applied in the future.

First, at the time the redesignation request was submitted, the area was classified under Subpart 2 and was required to meet the Subpart 2 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the Clean Air Act, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment'', Memorandum from John Calcagni, Director, Air Quality Management Division) See also Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor); *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. See, *e.g*, also 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis). At the time the redesignation request was submitted, the Richmond Area was classified as a marginal area under Subpart 2 and thus only Subpart 2 marginal area requirements are applicable for purposes of redesignation.

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted, but which might later become applicable. The D.C. Circuit has recognized the inequity in such retroactive rulemaking. See *Sierra Club* v. *Whitman*, 285 F.3d 63 (D.C. Cir. 2002), in which the D.C. Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly, here it would be unfair to penalize the area by applying to it for purposes of redesignation any additional requirements that were not in effect at the time it submitted its redesignation request, but that might apply in the future.

Two Subpart 2 requirements became due for the Richmond Area under section 182(a) of the CAA prior to redesignation—a 2002 base-year inventory, and the emissions statement requirement pursuant to section 182(a)(3)(B). The Virginia SIP has an approved emissions statement rule for the 1-hour standard covering those

portions of the 8-hour nonattainment area that was part of the previous 1-hour attainment area, which satisfies the emissions statement requirement for the 8-hour standard. See 65 FR 21315 (April 21, 2000). Virginia recently submitted a rulemaking to expand the VOC and NO_X Richmond Emissions Control Area to include the City of Petersburg and Prince George County. EPA approved this rulemaking on March 2, 2007 (72 FR 9441) and will be effective on April 2, 2007. Today, EPA is proposing to approve the 2002 base-year inventory for the Richmond Area, which was submitted on September 18, 2006, and supplemented on November 17, 2006 and February 13, 2007, concurrently with its maintenance plan, into the Virginia SIP. A detailed evaluation of Virginia's 2002 base-year inventory for the Richmond Area can be found in a Technical Support Document (TSD) prepared by EPA for this rulemaking. EPA has determined that the emission inventory and emissions statement requirements for the Richmond Area have been satisfied. EPA believes it is reasonable to interpret the general conformity and NSR requirements of part D as not requiring approval prior to redesignation. With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA*, 265 F. 3d 426, 438 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (December 7, 1995).

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR in effect, because PSD requirements will apply after redesignation. The rationale for this position is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D NSR Requirements or Areas Requesting Redesignation to Attainment.'' Virginia has demonstrated that the Richmond Area will be able to maintain the standard without Part D NSR in effect in the Richmond Area, and therefore, Virginia need not have a fully approved Part D NSR program prior to approval of the redesignation request. Virginia's SIP-approved PSD program will become effective in Richmond upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR at 12467–68); Cleveland-Akron-Lorain, Ohio (61 FR at 20458, 20469–70); Louisville, Kentucky (66 FR 53665, 53669 October 23, 2001); Grand Rapids, Michigan (61 FR at 31831, 31834–37, June 21, 1996).

3. Requirements Under the 1-Hour Standard

With respect to the 1-hour standard requirements, the City of Petersburg and the Prince George County portions of the Richmond Area were designated Unclassifiable/Attainment under the 1-hour standard and were never designated nonattainment for the 1-hour standard. Therefore, there are no outstanding 1-hour nonattainment area requirements these portions of the Richmond Area would be required to meet. Thus, we find that the Court's ruling does not result in any additional 1-hour requirements for purposes of redesignation.

The portion of the Richmond Area consisting of the Cities Colonial Heights, Hopewell, and Richmond, and the Counties of Chesterfield, Hanover, Henrico, and Charles City was an Attainment area subject to a Clean Air Act section 175A maintenance plan under the 1-hour standard. The Court's ruling does not impact redesignation requests for these types of areas.

First, there are no conformity requirements that are relevant for redesignation requests for any standard, including the requirement to submit a transportation conformity SIP.[2] Under longstanding EPA policy, EPA believes that it is reasonable to interpret the conformity SIP requirement as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. 40 CFR 51.390. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (Dec. 7, 1995) (Tampa, FL redesignation).

Second, with respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, this portion of the Richmond Area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measure (pursuant to section 172(c)(9) or 182(c)(9)) and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus the decision in *South Coast* should not alter requirements that would preclude EPA from finalizing the redesignation of this area.

4. Richmond Has a Fully Approved SIP for Purposes of Redesignation

EPA has fully approved the Virginia SIP for the purposes of this redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p.3; *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F. 3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA*, 265 F. 3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR at 25425 (May 12, 2003) and citations therein. The Richmond Area was a 1-hour ozone maintenance area at the time of its designation as a marginal 8-hour ozone nonattainment area on April 30, 2004. As stated previously, two subpart 2 part D requirements became due for the Richmond Area prior to redesignation a 2002 base-year inventory, and the emissions statement requirement. VADEQ has submitted concurrently with its maintenance plan, a 2002 base-year inventory as a SIP revision. In this action, EPA is proposing approval of this inventory. The emissions statement requirement for the entire Richmond Area was recently fulfilled on March 2, 2007 (72 FR 9441). Because there are no outstanding SIP submission requirements applicable for the purposes of the redesignation of the Richmond Area, the applicable implementation plan satisfies all pertinent SIP requirements.

[2] Clean Air Act section 176(c)(4)(E) currently requires States to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emissions budgets that are established in control strategy SIPs and maintenance plans.

C. The Air Quality Improvement in the Richmond Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the Commonwealth has demonstrated that the observed air quality improvement in the Richmond Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO_X EMISSIONS FOR 2002 AND 2005 IN TONS PER DAY (TPD)

Year	Point	Area *	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
2002	31.228	51.364	23.278	50.200	156.070
2005	32.705	54.760	20.438	43.518	151.421
Diff (02–05)	+1.477	+3.396	−2.840	−6.682	−4.649
Nitrogen Oxides (NO_X)					
2002	119.750	27.067	17.792	74.130	238.739
2005	77.281	26.501	16.862	67.155	187.799
Diff (02–05)	−42.469	−0.566	−0.930	−6.975	−50.940

* Area source category includes emissions from motor vehicle refueling.

Between 2002 and 2005, VOC emissions decreased by 4.649 tpd and NO_X emissions decreased by 50.940 tpd because of permanent and enforceable measures implemented by the Commonwealth and the federal government. These reductions, and anticipated future reductions, are due to the following permanent and enforceable measures.

Programs Currently in Effect

(a) Tier 1;
(b) National Low Emission Vehicle (NLEV) Program; and
(c) NO_X SIP Call

EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the Area achieving attainment of the 8-hour ozone standard.

D. The Richmond Area Has a Fully Approvable Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Richmond Area to attainment status, Virginia submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the Area for at least 11 years after redesignation. The Commonwealth is requesting that EPA approve this SIP revision as meeting the requirement of CAA 175A and 175A(b). Section 175A(a) was met with the September 25, 2006 submission of the maintenance plan, because it states that Richmond will maintain the 8-hour ozone NAAQS for at least 10 years after redesignation. Section 175A(b) was met with the September 25, 2006 submission of the maintenance plan, because it will replace the 1-hour maintenance plan update requirement that was due 8 years after redesingation of the Richmond Area to attainment. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for the Richmond Area meets the requirements of the CAA regarding maintenance of the applicable 8-hour ozone standard.

What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A(a), the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Section 175A(b) states that eight years after redesignation from nonattainment to attainment, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the next 10-year period following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(a) An attainment emissions inventory;
(b) a maintenance demonstration;
(c) a monitoring network;
(d) verification of continued attainment; and
(e) a contingency plan.

Analysis of the Richmond Area Maintenance Plan

(a) Attainment inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. VADEQ determined that the appropriate attainment inventory year is 2005. That year establishes a reasonable year within the three-year block of 2003–2005 as a baseline and accounts for reductions attributable to implementation of the CAA requirements to date. The 2005 inventory is consistent with EPA guidance and is based on actual ''typical summer day'' emissions of VOC and NO_X during 2005 and consists of a list of sources and their associated emissions.

To develop the NO_X and VOC base year emissions inventories, VADEQ used the following approaches:

(i) Point source emissions were developed using the latest version of

EPA's Economic Growth Analysis System (EGAS 5.0).

(ii) Area source emissions were also developed using growth factors from EGAS 5.0 and then applied to the 2002 Area source inventory.

(iii) Mobile nonroad emissions were developed using EPA's NONROAD 2005 model. The NONROAD 2005 model estimates fuel consumption and emissions of total hydrocarbons, carbon monoxide, nitrogen oxides, sulfur oxides, and particulate matter for all nonroad mobile source categories except for aircraft, locomotives, and commercial marine vessels (CMV).

(iv) Mobile on-road source emissions were calculated using EPA's MOBILE6.2 mobile source inventory model. The Virginia Department of Transportation (VDOT) provided daily vehicle miles traveled (DVMT), average speed data for each road type by jurisdiction, and annual growth rates that were used to forecast DVMT into the future. Also, the Virginia Department of Motor Vehicles provided registration data that was specific to each jurisdiction. Mobile source emission projections include the National Low Emission Vehicle Program (NLEV), the 2004 Tier 2 and Low Sulfur Gasoline Rule, the 2004 and 2007 Heavy-Duty Diesel Vehicle Rules, and the 2006 Low Sulfur Diesel Rule. In addition, Richmond, Hopewell, Colonial Heights, Chesterfield, Hanover, Henrico, and Charles City were modeled with Phase II Reformulated Gasoline (RFG) while Prince George and Petersburg were modeled with conventional gasoline fuel.

More detailed information on the compilation of the 2002, 2005, 2011, and 2018 inventories can found in the Technical Appendices, which are part of VADEQ's September 25, 2006 submittal.

(b) Maintenance Demonstration—On September 25, 2006, the VADEQ submitted a maintenance plan as required by section 175A of the CAA. The Richmond maintenance plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that future emissions of VOC and NO_X will not exceed the attainment year 2005 emissions levels throughout the Richmond Area through the year 2018. A maintenance demonstration need not be based on modeling. See *Wall* v. *EPA, supra; Sierra Club* v. *EPA, supra.* See also 66 FR at 53099–53100; 68 FR at 25430–32.

Tables 4 and 5 specify the VOC and NO_X emissions for the Richmond Area for 2005, 2011, and 2018. The VADEQ chose 2011 as an interim year in the maintenance demonstration period to demonstrate that the VOC and NO_X emissions are not projected to increase above the 2005 attainment level during the time of the maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2005–2018 (TPD)

Source category	2005 VOC emissions	2011 VOC emissions	2018 VOC emissions
Point	32.705	36.074	39.900
Area [1]	54.760	60.315	68.331
Mobile [2]	43.518	32.343	23.845
Nonroad	20.438	15.898	15.515
Total	151.421	144.630	147.591

[1] Includes vehicle refueling emissions and the benefits of selected local controls (Stage I, CTG RACT, and open burning). Also includes site/project specific emissions estimates and projections.
[2] Includes transportation provisions.

TABLE 5.—TOTAL NO_X EMISSIONS FOR 2005–2018 (TPD)

Source category	2005 NO_X emissions	2011 NO_X emissions	2018 NO_X emissions
Point	62.536	69.333	75.241
Area [1]	55.207	56.974	60.105
Mobile [2]	78.169	50.387	31.890
Non-road	30.208	29.116	23.093
Total	226.120	205.810	190.329

[1] Includes selected local controls (open burning).
[2] Includes transportation provisions.

Additionally, the following programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

Currently in Effect:

- The National Low Emission Vehicle (NLEV) program;
- Open burning restrictions for Richmond, Hopewell, Colonial Heights, Hanover, Henrico, Chesterfield, and western Charles City;
- Control Technology Guideline (CTG) Reasonable Available Control Technology (RACT) requirements for Richmond, Hopewell, Colonial Heights, Hanover, Henrico, Chesterfield, and western Charles City;
- Non-CTG VOC RACT requirements for Richmond, Hopewell, Colonial Heights, Hanover, Henrico, Chesterfield, and western Charles City;
- Reformulated gasoline requirements for Richmond, Hopewell, Colonial Heights, Hanover, Henrico, Chesterfield, and western Charles City;
- Motor vehicle fleet turnover with new vehicles meeting the Tier 2 standards; and
- Low sulfur gasoline.

Additionally, the following programs are in place and either effective or are due to become effective.

- Heavy duty diesel on-road (2004/2007) and low sulfur on-road (2006); 66 FR 5002, (January 18, 2001).
- Non-road emission standards (2008) and off-road diesel fuel 2007/2010); 69 FR 38958 (June 29, 2004).

Lastly, to further improve air quality and to provide room for industrial and population growth while maintaining emissions in the area to less than 2005 levels, the Commonwealth of Virginia has initiated rulemaking to implement the following programs:

• Implement the Stage I requirements of 9 VAC 5 Chapter 40, Article 37 in Prince George, Petersburg, and eastern Charles City;

• Implement open burning restriction requirements of 9 VAC 5 Chapter 40, Article 40 in Prince George, Petersburg, and eastern Charles City; and

• Implement existing source CTG RACT requirements of 9 VAC 5 Chapter 40, Articles 5–6, 24–36, and 39 in Prince George, Petersburg, and eastern Charles City.

Based on the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that VADEQ has successfully demonstrated that the 8-hour ozone standard should be maintained in the Richmond Area.

(c) Monitoring Network—There are three monitors measuring ozone in the Richmond Area. VADEQ will continue to operate its current air quality monitors (located in the Richmond Area), in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—In addition to maintaining the key elements of its regulatory program, the Commonwealth will acquire ambient and source emission data to track attainment and maintenance. The Commonwealth will track the progress of the maintenance demonstration by periodically updating the emissions inventory. This tracking will consist of annual and periodic evaluations. The annual evaluation will consist of checks on key emissions trend indicators such as the annual emission update of stationary sources, the Highway Performance Monitoring System (HPMS) vehicle miles traveled data reported to the Federal Highway Administration, and other growth indicators. These indicators will be compared to the growth assumptions used in the plan to determine if the predicted versus the observed growth remains relatively constant. The Commonwealth will also develop and submit periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR 51, subpart A), beginning in 2005.

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the Commonwealth will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the timeframe by which the state would adopt and implement the measure(s).

The ability of the Richmond Area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_X emissions in the Area remaining at or below 2005 levels. The Commonwealth's maintenance plan projects VOC and NO_X emissions to decrease and stay below 2005 levels through the year 2018. The Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

The Commonwealth's maintenance plan lays out situations where the need to adopt and implement a contingency measure to further reduce emissions would be triggered. Those situations are as follows:

(i) An actual increase of the VOC or NO_X emissions exceed the regional emissions budgets, which would be identified or predicted through the development of the comprehensive periodic tracking inventories—The maintenance plan states that the VADEQ will monitor the observed growth rates for VMT, population, and point source VOC and NO_X emissions on a yearly basis which will serve as an early warning indicator of the potential for a violation. The plan also states that comprehensive tracking inventories will also be developed every 3 years using current EPA-approved methods to estimate emissions, concentrating on areas identified in the less rigorous yearly evaluations as being potential problems. If the regional emissions budget for VOC or NO_X is exceeded, the following control strategies will be implemented as follows:

• Preparation of a complete VOC and NO_X emission inventory; and

• The expanded implementation of one or more of the control strategies, listed in Table 6, that have not already been implemented in the Richmond Area.

TABLE 6.—MAINTENANCE PLAN CONTINGENCY MEASURE OPTIONS

Control strategy	Description
9 VAC 5 Chapter 40, Article 42	Emissions Standards for Portable Fuel Container Spillage.
9 VAC 5 Chapter 40, Article 47	Emissions Standards for Solvent Metal Cleaning Operations.
9 VAC 5 Chapter 40, Article 48	Emissions Standards for Mobile Equipment Repair and Refinishing Operations.
9 VAC 5 Chapter 40, Article 49	Emissions Standards for Architectural and Industrial Maintenance Coatings.
9 VAC 5 Chapter 40, Article 50	Emissions Standards for Consumer Products.
9 VAC 5–40–310 of 9 VAC 5 Chapter 40, Article 4.	General Process Operations—Standard for Nitrogen Oxides (non-CTG RACT for major sources).

(ii) A violation (any 3-year average of each annual fourth highest 8-hour average) of the 8-hour ozone NAAQS of 0.08 ppm occurs—The maintenance plan states that if a violation (any 3-year average of each annual fourth highest 8-hour average) of the 8-hour ozone NAAQS of 0.08 ppm occurs at a monitor located in the Richmond monitoring network, the VADEQ will implement two of the following control strategies as follows:

• The expanded implementation of one or more of the following control strategies, listed in Table 6, that have not already been implemented in the Richmond Area.

(iii) A violation (any 3-year average of each annual fourth highest 8-hour average) of the 8-hour ozone NAAQS of 0.08 ppm in any subsequent ozone season—The maintenance plan states that if a violation (any 3-year average of each annual fourth highest 8-hour average) of the 8-hour ozone NAAQS of 0.08 ppm occurs in the Richmond monitoring network following the implementation of the requirements listed in the previous section (section e(ii)) and in any subsequent ozone season, two additional control strategies from Table 6 will be implemented.

The following schedule for adoption, implementation and compliance applies to the contingency measures concerning non-CTG RACT requirements. It would

also apply to the imposition of the area source VOC regulations if those regulations had not already been implemented due to other triggers or provisions of the maintenance plan.

- Notification received from EPA that a contingency measure must be implemented, or three months after a recorded violation;
- Applicable regulation to be adopted 6 months after this date;
- Applicable regulation to be implemented 6 months after adoption; [3]
- Compliance with regulation to be achieved within 12 months of adoption.

The maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. EPA believes that the maintenance plan SIP revision submitted by Virginia for the Richmond area meets the requirements of section 175A of the Act.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Richmond Maintenance Plan Adequate and Approvable?

A. What Are the Motor Vehicle Emissions Budgets?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (i.e., RFP SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. In the maintenance plan, the MVEBs are termed ''on-road mobile source emission budgets.'' Pursuant to 40 CFR part 93 and 51.112, MVEBs must be established in an ozone maintenance plan. An MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. An MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and ensuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein ''adequate'' for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining ''adequacy'' of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA consults this guidance and follows this rulemaking in making its adequacy determinations.

The MVEBS for the Richmond Area are listed in Table 1 of this document for 2011 and 2018, and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs (safety margin allocation for 2011 and 2018 only). These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2018 safety margin: Richmond first attained the 8-hour ozone NAAQS during the 2003 to 2005 time period. The Commonwealth used 2005 as the year to determine attainment levels of emissions for Richmond. The total emissions from point, area, mobile on-road, and mobile non-road sources in 2005 equaled 151.421 tpd of VOC and 187.799 tpd of NO_X. The VADEQ projected emissions out to the year 2018 and projected a total of 147.591 tpd of VOC and 154.158 tpd of NO_X from all sources in Richmond. The safety margin for 2018 would be the difference between these amounts, or 3.830 tpd of VOC and 33.641 tpd of NO_X. The emissions up to the level of the attainment year including the safety margins are projected to maintain the Area's air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 7 shows the safety margins for the 2011 and 2018 years.

TABLE 7.—2011 AND 2018 SAFETY MARGINS FOR RICHMOND

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2005 Attainment	151.421	187.799

[3] In the event of implementation of the RACT contingency measure, Virginia would amend its current RACT regulations to apply them to non-CTG sources in the Richmond Area within 6 months after (a) notification received from EPA that the contingency measure must be implemented, or (b) three months after a recorded violation. The newly subject non-CTG RACT sources would need to develop source-specific RACT plans and comply with their plans no later than 12 months from the date of Virginia's adoption of the amended regulations.

TABLE 7.—2011 AND 2018 SAFETY MARGINS FOR RICHMOND—Continued

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2011 Interim	144.630	168.492
2011 Safety Margin	6.791	19.307
2005 Attainment	151.421	187.799
2018 Final	147.591	154.158
2018 Safety Margin	3.830	33.641

The VADEQ allocated 1.000 tpd VOC and 3.000 tpd NO_X to the 2011 interim VOC projected on-road mobile source emissions projection and the 2011 interim NO_X projected on-road mobile source emissions projection to arrive at the 2011 MVEBs. For the 2018 MVEBs the VADEQ allocated 1.000 tpd VOC and 3.000 tpd NO_X from the 2018 safety margins to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category. Table 8 shows the final 2009 and 2018 MVEBS for the Richmond Area.

TABLE 8.—2011 AND 2018 FINAL MVEBS FOR RICHMOND

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2011 projected on-road mobile source projected emissions	31.343	40.661
2011 Safety Margin Allocated to MVEBs	1.000	3.000
2011 MVEBs	32.343	43.661
2018 projected on-road mobile source projected emissions	22.845	23.827
2018 Safety Margin Allocated to MVEBs	1.000	3.000
2018 MVEBs	23.845	26.827

C. Why Are the MVEBs Approvable?

The 2011 and 2018 MVEBs for the Richmond Area are approvable because the MVEBs for NO_X and VOCs continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

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

The MVEBs for the Richmond Area maintenance plan are being posted to EPA's conformity Web site concurrently with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Richmond MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the Richmond Area MVEBs will also be announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/index.htm* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions'').

VIII. Proposed Actions

EPA is proposing to determine that the Richmond Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the redesignation of the Richmond Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA has evaluated Virginia's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the Richmond Area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Richmond Area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for the Richmond Area, submitted on September 25, 2006, as a revision to the Virginia SIP. EPA is proposing to approve the maintenance plan for the Richmond Area because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the 2002 base-year inventory for the Richmond Area, and the MVEBs submitted by Virginia for the Richmond Area in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose

any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This rule, proposing to approve the redesignation of the Richmond Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base-year inventory, and the MVEBS identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: April 5, 2007.

Judith Katz,

Acting Regional Administrator, Region III.

[FR Doc. E7–7018 Filed 4–11–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, 173, 176, 178, and 180

[Docket No. PHMSA–2006–25910 (HM–218E)]

RIN: 2137–AE23

Hazardous Materials: Miscellaneous Cargo Tank Motor Vehicle and Cylinder Issues; Petitions for Rulemaking

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA proposes to amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to revise certain requirements applicable to the manufacture, maintenance, and use of DOT and MC specification cargo tank motor vehicles, DOT specification cylinders and UN pressure receptacles. The proposed revisions are based on petitions for rulemaking submitted by the regulated community and are intended to enhance the safe transportation of hazardous materials in commerce, clarify regulatory requirements, and reduce operating burdens on cargo tank and cylinder manufacturers, requalifiers, carriers, shippers, and users.

DATES: Comments must be received by June 11, 2007.

ADDRESSES: You may submit comments identified by the docket number PHMSA–2006–25910 (HM–218E) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name and docket number PHMSA–2006–25910 (Docket No. HM–218E) or the Regulatory Identification Number (RIN) for this notice of proposed rulemaking at the beginning of your comment. Please note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. See the Privacy Act section of this document.

Docket: You may view the public docket through the Internet at *http://dms.dot.gov,* or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Cameron Satterthwaite or T. Glenn Foster, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

I. Background

The Administrative Procedure Act (APA) requires Federal agencies to give interested persons the right to petition for the issuance, amendment, or repeal of a rule (5 U.S.C. 553(e)). PHMSA's rulemaking procedure regulations, at 49 CFR 106.95, provide for persons to ask PHMSA to add, amend or delete a regulation by filing a petition for

rulemaking containing adequate support for the requested action. In this NPRM, PHMSA (also ''we'' or ''us'') proposes to amend the HMR based on petitions for rulemaking submitted by cargo tank and cylinder manufacturers, requalifiers, shippers, and carriers. We are also proposing revisions to address requests for clarification of the regulations. These proposed revisions are intended to enhance the safe transportation of hazardous materials in cargo tank motor vehicles and cylinders, clarify regulatory requirements, and reduce operating burdens on carriers, shippers, and users.

II. Summary of Proposals in This NPRM

The development of this rulemaking was influenced by a wide array of correspondence received from persons engaged in the manufacture, maintenance, or use of cargo tanks and cylinders. We received petitions for rulemaking requesting changes to the cargo tank and cylinder requirements specified in the HMR and clarification of existing requirements. These petitions are summarized and discussed in the following review-by-section summary:

A. Part 171

Updated/Revised/Added Incorporations by Reference (§ 171.7)

We have reviewed the following documents pertaining to cargo tanks and compressed gas cylinders. As a result, we have found no provisions that would impose a substantial burden or would have an adverse impact on safety. Therefore, we are proposing to update, revise, and add the following incorporation by reference (IBR) materials in paragraph (a)(3) of § 171.7 in the Table of material incorporated by reference:

- In response to Western Growers Association (WGA) petition P–1352, under the entry ''American Society of Mechanical Engineers,'' we propose to revise the reference for ''ASME Code, Sections II (Parts A and B), V, VIII (Division 1), and IX of 1998 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code'' to add a section reference for § 173.5b. See review-by-section preamble discussion in § 173.5b for further details.
- In response to WGA petition P–1352, under the entry ''American Society for Testing and Materials,'' we propose to add references to ASTM A53/A53M–06a and ASTM A106/A106M–06a. See review-by-section preamble discussion in § 173.5b for further details.
- In response to Compressed Gas Association (CGA) petition P–1482, under the entry ''Compressed Gas Association, Inc,'' we propose to add a reference to CGA, C–1 ''Methods for Hydrostatic Testing of Compressed Gas Cylinders,'' 2004 edition. See review-by-section preamble discussion in § 180.205 for further details.
- In response to CGA petition P–1489, under the entry ''Compressed Gas Association, Inc,'' we propose to update CGA G–2.2, ''Guideline Method for Determining Minimum of 0.2% Water in Anhydrous Ammonia,'' from the 1985 Edition to reflect the 1985 Second Edition, Reaffirmed 1997. Paragraph (l), in § 173.315, restricts the use of MC 330 and MC 331 cargo tanks constructed of quenched and tempered ''QT'' steel from transporting anhydrous ammonia unless the ammonia has the specified minimum water content. The analysis of the water content in the ammonia is conducted as prescribed in CGA G–2.2. Currently, CGA G–2.2, 1985, Second Edition is incorporated by reference in § 171.7(a)(3). CGA reaffirmed this publication in 1997. There were no changes to the document other than the title reflecting that it was reaffirmed in 1997.
- In response to CGA petition P–1488, under the entry ''Compressed Gas Association, Inc,'' we propose to update CGA P–20, ''Standard for Classification of Toxic Gas Mixtures'' from the 1995 2nd edition to the 2003 3rd edition. See review-by-section preamble discussion in § 173.115 for further details.
- In response to CGA petition P–1484, under the entry ''Compressed Gas Association, Inc,'' we propose to add a reference to CGA TB–25 ''Design Considerations for Tube Trailers,'' 2005 edition. See review-by-section preamble discussion in § 173.301 for further details.
- In response to CGA petition P–1422, under the entry ''Compressed Gas Association, Inc,'' we propose to add a reference to CGA V–9 ''Standard for Compressed Gas Cylinder Valves,'' 2005 edition. See review-by-section preamble discussion in §§ 173.40 and 173.301 for further details.

In response to Tank Trailer Manufacturers Association (TTMA) petition P–1408, we are also proposing to revise paragraph (b) of § 171.7, List of informational materials not requiring incorporation by reference, to add a reference to TTMA RP No. 96–01, ''Structural Integrity of DOT 406, DOT 407, and DOT 412 Cylindrical Cargo Tanks, January 1, 2001 Edition.'' See review-by-section preamble discussion in § 178.345–3 for further details.

B. Part 173

Mobile Refrigeration Systems (§ 173.5b)

The agricultural produce industry uses large, mobile refrigeration systems on field sites to help preserve freshly harvested fruit and vegetables. These refrigeration systems consist of ASME non-DOT specification pressure components with a maximum total volumetric capacity per vehicle of 2,500 gallons. Refrigerant systems placed in service prior to June 1, 1991, have a maximum allowable working pressure (MAWP) between 150 to 250 psig; and those placed in service on or after June 1, 1991, have an MAWP of 250 psig. The refrigeration system, commonly known as vacuum tubes, accumulators, refrigeration units, icemakers, pressure coolers or evaporators, primarily use Division 2.2 refrigerant gases or anhydrous ammonia in the cooling process. The refrigeration systems may or may not be mounted on a motor vehicle. These refrigerant systems are operated under special permit, SP–10285, which requires each refrigeration system to be visually inspected annually and proof pressure tested at least once every two years. The Western Growers Association (WGA) P–1352 requests we establish design and safety control measures for these refrigeration systems consistent with those specified in the special permit and provide for their use in the HMR. WGA states these refrigeration systems have been authorized under DOT–SP 10285 for highway transportation since 1989 and have an exceptional transportation safety record. WGA conservatively estimates that in a two-month period, these refrigeration systems cool over 18,000,000 cartons of produce valued at more than $56 million. We agree with WGA that these portable refrigeration systems have a proven safety record under the special permit. Therefore, we propose to add a new § 173.5b to authorize the transportation of these refrigeration systems subject to the design and safety control measures recommended in the petition and prescribed in DOT–SP 10285.

Standards for Cylinder Valves (§§ 173.40 and 173.301)

Currently, § 173.40(c) of the HMR requires each cylinder containing a poison inhalation hazard (PIH) material in Hazard Zone A to be closed with a plug or valve having a taper-threaded connection. Each cylinder, with the plug or valve installed, must be capable of withstanding the cylinder test

pressure without damage or leakage, as specified in § 173.40(c). CGA (P–1422) requests we add a new paragraph (c)(5) to § 173.40 to require cylinders containing a Hazard Zone A material to be closed with a plug or a valve conforming to CGA V–9, ''Compressed Gas Association Standard for Compressed Gas Cylinder Valves,'' 2005 edition. Section 173.301 prescribes general requirements for the shipment of compressed gases in cylinders and spherical vessels. CGA further requests we revise § 173.301(c) to require cylinders containing Hazard Zone A and B toxic gases and mixtures to meet the requirements in CGA V–9. CGA V–9 defines a cylinder valve as the mechanical device attached to a compressed gas cylinder that permits flow into or out of the cylinder when the device is in the open position, and prevents flow when it is in the closed position. CGA V–9 contains standards on general cylinder valve design, design qualification, and performance requirements such as operating temperature limits, pressure ranges, and flow capabilities. This standard also contains testing and maintenance requirements to ensure valves are maintained in a safe working condition. CGA V–9 is not applicable to cylinder valves used on non-refillable cylinders whose valves or inlet connections are permanently attached to the cylinders by means of welding or brazing, or to valves on cylinders that are horizontally mounted to a chassis or framework for road transportation. CGA states use of this publication will provide greater assurance that valves used on cylinders containing toxic materials are in good condition and properly maintained. Based on our review of CGA V–9, we agree with CGA that providing for the use of CGA V–9 will assist shippers in the proper selection and use of valves installed in DOT specification cylinders containing toxic and various types of other gases. Because gases vary in degrees of corrosivity, toxicity, and pressure and concentration, a user must use care in selecting a cylinder valve appropriate for the cylinder's intended use and pressure. The current HMR offer no guidance to users on the proper selection of valves. Therefore, we propose to revise §§ 173.40(c) and 173.301(a) to require valves on cylinders, unless otherwise excepted, to conform to the requirements in CGA V–9, ''Standard for Compressed Gas Cylinder Valves,'' 2005 Fifth Edition. We also solicit comments on the potential cost impacts, if any, of requiring compliance with CGA V–9.

Classification Criteria for Toxic Gas Mixtures (§ 173.115)

In § 173.155(c)(2), the definition for Division 2.3 material (gas poisonous by inhalation) provides that LC_{50} values for mixtures may be determined using the formula in § 173.133(b)(1)(i) or CGA P–20, ''Standard for Classification of Toxic Gas Mixtures.'' CGA (P–1488) requests we update CGA P–20 from the 1995 2nd edition to the 2003 3rd edition. CGA enclosed a list of changes contained in the 3rd edition. These changes align the LC_{50} values contained in CGA P–20 with values contained in the international standards for the following materials: Ethylene oxide, Hydrogen fluoride, Methyl amine, Nitrogen trioxide, Phosphorous pentafluoride, Phosphorous trifluoride, and Tungsten hexafluoride. We agree the petition has merit and propose to revise paragraph (c)(2) to reflect the updated CGA P–20, ''Standard for Classification of Toxic Gas Mixtures.''

Tube Trailers (§ 173.301)

This section prescribes general requirements for the shipment of compressed gases in cylinders and spherical pressure vessels. Paragraph (i) of § 173.301 specifies guidelines for cylinders mounted on motor vehicles or in frames, commonly referred to as tube trailers. CGA (P–1484) requests we revise § 73.301(i) to reference the technical bulletin, CGA TB–25, ''Design Considerations for Tube Trailers,'' 2005 edition. CGA TB–25 addresses protective structures for valves and pressure relief devices, and design considerations for the static, dynamic, and thermal loads affecting tube trailers. These design considerations are intended to reduce the likelihood of the tube separating from the trailer and to minimize the unintentional release of hazardous materials in the event of a highway collision, including but not limited to, a rollover accident. These guidelines are intended to promote the reliable operation of the trailers under normal conditions and minimize the risk of a catastrophic incident in the event of an accident.

We agree the guidelines contained in CGA TB–25 will enhance the safe transportation of tube trailers. CGA developed TB–25 to address safety concerns identified following a May 1, 2001 hydrogen gas tube trailer incident investigated by the National Transportation Safety Board (NTSB). In the incident, certain horizontally mounted cylinders on a semi-trailer, along with valves, piping and fittings, were damaged, causing the release of hydrogen gas. As a result, NTSB made several recommendations to PHMSA in an effort to address safety concerns. PHMSA responded to NTSB Recommendation H–02–25 by revising ERG Guide 115 in the 2004 Emergency Response Guidebook to include information on the difficulty of detecting and extinguishing hydrogen-fuel fires. As a result, NTSB classified Safety Recommendation H–02–25 as ''Closed—Acceptable Action.'' NTSB also recommended that PHMSA revise § 173.301 to clearly require valves, piping, and fittings for cylinders that are horizontally mounted and used to transport hazardous materials to be protected from multidirectional forces that are likely to occur during accidents, including rollovers (NTSB Recommendation H–02–23); and to require cylinders that are used to transport hazardous materials and are horizontally mounted on a semi-trailer to be protected from impact with the roadway or terrain to reduce the likelihood of their being fractured and ejected during a rollover accident (NTSB Recommendation H–02–24). Accordingly, we propose to revise § 173.301(i) to require tube trailers to conform to the requirements in CGA TB–25, ''Design Considerations for Tube Trailers.'' We also solicit comments on the potential cost impacts, if any, of requiring compliance with CGA TB–25.

Requalification of DOT 3BN Cylinders (§ 173.338)

Section 173.338 authorizes the use of DOT 3BN cylinders for the shipment of tungsten hexafluoride. Section 173.163 permits cylinders used exclusively for hydrogen fluoride to be requalified by external visual inspection in place of the periodic volumetric expansion test. Air Products (P–1458) requests we permit DOT 3BN cylinders used exclusively for tungsten hexafluoride to be requalified by an external visual inspection in place of the volumetric expansion test. Air Products states the chemical and physical properties of tungsten hexafluoride are similar to those of hydrogen fluoride. Air Products states noble metal nickel 200 does not corrode in tungsten hexafluoride service and the company has never had a cylinder fail a volumetric expansion test. We agree with the petitioner that the chemical properties of tungsten hexafluoride are similar to those of hydrogen fluoride. Tungsten hexafluoride does not corrode nickel; therefore, an internal inspection is not warranted. We have authorized DOT 3BN cylinders used exclusively for tungsten hexafluoride to be requalified by an external visual inspection for several years under special permit, SP–

14016, with satisfactory transportation experience. SP–14016 stipulates that DOT 3BN cylinders removed from service must be condemned. Therefore, in § 173.338, we propose to permit DOT 3BN cylinders used exclusively for tungsten hexafluoride to be requalified by an external visual inspection in place of the volumetric expansion test. The cylinders must be condemned when removed from service.

C. Part 176

Stowage Requirements for Class 2 Material on Vessels (§ 176.200)

Section 176.200 prescribes general stowage requirements for Class 2 (Compressed gases) materials transported aboard vessels. Horizon Lines (P–1471) requests we prohibit vessel stowage of Division 2.1 (flammable gases) in ''reefer units,'' that is, powered refrigerated temperature controlled containers. Horizon Lines expresses concern that sparks emitted from mechanical components of the reefer unit could come into contact with flammable gas in the event of a spill and cause an explosion. Horizon Lines further states its concern was substantiated by several major manufacturers of reefer units. We agree with the petitioner that the stowage of flammable gases in powered refrigerated temperature controlled containers should not be permitted without adequate safety measures. The transport of hazardous materials in temperature controlled containers is addressed in Chapter 7 of the International Maritime Dangerous Goods (IMDG) Code. More specifically, the IMDG Code, at 7.4 and 7.7 requires the use of refrigeration systems with explosion-proof electric fittings within the cooling compartment to prevent ignition of flammable vapors. Consistent with the IMDG Code, we propose to revise § 176.200 (f) to restrict any package containing a Division 2.1 material from transportation in powered refrigerated temperature controlled containers, unless the container equipment is capable of preventing ignition of flammable vapor by having non-sparking or explosion-proof electric fittings within the cooling compartment.

D. Part 178

DOT 4E Cylinders (§ 178.68)

Section 178.68 contains the manufacturing specification for DOT 4E welded aluminum cylinders. Paragraph (l)(2) specifies the guided bend test procedures and rejection criteria to be applied to welds. Worthington Cylinders Corp (Worthington) (P–1486) requests we revise this paragraph to authorize the use of an alternate bend test illustrated in paragraph 12 of The Aluminum Association's publication, ''Welding Aluminum: Theory and Practice'' for determining the soundness of circumferential seam welds on aluminum cylinders. Worthington states use of this alternate test will assure the stress is placed on the weld, rather than the heat-affected zone of the weld. We agree that this alternate bend test is an acceptable test method for aluminum cylinders, as well as the currently authorized bend test designed for thin-walled steel cylinders. Therefore, we are proposing to revise § 178.68(l) to allow the bend test described in The Aluminum Association's publication, ''Welding Aluminum: Theory and Practice,'' as an alternative test method.

DOT 406, 407, and 412 Cargo Tank Motor Vehicles (§ 178.345–3)

Section 178.345–3 prescribes structural integrity requirements for the design and construction of DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles. Paragraph (a) specifies the general requirements and acceptance criteria for structural integrity. The Tank Trailer Manufacturers Association (TTMA) (P–1408) requests we revise paragraph (a) to reference TTMA Recommended Practice (RP) No. 96–97, ''Structural Integrity of DOT 406, DOT 407, and DOT 412 Cylindrical Cargo Tanks,'' December 1, 1997 Edition. This standard contains methods for calculating the structural integrity of DOT 406, DOT 407 and DOT 412 cylindrical cargo tanks in conformance with §§ 178.345–3 and 178.345–8(e). Based on the Federal Motor Carrier Safety Administration's review of TTMA RP No. 96–97, we agree with the petitioner that using the methods outlined in the publication for calculating the structural integrity of cargo tanks will be beneficial to manufacturers in reducing time to perform the calculations. Therefore, we propose to revise § 178.345–3(a)(3) to reference the updated TTMA RP 96–01, 2001 Edition, as suitable guidance for performing the structural integrity calculations.

Manhole Assemblies on DOT 406, 407, and 412 Cargo Tank Motor Vehicles (§ 178.345–5)

Section 178.345–5 prescribes requirements for manhole assemblies used on DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles. Paragraph (f) specifies that all fittings and devices mounted on a manhole cover, coming in contact with the lading, must withstand the same static internal fluid pressure and contain the same permanent compliance markings as those prescribed in paragraph (e) for the manhole cover. Because paragraph (e) already requires the manhole cover to be marked with a statement certifying that the manhole cover meets the requirements in § 178.345–5, TTMA (P–1372) requests we remove the marking requirement in paragraph (f). We agree with the petitioner that the requirement in § 178.345–5(f) to mark the manhole's fittings is duplicative of the manhole cover marking requirement in paragraph (e). Therefore, we propose to remove the redundant wording in paragraph (f).

E. Part 180

Cylinder Requalification (§ 180.205)

Section 180.205 prescribes general requirements for requalification of DOT specification cylinders and special permit cylinders. Paragraph (g) contains requirements for conducting a periodic pressure test for the requalification of cylinders. These requirements include parameters for accuracy of the test equipment. CGA requests we revise paragraph (g) to reference CGA C–1 ''Methods for Hydrostatic Testing of Compressed Gas Cylinders,'' 2004 edition. This CGA publication contains hydrostatic testing requirements for the requalification of cylinders.

We agree the CGA publication more adequately reflects the equipment accuracy requirements for performing a pressure test on cylinders. We propose to revise § 180.205(g) to reference CGA C–1 for requalification of DOT specification cylinders. Section 180.207 covering UN pressure receptacles also references § 180.205(g) for test equipment accuracy. We propose to retain the current requirement in paragraph (g) that permits a pressure test to be repeated, in the event of test equipment failure only, at a pressure increased by 10%, or 100 psi, whichever is the lower value. If repeated, the cumulative increase in test pressure may not exceed 10% of minimum prescribed test pressure, as noted in CGA C–1. As an example, using a cylinder marked ''DOT3AA1800'', if the first test is performed exactly at the minimum test pressure of 3000 psi (5/3 service pressure), and subsequent tests exactly at 3100, 3200, and 3300, a total of three repeat tests could be performed. However, if the first test is performed at 3200, one repeat test could be performed at 3300. The proposed rule does not alter any of the requirements for the operator to ensure the test system is accurate and ready to test cylinders. We are retaining the requirements contained in current paragraph (g) concerning bands and other removable

attachments, allowing other calibration standards approved by the Associate Administrator, requiring the requalifier to demonstrate calibration to an authorized DOT inspector, and the retention of calibrated cylinder certificates.

Cargo Tank Testing and Inspection (§ 180.407)

Section 180.407 prescribes requirements for the periodic testing and inspection of specification cargo tanks. Paragraph (d)(3) of § 180.407 requires each reclosing pressure relief valve that is required to be removed and tested to be able to open at the required set pressure and reseat to a leak-tight condition at 90 percent of the set-to-discharge pressure or the pressure for the applicable cargo tank specification. Paragraph (g)(1)(ii)(A) of § 180.407 requires each self-closing pressure relief valve that is an emergency relief vent to open at the required set pressure and seat to a leak-tight condition at 90 percent of the set-to-discharge pressure or the pressure for the applicable cargo tank specification. Keehn Service Corporation (Keehn Service) (P–1436) states the majority of pressure relief valves installed on MC–330 and MC–331 cargo tank motor vehicles transporting liquefied petroleum gas have a start-to-discharge set pressure of 250 psi. Keehn Service states it is difficult for existing or rebuilt valves to open at this exact pressure. In fact, a margin of error of as much as 4 psig could occur when using a typical 0–400 psig pressure gauge. Keehn Service requests we specify a start-to-discharge tolerance for pressure relief valves. We agree with the petitioner that it may be difficult for a pressure relief valve to function exactly at the specified set pressure and that we should allow a margin of error. Therefore, we propose to revise paragraphs (d)(3) and (g)(1)(ii)(A), of § 180.407, to specify that reclosing and self-closing pressure relief valves must be set-to-discharge at a pressure no more than 110% of the required set pressure. Providing for a tolerance is consistent with the set-to-discharge tolerance allowed for certain other DOT specification pressure vessels.

III. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This notice is published under authority of 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This notice proposes to adopt regulations intended to enhance the safe transportation of hazardous materials in cargo tank motor vehicles and cylinders, clarify regulatory requirements, and reduce operating burdens on carriers, shippers, and users.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice of proposed rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The proposed rule addresses several petitions for rulemaking submitted by the regulated community. For the most part, the petitioners request revisions to the HMR that should reduce overall compliance costs. For example, several of the petitioners request we update industry consensus standards incorporated by reference into the HMR. Adoption of industry standards reduces the regulatory burden on persons who offer hazardous material for transportation and persons who transport hazardous materials in commerce. Industry standards developed and adopted by consensus generally are accepted and followed by the industry; thus, their incorporation by reference in the HMR assures that the industry is not forced to comply with a different set of standards to accomplish the same safety goal. In addition, several of the petitions request regulatory relief through alternative means of compliance with current safety regulations or the elimination of requirements that are duplicative, outdated, or otherwise unnecessary for safety. Thus, we are proposing to eliminate a duplicative marking requirement for manholes on certain cargo tank motor vehicles and provide alternative manufacturing and requalification methods for certain cylinders and cargo tank motor vehicles.

Two of the proposals in this NPRM may result in increased compliance costs on the regulated community. We are proposing to require valves on cylinders authorized for the transportation of hazardous materials to conform to requirements in a CGA consensus standard—CGA V–9—applicable to compressed gas cylinder valves. Use of the CGA standard will help shippers to select a valve that is appropriate for the cylinder's intended use and pressure. Use of the correct valve is critical to prevent leaks or failures during transportation. We believe that most cylinder users already use the CGA consensus standard to guide their valve selection decisions; thus, we expect increased compliance costs associated with this proposal to be minimal. However, we request comments on the potential costs and impacts of requiring compliance with the valve requirements in CGA V–9.

In addition, we are proposing to address a safety problem involving the transportation of hazardous materials in tube trailers through adoption of CGA consensus standard TB–24, ''Design Considerations for Tube Trailers.'' The CGA standard addresses safety concerns identified by NTSB in its investigation of an accident involving tube trailers that resulted in the release of hydrogen gas. We anticipate transportation of hydrogen gas in tube trailers will increase significantly in the coming years to support its use as an alternative fuel for automobiles and other vehicles. Ensuring that hydrogen gas will be transported safely to suppliers and distribution centers will be essential to support its use as an alternative fuel. The CGA standard addresses protective structures for valves and pressure relief devices and design considerations for static, dynamic, and thermal loads affecting tube trailers. The standard is intended to reduce the likelihood of the tube trailer separating from its trailer and to prevent the unintentional release of hazardous materials in the event of a highway collision or rollover accident. Because we are proposing to adopt an industry consensus standard that is already in widespread use by the industry, we expect compliance costs associated with this proposal will be minimal. However, we request comments on the potential cost and other impacts of requiring compliance with the CGA standard.

If adopted, the proposals in this NPRM will enhance transportation safety and may reduce the overall compliance burden on the regulated industry.

C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''federalism''). This proposed rule would preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the

consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous material;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) The design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This proposed rule addresses covered subject items (v) above and preempts State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This proposed rule is necessary to update, clarify and provide relief from regulatory requirements.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA has determined the effective date of Federal preemption for these requirements will be 1 year from the date of publication of a final rule in the **Federal Register**.

D. Executive Order 13084

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Regulatory Policies and Procedures

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant impact on a substantial number of small entities. The proposed rule incorporates several petitions for rulemaking submitted by the regulated community. As specified above, there may be minimal increased costs associated with the adoption of CGA V–9 and CGA TB–24. However, the revisions as a whole proposed in this rulemaking, if adopted, may decrease overall compliance costs for the regulated community while enhancing the safe transportation of hazardous materials in commerce. Therefore, I certify this rule should not have a significant economic impact on a substantial number of small entities.

This notice has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA currently has approved information collections under Office of Management and Budget (OMB) Control Number 2137–0014, ''Cargo Tank Specification Requirements,'' with an expiration date of November 30, 2007, and Control Number 2137–0022, ''Testing, Inspection, and Marking Requirements for Cylinders,'' with an expiration date of August 31, 2008. This rule proposes no new information collection and recordkeeping requirements.

Title 5, Code of Federal Regulations requires us to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. Under the Paperwork Reduction Act, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number.

Requests for a copy of these information collections should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Pipeline and Hazardous Materials Safety Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

All comments should be addressed to the Dockets Unit as identified in the **ADDRESSES** section, and received prior to the close of the comment period identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, Office of Management and Budget (OMB), at fax number 202–395–6974. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This proposed rule imposes no unfunded mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

I. Privacy Act

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

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 176

Hazardous materials transportation, Incorporation by reference, Maritime

carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub L. 104–134 section 31001.

2. In § 171.7, make the following changes:

a. In the table in paragraph (a)(3), under The Aluminum Association, a new entry titled ''Welding Aluminum: Theory and Practice,'' 2002 Fourth Edition is added;

b. In the table in paragraph (a)(3), under American Society of Mechanical Engineers, the entry titled ''ASME Code, Sections II (Parts A and B), V, VIII (Division 1), and IX of 1998 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code,'' is revised;

c. In the table in paragraph (a)(3), under American Society for Testing and Materials, entries for ASTM A53/A53M–06a and ASTM A106/A106M–06a are added;

d. In the table in paragraph (a)(3), under Compressed Gas Association, Inc., entries for CGA Pamphlet G–2.2 1985 edition and CGA Pamphlet P–20 1995 edition are revised;

e. In the table in paragraph (a)(3), under Compressed Gas Association Inc., new entries for CGA C–1 2005 edition, CGA TB–25 2005 edition, and CGA V–9 2005 edition are added; and

f. In paragraph (b), a new entry ''Truck Trailer Manufacturers Association,'' 1020 Princess Street, Alexandria, Virginia 22314, ''TTMA RP No. 96–01,'' January 1, 2001 Edition is added in alphabetical order.

The revisions and additions read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
The Aluminum Association,	
* * * * * * *	
Welding Aluminum: Theory and Practice, 2002 Fourth Edition	178.68.
* * * * * * *	
American Society of Mechanical Engineers,	
* * * * * * *	
ASME Code, Sections II (Parts A and B), V, VIII (Division 1), and IX of 1998 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code.	172.102; 173.5b; 173.24b; 173.32; 173.306; 173.315; 173.318; 173.420; 178.245–1; 178.245–3; 178.245–4; 178.245–6; 178.245–7; 178.255–1; 178.255–2; 178.255–14; 178.255–15; 178.270–2; 178.270–3; 178.270–7; 178.270–9; 178.270–11; 178.270–12; 178.271–1; 178.272–1; 178.273; 178.274; 178.276; 178.277; 178.320; 178.337–1; 178.337–2; 178.337–3; 178.337–4; 178.337–6; 178.337–16; 178.337–18; 178.338–1; 178.338–2; 178.338–3; 178.338–4; 178.338–5; 178.338–6; 178.338–13; 178.338–16; 178.338–18; 178.338–19; 178.345–1; 178.345–2; 178.345–3; 178.345–4; 178.345–7; 178.345–14; 178.345–15; 178.346–1; 178.347–1; 178.348–1; 179.400–3; 180.407.
* * * * * * *	
American Society for Testing and Materials,	
* * * * * * *	
ASTM A53/A53M–06a Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.	173.5b.
* * * * * * *	
ASTM A106/A106M–06a Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service.	173.5b.
* * * * * * *	
Compressed Gas Association, Inc.,	
* * * * * * *	
CGA C–1, Methods for Hydrostatic Testing of Compressed Gas Cylinders, 2004 Edition.	180.205.
* * * * * * *	
CGA G–2.2, Guideline Method for Determining Minimum of 0.2% Water in Anhydrous Ammonia, 1985, Second Edition, Reaffirmed 1997.	173.315.

Source and name of material	49 CFR reference
* * * * * * *	
CGA P–20, Standard for the Classification of Toxic Gas Mixtures, 2003, Third Edition.	173.115.
* * * * * * *	
CGA TB–25, Design Considerations for Tube Trailers, 2005 Edition.	173.301.
* * * * * * *	
CGA V–9, Standard for Compressed Gas Cylinder Valves, 2005 Fifth Edition.	173.40; 173.301.
* * * * * * *	

(b) *List of informational materials not requiring incorporation by reference.*
* * *

Source and name of material	49 CFR reference
* * * * * * *	
Truck Trailer Manufacturers Association, 1020 Princess Street, Alexandria, Virginia 22314	
TTMA RP No. 96–01, Structural Integrity of DOT 406, DOT 407, and DOT 412 Cylindrical Cargo Tanks, January, 2001 Edition.	178.345–3.
* * * * * * *	

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

4. A new § 173.5b is added to read as follows:

§ 173.5b Portable and mobile refrigeration systems.

This section authorizes the highway transportation of residual amounts of Division 2.2 refrigerant gases or anhydrous ammonia contained in non-specification pressure vessels that are components of refrigeration systems, which may or may not be permanently mounted to a transport vehicle, used for agricultural operations. These refrigeration systems are used at field sites to cool (pre-cool) produce before the produce is loaded into trucks or railcars for market or used to supplement stationary refrigeration systems during peak harvest times. The components of these refrigeration systems are commonly known as vacuum tubes, accumulators, refrigeration units, ice makers, pressure coolers, or evaporators.

(a) *General packaging requirements.* Each non-specification pressure vessel must conform to the following:

(1) Each pressure vessel must be designed, manufactured, and maintained in accordance with applicable requirements of the ASME Code (IBR, see § 171.7 of this subchapter).

(2) Except as authorized in this section, each pressure vessel and associated piping must be rated at a maximum allowable work pressure (MAWP) of 250 psig. The pressure in these components may not exceed MAWP.

(3) Any part of the piping or pressure vessel separated from another component of the refrigeration system by means of a valve, blank flange, or other device must be equipped with a pressure relief valve set at MAWP. All lines that must be disconnected for transportation purposes must be closed by means of a cap, plug or blank flange, and valves at the end of disconnected lines must be tightly closed.

(4) The aggregate total volumetric capacity of components within the refrigeration system authorized for highway transportation in accordance with this section may not exceed 2,500 gallons per vehicle.

(5) Each pressure vessel and associated piping containing anhydrous ammonia must conform to the following:

(i) Piping with a diameter of 2 inches or more must conform to ASTM Specification A53B Schedule 40 (IBR, see § 171.7 of this subchapter) or ASTM Specification A106 Schedule 40 (IBR, see § 171.7 of this subchapter).

(ii) Piping with a diameter of less than 2 inches must conform to ASTM Specification A53B (IBR, see § 171.7 of this subchapter) Schedule 80 or ASTM Specification A106 Schedule 80 (IBR, see § 171.7 of this subchapter).

(iii) The words ''Inhalation Hazard'' must be marked as required in special provision 13 in § 172.102 of this subchapter and, when practicable, within 24 inches of the placard.

(b) *Refrigeration systems placed into service prior to June 1, 1991.* (1) For refrigeration systems placed into service prior to June 1, 1991, each pressure vessel and associated piping for the condensing line (''high side'') must be rated at an MAWP of not less than 250 psig. Each pressure vessel and associated piping for the evaporating line (''low side'') must be rated at an MAWP of not less than 150 psig, except that each pressure vessel or associated piping that will contain refrigerant gas during transportation must be rated at an MAWP of not less than 250 psig. During transportation, pressure in the components that are part of the evaporating line may not exceed 150 psig.

(2) Each pressure vessel and associated piping that is part of the

evaporating line must be marked ''LOW SIDE'' in a permanent and clearly visible manner. The evaporating line must have a pressure gauge with corresponding temperature markings mounted so as to be easily readable when standing on the ground. The gauge must be permanently marked or tagged ''SATURATION GAUGE''.

(3) Each pressure vessel and associated piping with an MAWP of 250 psig or greater containing liquid anhydrous ammonia must be isolated using appropriate means from piping and components marked ''LOW SIDE''.

(4) Liquid lading is only authorized in system components with a rated MAWP of not less than 250 psig.

(5) Prior to transportation, each pressure vessel and associated piping with a rated MAWP of less than 250 psig must be relieved of enough gaseous lading to ensure that the MAWP is not exceeded at transport temperatures up to 54 °C (130 °F).

(6) Refrigeration systems placed into service prior to June 1, 1991, may continue in service until October 1, 2017.

(c) Prior to transportation over public highways, each pressure vessel and associated piping must be drained of refrigerant gas or liquid anhydrous ammonia to the extent practicable. Drained contents must be recovered in conformance with all applicable environmental regulations. Residual liquid anhydrous ammonia in each component may not exceed one percent of the component's total volumetric capacity or 10 gallons, whichever is less.

(d) *System inspection and testing.* (1) Each refrigeration system authorized under this section must be visually inspected every year. The visual inspection must include items listed in § 180.407(d)(2) applicable to refrigeration systems. A certificate of the annual visual inspection must be dated and signed by the person performing the inspection and must contain that person's company affiliation. The certificate must remain at the equipment owner's office.

(2) Each refrigeration system authorized under this section must be proof pressure tested every two years beginning with the initial pressure test performed after manufacture. Additional pressure tests must be performed after any modification, repair or damage to a part of the system pressurized with refrigerant gas. System test pressures may not be less than one-and-one-half (1.50) times the rated MAWP of the system component or piping.

(3) Pressure relief valves must be successfully tested every two years at the MAWP for the components or piping to which they are attached. Pressure relief valves may be replaced and marked every 5 years with valves certified at the appropriate MAWP, in which case the valves need not be tested every two years. Valves that do not pass the test must be repaired or replaced.

(e) *Test markings and reports.* (1) Evidence of testing specified in paragraph (d) of this section must be marked on the right forward side of the refrigeration system with 2 inch high letters indicating type of last test (V = visual; P = pressure: hydrostatic or pneumatic) and the month/year in which it was performed. Reports and all of the requirements for records of inspections including markings must be completed as specified in part 180.

(2) Pressure relief valves must be durably marked with either the date of last test, set-pressure and testing company or the date of last replacement, set-pressure, and certifying company, as applicable.

5. In § 173.40, the introductory text to paragraph (c) is revised to read as follows:

§ 173.40 General packaging requirements for toxic materials packaged in cylinders.

* * * * *

(c) *Closures.* When a valve is installed in a DOT specification cylinder containing a hazardous material, unless otherwise excepted, the valve must conform to the requirements in CGA V–9 (IBR; see § 171.7 of this subchapter). In addition, each cylinder containing a Hazard Zone A material must be closed with a plug or valve conforming to the following:

* * * * *

6. In § 173.115, paragraph (c)(2) is revised to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

* * * * *

(c) * * *

(2) In the absence of adequate data on human toxicity, is presumed to be toxic to humans because when tested on laboratory animals it has an LC_{50} value of not more than 5000 mL/m^3 (see § 173.116(a) of this subpart for assignment of Hazard Zones A, B, C or D). LC_{50} values for mixtures may be determined using the formula in § 173.133(b)(1)(i) or CGA P–20 (IBR, see § 171.7 of this subchapter).

* * * * *

7. In § 173.301, a new paragraph (a)(11) is added and paragraph (i) is revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical pressure vessels.

(a) * * *

(11) When a valve is installed in a DOT specification cylinder containing a hazardous material, unless otherwise excepted, the valve must conform to the requirements in CGA V–9 (IBR; see § 171.7 of this subchapter).

* * * * *

(i) *Cylinders mounted in motor vehicles or in frames.* (1) MEGCs must conform to the requirements in § 173.312. DOT specification cylinders mounted on motor vehicles or in frames must conform to the requirements specified in this paragraph (i).

(2) Seamless DOT specification cylinders longer than 2 m (6.5 feet) are authorized for transportation only when horizontally mounted on a motor vehicle or in an ISO framework or other framework of equivalent structural integrity in accordance with CGA TB–25 (IBR, see § 171.7 of this subchapter). The pressure relief device must be arranged to discharge unobstructed to the open air. In addition, for Division 2.1 (flammable gas) material, the pressure relief devices must be arranged to discharge upward to prevent any escaping gas from contacting personnel or any adjacent cylinders.

(3) Cylinders may not be transported by rail in container on freight car (COFC) or trailer on flat car (TOFC) service except under conditions approved by the Associate Administrator for Safety, Federal Railroad Administration.

* * * * *

8. Section 173.338 is revised to read as follows:

§ 173.338 Tungsten hexafluoride.

(a) Tungsten hexafluoride must be packaged in specification 3A, 3AA, 3BN, or 3E (§§ 178.36, 178.37, 178.39, 178.42 of this subchapter) cylinders. Cylinders must be equipped with a valve protection cap or be packed in a strong outside container complying with the provisions of § 173.40. Outlets of any valves must be capped or plugged. As an alternative, the cylinder opening may be closed by the use of a metal plug. Specification 3E cylinders must be shipped in an overpack that complies with the provisions of § 173.40.

(b) In place of the volumetric expansion test, DOT 3BN cylinders used in exclusive service may be given a complete external visual inspection in conformance with part 180, subpart C, of this subchapter, at the time such periodic requalification becomes due. Cylinders that undergo a complete external visual inspection, in place of

the volumetric expansion test, must be condemned in accordance with § 180.205 of this subchapter if removed from tungsten hexafluoride service.

PART 176—CARRIAGE BY VESSEL

9. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

10. In § 176.200, paragraph (f) is revised to read as follows:

§ 176.200 General stowage requirements.

* * * * *

(f) Class 2 (compressed gas) material must be kept as cool as practicable and be stowed away from all sources of heat and ignition. Any package containing a Division 2.1 (flammable gas) material is restricted from transport in powered refrigerated temperature controlled containers, unless the equipment is capable of preventing ignition of flammable vapors by having non-sparking or explosion-proof electric fittings within the cooling compartment.

PART 178—SPECIFICATIONS FOR PACKAGINGS

11. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

12. In § 178.68, paragraph (l)(2) is revised to read as follows:

§ 178.68 Specification 4E welded aluminum cylinders.

* * * * *

(l) * * *

(2) *Guided bend test.* A bend test specimen must be cut from the cylinder used for the physical test specified in paragraph (j) of this section. Specimen must be taken across the seam, must be a minimum of 1½ inches wide, edges must be parallel and rounded with a file, and back-up strip, if used, must be removed by machining. The specimen shall be tested as follows:

(i) The specimen must be bent to refusal in the guided bend test jig as illustrated in paragraph 6.10 of CGA C–3 (IBR, see § 171.7 of this subchapter). The root of the weld (inside surface of the cylinder) must be located away from the ram of the jig. The specimen must not show a crack or other open defect exceeding ⅛ inch in any direction upon completion of the test. Should this specimen fail to meet the requirements, specimens may be taken from each of 2 additional cylinders from the same lot and tested. If either of the latter specimens fails to meet requirements, the entire lot represented must be rejected.

(ii) Alternatively, the specimen may be tested in a guided bend test jig as illustrated in paragraph 12 of The Aluminum Association's publication, ''Welding Aluminum: Theory and Practice'' (IBR, see § 171.7 of this subchapter). The root of the weld (inside surface of the cylinder) must be located away from the mandrel of the jig. No specimen must show a crack or other open defect exceeding ⅛ inch in any direction upon completion of the test. Should this specimen fail to meet the requirements, specimens may be taken from each of 2 additional cylinders from the same lot and tested. If either of the latter specimens fails to meet requirements, the entire lot represented must be rejected.

* * * * *

13. In § 178.345–3, at the end of paragraph (a)(3), a sentence is added to read as follows:

§ 178.345–3 Structural integrity.

(a) * * *

(3) * * * TTMA RP 96–01, Structural Integrity of DOT 406, DOT 407, and DOT 412 Cylindrical Cargo Tanks, may be used as guidance in performing the calculations.

* * * * *

14. In § 178.345–5, paragraph (f) is revised to read as follows:

§ 178.345–5 Manhole assemblies.

* * * * *

(f) All components mounted on a manhole cover that form part of the lading retention structure of the cargo tank wall must withstand the same static internal fluid pressure as that required for the manhole cover. The component manufacturer shall verify compliance using the same test procedure and frequency of testing as specified in § 178.345–5(b).

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

16. In § 180.205, paragraph (g) is revised to read as follows:

§ 180.205 General requirements for requalification of specification cylinders.

* * * * *

(g) *Pressure test.* Unless otherwise provided, each cylinder required to be pressure tested under this subpart must be tested by means suitable for measuring the expansion of the cylinder under pressure. The pressure test procedures and equipment accuracy for the volumetric expansion test and, when authorized, the proof pressure test must be in accordance with CGA C–1 (IBR, see § 171.7 of this subchapter), subject to the following limitations as applicable:

(1) Bands and other removable attachments must be loosened or removed before testing so that the cylinder is free to expand in all directions.

(2) Each day before testing, the requalifier shall confirm the accuracy of the expansion-indicating device and the pressure-indicating device by using a calibrated cylinder or other method authorized in writing by the Associate Administrator. In the event the calibrated cylinder's expansion values have changed from the certified certificate expansion values, the calibrated cylinder may be recalibrated using a dead weight test device traceable to the National Institute of Standards and Testing (NIST) measurement standards or using another calibrated cylinder.

(3) The requalifier must demonstrate calibration in conformance with this paragraph (g) to an authorized inspector on any day that the requalifier retests cylinders. A requalifier must maintain calibrated cylinder certificates in accordance with § 180.215(b)(4).

(4) When a test pressure cannot be achieved or maintained due to a malfunction of the test equipment, the pressure test may be repeated only at a pressure increased by 10% or 100 psig, whichever is the lower value. The cumulative increase in test pressure may not exceed 10% of minimum prescribed test pressure.

(5) This paragraph (g) does not authorize retest of a cylinder otherwise required to be condemned under paragraph (i) of this section.

* * * * *

In § 180.407, paragraphs (d)(3) and (g)(1)(ii)(A) are revised to read as follows:

§ 180.407 Requirements for test and inspection of specification cargo tanks.

* * * * *

(d) * * *

(3) All reclosing pressure relief valves must be externally inspected for any corrosion or damage which might prevent safe operation. All reclosing pressure relief valves on cargo tanks carrying lading corrosive to the valve must be removed from the cargo tank for inspection and testing. Each reclosing pressure relief valve required to be removed and tested must open at no less than the required set pressure and no

more than 110 percent of the required set pressure and reseat to a leak-tight condition at 90 percent of the set-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification.

* * * * *

(g) * * *

(1) * * *

(ii) * * *

(A) Each self-closing pressure relief valve that is an emergency relief vent must open at no less than the required set pressure and no more than 110 percent of the required set pressure and reseat to a leak-tight condition at 90 percent of the set-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification.

* * * * *

Issued in Washington, DC on April 6, 2007 under authority delegated in 49 CFR part 106.

Theodore L. Willke,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. E7–6942 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 72, No. 70
Thursday, April 12, 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.

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting

MEETING: African Development Foundation, Board of Directors Meeting.

TIME: Tuesday, April 24, 2007, 8:45 a.m. to 1 p.m.

PLACE: African Development Foundation, Conference Room, 1400 I Street, NW., Suite 1000, Washington, DC 20005.

DATE: Tuesday, April 24, 2007.

STATUS:

1. Open session, April 24, 2007, 8:45 a.m. to 12 p.m.; and,
2. Closed session, April 24, 2007, 12 p.m. to 1 p.m.

Due to security requirements and limited seating, all individuals wishing to attend the open sessions of the meeting must notify Doris Martin, General Counsel, at (202) 673–3916 or *mrivard@usadf.gov* of your request to attend by 9 a.m. on Wednesday, April 18, 2007.

Rodney J. MacAlister,
President.

[FR Doc. 07–1840 Filed 4–10–07; 3:10 pm]

BILLING CODE 6117–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Province Advisory Committee will meet at Beazell Center, Kings Valley Highway. The theme of the meeting is Introduction/Overview Business Planning. The agenda includes: Daylight Decisions, Public involvement for BLM's Western Oregon Planning Revision, Forest Service Travel Management Update.

DATES: The meeting will be held April 19, 2007, beginning at 9 a.m.

ADDRESSES: The meeting will be held at 37309 Kings Valley Highway, Philomath, Oregon 97370.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541–750–7075, or write to Siuslaw National Forest Supervisor, 4077 SW Research Way, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council Discussion is limited to Forest Service/BLM staff and Council Members. Lunch will be on your own. A public input session will be at 11:30 a.m. for fifteen minutes. The meeting is expected to adjourn around 3:30 p.m.

Dated: April 6, 2007.

Mary Zuschlag,
Natural Resource Staff.

[FR Doc. 07–1815 Filed 4–11–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Rescission, in Part

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

SUMMARY: In response to a request from Geo Speciality Chemicals, Inc. (''GSC''), a domestic glycine producer, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on glycine from the People's Republic of China (''PRC''). This review covers Nantong Dongchang Chemical Industry Corporation (''Nantong Dongchang'') and Baoding Mantong Fine Chemistry Co., Ltd. (''Baoding Mantong''). The period of review (''POR'') is March 1, 2005, through February 28, 2006. We preliminarily find that sales have been made below normal value (''NV'') by Nantong Dongchang, and that Baoding Mantong did not make sales of subject merchandise during the POR. We are preliminary rescinding this review with respect to Baoding Mantong. The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (''CBP'') to assess the *ad valorem* margins against the entered value of each entry of the subject merchandise during the POR.

EFFECTIVE DATE: April 12, 2007.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey or Alex Villanueva, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2312, or (202) 482–3208, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1995, the Department published in the **Federal Register** an antidumping duty order on glycine from the PRC. *See Antidumping Duty Order: Glycine from the People's Republic of China*, 60 FR 16116 (March 29, 1995). On March 1, 2004, the Department published a *Notice of Opportunity to Request an Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 69 FR 9584 (March 1, 2004). On March 29, 2006, GEO Speciality Chemicals, Inc., requested that the Department conduct an administrative review of Baoding Mantong's sales of subject merchandise to the United States during the POR, in accordance with section 351.213(b) of the Department's regulations. On March 31, 2006, GEO Speciality Chemicals, Inc., requested that the Department conduct an administrative review of Nantong Dongchang's sales of subject merchandise to the United States during the POR, in accordance with section 351.213(b) of the Department's regulations. On April 28, 2006, the Department initiated the antidumping duty administrative review with respect to Nantong Donchang and Baoding Mantong. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 25145 (April 28, 2006).

Questionnaires

On May 5, 2006, the Department issued standard non–market economy (''NME'') antidumping duty questionnaires to Baoding Mantong and Nantong Dongchang. On May 11, 2006, Baoding Mantong reported that it had no shipments of subject merchandise during the POR. Between June 5, 2006, and January 3, 2007, Nantong Dongchang submitted responses to the Department's original and supplemental Section A, C and D questionnaires.

Surrogate Country and Factors

On October 17, 2006, we invited interested parties to comment on the Department's surrogate country selection and/or significant production in the other potential surrogate countries and to submit publicly available information to value the factors of production (''FOPs''). On November 7, 2006, GSC submitted comments regarding surrogate country selection. On January 8, 2007, both GSC and Nantong Dongchang submitted information for the Department to consider in valuing the FOPs. On March 5, 2007, along with its comments regarding the upcoming preliminary results, GSC re–submitted the surrogate value data it had originally filed on January 8, 2007. All surrogate value data submitted by both parties were from Indian sources.

Scope of the Order

The product covered by the order is glycine, which is a free–flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. This review covers glycine of all purity levels. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise under the order is dispositive.

Separate Rate

A designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Tariff Act of 1930, as amended (''the Act''). Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company–specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'').

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589. In a prior new shipper review for this case, the Department granted a separate rate to Nantong Dongchang. *See Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review*, 66 FR 8383 (January 31, 2001). However, it is the Department's policy to evaluate requests for a separate rate individually, regardless of whether the respondent received a separate rate in the past. *See Manganese Metal From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440 (March 13, 1998).

In this review, Nantong Dongchang submitted a complete response to the separate rates section of the Department's NME questionnaire. The evidence submitted by this company includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the companies' operations and selection of management. The evidence provided by this company supports a finding of a *de jure* absence of governmental control over their export activities based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents, as demonstrated by the PRC laws placed on the record of this review. No party submitted information to the contrary. Accordingly, we preliminarily find an absence of *de jure* control.

B. Absence of De Facto Control

The absence of *de facto* governmental control over exports is based on whether the respondent: (1) sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In its questionnaire responses, Nantong Dongchang submitted evidence indicating an absence of *de facto* governmental control over its export activities. Specifically, this evidence indicates that: (1) Nantong Dongchang sets its own export prices independent of the government and without the approval of a government authority; (2) Nantong Dongchang retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) Nantong Dongchang has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on the company's use of export revenues. Therefore, the Department preliminarily finds that Nantong Dongchang has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Preliminary Partial Rescission of Review

In accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding this administrative review with respect to Baoding Mantong. As noted above, Baoding Mantong reported that it made no shipments of subject merchandise to the United States during the POR. Our examination of shipment data from CBP for Baoding Mantong confirmed that there were no entries of glycine during the POR. Consequently,

because there is no evidence on the record to indicate that Baoding Mantong had sales of subject merchandise during the POR, we are preliminarily rescinding the review for Baoding Mantong.

NME Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Normal Value Comparisons

To determine whether Nantong Dongchang's sale of the subject merchandise to the United States was made at a price below NV, we compared its United States price to a normal value, as described in the ''United States Price'' and ''Normal Value'' section of this notice.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below and in *Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Matthew Renkey, Senior Analyst, Office 9: Antidumping Duty Administrative Reviews of Glycine from the People's Republic of China: Surrogate Values for the Preliminary Results*, April 2, 2007 (''*Surrogate Values Memo*'').

India is among the countries comparable to the PRC in terms of overall economic development, as noted in the Department's October 17, 2006, letter to interested parties requesting surrogate country and surrogate value comments. In its November 7, 2006, letter commenting on surrogate country selection, GSC suggested that India be the primary surrogate country because it is a significant producer of glycine (whereas the other countries are not), and also because of the availability of surrogate value data from Indian sources. In addition, based on publicly available information placed on the record (*i.e.*, export data), India is a significant producer of the subject merchandise. *See Memorandum to the File, through James C. Doyle, Office Director, Office 9, Import Administration, from Matthew Renkey, Senior Analyst, Subject: Antidumping Duty Administrative Review of Glycine from the People's Republic of China: Selection of a Surrogate Country*, (April 2, 2007) (''*Surrogate Country Memo*''). Furthermore, we note that India has been the primary surrogate country in past segments of this case, and both GSC and Nantong Dongchang submitted surrogate values based on Indian data that are contemporaneous to the POR, which gives further credence to the use of India as a surrogate country.

U.S. Price

A. Export Price

In accordance with section 772(a) of the Act, we calculated the export price (''EP'') for certain sales to the United States for Nantong Dongchang because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP (''CEP'') was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight, brokerage and handling, international freight, and marine insurance. Each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, we based the deduction of these movement charges on surrogate values. Additionally, for international freight provided by a market economy provider and paid in U.S. dollars (''USD''), we used the actual cost per kilogram of the freight. *See Surrogate Values Memo* for details regarding the surrogate values for movement expenses.

B. Constructed Export Price

Also for Nantong Dongchang, we based U.S. price for certain sales on CEP in accordance with section 772(b) of the Act, because sales were made by Nantong Donchang's U.S. affiliate, Wavort, Inc. (''Wavort'') to unaffiliated purchasers. For such sales to certain U.S. customers, we based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act. Due to the proprietary nature of the facts regarding the CEP treatment for certain sales, for further details, *see Memorandum to the File, through Alex Villanueva, Program Manager, Office 9, from Matthew Renkey, Senior Analyst, Office 9; Administrative Review of Gylcine from the People's Republic of China: Analysis for the Preliminary Results of Nantong Dongchang Chemical Industry Corp. (''Nantong Dongchang'')* , dated April 2, 2007 (''*Prelim Analysis Memo*'').

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we also deducted those selling expenses associated with economic activities occurring in the United States. We deducted, where appropriate, commissions, credit expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by NME service providers or paid for in an NME currency, we valued these services using surrogate values (*see Surrogate Values Memo* for further discussion). For those expenses that were provided by a market economy provider and paid for in market economy currency, we used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for Nantong Dongchang, *see Prelim Analysis Memo*.

Normal Value

1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using a factors–of-production methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of

government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by respondent for the POR. To calculate NV, we multiplied the reported per–unit factor–consumption rates by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997). Where we did not use Indian import data, we calculated freight based on the reported distance from the supplier to the factory.

With regard to surrogate values, we have disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) (''*CTVs from the PRC*'') and accompanying issues and decision memorandum at Comment 7; *see also Certain Cut–to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) and accompanying Issues and Decision Memorandum at Comment 4. The legislative history provides that in making its determination as to whether input values may be subsidized, the Department is not required to conduct a formal investigation; rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. *See* H.R. Rep. 100–576 at 590 (1988). Therefore, based on the information currently available, we have not used prices from these countries in calculating the surrogate values based on Indian import data. *See Memorandum from Office of Policy to DAS and Office Directors: NME investigations: procedures for disregarding subsidized factor input prices*, (February 2002), which has been placed on the record of this review. We have also disregarded Indian import data from countries that the Department has previously determined to be NME countries, as well as imports from unspecified countries. *See CTVs from the PRC*. For a comprehensive list of the sources and data used to determine the surrogate vales for the FOPs, by–products, and the surrogate financial ratios for factory overhead, selling, general and administrative expenses, and profit, *see Surrogate Values Memo*.

It is the Department's practice to calculate price index adjustors to inflate or deflate, as appropriate, surrogate values that are not contemporaneous with the POR using the wholesale price index for the subject country. *See Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Antidumping Duty New Shipper Review*, 71 FR 66910 (November 17, 2006). Therefore, where publicly available information contemporaneous with the POR with which to calculate surrogate values could not be obtained, surrogate values were adjusted using the Wholesale Price Index (''WPI'') for India, as published in the *International Financial Statistics* (''*IFS*'') of the International Monetary Fund (''IMF'').

Surrogate values denominated in foreign currencies were converted to USD using the applicable average exchange rate based on exchange rate data from the Department's website.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period March 1, 2005, through February 28, 2006:

GLYCINE FROM THE PRC

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Nantong Dongchang Chemical Industry Corp.	75.82

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs. See 19 CFR 351.309(d).

Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we intend to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer–specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

Further, the following cash deposit requirements will be effective upon publication of the final results of the administrative review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Nantong Dongchang, the cash–deposit rate will be that established in the final results of review; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash–deposit rate will be PRC–wide rate of 155.89 percent; (4) for all non–PRC exporters of subject merchandise, the cash–deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i) of the Act, 19 CFR 351.213, and 19 CFR 351.221(b)(4).

Dated: April 2, 2007.

Steven J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–6953 Filed 4–11–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Notice of Extension of Time Limit for Final Results of Fourth Antidumping Duty Administrative Review and the Eighth New Shipper Review: Honey From the People's Republic of China

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

EFFECTIVE DATE: April 12, 2007

FOR FURTHER INFORMATION CONTACT: Judy Lao or Patrick Edwards, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–7924 and (202) 482–8029, respectively.

Background

The Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review and the new shipper reviews on honey from the People's Republic of China (PRC) on January 3, 2007. *See Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 72 FR 102 (January 3, 2007) and *Honey from the People's Republic of China: Intent to Rescind, in Part, and Preliminary Results of Antidumping Duty New Shipper Reviews,* 72 FR 111 (January 3, 2007). On October 25, 2006, the Department aligned the new shipper review proceeding with the administrative review. *See* Memorandum to All Interested Parties and File, through Abdelali Elouaradia, Program Manager, ''2004–2005 New Shipper Review of Honey from the People's Republic of China: Waive of New Shipper Time Limits and Alignment of the New Shipper Review with the Administrative Review,'' dated October 25, 2006.

Extension of Time Limits for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(1), the Department shall issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides that the Department shall issue the final results of review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 245-day period to 365 days and the 120-day period to 180 days.

Due to the complexity of the issues involved and the time required to analyze the numerous surrogate value information submissions and arguments raised in parties' briefs, as well as the demands of other proceedings handled by the office administering these reviews, the Department has determined that it is not practicable to complete these reviews within the original time period.

Section 751(a)(3)(A) of the Act and 19 CFR 351.213(h) allow the Department to extend the deadline for the final results of a review to a maximum of 180 days from the date on which the notice of the preliminary results was published. For the reasons noted above, the Department is extending the time limit for the completion of the final results for the fourth antidumping duty administrative review and the eighth new shipper review until no later than July 2, 2007, which is 180 days from the date on which the notice of the preliminary results was published.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: April 6, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–6956 Filed 4–11–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040507F]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Steller Sea Lion Mitigation Committee (SSLMC) will meet in Seattle, WA.

DATES: The meeting will take place on May 7–10, 2007, from 8:30 a.m. to 5 p.m. May 7 will focus on proposal work;

May 9–10 will focus on new scientific information.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center, 7600 Sand Point Way NE, Bldg 4, Room 2076, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Bill Wilson, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Committee will review information requested from proposers, receive and discuss new scientific information, review Proposal Ranking Tool in light of new information, and continue proposal review.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: April 9, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–6910 Filed 4–11–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 14, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, *e.g.*, ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 9, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Conversion Magnet Schools Evaluation.

Frequency: On Occasion.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 94.

Burden Hours: 1,062.

Abstract: The Conversion Magnet Schools Evaluation studies the impact of federally funded elementary magnet schools on the academic achievement of students who attend them, and on minority group isolation in the schools. The first phase of the study investigates the feasibility of conducting rigorous research using experimental or quasi-experimental designs to explore the relationship between magnet programs and student achievement both for students who attend magnet schools as their neighborhood schools and for students from other neighborhoods who must apply for admission. Collection and analysis of student data will proceed if the studies are found to be feasible. The evaluation will inform policymakers and researchers on the effectiveness of magnet schools as an educational approach and a type of school choice.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3262. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–6957 Filed 4–11–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Enhanced Assessment Instruments; Notice Inviting Applications for New Awards Using Fiscal Year (FY) 2006 Funds

Catalog of Federal Domestic Assistance (CFDA) Number: 84.368.

Dates: Applications Available: April 12, 2007.

Deadline for Transmittal of Applications: May 31, 2007.

Eligible Applicants: State educational agencies (SEAs) and consortia of SEAs.

Estimated Available Funds: $7,500,000 in FY 2006 funds.

Estimated Range of Awards: $500,000 to $2,000,000.

Estimated Average Size of Awards: $1,500,000.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 18 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to enhance the quality of assessment instruments and systems used by States for measuring the achievement of all students.

Priorities: This competition includes four absolute priorities and three competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priorities are from section 6112 of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The competitive preference priorities are from Appendix E to the notice of final requirements for optional State consolidated applications submitted under section 9302 of the ESEA, published in the **Federal Register** on May 22, 2002 (67 FR 35967).

Absolute Priorities: For FY 2006, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one or more of these priorities.

These priorities are:

Absolute Priority 1. Collaborate with institutions of higher education, other research institutions, or other organizations to improve the quality, validity, and reliability of State academic assessments beyond the requirements for these assessments described in section 1111(b)(3) of Title I, Part A of the ESEA.

Absolute Priority 2. Measure student academic achievement using multiple measures of student academic achievement from multiple sources.

Absolute Priority 3. Chart student progress over time.

Absolute Priority 4. Evaluate student academic achievement through the development of comprehensive academic assessment instruments, such as performance and technology-based academic assessments.

Competitive Preference Priorities: For FY 2006, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 35 points to an application, depending on the extent to which the application meets these priorities.

These priorities are:

Competitive Preference Priority 1. Accommodations and alternate assessments (up to 20 points).

Competitive Preference Priority 2. Collaborative efforts (up to 10 points).

Competitive Preference Priority 3. Dissemination (up to 5 points).

Note: The full text of the competitive preference priorities is included in the notice of final requirements published in the **Federal Register** on May 22, 2002 (67 FR 35967) and in the application package.

Program Authority: 20 U.S.C. 7842 and 7301a.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final requirements published in the **Federal Register** on May 22, 2002 (67 FR 35967).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $7,500,000 in FY 2006 funds.

Estimated Range of Awards: $500,000 to $2,000,000.

Estimated Average Size of Awards: $1,500,000.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs and consortia of SEAs.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other:* An application from a consortium of SEAs must designate one SEA as the fiscal agent.

IV. Application and Submission Information

1. *Address to Request Application Package:* Valeria Ford, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W118, Washington, DC 20202–6132. Telephone: (202) 205–2213 or by e-mail: *Valeria.Ford@ed.gov.*

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 a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application and the absolute and competitive preference priorities. You must limit Part III to the equivalent of no more than 40 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet, budget section (chart and narrative), assurances and certifications, response regarding research activities involving human subjects, GEPA 427 response, one-page abstract, personnel resumes, and letters of support; however, discussion of how the application meets the absolute priorities, how well the application meets the competitive preference priorities, and how well the application addresses each of the selection criteria must be included within the application narrative and therefore is subject to the page limit.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. Submission Dates and Times: *Applications Available:* April 12, 2007. *Deadline for Transmittal of Applications:* May 31, 2007.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). If duplicate applications are submitted, the last application submitted will be considered and not the applications submitted earlier. For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements.* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the Enhanced Assessment Instruments, CFDA Number 84.368 must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for Enhanced Assessment Instruments at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.368, not 84.368A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit

your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Valeria Ford, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W118, Washington, DC 20202–6132. FAX: (202) 260–7764.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.* If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.368), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, *Attention:* (CFDA Number 84.368), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.368), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from Appendix E to the notice of final requirements published in the **Federal Register** on May 22, 2002 (67 FR 35967) and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* Grantees receiving a multi-year award must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. Grantees will be expected to include in this annual performance report documentation of their success in addressing the performance measures identified in section 4 below. At the end of the project period, grantees must

submit a final report to the Secretary, including financial information as directed by the Secretary. Each State educational agency receiving a grant must submit a final report using the U.S. Department of Education (ED) Grant Performance Report form describing its activities and the result of those activities, under the grant. ED will provide grant recipients with the appropriate form and related instructions for addressing these reporting requirements.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the ED has developed three measures for evaluating the effectiveness of the Enhanced Assessment Instruments grantees: (1) The number of States that participated in pilot activities described in each proposal; (2) the number of States that participated in Enhanced Assessment Grant projects funded by the current or prior competitions; and (3) the number of presentations at national conferences sponsored by professional education organizations and papers submitted for publication in refereed journals.

VII. Agency Contact

For Further Information Contact: Valeria Ford, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W118, Washington, DC 20202–6132. Telephone: (202) 205–2213, or by e-mail: *Valeria.Ford@ed.gov.*

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 program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site:*http://www.ed.gov/news/fedregister.*

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

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

Dated: April 9, 2007.

Kerri L. Briggs,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E7–6958 Filed 4–11–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education

AGENCY: U.S. Department of Education, Office of Elementary and Secondary Education.

ACTION: Notice of opening meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the National Advisory Council on Indian Education (the Council) and is intended to notify the general public of their opportunity to attend. This notice also describes the functions of the Council. Notice of the Council's meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act and by the Council's charter.

AGENDA: The Council will discuss their development of the Council's Annual Report to Congress, subcommittee work activities and updates on Executive Order 13336.

Dates: May 2, 2007.

Time: 9 a.m. to 4 p.m.

Location: Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Peirce Hammond, Acting Director, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: 202–401–0953. Fax: 202–260–7779

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the ESEA. The Council submits to the Congress, not later than June 30 of each year, a report on the activities of the Council that includes recommendations the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

The general public is welcome to attend the May 2, 2007 meeting to be held from 9 a.m. to 4 p.m. in Washington, DC. Individuals who need accommodations for a disability in order to participate (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Peirce Hammond at 202–401–0953 by April 23, 2006. We will attempt to meet requests after the date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Records are kept of all Council proceedings and are available for public inspection at the Office of Indian Education, United States Department of Education, Room 5C141, 400 Maryland Avenue, SW., Washington, DC 20202, Monday through Friday from 9 a.m. to 5 p.m.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/federegister.*

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.*

Kerri L. Briggs,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 07–1819 Filed 4–11–07; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12752–000]

AquaEnergy Group Ltd.; Notice Granting Late Intervention

April 6, 2007.

On November 22, 2006, AquaEnergy Group Ltd., filed an application for a preliminary permit for the Coos County Offshore Wave Energy Project No. 12752, to be located in the Pacific Ocean off the coast of Coos County, Oregon, southwest of the City of Bandon. The Commission issued public notice of the application on December 1, 2005, setting January 30, 2007, as the deadline for filing motions to intervene.

On February 16, 2007, the National Marine Fisheries Service filed a late motion to intervene. Granting the late motion to intervene will not unduly delay or disrupt the proceeding or prejudice other parties to it. Therefore, pursuant to Rule 214,[1] the late motion to intervene filed by the National Marine Fisheries Service is granted, subject to the Commission's rules and regulations.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6917 Filed 4–11–07; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.214 (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR07–11–000]

Arkansas Western Gas Company; Notice of Petition for Rate Approval

April 6, 2007.

Take notice that on March 29, 2007, Arkansas Western Gas Company (AWG) filed a petition for rate approval pursuant to sections 284.224 and 284.123(b)(2) of the Commission's regulations. AWG proposes to increase its maximum rate for interruptible transportation service on its northwest Arkansas system south of Drake Compressor Station from $0.1312 per MMBtu to $0.1366 per MMBtu and to increase the rate for compressor fuel and lost and unaccounted for gas from 3.25 percent to 3.70 percent. AWG also submitted changes to its Operating Statement.

Any person desiring to participate in this rate proceeding must file a motion 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 20, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6923 Filed 4–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–391–000]

Central Kentucky Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 6, 2007.

Take notice that on April 2, 2007, Central Kentucky Transmission Company (Central Kentucky) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 6, with a proposed effective date of May 1, 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. E7–6925 Filed 4–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–335–003]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

April 6, 2007.

Take notice that on March 23, 2007, Maritimes & Northeast Pipeline, L.L.C. filed a fuel cost study to comply with the Commission's Order Issuing Certificate and Amending Presidential Permit, issued on February 21, 2007, in Docket No. CP06–335–000 (118 FERC ¶ 61,137 (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 April 13, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6914 Filed 4–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–392–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Report of Flow Through of Penalty Revenues

April 6, 2007.

Take notice that on April 3, 2007, Panhandle Eastern Pipe Line Company, LP (Panhandle) tendered for filing its Annual Report of Flow Through of Penalty Revenues.

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 § 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. E7–6926 Filed 4–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–289–002]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

April 6, 2007.

Take notice that on March 9, 2007, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Eighth Revised Sheet No. 324, with an effective date of May 1, 2007.

Tennessee states that the filing is being made in compliance with the Commission's letter order issued February 26, 2007 in the above reference proceeding.

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

The 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. E7–6924 Filed 4–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

April 6, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of Preliminary Permit.

b. *Project No.:* 12611–002.

c. *Date Filed:* March 16, 2007.

d. *Applicant:* Verdant Power, LLC.

e. *Name of Project:* Roosevelt Island Tidal Energy Hydroelectric Project.

f. *Location:* The project would be located in the East River—East and West Channels off Roosevelt Island, and on Roosevelt Island lands bordering the northern Channel, in Queens County, New York. The project would not occupy Federal or Tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William H. Taylor, Verdant Power, LLC, 4640 13th Street North, Arlington, VA 22207–2102, (703) 528–6445.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* May 7, 2007.

All documents (original and eight copies) should be filed with: Philis Posey, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12611–002) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Amendment:* The permittee proposes to increase the project boundary to include the following to fields:

Field 1. The boundary would be extended from the Roosevelt Island Bridge to the northern tip of Roosevelt Island on the east side of the island in the east channel of the east River.

Field 2. The boundary would be extended from an area across from the southern tip of Roosevelt Island as designated within the United Nations navigation security zone to the 59th Street Bridge, on the west side of the west channel of the East River. This field is discontinuous due to cable/tunnel right of ways.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''COMPETING APPLICATION'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6915 Filed 4–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12635–000]

Moriah Hydro Corporation; Notice Rejecting Late Intervention

April 6, 2007.

On January 3, 2006, Moriah Hydro Corporation (Moriah) filed an application for a three-year preliminary permit under Section 4(f) of the Federal Power Act [1] to study the proposed 189-megawatt Mineville Pumped Storage Project No. 12635. Public notice of the application was issued on April 20, 2006, with a deadline of June 19, 2006, for comments and motions to intervene. On November 13, 2006, a preliminary permit was issued to Moriah.[2] The order became final on December 13, 2006.

On March 7, 2007, the New York State Council of Trout Unlimited (Trout Unlimited) filed a late motion to intervene in the permit application proceeding. The permit application proceeding was terminated upon issuance of the permit. Because there is no proceeding in which to intervene,

[1] 16 U.S.C. 797(f) (2000).

[2] *Moriah Hydro Corporation,* 117 FERC ¶ 62,149 (2006).

Trout Unlimited's motion for late intervention is rejected.[3]

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6916 Filed 4–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

April 6, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12770–000.

c. *Date Filed:* January 30, 2007.

d. *Applicant:* Lockhart Power Company.

e. *Name of Project:* Upper Pacolet Project.

f. *Location:* On the Pacolet River, in Spartanburg County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 USC. 791(a)–825(r).

h. *Applicant Contact:* Bryan Stone, Lockhart Power Company, P.O. Box 10, 420 River Street, Lockhart, SC 29364, (864) 545–2211.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12770–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 370-foot-long, 22-foot-high Upper Pacolet Dam, (2) an existing impoundment having a surface area of 25 acres, with a storage capacity of 220 acre-feet and normal water surface elevation of 520.5 feet mean sea level, (3) a proposed power house containing two generating units having a total installed capacity of 850 kilowatts, (4) a proposed 1000-foot-long, 34.5 kilovolt transmission line, and (5) appurtenant facilities. The proposed project would have an estimated average annual generation of 5.07 gigawatt-hours, which would be sold to a local utility.

l. *Location of Application:* 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE.,

[3] If the Moriah files a license application, public notice will be issued; and Trout Unlimited will have an opportunity to intervene and comment on the proposed project.

Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6918 Filed 4–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

April 6, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12777–000.

c. *Date Filed:* February 13, 2007.

d. *Applicant:* Maine Maritime Academy.

e. *Name of Project:* Castine Harbor and Bagaduce Narrows Project.

f. *Location:* The project would be located on the Atlantic Ocean and Bagaduce Narrows, in Hancock County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James E. Adamson, Maine Maritime Academy, c/o Mainus Power LLC, 440 Louisiana Street, Suite 625, Houston, TX 77002, Phone (713) 236–0037, ext. 109.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12770–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of the following two developments:

Castine Harbor Development. Would consist of: (1) From 3 to 50 proposed TESEC generating units having a total installed capacity of 1.3 MW, (2) a proposed short 12.5 kV transmission line, and (3) appurtenant facilities.

Bagaduce Narrows Development. Would consist of: (1) From 1 to 21 proposed TESEC generating units having a total installed capacity of 11.5 MW, (2) a proposed 16-mile-long 34.5-kV transmission line, and (3) appurtenant facilities.

The project would have a maximum average annual generation of 8 gigawatt hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion

to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''COMPETING APPLICATION'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6919 Filed 4–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

April 6, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12780–000

c. *Date filed:* February 28, 2007.

d. *Applicant:* Fairhaven OPT Ocean Power, LLC.

e. *Name of Project:* Fairhaven OPT Wave Power Project.

f. *Location:* The project would be located in the Pacific Ocean in Humbolt County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contacts:* Charles F. Dunleavy, Fairhaven OPT Ocean Power, LLC, 1590 Reed Road, Pennington, NJ 08534, phone: (609)–730–0400.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12770–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 40 to 80 Power Buoys having a total installed capacity of 20 megawatts, (2) a proposed 300-foot-long, 69 kilovolt transmission line, and (3) appurtenant facilities. The project is estimated to have an average annual generation of 1.534 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation

of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6920 Filed 4–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

April 6, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12781–000.

c. *Date Filed:* February 27, 2007.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Mendocino WaveConnect Project.

f. *Location:* The project would be located in the Pacific Ocean in Mendocino County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Roy Kuga, Pacific Gas and Electric Company, P.O. Box 770000, MC N13–1360, San Francisco, CA 94177, phone: (415)–973–3806.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12770–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 40 to 200 wave generators having a total installed capacity of 40 megawatts, (2) a proposed 40 kilovolt transmission line, and (3) appurtenant facilities. The project is estimated to have an average annual generation of 100 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to

submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6921 Filed 4–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

April 6, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12783–000.

c. *Date filed:* March 5, 2007.

d. *Applicant:* Inglis Hydropower, LLC.

e. *Name of Project:* Inglis Hydropower Project.

f. *Location:* On the Withlacoochee River, in Levy County, Florida.

g. *Filed Pursuant To:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Dean Edwards, Inglis Hydropower, LLC , P.O. Box 1565, Dover, FL 33527, (813) 659–3014.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12783–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 3500-foot-long, 22-foot-high Inglis Bypass Dam, (2) an existing impoundment having a surface area of 4,000 acres, with a storage capacity of 41,000 acre-feet and normal water surface elevation of 27.5 feet mean sea level, (3) an existing 320-foot-long, 45-foot-wide, and 12-foot deep intake channel, (4) a proposed power house containing two generating units having a total installed capacity of 2,000 kilowatts, (5) an existing bypass channel, (6) a proposed 0.45-mile-long, 12.47 kilovolt transmission line, and (7) appurtenant facilities. The proposed project would have an estimated average annual generation of 12.3 gigawatt-hours, which would be sold to a local utility.

l. *Location of Application:* 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, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the

particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6922 Filed 4–11–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2007–0201; FRL–8297–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request for the National Listing of Fish Advisories, EPA ICR Number 1959.03, OMB Control Number 2040–0226

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on September 30, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 11, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2007–0201, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: OW-Docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* EPA Docket Center [Information Collection Request for the National Listing of Fish Advisories], Environmental Protection Agency, Water Docket MC4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket, EPA West Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. 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–OW–2007–0201. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Erica Fleisig, National Fish Advisory Program (4305T), Office of Science and Technology, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1057; fax number: (202) 566–0409; e-mail address: *fleisig.erica@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2007–0201, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

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

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are Administrators of Public Health and Environmental Quality Programs in State and tribal governments (NAICS 92312/SIC 9431 and NAICS 92411/SIC 9511).

Title: Information Collection Request for the National Listing of Fish Advisories.

ICR numbers: EPA ICR No. 1959.03, OMB Control No. 2040–0226.

ICR status: This ICR is currently scheduled to expire on September 30, 2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Listing of Fish Advisories (NLFA) database contains information on the number of new advisories issued by each state, territory, or tribe annually. The advisory information collected identifies the waterbody under advisory, the fish or shellfish species and size ranges included in the advisory, the chemical contaminants and residue levels causing the advisory to be issued, the waterbody type (river, lake, estuary, coastal waters), and the target populations to whom the advisory is directed. This information is collected under the authority of section 104 of the Clean Water Act, which provides for the collection of information to be used to protect human health and the environment. The results of the survey are shared with states, territories, tribes, other federal agencies, and the general public through the NLFA database and the distribution of annual fish advisory fact sheets. The responses to the survey are voluntary and the information requested is part of the state public record associated with the advisories. No confidential business information is requested. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 38.76 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 92.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 3.

Estimated total annual burden hours: 3,566 labor hours.

Estimated total annual burden costs: $124,755.08. No capital or startup costs are required.

Are There Changes in the Estimates From the Last Approval?

There is no change in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: April 6, 2007.

Ephraim King,

Director, Office of Science and Technology.

[FR Doc. E7–6947 Filed 4–11–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

April 4, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 11, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Jasmeet K. Seehra, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3123, or via fax at 202–395–5167 or via Internet at *Jasmeet_K._Seehra@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection after the 60-day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–XXXX.

Title: Consummation of Assignments and Transfers of Control of Station Authorization.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 586 respondents; 586 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 586 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality pertaining to the information collection requirements in this collection.

Needs and Uses: The Commission will submit this new information collection to the OMB after this 60-day comment period to obtain the full three-year clearance from them. The Federal Communications Commission (''Commission'') is requesting that the Office of Management and Budget (OMB) approve the establishment of a new collection for consummation of assignments and transfers of control of station authorization. In addition, the Commission is requesting the OMB's approval of mandatory electronic filing of consummations of assignments and transfers of control of licenses for all telecommunications services.

A consummation is a party's notification to the Commission that a transaction (assignment or transfer of control of station authorization) has been completed within a designated period of time. A consummation is applicable to all international telecommunications services, including International High Frequency (IHF), Section 214 Applications (ITC), Satellite Space Stations (SAT), Submarine Cable Landing Licenses (SCL) and Satellite Earth Station (SES) stations.

Currently, applicants send multiple letters to various offices within the Commission for each file number and call sign that are part of the consummation. The new, proposed consummation module will eliminate the applicant's requirement to notify the Commission by letter with the details of the consummation. With this new collection, the applicant will complete an on-line form (consummation module) in the Commission's electronic International Bureau Filing System (''IBFS''). After the applicant enters the FCC Registration Number (FRN) in the form, the system will generate a list of file numbers and call signs that are related to the FRN. The applicant can select the file numbers and call signs that are part of the consummation. The consummation module: (1) Saves time for the applicants and the Commission staff because the information is readily accessible for viewing and processing 24 hours a day/7 days a week, (2) eliminates the applicants completion by paper and mailing of letters, and (3) expedites the Commission staff's receipt of consummations in a timely manner.

The Commission has authority for this information collection pursuant to 47 CFR 1.767, 25.119, 63.24(e), 73.3540 and 73.3541. Without this collection of information, the Commission would not have critical information such as a change in a controlling interest in the ownership of the licensee. Furthermore, the Commission would not have the authority to review assignments and transfers of control of satellite licenses to determine whether the initial license was obtained in good faith with the intent to construct a satellite system.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–6936 Filed 4–11–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

April 4, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments June 11, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Jasmeet K. Seehra, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3123, or via fax at 202–395–5167, or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov* and to *JudithB.Herman@fcc.gov*, Federal Communications Commission (FCC), Room 1–B441, 445 12th Street, SW., Washington, DC 20554. To submit your comments by e-mail send them to: PRA@fcc.gov. If you would like to obtain or view a copy of this information collection after the 60 day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an email to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0265.

Title: Section 80.868, Card of Instructions.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 4,506 respondents; 4,506 responses.

Estimated Time Per Response: .6 minutes.

Frequency of Response: Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 451 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension (no change in recordkeeping requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance from them. Section 80.868 requires vessel radio operators to post a card of instruction giving clear summary of the radiotelephone distress procedures. It must be securely mounted and displayed in full view of the principal operating position. This is required by 47 CFR part 80, Stations in the Maritime Services, Compulsory Radiotelephone Installations for Vessels 300 Gross Tons (Stations on Shipboards). This notification is designed to assist the radio operator to utilize proper distress procedures during a time of emergency when he/she may be subject to considerable stress or confusion.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–6937 Filed 4–11–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 03–123; DA 07–1374]

Dismissal of Snap Telecommunications, Inc.'s Request for Limited Waiver of the Video Relay Service (VRS) Interoperability Requirements

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission dismisses Snap Telecommunications Inc.'s (Snap) request for temporary waiver of the interoperability requirements concerning the provision of Video Relay Service (VRS).

DATES: Effective March 22, 2007.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington DC 20554.

FURTHER INFORMATION CONTACT: Gregory Hlibok, Consumer & Governmental Affairs Bureau, Disability Rights Office at (800) 311–4381 (Voice), (202) 418–0431 (TTY), or e-mail at *Gregory.Hlibok@fcc.gov*.

SUPPLEMENTARY INFORMATION: On May 9, 2006, the Commission released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Declaratory Ruling and Further Notice of Rulemaking, FCC 06–57, CG Docket No. 03–123, which was published in the **Federal Register** at 71 FR 30818, May 31, 2006 and 71 FR 30848, May 31, 2006, setting interoperability requirements concerning the provision of VRS. This is a summary of the Commission's document DA 07–1374, released March 22, 2007. A copy of document DA 07–1374 and related documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Suite CY–A257, Washington, DC 20554, (202) 418–0270. These documents also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at their Web site: *http://www.bcpiweb.com* or by calling 1–800–378–3160. Filings also may be found by searching on the Commission's Electronic Comment Filing System (ECFS) at *http://www.fcc.gov/cgb/ecfs* (insert CG Docket No. 03–123 into the Proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document DA 07–1374 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro*.

Synopsis

On July 14, 2006, Snap filed a request for a temporary waiver of the interoperability requirements concerning the provision of VRS. *See* Snap Request for Limited Waiver, CG Docket No. 03–123, filed July 14, 2006 (requesting a waiver until March 31, 2007). On March 6, 2007, Snap filed a letter with the Commission stating that Snap has started providing VRS and is in compliance with the VRS interoperability requirements. *See* Letter from Francis Buono, Counsel for Snap, to Marlene Dortch, Office of the Secretary, Federal Communications Commission (March 6, 2007). Snap requested that the Commission dismiss its waiver request as moot. In response to Snap's request, the Consumer & Governmental Affairs Bureau hereby dismisses Snap's request for temporary waiver as moot.

Federal Communications Commission.

Jay Keithley,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. E7–6933 Filed 4–11–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Notice of Sunshine Act Meeting

DATE AND TIME: Tuesday, April 17, 2007 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, April 19, 2007 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 2007–04: Atlatl, Inc. by Duke Williams, Chief Executive Officer.

Notice of Proposed Rulemaking on Hybrid Ads.

Final Report for Gephardt for President, Inc.

Management and Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 07–1839 Filed 4–10–07; 3:10 pm]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 2007–N–07]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) has submitted the information collection entitled ''Capital Requirements for the Federal Home Loan Banks'' to the Office of Management and Budget (OMB) for review and approval of a 3-year extension of the OMB control number, 3069–0059, which is due to expire on May 31, 2007.

DATES: Interested persons may submit comments on or before May 14, 2007.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Board, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jonathan F. Curtis, Senior Financial Analyst, Regulations & Research Division, Office of Supervision, by e-mail at *curtisj@fhfb.gov,* by telephone at 202–408–2866, or by regular mail at the Federal Housing Finance Board, 1625 Eye Street, NW., Washington DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

Section 6 of the Federal Home Loan Bank Act establishes the capital structure for the Federal Home Loan Banks (Banks) and requires the Finance Board to issue regulations prescribing uniform capital standards applicable to each Bank. 12 U.S.C. 1426. To implement the statutory capital structure for the Banks, the Finance Board added parts 930, 931, 932, and 933 to its regulations. 12 CFR parts 930, 931, 932, and 933. Part 930 establishes definitions applicable to risk management and the capital regulations; part 931 concerns Bank capital stock; part 932 establishes Bank capital requirements; and part 933 sets forth the requirements for Bank capital structure plans. The implementing regulations also include conforming changes to parts 917, 925, and 956, which concern, respectively, the powers and responsibilities of Bank boards of directors and senior management, Bank members, and Bank investments. 12 CFR parts 917, 925, and 956.

The Banks use the information collection contained in the rules implementing section 6 to determine the amount of capital stock a member must purchase to maintain membership in and to obtain services from a Bank. More specifically, sections 931.3 and 933.2(a) of the Finance Board rules authorize a Bank to offer its members several options to satisfy required investments in capital stock as activity-based and/or membership stock purchase requirements. 12 CFR 931.3 and 933.2(a). The information collection is necessary to provide the Banks with the flexibility to meet the statutory and regulatory capital structure requirements while allowing Bank members to choose the option best suited to their business requirements.

The OMB control number for the information collection is 3069–0059, and it is due to expire on May 31, 2007. The likely respondents include Bank members.

B. Burden Estimate

While the number of member respondents and the volume of information have increased, the overall burden has decreased significantly because the Banks can access almost all of the data required by the information collection electronically from call reports the members already must file with their primary regulator. The estimate for the total annual hour burden for all member respondents is 8,953 hours. The estimate for the total annual cost burden is $367,073. These estimates are based on the following calculations:

The Banks determine members' activity-based stock purchase requirements on a daily basis. Based on input from the Banks, we estimated the cost and hour burden of the activity-based stock purchase requirement information collection using a daily average of 564 member respondents submitting 1 report for each of the 260 business days during the year. The estimate for the average hours per response is .05 hours. The estimate for

member respondents' annual hour burden related to activity-based stock purchase requirements is 7,332 hours (564 average daily activity-based member respondents × 260 responses per member × 0.05 hours per response). The estimate for the annual cost burden is $300,612 (7,332 hours × $41 hourly rate).

The Finance Board estimates the total annual average number of member respondents for membership stock purchase requirements at 8,105, with 4 responses per member. The estimate for the average hours per response is 0.05 hours. The estimate for member respondents' annual hour burden related to membership stock purchase requirements is 1,621 hours (8,105 membership investment member respondents × 4 responses per member × 0.05 hours per response). The estimate for the annual cost burden is $66,461 (1,621 hours × $41 hourly rate).

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on January 26, 2007. See 72 FR 3848 (Jan. 26, 2007). The 60-day comment period closed on March 27, 2007. The Finance Board received no public comments.

Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to OMB in writing at the address listed above.

Dated: April 6, 2007.

By the Federal Housing Finance Board.

Neil R. Crowley,

Acting General Counsel.

[FR Doc. E7–6890 Filed 4–11–07; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Availability of Funding Opportunity Announcement; Alzheimer's Disease Demonstration Grants to States (ADDGS) Program

Announcement Type: Initial Announcement.

Funding Opportunity Number: HHS–2007–AoA–AZ–0703.

Statutory Authority: Sec. 398 of the Public Health Service Act (Pub. L. 78–410; 42 U.S.C. 280c–3), amended by the Home Health Care and Alzheimer's Disease Amendments of 1990 (Pub. L. 101–557) and by the Health Professions Education Partnerships Act of 1998 (Pub. L. 105–392).

Catalog of Federal Domestic Assistance (CFDA) Number: 93.051, Alzheimer's Disease Demonstration Grants to States (ADDGS) Program.

Dates: The deadline date for the submission of applications is May 14, 2007.

I. Funding Opportunity Description

This announcement seeks proposals for the ADDGS Program's mission to expand the availability of diagnostic and support services for persons with Alzheimer's disease, their families, and their caregivers, as well as improve the responsiveness of the home and community based care system to persons with dementia. The program focuses on serving hard-to-reach and underserved people with Alzheimer's disease or related disorders (ADRD). A detailed description of the funding opportunity may be found at *http://www.aoa.gov/doingbus/fundopp/fundopp.asp.*

II. Award Information

1. *Funding Instrument Type:* Grant.

2. *Anticipated Total Priority Area Funding per Budget Period.* AoA intends to make available, under this program announcement, grant awards for up to twenty-three (23) projects at a federal share of approximately $250,000–$325,000 for one year.

III. Eligibility Criteria and Other Requirements

1. Eligible Applicants

This is a limited grant competition. Eligibility for grant awards is limited to agencies of State Government; only one application per state will be funded. These 1-year grant options are available to all States that will not be receiving ADDGS funds as of July 1, 2007 or operating under a no-cost extension as of July 1, 2007.

2. Cost Sharing or Matching

Under this program, AoA will fund no more than 75 percent of the project's total cost. Grantees are required to provide at least 25 percent of the total program costs from non-federal cash or in-kind resources in order to be considered for the award.

3. DUNS Number

[All grant applicants must obtain a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D-U-N-S number is free and easy to obtain from *http://www.dnb.com/US/duns_update/*]

4. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Application and Submission Information

Address To Request Application

Application materials are available online at *http://www.grants.gov.*

1. Submission Requirements

Applications must be submitted electronically to *http://www.grants.gov.* In order to be able to submit the application, you must register in the Central Contractor Registry (CCR) database. Information about CCR is available at *http://www.grants.gov/CCRRegister.*

2. Submission Dates and Times

To receive consideration, applications must be submitted electronically by midnight, Eastern time, by the deadline listed in the ''Dates'' section of this Notice.

V. Responsiveness Criteria

Each application submitted will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the requirements outlined in Sections III and IV of this Notice and the Program Announcement. Only complete applications that meet these requirements will be reviewed and evaluated competitively.

VI. Application Review Information

Eligible applications in response to this announcement will be reviewed according to the following evaluation criteria: Purpose and Need for Assistance (10 points); Approach/

Method—Workplan and Activities (40 points); Outcomes/Benefits/Impacts (25 points); and Level of Effort, Program Management, Organizational Capacity (25 points).

VII. Agency Contacts

Direct inquiries regarding programmatic issues to U.S. Department of Health and Human Services, Administration on Aging, Office of Community-Based Services, Washington, DC 20201, telephone: 202–357–3452.

Dated: April 6, 2007.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E7–6877 Filed 4–11–07; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–06BE]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 693–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluating Channels for Dissemination and Influencing Factors for Implementation of CDC's Dental Infection Control Guidelines-New-National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention's (CDC) Dental Unit plans to conduct an evaluation of the acceptance and implementation of its 2003 Guidelines for Infection Control in Dental Health Care Settings. These Guidelines took an evidence-based approach to recommending infection control procedures, coalescing existing guidelines developed over the past decade with new infection control measure recommendations supported by research. In releasing the Guidelines just over two years ago, the CDC mailed more than 400,000 copies to practicing dentists, hygienists, dental schools and educators, and health science libraries. CDC also prepared a summary of the Guidelines that were published in the Journal of the American Dental Association (JADA) in early 2004. At this time, it is critical to the Dental Unit's dissemination plan to mount an evaluation of the effectiveness of CDC's activities in moving the behavior of practicing dentists in the direction of increased adoption and implementation of recommendations put forth in the Guidelines.

CDC has contracted with the Research Triangle Institute (RTI) and its subcontractor, the American Dental Association (ADA), to design and conduct the first phase of such an evaluation. This phase includes conducting a mail survey to a probability sample of 6,500 dentists actively engaged in the private practice of clinical dentistry in the United States.

The sample will be selected from the ADA's dentist Master file, the nation's most up-to-date and complete listing of U.S. dentists. The Master file is associated with extensive descriptive information on U.S. dentists based on returns to other ADA survey and updating activities. Included in the master file is information that will allow the sample to: Be selected with equal precision from the U.S. Census Divisions; include over-representation of selected specialties, *i.e.*, oral surgery and periodontics; identify dentists in private practice; and weight the sample according to selected demographic and professional characteristics so the results can accurately reflect all active private practice dentists in the U.S. We expect to achieve a response rate of at least 70 percent, which will yield 4,550 completed questionnaires. There are no costs to respondents other than their time to participate in the survey. The total estimated annual burden hours are 1,138.

ESTIMATED ANNUALIZED BURDEN TABLE

Form	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Dental Survey	4550	1	15/60

Dated: April 6, 2007.

Joan Karr,

Reports Clearance Officer Centers for Disease Control and Prevention.

[FR Doc. E7–6911 Filed 4–11–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-07–06AV]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Occupational Safety and Health Information Needs and Uses By Trade Associations and Labor Unions Within Eight Industrial Sectors—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

As mandated in the Occupational Safety and Health Act of 1970 (Pub. L. 91–596), the mission of NIOSH is to conduct research and investigations on work-related disease and injury and to disseminate information for preventing identified workplace hazards (Sections 20(a)(1) and (d)). Through the development, organization, and dissemination of information, NIOSH promotes awareness about occupational hazards and their control, and improves the quality of American working life.

Previous research has shown that trade associations and labor unions are primary sources of occupational safety and health (OSH) information. These organizations know the industries they represent and how to relate to the various groups within their respective industries. If NIOSH could learn more about the OSH-related activities of these organizations, it would be a first step in routinely partnering with them to communicate information which impacts worker safety and health. For example, through these organizations NIOSH could learn about unmet occupational safety and health information needs in industry and develop information and communication products to address these needs. Furthermore, with more focused information on the safety and health issues, NIOSH would be in a better position to develop impact communication products to serve this community.

NIOSH proposes to obtain OSH information from trade associations and labor unions that represent each of the eight NIOSH National Occupational Research Agenda (NORA) industry sectors. These sectors are Agriculture, Forestry, and Fishing; Mining; Construction; Manufacturing; Wholesale and Retail Trade; Transportation and Utilities; Public and Private Services; and Healthcare and Social Assistance Industries. The goals of this project are to determine (1) Sources of occupational safety and health (OSH) information currently used by the different sector trade associations and labor unions, (2) OSH information presently being disseminated by these different trade associations and labor unions to their members, (3) channels of communication within the different sector associations and unions used to disseminate OSH information, (4) needs for specific types of OSH information, especially those needs not presently being serviced, (5) OSH concerns of industry trade associations and labor unions, (6) awareness and perception of NIOSH as a source of OSH information, (7) use of NIOSH information services (Web site, printed materials, 800 number, etc.), (8) usefulness of NIOSH information to address their OSH concerns and (9) credibility of NIOSH as a trusted source of occupational safety and health information. The ultimate desired outcome of this project is to reduce illness and injury for workers on jobs and tasks which pose high risks.

Occupational Safety and Health information will be collected from a sample of trade associations and labor unions for each of the NORA industry sectors using a telephone survey. NIOSH requests approval from OMB for eighteen months for this information collection.

To facilitate the survey, NIOSH will interact with trade association and labor organization staff within the industry sectors to ensure that (1) the survey questions developed appropriately capture the needed information, (2) the survey is well received and (3) that the data obtained is representative of the full range of occupations within the targeted industry sectors. These interactions will be structured to foster professional relationships that will improve NIOSH's future communication and information dissemination efforts to these important partners. The process of interacting and surveying the trade associations and labor unions will allow NIOSH to develop a benchmark against which future efforts in partnership and communication can be measured. Working cooperatively on new solutions and distribution of future communication products will promote cooperation and trust between NIOSH and trade and labor groups for the future. The total estimated annualized burden hours are 376. There is no cost to respondents for participation in the survey except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden hours per response (in hours)	Response burden
Health & safety personnel	Full form	1455	1	15/60	364
Health & safety personnel	Non-response form	357	1	2/60	12

Dated: April 6, 2007.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–6912 Filed 4–11–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Implementing Surveillance to Determine the Prevalence of the Autism Spectrum Disorders and Other Developmental Disabilities in Early Childhood Populations, Request for Applications (RFA) DD 07–007

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 12 p.m.–3 p.m., June 7, 2007 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of ''Implementing

Surveillance to Determine the Prevalence of the Autism Spectrum Disorders and Other Developmental Disabilities in Early Childhood Populations,'' RFA DD 07–007.

For Further Information Contact: Sheree Williams, PhD, Scientific Review Administrator, Office of the Chief Science Officer, CDC, 1600 Clifton Road NE., Mailstop D 72, Atlanta, GA 30333, Telephone 404–639–4896.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 5, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–6927 Filed 4–11–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee Meeting; Notice of Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The meeting of the Anti-Infective Drugs Advisory Committee scheduled for April 11, 2007, is cancelled. This meeting was announced in the **Federal Register** of March 16, 2007 (72 FR 12620).

FOR FURTHER INFORMATION CONTACT: Lt. Sohail Mosaddegh, 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: *sohail.mosaddegh@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (443–0572 in the Washington, DC area), code 3014512530. Please call the Information Line for up-to-date information on this meeting.

Dated: April 8, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. 07–1825 Filed 4–9–07; 3:14 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–27793]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers 1625–0002, 1625–0017, 1625–0030, 1625–0072, and 1625–0078

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) to the Office of Management and Budget (OMB) requesting an extension of their approval for the following collections of information: (1) 1625–0002, Application for Vessel Inspection, Waiver, and Continuous Synopsis Record; (2) 1625–0017, Various International Agreement Safety Certificates and Documents; (3) 1625–0030, Oil and Hazardous Materials Transfer Procedures; (4) 1625–0072, Waste Management Plans, Refuse Discharge Logs, and Letters of Instruction for Certain Persons-in-Charge (PIC); and (5) 1625–0078, Licensing and Manning Requirements for Officers on Towing Vessels. Before submitting these ICRs to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before June 11, 2007.

ADDRESSES: To make sure your comments and related material do not enter the docket [USCG–2007–27793] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 10–1236 (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents; or telephone Ms. Renee V. Wright, Program Manager, Docket Operations, 202–493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov;* they will include any personal information you provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number [USCG–2007–27793], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as

being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Information Collection Request

1. *Title:* Application for Vessel Inspection, Waiver, and Continuous Synopsis Record.

OMB Control Number: 1625–0002.

Summary: This collection of information requires the owner, operator, agent, or master of a vessel to apply in writing to the Coast Guard before the commencement of an inspection for certification, when a waiver is desired from the requirements of navigation and vessel inspection, or to request a Continuous Synopsis Record.

Need: With the objective of protecting life, property, and the environment, 46 U.S.C. 3306 and 3309 authorize the Coast Guard to establish regulations for vessels subject to inspection. These reporting requirements are part of the Coast Guard's Marine Safety Program.

Respondents: Vessel owner, operator, agent, master, or interested U.S. Government agency.

Frequency: On occasion, annually, or on a 5-year cycle.

Burden Estimate: The estimated burden has decreased from 979 hours to 848 hours a year.

2. *Title:* Various International Agreement Safety Certificates and Documents.

OMB Control Number: 1625–0017.

Summary: These 15 forms are based on the United States' adoption of the International Convention for Safety of Life at Sea, (SOLAS) 1974. The 15 forms are evidence of compliance with this convention for U.S. vessels on international voyages. Without the proper certificates or documents, a U.S. vessel could be detained in foreign ports.

Need: SOLAS applies to all mechanically propelled cargo vessels of 500 or more gross tons (GT), and to all mechanically propelled passenger vessels carrying more than 12 passengers that engage in international voyages. SOLAS and 46 CFR 2.01–25 list certificates and documents that may be issued to vessels.

Respondents: Owners and operators of SOLAS vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 96 hours to 126 hours a year.

3. *Title:* Oil and Hazardous Materials Transfer Procedures.

OMB Control Number: 1625–0030.

Summary: The collection of information requires vessels with a cargo capacity of 250 barrels or more of oil or hazardous materials to develop and maintain transfer procedures. Transfer procedures provide basic safety information for operating transfer systems with the goal of pollution prevention.

Need: Title 33 U.S.C. 1231 authorizes the Coast Guard to prescribe regulations related to the prevention of pollution. Title 33 CFR part 155 prescribes pollution prevention regulations including those related to transfer procedures.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 89 hours to 133 hours a year.

4. *Title:* Waste Management Plans, Refuse Discharge Logs, and Letters of Instruction for Certain Persons-in-Charge (PIC).

OMB Control Number: 1625–0072.

Summary: This information is needed to ensure that certain U.S.-oceangoing vessels: (1) Develop and maintain a waste management plan; (2) maintain refuse discharge records; and (3) with certain individuals acting as PIC for the transfer of fuel receive a letter of instruction, for pollution prevention.

Need: This collection of information is needed as part of the Coast Guard's pollution prevention compliance program. Title 33 U.S.C. 1231 authorizes the Coast Guard to prescribe regulations related to the prevention of pollution. Title 33 CFR parts 151 and 155 prescribe pollution prevention regulations including those related to this collection.

Respondents: Owners, operators, masters, and persons-in-charge of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 55,484 hours to 67,030 hours a year.

5. *Title:* Licensing and Manning Requirements for Officers on Towing Vessels.

OMB Control Number: 1625–0078.

Summary: Licensing and manning requirements ensure that towing vessels operating on the navigable waters of the U.S. are under the control of licensed officers who meet certain qualification and training standards.

Need: Title 46 CFR part 10 prescribes regulations for the licensing of maritime personnel. This information collection is necessary to ensure that a mariner's training information is available to assist in determining his or her overall qualifications to hold certain licenses.

Respondents: Owners and operators towing vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 17,159 hours to 19,746 hours a year.

Dated: April 5, 2007.

C.S. Johnson, Jr.,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E7–6883 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 07–19]

Re-Accreditation and Re-Approval of Camin Cargo Control Inc., as a Commercial Gauger and Laboratory

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

ACTION: Notice of re-approval Camin Cargo Control, Inc., of Corpus Christi, Texas, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Camin Cargo Control, Inc., 218 Centaurus Street, Corpus Christi, Texas 78405, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or

gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-approval of Camin Cargo Control Inc., as a commercial gauger and laboratory became effective on November 3, 2006. The next triennial inspection date will be scheduled for November 2008.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 6, 2007.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E7–6895 Filed 4–11–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 07–18]

Re-Approval of Inspecorate America Corporation as a Commercial Gauger

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

ACTION: Notice of re-approval of Inspectorate America Corporation of Freeport, Texas, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13 Inspectorate America Corporation, 1331 North Avenue I, Suite E, Freeport, Texas 77541, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity for gauger services should request and receive written assurances from the entity that it is approved by the Bureau of Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger services this entity is approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-approval of Inspectorate America Corporation as a commercial gauger became effective on September 7, 2006. The next triennial inspection date will be scheduled for September 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 6, 2007.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E7–6902 Filed 4–11–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 07–20]

Re-Accreditation and Re-Approval of Columbia Inspection, Inc., as a Commercial Gauger and Laboratory

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

ACTION: Notice of re-approval of Columbia Inspection, Inc., of Portland, Oregon, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Columbia Inspection, Inc., 7133 North Lombard Street, Portland, Oregon 97203, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-approval of Columbia Inspection, Inc., as a commercial gauger and laboratory became effective on July 14, 2005. The next triennial inspection date will be scheduled for July 2008.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 6, 2007.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E7–6896 Filed 4–11–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 07–21]

Re-Accreditation and Re-Approval of AMSPEC Services LLC as a Commercial Gauger and Laboratory

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

ACTION: Notice of re-approval of Amspec Services LLC of Linden, New Jersey, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Amspec Services LLC, 360 East Elizabeth Avenue, Linden, New Jersey 07036, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-approval of Amspec Services LLC as a commercial gauger and laboratory became effective on August 3, 2005. The next triennial inspection date will be scheduled for August 2008.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 6, 2007.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E7–6898 Filed 4–11–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 07–17]

Re-Accreditation and Re-Approval of Saybolt LP as a Commercial Gauger and Laboratory

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

ACTION: Notice of re-approval of Saybolt LP of Carson, California, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Saybolt LP, 21730 South Wilmington Avenue, Carson, California 90810, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-approval of Saybolt LP as a commercial gauger and laboratory became effective on September 14, 2006. The next triennial inspection date will be scheduled for September 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 6, 2007.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E7–6900 Filed 4–11–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 07–22]

Re-Accreditation and Re-Approval of Saybolt LP, Inc., as a Commercial Gauger and Laboratory

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

ACTION: Notice of re-approval of Saybolt LP, Inc., of Tukwila, Washington, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Saybolt LP, Inc., 18251 Cascades Avenue South, Tukwila, Washington 98188, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-approval of Saybolt LP Inc., as a commercial gauger and laboratory became effective on July 15, 2005. The next triennial inspection date will be scheduled for July 2008.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 6, 2007.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E7–6901 Filed 4–11–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 07–23]

Re-Accreditation and Re-Approval of Intertek Caleb Brett, Inc., as a Commercial Gauger and Laboratory

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

ACTION: Notice of re-approval of Intertek Caleb Brett, Inc., of Benicia, California, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Intertek Caleb Brett, Inc., 6050 Egret Court, Benicia, California 94510, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-approval of Intertek Caleb Brett as a commercial gauger and laboratory became effective on September 21, 2005. The next triennial inspection date will be scheduled for September 2008.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, PhD, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 6, 2007.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E7–6905 Filed 4–11–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 07–24]

Re-Accreditation and Re-Approval of Saybolt LP as a Commercial Gauger and Laboratory

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

ACTION: Notice of re-approval of Saybolt LP of Corpus Christi, Texas, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Saybolt LP, 414 Westchester, Corpus Christi, Texas 78408, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-approval of Saybolt LP as a commercial gauger and laboratory became effective on February 23, 2005. The next triennial inspection date will be scheduled for February 2008.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 6, 2007.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E7–6906 Filed 4–11–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs And Border Protection

[CBP Dec. 07–16]

Re-Accreditation of Intertek Caleb Brett Stolthaven Terminal as a Commercial Laboratory

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

ACTION: Notice of re-accreditation of Intertek Caleb Brett Stolthaven Terminal of Houston, Texas, as an accredited commercial laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12, Intertek Caleb Brett Stolthaven Terminal, 15602 Jacintoport Boulevard, Houston, Texas 77015, has been re-accredited to test Petroleum and Petroleum Products entered under Chapters 27 and 29 of the Harmonized Tariff Schedule of the United States (HTSUS) for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analysis should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific tests this entity is accredited to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-accreditation of Intertek Caleb Brett Stolthaven Terminal as an accredited laboratory became effective on February 17, 2005. The next triennial inspection date will be scheduled for February 2008.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 6, 2007.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E7–6899 Filed 4–11–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Form N–4, Monthly. Report Naturalization Papers; OMB Control No. 1615–0051.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 5, 2007, at 72 FR 5299 allowing for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 14, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, 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*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0051 in the subject box. Written comments and suggestions from the public and affected agencies 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 agency's 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 collection.

(2) *Title of the Form/Collection:* Monthly Report Naturalization Papers.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–4. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State or local Governments. Section 339 of the Immigration and Nationality Act (Act) requires that the clerk of each court that administers the oath of allegiance notify the USCIS of all persons to whom the oath of allegiance for naturalization is administered, within 30 days after the close of the month in which the oath was administered. This form provides a format for submitting a list of those persons to USCIS and provides accountability for the delivery of the certificates of naturalization as required under that section of law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 160 responses at 12 responses annually at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 960 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., Suite 3008, Washington, DC 20529; Telephone 202–272–8377.

Dated: April 6, 2007.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7–6903 Filed 4–11–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1320–EL, WYW154432]

Notice of Availability (NOA) of the Maysdorf Coal Lease-By-Application Final Environmental Impact Statement (FEIS), Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability (NOA) of a final environmental impact statement (FEIS) for coal lease by application (LBA) WYW154432 in the decertified Powder River Federal Coal Production Region, Wyoming.

SUMMARY: Under the provisions of the National Environmental Policy Act (NEPA), the Bureau of Land Management (BLM) announces the availability of the Maysdorf Coal Lease Application FEIS. The lease tract is being considered for sale as a result of a coal lease application received from Cordero Mining Company (CMC), operator of the adjacent Cordero Rojo Mine in Campbell County, Wyoming.

DATES: The FEIS will be available for a 30 calendar day review period effective the date that the Environmental Protection Agency (EPA) publishes their NOA of the FEIS in the **Federal Register**.

ADDRESSES: The FEIS is available on the internet at *http://www.blm.gov/wy/st/en/info/NEPA/cfodocs/maysdorf.html*.

Copies are available at the following BLM offices:

- BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.
- BLM Casper Field Office, 2987 Prospector Drive, Casper, Wyoming 82604.

Written comments may be submitted to: Bureau of Land Management, Casper Field Office, Attn: Nancy Doelger at the address listed above. The public may submit comments electronically to the attention of Nancy Doelger at *casper_wymail@blm.gov* or fax comments to (307) 261–7587.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs at the BLM Casper Field Office address above or telephone (307) 361–7600.

SUPPLEMENTARY INFORMATION: The FEIS analyzes and discloses to the public direct, indirect, and cumulative environmental impacts of issuing a Federal coal lease in the Wyoming portion of the Powder River Basin. The BLM is considering issuing a coal lease as a result of a September 20, 2001, application submitted by CMC to lease Federal coal near the Cordero Rojo Mine, approximately 15 miles south-southeast of Gillette, Wyoming.

CMC, the operator of the mine, applied to lease the tract as a maintenance tract to extend the life of their existing mining operations under the provisions of the Leasing by Application regulations at 43 CFR 3425. This tract, case number WYW154432, is referred to as the Maysdorf Coal Tract.

The following lands in Campbell County, Wyoming are included in the tract as applied for:

T. 46 N., R. 71 W., 6th P.M., Wyoming
Section 4: Lots 5, 6, 7 (E½E½), 10 (E½E½), 11, 12;
Section 10: Lots 1, 2, 3 (N½, N½S½), 4 (N½, N½S½), 5 (N½, N½S½), 6 (N½, N½S½);
Section 11: Lots 1 through 8, 9 (N½, N½S½), 10 (N½, N½S½), 11 (N½, N½S½), 12 (N½, N½S½);

T. 47 N., R. 71 W, 6th P.M., Wyoming
Section 8: Lots 3 through 6, 11 through 13;
Section 21: Lots 1, 2, 3 (E½E½), 6 (E½E½), 7 through 10, 11 (E½E½), 14 (E½E½), 15, 16;
Section 28: Lots 1, 2, 3 (E½E½), 6 (E½E½), 7 through 10, 11 (E½E½), 14 (E½E½), 15, 16;
Section 33: Lots 1, 2, 3 (E½E½), 6 (E½E½), 7 through 10, 11 (E½E½), 14 (E½E½), 15, 16;

Containing 2,219.39 acres, more or less.

CMC estimates that approximately 234.8 million tons of in-place Federal coal are included in the tract.

The Office of Surface Mining Reclamation and Enforcement (OSM), the Land Quality Division of the Wyoming Department of Environmental Quality (WDEQ), and the Wyoming State Planning Office (WSPO) are cooperating agencies in the preparation of the FEIS. If the tract is leased as a maintenance tract, the new lease will be incorporated into the existing mining and reclamation plan for the adjacent mine. The Secretary of the Interior must approve the revision to the Mineral Leasing Act (MLA) mining plan before the Federal coal can be mined. If the tract is leased, OSM is the Federal agency that would be responsible for recommending approval, approval with conditions, or disapproval of the revised MLA mining plan to the Office of the

Secretary of the Interior. WDEQ has entered into a cooperative agreement with the Secretary of the Interior to regulate surface coal mining operations on Federal and non-Federal lands within the State of Wyoming. WSPO coordinates planning within state agencies and facilitates collaboration among the agencies, the Federal Government, other states, the private sector, and the general public.

On February 1, 2005, the BLM published its Notice of Intent (NOI) to prepare an EIS for the Maysdorf coal lease application in the **Federal Register**. A notice announcing the availability of the Draft EIS was published in the **Federal Register** by the EPA on May 26, 2006. A 60-day comment period on the Draft EIS commenced with publication of the EPA's notice of availability and ended on July 25, 2006. The BLM published a Notice of Availability and Notice of Public Hearing in the **Federal Register** on May 26, 2006. The BLM's **Federal Register** notice announced the date and time of a public hearing, which was held on June 13, 2006, in Gillette, Wyoming. The purpose of the hearing was to solicit comments on the DEIS, fair market value, and the maximum economic recovery of the Federal coal.

During the review and comment period, the BLM received written comments from five entities, which are included, with agency responses, in an appendix to the FEIS. The FEIS analyzes leasing the above described tract as applied for as a separate Proposed Action. Under this alternative, a competitive sale would be held and a lease issued for Federal coal in the tract as applied for by Cordero. As part of the coal leasing process, BLM identified different tract configurations that would potentially avoid bypassing coal or prompt competitive interest in the unleased Federal coal in this area. The tract configurations that BLM has identified are described and analyzed as separate alternatives in the FEIS. Under these alternatives, a competitive sale would be held and a lease issued for Federal coal lands included in a tract modified by the BLM. The FEIS also analyzes the alternative of rejecting the application to lease Federal coal as the No Action Alternative. The Proposed Action and alternatives being considered in the FEIS are in conformance with the ''Approved Resource Management Plan for Public Lands Administered by the Bureau of Land Management Buffalo Field Office'' (April 2001). A Record of Decision (ROD) will be prepared after the close of the review period for the FEIS. 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. Comments received on the FEIS will be considered during preparation of the ROD.

Dated: February 27, 2007.

Alan Rabinoff,

Acting State Director.

[FR Doc. E7–7013 Filed 4–11–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1310PP–ARAC]

Notice of Public Meeting, Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held May 16–17, 2007, at the BLM Campbell Creek Science Center, 6881 Abbott Loop in Anchorage, Alaska. The meeting begins at 8 a.m. on both days.

The council will accept public comment on May 16 at 4 p.m. 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.

FOR FURTHER INFORMATION CONTACT: Danielle Allen, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone (907) 271–3335 or e-mail *Danielle_Allen@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics planned for discussion include:

- Alaska Minerals Program Update.
- Fire Season/Cabin Protection Policy.
- Invasive Species.
- Resource Management Planning.
- Conveyances Update.
- Other topics the Council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted for hearing public comments. Depending on the number of people wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the BLM.

Gust Panos,

Acting State Director.

[FR Doc. E7–6930 Filed 4–11–07; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–6334–bj: GP07–0098]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands were officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, on February 7, 2007.

Willamette Meridian

Washington

T. 17 N., R. 7 E., accepted November 22, 2006

T. 29 N., R. 25 E., accepted December 15, 2006

T. 14 N., R. 25 E., accepted December 29, 2006

T. 15 N., R. 25 E., accepted December 29, 2006

T. 14 N., R. 24 E., accepted December 29, 2006

T. 13 N., R. 24 E., accepted December 29, 2006

T. 14 N., R. 28 E., accepted December 29, 2006

T. 15 N., R. 28 E., accepted December 29, 2006

T. 15 N., R. 27 E., accepted December 29, 2006
T. 15 N., R. 26 E., accepted December 29, 2006
T. 13 N., R. 28 E., accepted December 29, 2006
T. 12 N., R. 28 E., accepted December 29, 2006

The plats of survey of the following described lands were officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, on March 19, 2007.

Willamette Meridian

Oregon

T. 29 S., R. 9 W., accepted January 19, 2007
T. 30 S., R. 5 W., accepted January 26, 2007
T.31 S., R. 4 W., accepted January 26, 2007
T. 15 S., R. 6 W., accepted February 15, 2007
T. 10 S., R. 1 E., accepted February 15, 2007
T. 13 S., R. 8 W., accepted February 15, 2007
T. 7 S., R. 4 E., accepted February 15, 2007
T. 29 S., R. 10 W., accepted February 15, 2007
T. 15 S., R. 2 W., accepted February 15, 2007
T. 8 S., R. 4 E., accepted February 23, 2007

Willamette Meridian

Washington

T. 5 N., R. 23 E., accepted January 26, 2007
T. 4 N., R. 23 E., accepted January 26, 2007
T. 31 N., R. 7 W., accepted February 23, 2007

The plats of survey of the following described lands were officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, on March 27, 2007.

Willamette Meridian

Oregon

T. 15 S., R. 13 E., accepted March 15, 2007

Willamette Meridian

Washington

T. 19 N., R. 3 W., accepted March 9, 2007
T. 39 N., R. 33 E., accepted March 9, 2007

A copy of the plats may be obtained from the Land Office at the Oregon/Washington State Office, Bureau of Land Management, 333 SW., 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

For further information contact: Chief, Branch of Geographic Sciences, Bureau of Land Management, (333 S.W. 1st Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: April 4, 2007.

Pamela J. Chappel,

Branch of Lands and Minerals Resources.

[FR Doc. E7–6907 Filed 4–11–07; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Availability of a Draft Environmental Assessment and Finding of No Significant Impact for Flood Control Improvements From International Dam to Riverside Diversion Dam, Within the Rio Grande Rectification Project, Located in El Paso County, TX

AGENCY: United States Section, International Boundary and Water Commission.

Proposed Action: Levee height improvements within an approximate 15-mile reach from International Dam to Riverside Diversion Dam in El Paso, El Paso County, Texas to meet the current Federal Emergency Management Agency (FEMA) freeboard requirements.

Report Designation: Environmental Assessment.

SUMMARY: The United States Section of the International Boundary and Water Commission (USIBWC) has prepared an Environmental Assessment (EA) for a proposed action to raise the levee system from International Dam to Riverside Diversion Dam, in El Paso County, Texas. The levee system under consideration for this EA, approximately 15-miles long, is located entirely within the city limits of El Paso, Texas.

This reach of levee system was recently identified as one of the priority areas within the Rio Grande Rectification Project for flood control improvements. The need for improvements to the levee system was determined by hydraulic modeling completed by the USIBWC in 2003. The USIBWC hydraulic study for this reach indicated that an increase in levee height would be required to meet design criteria for flood protection. An increase from 0.5 to 1.5 feet is anticipated for approximately 5.1 miles of levee. The increase in levee height would expand the levee footprint by lateral extension of the structure. Levee footprint increases in this reach will occur within the USIBWC right-of-way (ROW) and may extend primarily toward the riverside of the existing levee or to the landside given available ROW.

FEMA decertification of USIBWC levees in El Paso County, Texas has resulted in the need to rehabilitate the levees to FEMA criteria; draft Digital Flood Insurance Rate Maps will be issued in spring of 2007. The USIBWC plans on raising approximately 5.1 miles of USIBWC levees within the International Dam to Riverside Diversion Dam to meet the minimum 3 feet of freeboard criteria.

The Environmental Assessment assesses potential environmental impacts of the Proposed Action and the No Action Alternative. A Draft Finding of No Significant Impact was issued for the Proposed Action, including mitigation measures, based on a review of the facts and analyses contained in the Environmental Assessment. An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within 30-days from the date of this Notice.

Availability: Copies of the Draft Environmental Assessment and Finding of No Significant Impact may be obtained by request from Mr. Daniel Borunda, 4171 North Mesa, Suite C–100, El Paso, Texas 79902, e-mail: *danielborunda@ibwc.state.gov.* Electronic copies may also be obtained from the USIBWC Home Page at *http://www.ibwc.state.gov.* Written comments will be accepted for 30-days following the date of this Notice.

Dated: April 5, 2007.

Susan Daniel,

General Counsel.

[FR Doc. E7–6827 Filed 4–11–07; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Availability of a Final Environmental Assessment and Finding of No Significant Impact for Improvements to the Lateral A/Retamal Dike Levee System, in the Lower Rio Grande Flood Control Project, Hidalgo County, TX

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of Availability of Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the United States Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the United States Section hereby gives notice that the Final Environmental Assessment and Finding of No Significant Impact for Improvements to the Lateral A/Retamal Dike Levee System, in the Lower Rio Grande Flood Control Project, located in Hidalgo County, Texas are available. A notice of finding of no significant impact dated January 8, 2007 provided a thirty (30) day comment period before making the finding final. The Notice was published in the **Federal Register** on January 8, 2007 (**Federal Register** Notice, Vol. 72, No. 4, Pages 797–798).

FOR FURTHER INFORMATION CONTACT: Daniel Borunda, Environmental Protection Specialist; Environmental Management Division; United States Section, International Boundary and Water Commission; 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4767, e-mail: *danielborunda@ibwc.state.gov.*

Backgound: The USIBWC, in cooperation with the U.S. Fish and Wildlife Service (USFWS), prepared this Environmental Assessment for the proposed action of raising the Lateral A/Retamal Dike Levee System located in Hidalgo County, Texas to improve flood control. This levee system is part of the LRGFCP that extends approximately 180 miles from the Town of Peñitas in south Texas to the Gulf of Mexico. The Lateral A/Retamal Dike Levee System extends approximately 14 miles, from the Carlson Settling Basin to Retamal Diversion Dam.

The Proposed Action would increase the flood containment capacity of the Lateral A/Retamal Dike System to meet the 3-foot freeboard design criterion for flood protection. Throughout the approximately 11.5-mile Lateral A segment, height increases between 1.5 and 4 feet are typically needed to reach the design freeboard value. For the 3.5-mile Retamal Dike segment, typical increases in levee height range from 0 to 2 feet. The increase in levee height will result in an expansion to the levee footprint by lateral extension of the structure. Structural improvements, such as a slurry cutoff barrier or a riverside impermeable liner, may be required for some levee segments where seepage is a potential problem.

The Environmental Assessment assesses potential environmental impacts of the Proposed Action and the No Action Alternative. Potential impacts on natural, cultural, and other resources were evaluated and mitigation measures were incorporated into the Proposed Action. A Finding of No Significant Impact was issued for the Proposed Action based on a review of the facts and analyses contained in the Environmental Assessment.

The USIBWC is authorized to construct, operate, and maintain any project or works projected by the United States of America on the Lower Rio Grande Flood Control Project (LRGFCP) as authorized by the Act of the 74th Congress, Sess. I Ch. 561 (H.R. 6453), approved August 19, 1935 (49 Stat. 660), and codified at 22 U.S.C. Section 277, 277a, 277b, 277c, and Acts amendatory thereof and supplementary thereto. The LRGFCP was constructed to protect urban, suburban, and highly developed irrigated farmland along the Rio Grande delta in the United States and Mexico.

Availability: Electronic copies of the Final EA and FONSI are available from the USIBWC Home Page at *http://www.ibwc.state.gov.*

Dated: April 4, 2007.

Susan Daniel,

General Counsel.

[FR Doc. E7–6743 Filed 4–11–07; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–490 and Investigation No. NAFTA–103–017]

Certain Sugar Goods: Probable Economic Effect of Tariff Elimination Under NAFTA for Goods of Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and request for written submissions.

SUMMARY: Following receipt of a request on March 15, 2007 from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) and in accordance with section 103 of the North American Free Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3313), the Commission instituted Investigation Nos. 332–490 and NAFTA–103–017, *Certain Sugar Goods: Probable Economic Effect of Tariff Elimination under NAFTA for Goods of Mexico.*

DATES: March 15, 2007: Date of receipt of request.

April 5, 2007: Date of institution of investigation.

May 4, 2007: Deadline for written statements, including any post-hearing briefs.

June 15, 2007: Transmittal of report to the USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Douglas Newman, Office of Industries (202–205–3328 or *douglas.newman@usitc.gov*); for information on legal aspects, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: According to the USTR's letter, the President may

eliminate duties on between 175,000 and 250,000 metric tons, raw value, of sugar goods of Mexico that are classified in the tariff items listed below. Duties on these goods would be eliminated on October 1, 2007. Section 201(b) of the North American Free Trade Agreement Implementation Act (Act) authorizes the President, subject to the consultation and layover requirements in section 103(a) of the Act, to proclaim such modifications as the United States may agree to with Mexico or Canada regarding the staging of any duty treatment set forth in Annex 302.2 of the NAFTA. Section 103(a) requires the President to obtain advice regarding the proposed action from the Commission.

The USTR requested that the Commission provide advice as to the probable economic effect on domestic industries producing like or directly competitive articles, workers in these industries, and on consumers of the affected goods, of eliminating the U.S. tariff under the NAFTA on between 175,000 and 250,000 metric tons, raw value, of sugar goods of Mexico falling under the following Harmonized Tariff Schedule subheadings: (1) 1701.11.50 (raw cane sugar); (2) 1701.12.50 (raw beet sugar); (3) 1701.91.30 (refined sugar, containing added coloring); (4) 1701.99.50 (other refined sugar); (5) 1702.90.20 (other sugar and syrups, containing 6 percent or less soluble non-sugar solids); and (6) 2106.90.46 (sugar syrups, containing added coloring).

As requested, the Commission will provide its advice to the USTR by June 15, 2007. USTR has classified as Confidential the sections of the report that analyze probable economic effects, as well as other information that would reveal any aspect of the probable economic effects advice. USTR also requested that the Commission issue, as soon as possible after June 15, a public version of its report with any confidential business information deleted. Accordingly, the Commission will issue a public version of the report as soon as possible after June 15 and completion of USTR's review for classification purposes. The public version of the report will not include any sections of the report or information that USTR has classified as Confidential, or any information that the Commission considers to be confidential business information.

Written Submissions: In lieu of a public hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in this investigation. Submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. To be assured of consideration by the Commission, written statements should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on May 4, 2007. All written submissions must conform with the provisions of § 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, from which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by § 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf.* Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Any submissions that contain confidential business information must also conform with the requirements of § 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR and the President. However, the Commission will not publish such confidential business information in the public version of its report in a manner that would reveal the operations of the firm supplying the information.

Issued: April 6, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–6904 Filed 4–11–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

In accordance with Department of Justice policy, notice is hereby given that on March 29, 2007, a proposed consent decree (''Consent Decree'') in *United States* v. *Masterwear Corporation, et al.,* Civil Action No. 05–cv–00373, was lodged with the United States District Court for the Southern District of Indiana.

The Consent Decree would resolve claims for unreimbursed past response costs and projected future response costs incurred by the United States related to the ongoing removal action at the Masterwear Superfund Site (''Site'') in Martinsville, Indiana. Under the Consent Decree, the five defendants (James A. Reed, Linda Lou Mull Reed, Masterwear Corporation, William J. Cure, and Elizabeth J. Cure) named in the United States' complaint would pay a total of $380,000 in past costs and estimated future costs, based on agreements with their insurance companies (the insurance companies are not signatories to the proposed Consent Decree but have private agreements with the defendants to make the payments). The settlement would provide EPA with complete reimbursement for past and projected future costs relating to the removal action. The defendants will remain responsible under a Unilateral Administrative Order dated April 22, 2004 for completing the removal work at the Site, which they also intend to finance with funds from their insurance companies.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box No. 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Masterwear Corporation et al.,* Civil Action No. 05–cv–00373, D.J. Ref. 90–11–3–08498.

The Consent Decree may be examined at the Office of the United States Attorney, 10 West Market Street, Suite 2100, Indianapolis, Indiana 46204, and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604–4590. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web

site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 761, U.S. Department of Justice, Washington, D.C. 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.75 (35 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–1814 Filed 4–11–07; 8:45am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Notice of Charter Renewal

In accordance with the provisions of the Federal Advisory Committee Act, Title 5, United States Code, Appendix and Title 41, Code of Federal Regulations, Section 101–6.1015, with the concurrence of the Attorney General, I have determined that the continuance of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB) is in the public interest. In connection with the performance of duties imposed upon the FBI by law, I hereby give notice of the renewal of the APB Charter, effective February 23, 2007.

The APB provides me with general policy recommendations with respect to the philosophy, concept, and operational principles of the various criminal justice information systems managed by the FBI's CJIS Division.

The APB includes representatives from state and local criminal justice agencies; members of the judicial, prosecutorial, and correctional sectors of the criminal justice community, as well as one individual representing a national security agency; a representative of federal agencies participating in the CJIS Systems; and representatives of criminal justice professional associations (i.e., the American Probation and Parole Association; American Society of Crime Laboratory Directors, Inc.; International Association of Chiefs of Police; National District Attorneys' Association; National Sheriffs' Association; Major Cities Chiefs' Association; Major County Sheriffs' Association; and a representative from a national professional association representing the courts or court administrators nominated by the Conference of Chief Justices). The Attorney General has granted me the authority to appoint all members to the APB.

The APB functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. The Charter has been filed in accordance with the provisions of the Act.

Dated: April 2, 2007.

Robert S. Mueller, III,

Director.

[FR Doc. 07–1818 Filed 4–11–07; 8:45 am]

BILLING CODE 4410–02–M

LIBRARY OF CONGRESS

Copyright Office

Notice of Roundtable on the World Intellectual Property Organization (WIPO) Treaty On the Protection of the Rights of Broadcasting Organizations

AGENCY: United States Copyright Office, Library of Congress.

ACTION: Notice announcing public forum.

SUMMARY: The United States Copyright Office and the United States Patent and Trademark Office (USPTO) announce a public roundtable discussion concerning the work at the World Intellectual Property Organization (WIPO) in the Standing Committee on Copyright and Related Rights (SCCR) on a proposed Treaty on the Protection of the Rights of Broadcasting Organizations. Members of the public are invited to attend and observe the roundtable, or to participate in the roundtable discussion, on the topics outlined in the supplementary information section of this notice.

DATES: The roundtable will be held on Wednesday, May 9, 2007, beginning at 2 p.m. and ending at 4 p.m.

ADDRESSES: The roundtable will be held in the Mumford Room at the James Madison Memorial Building, 6th Floor, Library of Congress, 101 Independence Avenue, SE., Washington, DC.

Persons wishing to attend and observe or participate in the roundtable are required to submit requests to observe the roundtable or participate, preferably by electronic mail through the Internet to sking@loc.gov. Alternatively, you may submit requests by facsimile at 202–707–8366 or via regular mail to: U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024, marked to the attention of Simone King. Please be aware that delivery of mail (U.S. Postal Service and private carrier) sent to the U.S. Copyright Office is subject to delay. Therefore, it is strongly suggested that any request to observe or participate be made via e–mail or fax. Requests to observe the roundtable or to participate as a member of the roundtable must indicate the following information:

1. The name of the person, including whether it is your intention to observe the roundtable or to participate as a member of the roundtable;

2. The organization or organizations represented by that person, if any;

3. Contact information (address, telephone, and e–mail);

4. Information on the specific focus or interest of the observer or participant (or his or her organization) and any questions or issues you would like to raise.

The deadline for receipt of requests to observe or participate in the roundtable is 5:00 p.m. on Friday, May 4, 2007. If we receive so many requests that we reach the room's capacity, attendance will be granted in the order the requests were received.

FOR FURTHER INFORMATION CONTACT: Simone King by telephone at 202–707–5516, by facsimile at 202–707–8366, by electronic mail at sking@loc.gov, or by mail addressed to the U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024, marked to the attention of Simone King.

SUPPLEMENTARY INFORMATION:

Background

For the past eight years and since the first meeting of the Standing Committee on Copyright and Related Rights in November 1998, WIPO has been addressing the topic of updating the protection of the rights of broadcasting organizations. Although broadcasters' rights are protected under some existing international agreements, such as under the 1961 Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (however, the United States is not a party to that treaty) and the World Trade Organization's Agreement on Trade–Related Aspects of Intellectual Property Rights, there has been increasing concern that changes in technology and the opening up of much of the world to commercial broadcasting, have made the protection provided in those

agreements ineffective to protect broadcast signals against piracy.

At the September 2006 WIPO General Assembly, the decision was taken to convene two special sessions of the SCCR to clarify the outstanding issues, the first one in January 2007, and the second one in June 2007. The special sessions of the SCCR should aim to agree and finalize, on a signal–based approach, the objectives, specific scope and object of protection with a view toward submitting to the Diplomatic Conference a revised basic proposal, which will amend the agreed relevant parts of the Revised Draft Basic Proposal (Document SCCR/15/2). The Diplomatic Conference will be convened in November 2007 if such agreement is achieved.

WIPO posts various documents from its meetings, such as reports, Member State submissions, meeting agendas, and texts prepared by the Chair of the SCCR. On March 9, 2007, in accordance with the decisions of the First Special Session of the SCCR which took place from January 17 to 19, 2007, WIPO requested comments from Member States on a Draft Non–paper on the WIPO Treaty on the Protection of Broadcasting Organizations, prepared by the Chair of the First Special Session, with the assistance of the WIPO Secretariat (Document SCCR/S1/WWW/75352 can be found at *http://www.wipo.int/edocs/mdocs/sccr/en/sccr__s1/sccr__s1__www__75352.doc*). Member State submissions commenting on the Draft Non–paper on the WIPO Treaty on the Protection of Broadcasting Organizations, including comments of the United States Government, are available at *http://www.wipo.int/copyright/en/sccr__s1/*. A revised Non–paper, taking into account Member State comments on the Draft Non–paper, is expected to be made available to Member States on May 1, 2007.

Throughout this process in WIPO, many points of view have been represented, including those of developed and developing countries, and many non–governmental organizations (NGOs), and numerous industry, creator and content owner groups. The U.S. Copyright Office and USPTO have participated in several informal meetings with interested parties such as broadcasters, netcasters, telecom companies, Internet service providers, content industries, creators and other NGOs, in order to obtain views and information relevant to the deliberations in the SCCR on this proposed treaty.

In order to allow further opportunity for interested parties to comment, the U.S. Copyright Office and USPTO are convening this roundtable — the third held on this issue —to provide another forum for such parties to provide their views on and additional information related to the proposed treaty. In particular, the participants should be prepared to identify and discuss more fully any issues and concerns associated with the revised Non–paper to be released by WIPO on May 1, 2007.

Dated: April 9, 2007.

David O. Carson,

Associate Register for Policy and International Affairs U.S. Copyright Office.

[FR Doc. E7–6964 Filed 4–11–07; 8:45 am]

BILLING CODE 1410–30–S

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form 1, Rules 6a–1 and 6a–2; SEC File No. 270–0017; OMB Control No. 3235–0017.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq*) (''Act'') sets forth a regulatory scheme for national securities exchanges. Rule 6a–1 (17 CFR 240.6a–1) under the Act generally requires an applicant for initial registration as a national securities exchange to file an application with the Commission on Form 1. An exchange that seeks an exemption from registration based on limited trading volume also must apply for such exemption on Form 1. Rule 6a–2 (17 CFR 240.6a–2) under the Act requires registered and exempt exchanges: (1) To amend the Form 1 if there are any material changes to the information provided in the initial Form 1; and (2) to submit periodic updates of certain information provided in the initial Form 1, whether such information has changed or not. The information required pursuant to Rules 6a–1 and 6a–2 is necessary to enable the Commission to maintain accurate files regarding the exchange and to exercise its statutory oversight functions. Without the information submitted pursuant to Rule 6a–1 on Form 1, the Commission would not be able to determine whether the respondent met the criteria for registration or exemption set forth in Sections 6 and 19 of the Act. Without the amendments and periodic updates of information submitted pursuant to Rule 6a–2, the Commission would have substantial difficulty determining whether a national securities exchange or exempt exchange was continuing to operate in compliance with the Act.

The respondents to the collection of information are entities that seek registration as a national securities exchange or that seek exemption from registration based on limited trading volume. After the initial filing of Form 1, both registered and exempt exchanges are subject to ongoing informational requirements.

Initial filings on Form 1 by new exchanges are made on a one-time basis. The Commission estimates that it will receive approximately three initial Form 1 filings per year and that each respondent would incur an average burden of 47 hours to file an initial Form 1 at an average cost per response of approximately $4517. Therefore, the Commission estimates that the annual burden for all respondents to file the initial Form 1 would be 141 hours (one response/respondent × three respondents × 47 hours/response) and $13,551 (one response/respondent × three respondents × $4517/response).

There currently are ten entities registered as national securities exchanges and two exempt exchanges. The Commission estimates that each registered or exempt exchange files one amendment or periodic update to Form 1 per year, incurring an average burden of 25 hours to comply with Rule 6a–2. The Commission estimates that the annual burden for all respondents to file amendments and periodic updates to the Form 1 pursuant to Rule 6a–2 is 300 hours (12 respondents × 25 hours/response × one response/respondent per year) and $27,960 (12 respondents × $2330/response × one response/respondent per year).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 60 days of this notice.

Dated: April 5, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–6892 Filed 4–11–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form 10–D; OMB Control No. 3235–0604; SEC File No. 270–544.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on this collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form 10–D (17 CFR 249.312) is used by asset-backed issuers to file periodic distribution reports pursuant to Section 13 or 15(d) under the Securities Exchange Act 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*) within 15 days after each required distribution date. The information provided by Form 10–D is mandatory and all information is made available to the public upon request. Form 10–D takes approximately 30 hours per response to prepare and is filed by 9,500 respondents. We estimate that 75% of the 30 hours per response (22.5 hours) is prepared by the company for a total annual reporting burden of 213,750 hours (22.5 hours per response x 9,500 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: April 4, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–6894 Filed 4–11–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27777; 812–13249]

Forward Funds, et al.; Notice of Application

April 5, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: Forward Funds (the ''Trust'') and Forward Management, LLC (''Forward Management'').

FILING DATES: The application was filed on December 20, 2005, and amended on April 2, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 30, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549–1090; Applicants, 433 California Street, 11th Floor, San Francisco, CA 94104, *Attn.:* Mary Curran, Esq.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 551–6813, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F St., NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. The Trust has fourteen operating series (the ''Funds''). Applicants request that the order apply to: (a) The Funds; and (b) any future series of the Trust and any other registered open-end management investment companies or series thereof that (1) use the ''manager-of-managers'' arrangement described in the application, (2) comply with the terms and conditions of the application, and (3) are advised by a Manager (as defined below) (the investment companies and series thereof, as well as the Funds, the ''Sub-Advised Funds'').[1]

2. Forward Management is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and serves as investment adviser to the Funds pursuant to an investment advisory agreement (''Advisory Agreement'') with the Trust, on behalf of the Funds. The Advisory Agreement has been approved by the Trust's board of trustees (''Board''), including a majority of the

[1] All existing entities that currently intend to rely on the order are named as applicants. Any entity that relies on the order in the future will do so only in accordance with the terms and conditions of the application. If the name of any Sub-Advised Fund contains the name of a Sub-Adviser (as defined below), the name of the Manager that serves as the primary adviser to the Sub-Advised Fund will precede the name of the Sub-Adviser.

trustees (''Trustees'') who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust (the ''Independent Trustees''), as well as by the shareholders of the Funds. The term ''Manager'' refers to Forward Management and any existing or future entity controlling, controlled by, or under common control with Forward Management that is an investment adviser registered under the Advisers Act or exempt from such registration and any successor in interest thereto.[2]

3. Under the terms of the Advisory Agreement, the Manager provides investment advisory services to each Sub-Advised Fund and has the authority, subject to Board approval, to enter into investment subadvisory agreements (''Sub-Advisory Agreements'') with one or more subadvisers (''Sub-Advisers''). Each Sub-Adviser is registered under the Advisers Act. The Manager will monitor and evaluate the Sub-Advisers and recommend to the Board their hiring, retention or termination. Sub-Advisers recommended to the Board by the Manager are selected and approved by the Board, including a majority of the Independent Trustees. Each Sub-Adviser has discretionary authority to invest the assets or a portion of the assets of the relevant Fund. The Manager compensates each Sub-Adviser out of the fees paid to the Manager under the Advisory Agreement.

4. Applicants request an order that would permit the Manager to hire Sub-Advisers and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Sub-Advised Fund or the Manager, other than by reason of serving as a Sub-Adviser to one or more of the Sub-Advised Funds (''Affiliated Sub-Adviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Sub-Advised Funds' shareholders are relying on the Manager's experience to select one or more Sub-Advisers best suited to achieve a Sub-Advised Fund's investment objectives. Applicants assert that, from the perspective of an investor in the Sub-Advised Fund, the role of the Sub-Advisers is comparable to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Sub-Advisory Agreement would impose costs and unnecessary delays on the Sub-Advised Funds, and may preclude the Manager from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement and any Sub-Advisory Agreement with an Affiliated Sub-Adviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

4. Applicants note that the Commission has proposed rule 15a–5 under the Act and agree that the requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.[3]

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Sub-Advised Fund may rely on the requested order, the operation of the Sub-Advised Fund in the manner described in the application will be approved by a majority of the Sub-Advised Fund's outstanding voting securities, as defined in the Act, or in the case of a Sub-Advised Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Sub-Advised Fund to the public.

2. Each Sub-Advised Fund will disclose in its prospectus the existence, substance and effect of the order. In addition, each Sub-Advised Fund will hold itself out to the public as employing the manager-of-managers arrangement described in the application. The prospectus relating to each Sub-Advised Fund will prominently disclose that the Manager has ultimate responsibility (subject to oversight by the Board) to oversee Sub-Advisers and to recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Sub-Adviser, the Manager will furnish shareholders of the applicable Sub-Advised Fund all information about the new Sub-Adviser that would be included in a proxy statement. To meet this condition, the Manager will provide shareholders of the applicable Sub-Advised Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. The Manager will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser unless such agreement, including the compensation to be paid thereunder, has been approved by the shareholders of the applicable Sub-Advised Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a change of Sub-Adviser is proposed for a Sub-Advised Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of such Sub-Advised Fund and its shareholders and does not involve a conflict of interest from which the Manager or an Affiliated Sub-Adviser derives an inappropriate advantage.

7. The Manager will provide general investment management services to each Sub-Advised Fund, including overall supervisory responsibility for the general management and investment of each Sub-Advised Fund's assets and, subject to review and approval by the Board, will: (i) Set the Sub-Advised Fund's overall investment strategies; (ii) evaluate, select, and recommend Sub-Advisers to manage all or a part of the Sub-Advised Fund's assets; (iii) when appropriate, allocate and reallocate the Sub-Advised Fund's assets among multiple Sub-Advisers; (iv) monitor and evaluate the Sub-Advisers' investment performance; and (v) implement

[2] A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[3] Investment Company Act Release No. 26230 (Oct. 23, 2003).

procedures reasonably designed to ensure compliance by the Sub-Adviser(s) with the Sub-Advised Fund's investment objectives, policies and restrictions.

8. No Trustee or officer of the Trust, or director or officer of the Manager, will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in a Sub-Adviser serving in reliance on the order, except for ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company.

9. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–6891 Filed 4–11–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55584; File No. SR–CHX–2006–38]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change to Extend the Late Trading Session and to Permit Only the Execution of Cross Orders During That Session

April 5, 2007.

I. Introduction

On December 22, 2006, the Chicago Stock Exchange, Inc. (the ''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act (''Act''), and Rule 19b–4 thereunder,[2] a proposed rule change (i) To extend its late trading session until 4:00 p.m. (Central Time) and (ii) to provide that only cross orders may be executed during that session. The proposed rule change was published for comment in the **Federal Register** on February 23, 2007.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange conducts two trading sessions in its new trading model. The first session—called the regular trading session—is held from 8:30 a.m. (Central Time) to 3 p.m. (Central Time).[4] The second trading session—called the late trading session—is held from the end of the regular session until 3:30 p.m. (Central Time). The Exchange's Matching System begins accepting orders for the late trading session immediately after the closing of the regular trading session in a security.[5]

The proposed rule change would extend the Exchange's late trading session by one-half hour, to 4 p.m. (Central Time), and confirm that only cross orders may be executed during the late trading session. The Exchange states that the longer trading session is designed to allow CHX participants to trade for a full hour after the normal close of the regular trading session. The Exchange further states that the cross-orders-only rule simply confirms that CHX participants may only submit cross orders for execution during the late trading session. The Exchange believes that it is appropriate to limit the late trading session to cross orders for a variety of reasons—including the fact that doing so is consistent with the types of orders currently submitted by CHX participants during its current after-hours trading session. The Exchange also believes that this proposal is consistent with late trading sessions operated by other markets.[6]

As part of the proposed rule change, the Exchange is also proposing a change in its definition of ''NBBO'' to confirm that it applies only to protected quotes disseminated during regular trading hours. Without this change, the Exchange explained that a cross order in the late trading session technically would be required to be submitted at a price that is at or better than the NBBO during the late trading session (if markets are disseminating protected quotes), even though the trade-through provisions of Rule 611 of Regulation NMS do not apply during that session.[7]

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and the national market system, and, in general, to protect investors and the public interest. In making this finding, the Commission notes that other markets operate late trading sessions involving the execution of cross transactions.[10]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CHX–2006–38) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–6893 Filed 4–11–07; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55308 (Feb. 15, 2007), 71 FR 8215.

[4] The regular trading session for certain ETFs extends to 3:15 p.m. (Central Time).

[5] *See* CHX Rules, Article 20, Rule 8(c)(3). All orders remaining in the Matching System at the end of the regular trading session are cancelled back to the firms that submitted them; firms must submit new orders if they seek to trade in the late trading session.

[6] Other markets have instituted trading sessions that occur after the end of regular trading and that involve the execution of cross transactions. *See, e.g.*, Boston Stock Exchange Rules, Ch. IIC (Extended Hours Crossing Session), Section 4 (noting that ''only matched orders are eligible for execution during the ETS''); New York Stock Exchange 900 Series Rules ((''Off-Hours Trading Facility Rules'') including Rules 902 and 907 (describing different types of coupled orders that can be executed during the NYSE off-hours sessions)).

[7] *See* Article 20, Rule 4(b)(4)(defining a cross order as one that is equal to or better than the NBBO).

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] *See, e.g.*, Boston Stock Exchange Rules, Ch. IIC (Extended Hours Crossing Session), Section 4; New York Stock Exchange 900 Series Rules ((''Off-Hours Trading Facility Rules'') including Rules 902 and 907 (describing different types of coupled orders that can be executed during the NYSE off-hours sessions)).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55589; File No. SR–ISE–2007–18]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to Customer Orders on the Book

April 5, 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 5, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to include in an automated information feed to members the aggregate quantity of customer interest at the Exchange's best bid and offer (''BBO'').[3]

The text of the proposed rule change is available at the Exchange's principal office, at *http://www.iseoptions.com/legal/proposed_rule_changes.asp,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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 provide all ISE members with information regarding orders of public customers at the ISE BBO. Currently, the ISE provides full customer information only to its Primary Market Makers (''PMMs''), who effectively act as specialists on the Exchange. Other ISE members do not have this information. Because the ISE provides customer orders with priority over broker-dealer orders and market maker quotations, having access to customer order information would allow members to know how many customer contracts first would need to be satisfied in order to have certainty of knowledge before crossing a large block. This is particularly useful for broker-dealers attempting to execute larger-sized orders through the ISE's Block and Facilitation Mechanisms.[4]

The ISE recently confirmed that at least one other exchange—the Chicago Board Options Exchange (''CBOE'')—provides all its members with full information regarding customer orders at that exchange's BBO. The information is available through the CBOE's electronic data feed to its members. In order to remain competitive with the CBOE, we believe it is necessary to provide our members with similar information. Thus, we propose to make available to our members the full quantity of public customer interest included in the Exchange's BBO.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [5] that an exchange have rules that are 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 for 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 members with additional information to help them execute their orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 ISE 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–ISE–2007–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-ISE–2007–18. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change also will correct some cross-references in ISE Rule 713.

[4] *See* ISE Rule 716.

[5] 15 U.S.C. 78f(b)(5).

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 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 publicly available. All submissions should refer to File Number SR–ISE–2007–18 and should be submitted on or before May 2, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–6870 Filed 4–11–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55588; File No. SR–NASDAQ–2007–038]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Nasdaq Market Center Fees

April 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 3, 2007, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. Nasdaq has designated the proposal as constituting a ''non-controversial'' proposed rule change under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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

Nasdaq proposes to modify the pricing for Nasdaq members using the Nasdaq Market Center. Nasdaq proposes to make the proposed rule change retroactively effective with respect to the Nasdaq Market Center's invoices for executions of non-Nasdaq securities priced under $1 during the period from March 5, 2007 to March 21, 2007.[5] The text of the proposed rule change is available at Nasdaq, on the Exchange's Web site at *http://www.nasdaq.com*, and in 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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq recently reduced its fee for executing orders in non-Nasdaq securities priced under $1 to 0.1% of the cost of the transaction, effective March 22, 2007, on an immediately effective basis; this is the same as the comparable fee for Nasdaq-listed securities that had previously been in effect.[6] Prior to this change, the execution fee for non-Nasdaq securities priced under $1 had ranged from $0.0026 to $0.003 per share executed. Nasdaq notes, however, that Rule 610(c)(2) of Regulation NMS[7] limits the fee on an execution of an order against a protected quotation, if the price of the protected quotation is less than $1, to 0.3% of the quotation's price per share. Accordingly, Nasdaq is proposing to reduce the execution fee for non-Nasdaq securities to 0.25% of the transaction cost for the period from March 5, 2007 (the effective date of Rule 610) through March 21, 2007 (the day before the effectiveness of SR–NASDAQ–2007–026). The change will result, in all circumstances, in a reduction of the execution fees previously payable with respect to orders in non-Nasdaq securities priced under $1. Nasdaq is not, however, proposing to modify the routing fees or liquidity provider rebates applicable to transactions in these securities during the same time period.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. This change will reduce execution fees for trading non-Nasdaq securities at prices under $1 in a manner consistent with the requirements of Rule 610 of Regulation NMS.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 4 17 CFR 240.19b–4(f)(6).

[5] Telephone conversation between John Yetter, Vice President and Deputy General Counsel, Nasdaq, and Sara Gillis, Attorney, Division of Market Regulation, Commission, on April 5, 2007.

[6] See Securities Exchange Act Release No. 55576 (April 3, 2007) (SR–NASDAQ–2007–026).

[7] 17 CFR 242.610(c)(2).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

The Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to become operative immediately. The Commission hereby grants that request.[12] The Commission believes that the Exchange's proposal raises no regulatory issues, as the Exchange represents that proposed rule change will result in a retroactive reduction in fees for all executions in non-Nasdaq securities priced under $1 from March 5, 2007 to March 21, 2007. Furthermore, this rule change will allow the Exchange to immediately comply with the requirements of Rule 610(c)(2) of Regulation NMS, which limits the fee on an execution of an order against a protected quotation, if the price of the protected quotation is less than $1, to 0.3% of the quotation's price per share.[13] Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.

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–NASDAQ–2007–038 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–NASDAQ–2007–038. 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2007–038 and should be submitted on or before May 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–6879 Filed 4–11–07; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). As required by Rule 19b–4(f)(6)(iii) under the Act, the Exchange also provided with the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the proposed rule change.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 242.610(c)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55585; File No. SR–NYSE–2006–75]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval to Proposed Rule Change as Modified by Amendment No. 1 Thereto To List and Trade Four iShares® GS® Commodity Indexed Trusts

April 5, 2007.

I. Introduction

On September 22, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade under NYSE Rules 1300B, *et seq.* four iShares® GS Commodity Indexed Trusts. The Exchange filed Amendment No. 1 to the proposed rule change on November 22, 2006.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on December 29, 2006 for a 15-day comment period.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule as modified by Amendment No. 1.

II. Description

The Exchange proposes to list and trade under NYSE Rules 1300B *et seq.* (''Commodity Trust Shares'') shares of the following (''Shares''): iShares GS Commodity Light Energy Indexed Trust; iShares GS Commodity Industrial Metals Indexed Trust; iShares GS Commodity Livestock Indexed Trust; and iShares GS Commodity Non Energy Indexed Trust (collectively, the ''Trusts''). Each Trust is a Delaware statutory trust that will issue units of beneficial interest called Shares, representing fractional undivided beneficial interests in its net assets. Substantially all of the assets of each Trust consist of holdings of the limited liability company interests of a specified commodity pool (''Investing Pool Interests''), which are the only securities in which the Trust may invest. The Trusts and the Investing Pools are each commodity pools managed by a commodity pool operator registered as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 54992 (December 21, 2006), 71 FR 78482 (''Notice'').

such with the Commodity Futures Trading Commission (''CFTC''). According to the Registration Statements,[5] neither the Trusts nor the Investing Pools are investment companies registered under the Investment Company Act of 1940.

In its proposal, the Exchange provided detailed description regarding the structure of the Trusts and the listing and trading of the Shares. In particular, the Exchange addressed (i) The designation and calculation of each underlying index that each Trust tracks, (ii) the calculation and dissemination of net asset value (''NAV''), (iii) the application of continued listing criteria, (iv) the creation and redemption process, (v) dissemination of pricing and other information pertaining to the Shares, including the indicative value, Share price, and underlying index values, (vi) listing fees, (vii) applicable Exchange trading rules, (viii) events triggering trading halts and/or delisting, (ix) the distribution of an information memo regarding the Shares to Exchange members, and (x) surveillance procedures. Key features of the proposal are noted below.

Product Description

Each Trust, through its respective Investing Pool, will be a passive investor in CERFs, which are cash-settled futures contracts listed on the Chicago Mercantile Exchange (''CME'') that have a term of approximately five years after listing and whose settlement at expiration is based on the value of the respective Index at that time, and the cash or Short-Term Securities[6] posted as margin to collateralize the Investing Pool's CERF positions. The Investing Pools will hold long positions in CERFs and will also earn interest on the assets used to collateralize its holdings of CERFs.

Neither such Trust nor the respective Investing Pool will engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the value of CERFs or securities posted as margin. Each Investing Pool, and some other types of market participants, will be required to deposit margin with a value equal to 100% of the value of each CERF position at the time it is established. Those market participants not subject to the 100% margin requirement are required to deposit margin generally with a value of 3% to 5% of the established position. Interest paid on the collateral deposited as margin, net of expenses, will be reinvested by the Investing Pool or, at the Trustee's discretion, may be distributed from time to time to the Shareholders. The Investing Pool's profit or loss on its CERF positions should correlate with increases and decreases in the value of the applicable Index, although this correlation will not be exact. The interest on the collateral deposited by the Investing Pool as margin, together with the returns corresponding to the performance of the applicable Index, is expected to result in a total return for the Investing Pool that corresponds generally, but is not identical, to the applicable Index.

Underlying Indexes

The objective of each Trust is for the performance of the Shares to correspond generally to the performance of the following indexes, respectively, before payment of the Trust's and the Investing Pool's expenses and liabilities: Goldman Sachs Industrial Metals Total Return Index; Goldman Sachs Light Energy Total Return Index; Goldman Sachs Livestock Total Return Index, and Goldman Sachs Non Energy Total Return Index (the ''Total Return Indexes'').[7]

Each of the Total Return Indexes is comprised of a group of commodities included in the Goldman Sachs Commodity Index (''GSCI''),[8] which is a production-weighted index of the prices of a diversified group of futures contracts on physical commodities. Each Total Return Index reflects the return of the corresponding Goldman Sachs Excess Return Index together with the return on specified U.S. Treasury securities that are deemed to have been held to collateralize a hypothetical long position in the futures contracts comprising the corresponding index.

The Index Sponsor has established a Policy Committee to assist it with the operation of the GSCI. The principal purpose of the Policy Committee is to advise the Index Sponsor with respect to, among other things, the calculation of the GSCI, the effectiveness of the GSCI as a measure of commodity futures market performance and the need for changes in the composition or the methodology of the GSCI. All decisions with respect to the composition, calculation and operation of the GSCI are made by the Index Sponsor.[9]

Creations and Redemptions of Baskets

Creations of Baskets

Creation and redemption of interests in the Trusts, and the corresponding creation and redemption of interests in the respective Investing Pools, will generally be effected through transactions in ''exchanges of futures for physicals,'' or ''EFPs.'' In the context of CERFs, CME rules permit the execution of EFPs consisting of simultaneous purchases (sales) of CERFs and sales (purchases) of Shares. This mechanism will generally be used by the Trusts in connection with the creation and redemption of Baskets. Specifically, it is anticipated that an Authorized Participant requesting the creation of additional Baskets typically will transfer CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) to the Trusts in return for Shares.

The Trusts will offer Shares on a continuous basis on each Business Day, but only in Baskets consisting of 50,000 Shares. Baskets will be typically issued only in exchange for an amount of CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) equal to the Basket Amount for the Business Day on which the creation order was received by the Trustee. The Basket Amount for a Business Day will have a per Share value equal to the NAV as of such day. However, orders received by the Trustee after 2:40 p.m., New York time, will be treated as received on the next following Business Day. The Trustee will notify the Authorized Participants of the Basket Amount on each Business Day.

It is expected that delivery of the Shares will be made against transfer of consideration on the next Business Day following the Business Day on which

[5] Terms not otherwise defined herein have the same meaning as the meaning given in the Notice.

[6] ''Short-Term Securities'' means U.S. Treasury Securities or other short-term securities and similar securities, in each case that are eligible as margin deposits under the rules of the CME.

[7] Barclays Global Investors International, Inc., (the ''Sponsor for the Trusts'') filed Form S–1 on behalf of each Trust on August 31, 2006. *See* Registration Nos. 333–135823 through 333–135826.

[8] The Commission has previously approved listing on the Exchange of the iShares GSCI Commodity Indexed Trust. *See* Securities Exchange Act Release No. 54013 (June 16, 2006), 71 FR 36372 (June 26, 2006) (SR–NYSE–2006–17).

[9] The Index Sponsor, Goldman, Sachs & Co., is a broker dealer. Therefore, appropriate firewalls must exist around the personnel who have access to information concerning changes and adjustments to an index and the trading personnel of the broker-dealer. Prior to commencement of trading of the Shares on the Exchange, the Index Sponsor will represent to the Exchange that it (1) has implemented and maintained procedures reasonably designed to prevent the use and dissemination by personnel of the Index Sponsor, in violation of applicable laws, rules and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Total Return Indexes; and (2) periodically checks the application of such procedures as they relate to such personnel of the Index Sponsor directly responsible for such changes. In addition, the Policy Committee members are subject to written policies with respect to material, non-public information.

the creation order is received by the Trustee. If the Trustee has not received the required consideration for the Shares to be delivered on the delivery date, by 11 a.m., New York time, the Trustee may cancel the creation order.[10]

Redemptions of Baskets

Authorized Participants may typically surrender Baskets in exchange only for an amount of CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) equal to the Basket Amount on the Business Day the redemption request is received by the Trustee. However, redemption requests received by the Trustee after 2:40 p.m., New York time (or, on any day on which the CME is scheduled to close early, after the close of trading of CERFs on the CME on such day), will be treated as received on the next following Business Day. Holders of Baskets who are not Authorized Participants will be able to redeem their Baskets only through an Authorized Participant. It is expected that Authorized Participants may redeem Baskets for their own accounts or on behalf of Shareholders who are not Authorized Participants, but they are under no obligation to do so.

It is expected that delivery of the CERFs, cash or Short-Term Securities to the redeeming Shareholder will be made against transfer of the Baskets on the next Business Day following the Business Day on which the redemption request is received by the Trustee. If the Trustee's DTC account has not been credited with the total number of Shares to be redeemed pursuant to the redemption order by 11 a.m., New York time, on the delivery date, the Trustee may cancel the redemption order.

Dissemination of Information Relating to the Shares

Computation of Trust's Net Asset Value

On each Business Day on which the NYSE is open for regular trading, as soon as practicable after the close of regular trading of the Shares on the NYSE (normally, 4:15 p.m., New York time), the Trustee will determine the net asset value of the Trusts and the NAV as of that time.

The Trustee will value the Trusts' assets based upon the determination by the Manager, which may act through the Investing Pool Administrator, of the net asset value of the Investing Pool. The Manager will determine the net asset value of the Investing Pool as of the same time that the Trustee determines the net asset value of the Trusts.

Once the value of the Trusts' Investing Pool Interests have been determined and provided to the Trustee, the Trustee will subtract all accrued expenses and other liabilities of each Trust from the total value of the assets of the Trust, in each case as of the calculation time. The resulting amount is the net asset value of the Trust. The Trustee will determine the NAV by dividing the net asset value of the Trust by the number of Shares outstanding at the time the calculation is made.

Indicative Value

In order to provide updated information relating to the Trusts for use by investors, professionals, and other persons, the Exchange will disseminate through the facilities of CTA an updated Indicative Value on a per Share basis as calculated by Bloomberg. The Indicative Value will be disseminated at least every 15 seconds from 9:30 a.m. to 4:15 p.m. New York time. The Indicative Value will be calculated based on the cash and collateral in a Basket Amount divided by 50,000, adjusted to reflect the market value of the investments held by the applicable Investing Pool, *i.e.* CERFs. The Indicative Value will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and the close of trading on the NYSE at 4:15 p.m. New York time. The value of a Share may accordingly be influenced by non-concurrent trading hours between the NYSE and the various futures exchanges on which the futures contracts based on the Index commodities are traded.

Other Pricing Information

The Web site for the Trusts (*http://www.ishares.com*), which will be publicly accessible at no charge, will contain the following information: (a) The prior Business Day's NAV and the reported closing price; (b) the mid-point of the bid-ask price[11] in relation to the NAV as of the time the NAV is calculated (the ''Bid-Ask Price''); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (e) the prospectus; (f) the holdings of the Trusts, including CERFs, cash and Treasury securities; (g) the Basket Amount, and (h) other applicable quantitative information. The Exchange on its Web site at *http://www.nyse.com* will include a hyperlink to the Trusts' Web site at *http://www.ishares.com.* The Exchange will also make available on *http://www.nyse.com* daily trading volume, closing prices, and the NAV.

At present, official calculation by the Index Sponsor of the value of each GS Index is performed continuously and is updated on Reuters at least every fifteen seconds during NYSE trading hours for the Shares and during business hours on each Business Day on which the offices of Goldman Sachs in New York City are open for business. In the event that the Exchange is open for business on a day that is not a GSCI Business Day, the Exchange will not permit trading of the Shares on that day.

In addition, values updated at least every fifteen seconds are disseminated on Reuters for the Total Return Indexes during Exchange trading hours. Daily settlement values for the GS Indexes, Total Return Indexes and Excess Return Indexes are also widely disseminated.

Various data vendors and news publications publish futures prices and data. Futures quotes and last sale information for the commodities underlying the Index are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, complete real-time data for such futures is available by subscription from Reuters and Bloomberg. The futures exchanges or which the underlying commodities and CERFs trade also provide delayed futures information on current and past trading sessions and market news generally free of charge on their respective Web sites. The specific contract specifications for the futures contracts are also available from the futures exchanges on their Web sites as well as other financial informational sources.

Exchange Trading Rules and Policies

The Shares are considered ''securities'' pursuant to NYSE Rule 3 and are subject to all applicable trading rules.

The Trust is exempt from corporate governance requirements in Section 303A of the NYSE Listed Company Manual, including the Exchange's audit committee requirements in Section 303A.06.[12]

[10] The price at which the Shares trade should be disciplined by arbitrage opportunities created by the ability to purchase or redeem shares of the Trust in Basket size. This should help ensure that the Shares will not trade at a material discount or premium to their net asset value or redemption value.

[11] The bid-ask price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

[12] *See* Rule 10A–3(c)(7), 17 CFR 240.10A–3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A–3 if the issuer is

The Exchange has adopted NYSE Rules 1300B (''Commodity Trust Shares'') to deal with issues related to the trading of the Shares. Specifically, for purposes of NYSE Rules 13 (''Definitions of Orders''), 36.30 (''Communications Between Exchange and Members' Offices''), 98 (''Restrictions on Approved Person Associated with a Specialist's Member Organization), 104 (''Dealings by Specialists''), 105(m) (''Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 105''), 460.10 (''Specialists Participating in Contests''), 1002 (''Availability of Automatic Feature''), and 1005 (''Order May Not Be Broken Into Smaller Accounts''), the Shares will be treated similar to Investment Company Units.[13]

III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act [15] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission notes that the listing and trading of shares of the iShares GS Commodity Indexed Trusts pursuant to NYSE Rules 1300B *et seq.* has been previously approved by the Commission.[16]

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[17] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Key information will be disseminated at least every 15 seconds throughout the trading day, including the Indicative Value on a per-Share basis, as well as the value of each GS Index. Official calculation of each GS Index is currently performed continuously by the Index Sponsor and is updated at least every fifteen seconds on Reuters. The Sponsor for the Trusts has represented to the Exchange that the Trustee for the Trusts will make the NAV for the Trusts available to all market participants at the same time. In addition, futures quotes and last sale information for the commodities underlying the Indexes are widely disseminated through a variety of major market data vendors, and complete real-time data for such futures are available by subscription from such vendors. Daily settlement values for the Indexes are also widely disseminated. The Exchange's Web site will also disclose information regarding the Shares, including, among other things, their daily trading volume, closing prices, and NAVs.

The Commission notes that, prior to commencement of trading of the Shares on the Exchange, the Index Sponsor, a broker-dealer, will represent to the Exchange that it (a) Has implemented and maintained procedures reasonably designed to prevent the use and dissemination by personnel of the Index Sponsor, in violation of applicable laws, rules and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Total Return Indexes; and (b) periodically checks the application of such procedures as they relate to such personnel of the Index Sponsor directly responsible for such changes. In addition, Policy Committee members will be subject to written policies with respect to material, non-public information.

In support of this proposal, the Exchange has made the following representations:

(1) NYSE would rely on its existing surveillance procedures, which are adequate to properly monitor the trading of the Shares, to detect violations of applicable rules and deter manipulation. Specifically, the Exchange will rely upon existing procedures governing equities with respect to surveillance of the Shares. In addition, pursuant to its comprehensive information sharing agreements with each exchange, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the New York Mercantile Exchange, the Kansas City Board of Trade, ICE and the LME, in order to monitor for fraudulent and manipulative trading practices. All of the other trading venues on which current components of the Total Return Indexes and CERFs are traded are members of the Intermarket Surveillance Group and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange.

(2) The Exchange will halt trading of the Shares if the NAV of each Fund is not calculated or disseminated daily or not made available to all market participants at the same time, and the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares, including the extent to which trading is not occurring in the underlying commodities. Likewise, if the value of the Total Return Index associated with a Trust's Shares or the applicable Indicative Value is not being disseminated on at least a 15 second basis during the hours the Shares trade on the Exchange, the Exchange may halt trading during the day in which the interruption to the dissemination of the Indicative Value or the Index value occurs. If the interruption to the dissemination of the Indicative Value or the Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

(3) NYSE will distribute an Information Memo to its members providing guidance with regard to the special characteristics and risks of trading this type of security, the creation

organized as a trust or other unincorporated association that does not have a board of directors and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

See also Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (SR–NYSE–2002–33, SR–NASD–2002–77, *et al.*) (specifically noting that the corporate governance standards will not apply to, among others, passive business organizations in the form of trusts); and 47654 (April 25, 2003), 68 FR 18788 (April 16, 2003) (noting in Section II(F)(3)(c) that ''SROs may exclude from Exchange Act Rule 10A–3's requirements issuers that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities'').

[13] In particular, NYSE Rule 1300B provides that Rule 105(m) is deemed to prohibit an equity specialist, his member organization, other member, allied member or approved person in such member organization or officer or employee thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in the applicable futures contracts, except as otherwise provided therein.

[14] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] Securities Exchange Act Release No. 54013, *supra* note 8.

[17] 15 U.S.C. 78k–1(a)(1)(C)(iii).

and redemption procedures, applicable Exchange rules, the various fees and expenses, and the prospectus delivery requirements applicable to the Shares.

This Order is conditioned on NYSE's adherence to the foregoing representations.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSE–2006–75), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

[FR Doc. E7–6897 Filed 4–11–07; 8:45 am]

BILLING CODE 8010–01–P

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55593; File No. SR–NYSE–2004–56]

Self-Regulatory Organizations; New York Stock Exchange Inc. (n/k/a New York Stock Exchange LLC); Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to Amendments to Exchange Rule 611, ''Disqualification or Other Disability of Arbitrators''

April 6, 2007.

I. Introduction

On October 12, 2004, the New York Stock Exchange Inc. (n/k/a New York Stock Exchange LLC) (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending NYSE Rule 611 (''Disqualification or other Disability of Arbitrators'') to give the Director of Arbitration the authority to remove an arbitrator in the event a conflict comes to the attention of the parties or the Exchange that, for any reason, was not appropriately disclosed pursuant to NYSE rules. On May 26, 2006, the Exchange filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[3] The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on August 7, 2006.[4] The Commission received one comment on the proposal, as amended.[5] On January 11, 2007, the NYSE filed Amendment No. 2 (''Amendment No. 2''),[6] and on March 21, 2007, the Exchange filed Amendment No. 3 (''Amendment No. 3'')[7] to the proposed rule change. This order approves the proposed rule change, as amended, on an accelerated basis, and solicits comment from interested persons on the proposed rule change as modified by Amendment Nos. 2 and 3.

II. Description of the Proposed Rule Change

A. Description of the Proposal

At present, once an arbitrator has taken the Oath of Arbitrators for a particular case, NYSE rules do not provide for the Director of Arbitration to remove an arbitrator from serving on that case. Rather, NYSE Rule 610 permits the Director of Arbitration to remove an arbitrator prior to, but not after, the commencement of the hearing. The need to remove a sitting arbitrator could arise if, for example, an item that should have been disclosed by the arbitrator pursuant to Exchange rules had not been disclosed, or a conflict arises after commencement of the hearing. Historically, when this situation has arisen, the remedy has been for the arbitrator to recuse himself or herself. Nevertheless, the Exchange proposed to amend its rules, indicating that it would be prudent to give the Director of Arbitration the authority to remove an arbitrator in the event a conflict comes to the attention of the parties or the Exchange that for any reason was not appropriately disclosed pursuant to NYSE rules and was unknown to the parties, or if a conflict arises after the commencement of the hearing.

B. Comment Summary and NYSE's Response

1. Comments Received

The proposal was published for comment in the **Federal Register** on August 7, 2006,[8] and the Commission received one comment.[9] The commenter generally supported the proposed rule change, but expressed concern that it would not sufficiently protect against possible gamesmanship or delays in seeking to remove arbitrators. In the commenter's view, a party who is aware of grounds for removal but does not act should be prevented from bringing a later challenge to remove the arbitrator.

2. NYSE's Response to Comments

The NYSE responded to the commenter's concerns by filing Amendment No. 2 to the proposed rule change, providing that the Director of Arbitration may remove an arbitrator from an arbitration panel solely for information not disclosed pursuant to NYSE Rule 610 or based on information not known to the parties when the arbitrator was appointed. Subsequently, the NYSE filed Amendment No. 3, correcting an ambiguity in the rule, and clearly setting forth that the grounds for removal from the panel would be either a new conflict, arising after the commencement of the hearing (whether arising from circumstances known to the parties prior to the commencement of the hearing but only developing into a conflict after the commencement of the hearing, or from circumstances arising after the hearing), or, alternatively, an undisclosed conflict of which the parties were previously unaware.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, which supplemented the original filing, the Exchange amended the filing to note that the need to remove an arbitrator might arise from a failure to disclose information that should have been disclosed, or from a conflict that arises after the commencement of the hearing. The Exchange also amended the filing to eliminate the proposal to provide the Director of Arbitration with discretion to limit a party's additional information requests of an arbitrator.

[4] *See* Exchange Act Release No. 54233 (July 27, 2006), 71 FR 44751 (Aug. 7, 2006) (the ''Notice'').

[5] *See* letter from Seth E. Lipner (Aug. 28, 2006) (''Lipner Letter'').

[6] In Amendment No. 2, which supplemented the original filing, the Exchange modified the proposed rule to provide that the Director of Arbitration may remove an arbitrator from a panel based on information that was not known to the parties when the arbitrator was appointed. Amendment No. 2 also limited the reasons for which the Director of Arbitration may remove an arbitrator to information not known to the parties when the arbitrator was appointed and information required to be disclosed pursuant to NYSE Rule 610 that was not previously disclosed. The rule, as amended by Amendment No. 1, had not required the parties to be unaware of the information serving as the basis for the Director of Arbitration's decision, and had not limited the reasons for removal of the arbitrator.

[7] In Amendment No. 3, which supplemented the original filing, the Exchange corrected an ambiguity in Amendment No. 2. Amendment No. 3 clarified that the Director of Arbitration could remove an arbitrator for information that should have been disclosed pursuant to NYSE Rule 610, providing for disclosure of conflicts, and that either was not known to the parties prior to the commencement of the hearing, or that represented a new conflict, arising after the commencement of the hearing. The amendment also clarified that the Director of Arbitration could also remove an arbitrator where circumstances known to the parties before the commencement of the hearing developed into a conflict after the commencement of the hearing. The rule as amended by Amendment No. 2 did not clearly establish these requirements for removal.

[8] *See* Notice, *supra* note 4.

[9] *See* Lipner Letter, *supra* note 5.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act [10] in general and Section 6(b)(5) of the Act [11] in particular, which require that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[12] The proposed rule change, as amended, enables the Director of Arbitration to remove an arbitrator when a conflict arises after the commencement of the hearing or when information required to be disclosed pursuant to Exchange Rule 610 and of which the parties were previously unaware, is not disclosed. Similarly, the proposed rule change also permits an arbitrator to be removed where circumstances known before the commencement of the hearing develop into a conflict after the commencement of the hearing. Enabling the Director of Arbitration to remove arbitrators with any of these conflicts if they fail to recuse themselves will address circumstances in which an arbitrator with a conflict could otherwise continue serving on a panel. We believe that allowing the Director of Arbitration to exercise this authority will facilitate the removal of arbitrators with either previously undisclosed and unknown conflicts or newly-arising conflicts (whether from known or unknown circumstances), and will therefore enhance the fairness and transparency of the arbitration process. *Accelerated Approval of the Proposed Rule Change as Modified by Amendment Nos. 2 and 3.* The Commission finds good cause for approving the proposed rule change as modified by Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[13] Amendment No. 2 responded to a comment by providing that parties aware of conflicts prior to the time that the arbitrator was appointed could not delay action on that knowledge. Amendment No. 3, which clarified Amendment No. 2, set forth the two grounds for removal of an arbitrator after commencement of the hearing: first, a conflict arising after the commencement of the hearing; and second, a failure to disclose information pursuant to Rule 610 if the parties were previously unaware of the undisclosed information. The Commission finds that, given the concerns the commenter raised with respect to the possibility that the arbitration process might be manipulated by parties seeking to remove an arbitrator based on information known to a party at an earlier date but acted upon only after the party assessed the arbitrator, it is appropriate and responsive for the Exchange to amend the proposed rule change to provide that an arbitrator cannot be removed after taking the oath of arbitration for a particular case based on a conflict of which the parties were previously aware. In essence, the rule provides that parties who come into knowledge of a conflict may not delay before requesting removal of an arbitrator. Similarly, the Commission believes that it is appropriate to permit the Director of Arbitration to remove an arbitrator for whom a conflict arises after commencement of the hearing, as the NYSE rules do not presently provide for such removal. Accordingly, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change as modified by Amendment Nos. 2 and 3, including whether Amendment Nos. 2 and 3 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2004–56 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–NYSE–2004–56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–56 and should be submitted on or before May 3, 2007.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [14] that the proposed rule change (SR–NYSE–2004–56), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

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[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55591; File No. SR–Phlx–2007–30]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Ratio Spreads

April 6, 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 27, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Phlx.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] 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 Phlx proposes to amend Phlx Rules 1033, ''Bids and Offers—Premium,'' and 1066, ''Certain Types of Orders Defined,'' to define and permit ratio spreads in all options traded on the Exchange.

The text of the proposed rule change is available at the Exchange, in the Commission's Public Reference Room, and at *http://www.phlx.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 define and permit ratio spreads in options overlying equities, indexes, and Exchange Traded Fund Shares (''ETFs''), and to establish by rule permissible ratios for such orders.

Currently, Phlx Rule 1033 permits members to trade spread orders in which the respective legs consist of different numbers of contracts (ratio spreads) for foreign currency options only. The proposed rule change would expand the rule to permit ratio spreads for all options traded on the Exchange by deleting from the rules language limiting such orders to options overlying foreign currencies.

Specifically, the Phlx proposes to amend Phlx Rule 1033(g) to permit ratio spreads for spread, straddle, and combination orders, as defined in Phlx Rule 1066, in equity, ETF, and index options by deleting the current language that limits such orders to foreign currency options. The amended rules would permit spread, straddle, and combination orders in equity, ETF, and index options with a ratio that is equal to or greater than one-to-three and less than or equal to three-to-one.

Phlx Rule 1066 currently defines a ''spread order'' as an order to buy a stated number of option contracts and to sell *the same* number of option contracts in a different series of the same option. The proposed amendment would re-define the term ''spread order'' as an order to buy *a stated* number of option contracts and to sell a stated number of option contracts (which may be a different number of contracts) in a different series of the same option. The definition would also clarify that such an order may be bid for or offered on a total net debit or credit basis.

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 by permitting ratio spreads in all options traded on the Exchange.

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 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 Phlx has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9] Because the Phlx has designated the foregoing proposed rule change as one that 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. As required by Rule 19b–4(f)(6)(iii) under the Act,[10] the Phlx provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b–4(f)(6) under the Act[11] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[12] The Phlx has asked the Commission waive the 30-day operative delay to allow the Phlx to have the same rules governing ratio spreads as those currently in effect on other options exchanges.[13]

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Phlx to implement rules governing ratio spreads consistent with those adopted by other options exchanges without delay.[14] For this reason, the Commission designates that the proposal become operative immediately.

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,

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Phlx has asked the Commission to waive the 30-day operative delay provided in Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* American Stock Exchange LLC Rule 950(e)(v); Chicago Board Options Exchange, Incorporated Rule 6.53(n); International Securities Exchange, LLC Rule 722(a)(6); and NYSE Arca, Inc. Rule 6.62(j).

[14] *See* note 13, *supra.* For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2007–30 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–2007–30. 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–2007–30 and should be submitted on or before May 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–6878 Filed 4–11–07; 8:45 am]

BILLING CODE 8010–01–P

[15] *See* 15 U.S.C. 78s(b)(3)(C).

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10843 and #10844]

Colorado Disaster #CO–00015

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Colorado dated 04/05/2007.

Incident: Tornado.

Incident Period: 03/28/2007.

Effective Date: 04/05/2007.

Physical Loan Application Deadline Date: 06/04/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 01/07/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Prowers.

Contiguous Counties:

Colorado: Baca, Bent, Kiowa.

Kansas: Greeley, Hamilton, Stanton.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10843 C and for economic injury is 10844 0.

The States which received an EIDL Declaration # are Colorado, Kansas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 5, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–6950 Filed 4–11–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5757]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Divisionism/Neo-Impressionism: Arcadia and Anarchy''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Divisionism/Neo-Impressionism: Arcadia and Anarchy,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Solomon R. Guggenheim Museum, New York, New York, from on or about April 27, 2007, until on or about August 6, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–

44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 5, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–6952 Filed 4–11–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5756]

Culturally Significant Objects Imported for Exhibition; Determinations: ''The Gates of Paradise: Lorenzo Ghiberti's Renaissance Masterpiece''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Gates of Paradise: Lorenzo Ghiberti's Renaissance Masterpiece'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the High Museum of Art, Atlanta, Georgia, from on or about April 28, 2007, until on or about July 15, 2007, The Art Institute of Chicago, Chicago, Illinois, from on or about July 28, 2007, until on or about October 13, 2007, and The Metropolitan Museum of Art, New York, New York, from on or about October 30, 2007, until on or about January 13, 2008, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 3, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–6951 Filed 4–11–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5755]

Determination and Certification Related to Colombian Armed Forces Under Section 556 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Division D, Pub. L. 109–102)

Pursuant to the authority vested in me as Secretary of State, including under Section 556 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Pub. L. 109–102 ''the Act''), I hereby determine and certify that the Colombian Armed Forces are meeting the conditions contained in Sections 556(a)(2) and 556(a)(3) of the Act.

The above-mentioned conditions are that: (A) The Commander General of the Colombian Armed Forces is suspending from the Armed Forces those members, of whatever rank who, according to the Minister of Defense or the Procuraduria General de la Nacion, have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary organizations; (B) the Colombian government is vigorously investigating and prosecuting those members of the Colombian Armed Forces, of whatever rank, who have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary organizations, and is promptly punishing those members of the Colombian Armed Forces found to have committed such violations of human rights or to have aided or abetted paramilitary organizations; (C) the Colombian Armed Forces have made substantial progress in cooperating with civilian prosecutors and judicial authorities in such cases (including providing requested information, such as the identity of persons suspended from the Armed Forces and the nature and cause of the suspension, and access to witnesses, relevant military documents, and other requested information); (D) The Colombian Armed Forces have made substantial progress in severing links (including denying access to military intelligence, vehicles, and other equipment or supplies, and ceasing other forms of active or tacit cooperation) at the command, battalion, and brigade level, with paramilitary organizations, especially in regions where these organizations have a significant presence; (E) The Colombian government is dismantling paramilitary leadership and financial networks by arresting commanders and financial backers, especially in regions where these networks have a significant presence; and (F) The Colombian government is taking effective steps to ensure that the Colombian Armed Forces are not violating the land and property rights of Colombia's indigenous communities. A final condition, described in Section 556(a)(3), is that the Colombian Armed Forces are conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerilla organizations.

The Department of State has periodically consulted with internationally recognized human rights organizations regarding the Colombian Armed Forces' progress in meeting the above-mentioned conditions, as provided in Section 556(c) of the Act.

This Determination and Certification shall be published in the **Federal Register** and copies shall be transmitted to the appropriate committees of Congress.

Dated: April 4, 2007.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. E7–6955 Filed 4–11–07; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice 5754]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, June 20, 2007, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the 56th Session of the International Maritime Organization (IMO) Marine Environment Protection Committee (MEPC) to be held at The Royal Horticultural Halls and Conference Centre in London, England from July 9th to 13th, 2007.

The primary matters to be considered include:

— Harmful aquatic organisms in ballast water;

— Recycling of ships;
— Prevention of air pollution from ships;
— Consideration and adoption of amendments to mandatory instruments;
— Implementation of the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC) Convention and the OPRC-Hazardous Noxious Substance (OPRC–HNS) Protocol and relevant conference resolutions;
— Identification and protection of Special Areas and Particularly Sensitive Sea Areas;
— Inadequacy of reception facilities;
— Reports of sub-committees;
— Work of other bodies;
— Status of Conventions;
— Harmful anti-fouling systems for ships;
— Promotion of implementation and enforcement of MARPOL 73/78 and related instruments;
— Follow-up to United Nations Conference on Environment and Development and World Summit on Sustainable Development;
— Technical co-operation program;
— Role of the human element;
— Formal safety assessment;
— Work program of the Committee and subsidiary bodies;
— Application of the Committees' Guidelines; and
— Consideration of the report of the Committee.

Please note that hard copies of documents associated with MEPC 56 will not be available at this meeting. Documents will be available in Adobe Acrobat format on CD–ROM. To request documents please write to the address provided below, or request documents via the following Internet link: *http://www.uscg.mil/hq/g-m/mso/IMOMEPC.htm.*

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Lieutenant Heather St. Pierre, Commandant (CG–3PSO–4), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1601, Washington, DC 20593–0001 or by calling (202) 372–1432.

Dated: April 3, 2007.

Michael E. Tousley,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E7–6864 Filed 4–11–07; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 30, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2007–27782.

Date Filed: March 29, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 19, 2007.

Description: Application of Delta Air Lines, Inc. (''Delta'') requesting an exemption and a certificate of public convenience and necessity authorizing Delta to provide scheduled foreign air transportation of persons, property, and mail between any point or points in the United States and any point or points in any European Community Member State or States either directly or via any intermediate point or points, and beyond.

Renee V. Wright,

Program Manager, Docket Operations Federal Register Liaison.

[FR Doc. E7–6940 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Ninth Meeting, RTCA Special Committee 204: 406 MHz Emergency Locator Transmitters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 204 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 204: 406 MHz Emergency Locator Transmitters.

DATES: The meeting will be held on May 16–17, 2007, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., Colson Board Room, 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 202 meeting. The agenda will include:

- May 16–17:
- Opening Session (Welcome, Introductory and Administrative Remarks, Agenda Overview).
- Approval of Summary for the Eighth meeting held on 16–17 January 2007, RTCA Paper No. 029–07/SC 204–021.
- EUROCAE ELT Status.
- Committee Presentations, Discussion, Recommendations.
- Revisions/Updates to DO–204—*Minimum Operational Performance Standards for 406 MHz Emergency Locator Transmitters (ELT).*
- Any New Items Discussions.
- Open Actions Items.
- Closing Session (Other Business, Assignment/Review of Future Work, Establish Agenda, Date and Place of Next Meeting, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 3, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–1805 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 159: Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System (GPS).

DATES: The meeting will be held April 30–May 4, 2007, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, C 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting. **Note:** Specific working group sessions will be held April 30–May 4, 2007. The plenary agenda will include:

April 30:
- All Day, Working Group 2C, GPS/Inertial, MacIntosh-NBAA Room & Hilton-ATA Room.
- Afternoon (1–4:30 p.m.) Working Group 6, GPS/Interference, Colson Board Room.

May 1:
- All Day, Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh-NBAA Room & Hilton-ATA Room.
- All Day, Working Group 6, GPS/Interference, Colson Room.

May 2:
- Morning (9–12 p.m.) Working Group 2, Wide Area Augmentation System (GPS/WAAS), Colson Board Room.
- Morning (9–12 p.m.) Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh-NBAA Room & Hilton-ATA Room.
- Morning (9–12 p.m.), working Group 6, GPS/Interference, ARINC Room.
- Afternoon (1–4:30 p.m.), Joint, Working Groups 2, 4, 6, 7 & 8/EUROCAE WG–62, MacIntosh-NBAA Room & Hilton-ATA Room.

Note: Agenda for this session—Discussion on possible future joint FTCA/EUROCAE GPS–GALLILEO documents.

May 3:
- All Day, Working Group 4, Precision Landing Guidance (GPS/LAAS), Macntosh-NBAA Room & Hilton-ATA Room.
- Morning (9–12 p.m.), Working Group 6, GPS/Interference, Colson Board.
- Afternoon (1–4:30 p.m.), Working Group 7, GPS/Antennas, Colson Board Room.
- Morning (9–12 p.m.), Working Group 8, GPS/GRAS, ARINC Room.

- May 4:
  - Opening Plenary Session (Welcome and Introductory Remarks).
  - Approval of Summary of the Seventy-First Meeting held January 12, 2007, RTCA Paper No. 081–07/SX159–948.
  - Review Working Group (WG) Progress and Identify Issues for Resolution.
  - Global Positioning System (GPS)/3rd Civil Frequency (WG–1).
  - GPS/Wide Area Augmentation System (WAAS) (WG–2).
  - GPS/GLONASS (WG–2A).
  - GPS/Inertial (WG–2C).
  - GPS/Precision Landing Guidance (WG–4)
  - GPS/Airport Surface Surveillance (WG–5).
  - GPS/Interference (WG–6).
  - GPS/Antennas (WG–7).
  - GPS/GRAS (WG–8).
  - Review of EUROCAE activities.
  - Consider for Approval—revised DO–253A—Minimum Operational Performance Standards for GPS Local Area Augmentation System Airborne Equipment, TRCA Paper No. 030–07/SC 159–947.
  - Closing Plenary Session (Assignment/Review of Future Work, Other Business, Date and Place of Next Meeting).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 3, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–1806 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–27819]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by June 11, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2007–27819 by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room 401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kenneth Epstein, 202–366–2157, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Drug Offender's Drivers License Suspension Certification.

OMB Control #: 2125–0579 (Expiration Date: September 30, 2007).

Background: States are legally required to enact and enforce laws that revoke or suspend the drivers licenses of any individual convicted of a drug offense and to make annual certifications to the FHWA on their actions. The implementing regulations of the Department of Transportation and Related Agencies Appropriation Act, 1993 (Public Law 102–388, October 6, 1992) require annual certifications by the Governors. In this regard, the State must submit by January 1 of each year either a written certification, signed by the Governor, stating that the State is in compliance with 23 U.S.C. 159; or a written certification stating that the Governor is opposed to the enactment or enforcement, and that the State legislature has adopted a resolution expressing its opposition to 23 U.S.C. 159.

Beginning in Fiscal Year 1996, States' failure to comply by October 1 of each fiscal year resulted in a withholding penalty of 10 percent from major categories of Federal-aid funds (*i.e.*, National Highway System, Surface Transportation Program and the Interstate Maintenance Program) from States' apportionments for the fiscal year. Any funds withheld in Fiscal Year 1996 and thereafter cannot be restored and will be redistributed.

Respondents: 50 States and the District of Columbia and Puerto Rico.

Estimated Annual Burden Hours: Annual average of 5 hours for each respondent; 260 total annual burden hours.

FOR FURTHER INFORMATION CONTACT: Kenneth Epstein, 202–366–2157, Department of Transportation, Federal Highway Administration, Office of Safety, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Public Comments Invited: You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of these information collections.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: April 5, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E7–6885 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent to Prepare an Environmental Impact Statement on Transportation Improvements Within Downtown Dallas, TX

AGENCY: Federal Transit Administration (FTA), Department of Transportation.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and Dallas Area Rapid Transit (DART) have issued this notice to advise interested agencies and the public of their intent to prepare an Environmental Impact Statement (EIS) concurrent with a planning Alternatives Analysis (AA) for transportation improvements in the central business district (CBD) of Dallas, Texas. The EIS will be prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended. The EIS is being initiated to alleviate the capacity constraints on the LRT System within the Dallas CBD. The purpose of this Notice of Intent is to alert interested parties regarding the plan to prepare the EIS, to provide information on the purpose and need of the proposed transit project, to invite participation in the EIS process, including comments on the scope of the EIS proposed in this notice, and to announce that public scoping meetings will be conducted.

DATES: *Comment Due Date:* Written comments on the scope of the alternatives and issues to be considered should be sent to Ernie G. Martinez, Project Manager by June 1, 2007. See **ADDRESSES** below.

Scoping Meetings: Two public scoping meetings will be held at the DART Headquarters, located at 1401 Pacific Avenue, Dallas, Texas 75266 in the Board Room on:

—May 2, 2007 at 12 noon and on
—May 3, 2007 at 6:30 p.m.

Scoping material will be available at the meetings, on the project Web site at *http://www.dart.org/about/expansion/dallascbd.asp* or by contacting Mr. Martinez, DART Project Manager, as indicated under **ADDRESSES** below.

The meetings will be accessible to persons with disabilities. Individuals requiring special assistance to participate fully, such as a translator or sign-language interpreter, should notify DART in advance as indicated under **ADDRESSES** below.

Interagency Coordination Meeting: DART will conduct an interagency coordination meeting with Federal, State, and local agencies with an interest in the project. Invitations announcing the coordination meeting and inviting the agencies to participate will be sent.

ADDRESSES: Written comments on the project scope, including the project's purpose and need, the range of alternatives to be considered, and the environmental and community impact issues should be sent to: Ernie G. Martinez, Project Manager, DART Planning, P.O. Box 660163, 1401 Pacific Avenue, Dallas, Texas 75266–7213. Telephone (214) 749–3201, Fax (214) 749–3844, E-mail: *emartine@dart.org.*

FOR FURTHER INFORMATION CONTACT: Mr. John Sweek, Community Planner, Federal Transit Administration, Region VI; Telephone (817) 978–0550. E-mail: *john.sweek@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and DART invite interested individuals, organizations, and Federal, State, and local agencies to participate in refining purpose and need for the project, the alternatives, including: modes, alignments and station locations, and the environmental and community impacts to be assessed. Scoping comments should identify significant social, economic, or environmental issues related to the proposed project. Scoping comments may be made at the scoping meetings or in writing no later than June 1, 2007 (see **DATES** and **ADDRESSES** above). Scoping comments may also suggest alternatives that are less costly or more responsive to environmental issues, while still satisfying the project's purpose and need. Scoping comments should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Additional information on the EIS process, the project's purpose and need, and the alternatives and impact issues to be addressed will be included in the ''Scoping Information Report''. Copies of the scoping information document, as well as the Public Involvement and Agency Coordination Plan, will be available from DART at the scoping meetings, at DART Headquarters and on the DART Web site (*http://www.dart.org/about/expansion/dallascbd.asp*), thereafter (see **DATES** and **ADDRESSES** above).

II. Description of the Study Area

The area that is historically considered to be Downtown Dallas has primarily been an employment center. This area is bounded by a freeway loop formed by U.S. 75 and IH 45 to the east, IH 30 to the south, IH 35E to the west and Woodall Rogers Freeway to the north. This is changing. Downtown Dallas is expanding, and our Study Area boundaries are laid out to reflect that. They consist of Industrial Blvd—from IH 30 north to Oak Lawn; Oak Lawn—from Industrial east to McKinnon; McKinnon—from Oak Lawn south to Cedar Springs/Turtle Creek; Cedar Springs/Turtle Creek—from McKinnon northeast to Hall; Hall—from Cedar Springs/Turtle Creek south to Gaston; Gaston—from Hall west to Malcolm X; Malcolm X—from Gaston south to IH 30; IH 30—from Malcolm X west to Central; Central—from IH 30 south to Gano; Gano—from Central west to Wall; Wall—from Gano south to McKee; McKee—from Wall west to Austin; Austin from McKee north to IH 30; IH 30—from Austin west to Industrial. Also, the traditional core has been transitioning into a more mixed-use environment as new residential, retail and entertainment developments are completed. Recent additions to the Convention Center, planned improvements to the Farmers Market, the expanding Arts District, the first downtown grocery store in the modern day era, and the new American Airlines Center are changing the makeup of downtown Dallas.

On October 24, 2006, the DART Board approved the 2030 Transit System Plan. While the Plan addresses all modes operated by DART, the rail element will influence needs in the CBD and must be considered as part of the CBD AA/DEIS. Rail recommendations include approximately 43 miles of additional rail service, of which two (2) LRT lines would be routed through the CBD. Information on this plan is on *http://www.dart.org.*

III. Project Purpose and Need

The proposed action is intended to achieve the following goals:

- Increase transit capacity within Downtown Dallas;
- Improve regional mobility;
- Improve LRT operational flexibility, service reliability and efficiency through the CBD;
- Serve new CBD markets by increasing transit access and circulation between major activity centers; and
- Maximize potential for transit oriented and economic development.

The specific needs to be addressed by the proposed action include:

- Relieve CBD LRT capacity constraint;
- Serve inner-city infill development and general system growth demands;
- Serve new CBD transit markets;
- Enhance CBD development potential;

As part of the scoping and public and agency involvement process, these goals and objectives may be refined and expanded.

IV. Alternatives

The initial alternatives presented below correspond to Downtown transportation problems and to the above-described project purpose and need. The alternatives are grouped into the traditional and Federal process-required categories, including: No-Action, Baseline/Transportation Systems Management (TSM) and Build Alternatives.

Consideration of a second LRT alignment began when the City of Dallas and DART entered into the Master Interlocal Agreement (ILA) in 1992. As noted earlier, the ILA requires DART to supplement the current transit mall when specified operating and/or ridership measures are met. It is anticipated that additional build corridors and alignment options will be identified during scoping.

No Action

This alternative will consist of existing and committed projects included in the MPO long-range plan. This alternative is intended to serve as the alternative against which build alternatives are compared. Examples of committed projects are: the Super LRV fleet; signal prioritization along the existing mall; Bryan/Hawkins Junction improvements; trolley line extension from Ross Avenue to the existing mall; and, additional CBD bus service.

Baseline/Transportation System Management (TSM) Alternative

This alternative will consist of the No Action Alternative ''committed projects'', as well as additional relatively low-cost improvements. These improvements would be combined to alleviate LRT congestion without making a fixed guideway transit investment. This alternative will serve as the baseline alternative for New Starts evaluation purposes. Elements of this alternative would include, but not be limited to: Fully low-floor vehicle fleet; improved signals/train control; adjusted headways on selected routes; additional junction improvements; improved bus/LRT connections; LRT shuttles with forced transfers outside the CBD; and additional CBD bus service that would likely include bus feeder service, Bus Rapid Transit (BRT) service that would serve as a bus bridge between radial LRT lines terminating at the CBD boundary, and combined bus feeder/circulator service.

Build Alternatives

The Build Alternative proposed at this early stage is LRT in a broad corridor recommended by a recent City of Dallas Downtown transportation study. The Comprehensive Transportation Plan for the Central Business District, (June 2005), which evaluated alignment options, resulted in the recommendation of a corridor for a second LRT alignment through the CBD that is generally bounded by Woodall Rodgers Freeway, Field Street, Commerce Street, Young Street and Lamar Street. Within this broad corridor, there is a range of possible alignment options. A specific recommendation was made in the City study for a tunnel alignment between Ross and Commerce Avenues to avoid an at-grade crossing of the existing LRT mall and short north-south blocks.

While alignment options outside of this broad corridor have been identified and studied over the past several years, this broad corridor will be the starting point for the scoping process. Other previously studied alternatives and new alternatives may be added to the list of initial alternatives during the scoping process.

The Build Alternative will include a new LRT alignment through downtown. Possible alignment variations include:

All surface with at-grade crossing of existing LRT mall;

Combination surface/subway with or without underground stations;

All subway with underground stations; and a

Modern streetcar system. A build alternative without a modern streetcar system will also be tested to understand the relationship between the two modes.

V. Probable Effects

The FTA and DART will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the EIS. Impact areas to be addressed include: economic development; land acquisition, displacements, and relocation of existing uses; cultural resource impacts including impacts on historical and archaeological resources and parklands/recreational areas; noise and vibration; safety and security; utilities; traffic and transportation impacts.

Potential impacts will be addressed for the long-term operation of each alternative and the short-term

construction period. Measures to avoid, minimize, and mitigate all adverse impacts will be identified, evaluated, and adopted as appropriate.

VI. FTA Procedures

In accordance with FTA policy, all Federal environmental laws, regulations, and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality implementing NEPA (40 CFR parts 1500–1508, the joint FHWA/FTA environmental regulations (23 CFR part 771), the project-level conformity requirements of the Clean Air Act, Section 404 of the Clean Water Act, the National Historic Preservation Act, the Endangered Species Act, and Section 4(f) of the Department of Transportation Act (49 U.S.C. 303) will be addressed to the maximum extent practicable during the NEPA process. Following the scoping process, a Draft EIS will be prepared and made available for public review and comment. One or more public hearings will be held during the Draft EIS public comment period. On the basis of the Draft EIS and comments received, the project will be revised or further refined as necessary and the Final EIS prepared.

Issued on: April 5, 2007.

Robert C. Patrick,

Regional Administrator.

[FR Doc. E7–6938 Filed 4–11–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35009]

CG Railway, Inc.—Lease and Operation Exemption—Terminal Railway Alabama State Docks

CG Railway, Inc. (CGR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by lease from Terminal Railway Alabama State Docks (TASD), an agency of the State of Alabama, and to operate approximately 0.583 miles of rail line consisting of track numbers North 14 and North 15 in TASD's North Yard in Mobile, AL.[1] There are no mileposts associated with the two lines.

CGR certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its projected annual revenues from operation of the leased lines and current operations will not exceed $5 million.

The transaction is expected to be consummated on or shortly after April 26, 2007. If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions to stay must be filed no later than April 19, 2007 (at least 7 days before the exemption becomes effective.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35009, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 2, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–6614 Filed 4–11–07; 8:45 am]

BILLING CODE 4915–01–P

[1] CGR states that it will shortly enter into an agreement with TASD for the lease of the rails.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 9, 2007

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before May 14, 2007 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1549.

Type of Review: Extension.

Title: Tip Reporting Alternative Commitment (TRAC) for Use in the Food and Beverage Industry.

Description: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 296,916 hours.

OMB Number: 1545–1036.

Type of Review: Extension.

Title: Election to Have a Tax Year Other Than a Required Tax Year.

Form: 8716.

Description: Filed by partnerships, S Corporations, and personal service corporations, under section 444(a), to retain or to adopt a tax year that is not a required tax year. Service Centers accept Form 8716 and use the form information to assign master-file codes that allow the Center to accept the filer's tax return filed for a tax year (fiscal year) that would not otherwise be acceptable.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 204,400 hours.

OMB Number: 1545–2034.

Type of Review: Extension.

Title: U.S. Partnership Declaration for an IRS e-file Return.

Form: 8453–PE.

Description: Form 8453–PE, U.S. Partnership Declaration for an IRS e-file Return, was developed for Modernized e-file for partnerships. Internal Revenue Code sections 6109 and 6103.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 1,560 hours.

OMB Number: 1545–0962.

Type of Review: Extension.

Title: Tax Information Security Guidelines for Federal, State, and Local Agencies.

Form: 1075.

Description: Internal Revenue Code section 6103(p) requires that IRS provide periodic reports to Congress describing safeguard procedures, utilized by agencies which receive information from the IRS, to protect the confidentiality of the information. This section also requires that these agencies furnish reports to the IRS describing their safeguards.

Respondents: State, local, and tribal governments.

Estimated Total Burden Hours: 204,000 hours.

OMB Number: 1545–0092.

Type of Review: Extension.

Title: U.S. Income Tax Return for Estates and Trusts.

Form: 1041, Schedules D, J, K–1.

Description: IRC section 6012 requires that an annual income tax return be filed for estates and trusts. Data is used to determine that the estates, trusts, and beneficiaries filed the proper returns and paid the correct tax. IRC section 59 requires the fiduciary to re-compute the distributable net income on a minimum tax basis.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 414,420,365 hours.

OMB Number: 1545–1709.

Type of Review: Extension.

Title: Application for Extension of Time To File an Exempt Organization Return.

Form: 8868.

Description: IRC 6081 permits the Secretary to grant a reasonable extension of time for filing any return, declaration, statement, or other document. This form is used by fiduciaries and certain exempt organizations, to request an extension of time to file their returns. The information is used to determine whether the extension should be granted.

Respondents: Not-for-profit institutions.

Estimated Total Burden Hours: 1,453,638 hours.

OMB Number: 1545–0732.

Type of Review: Extension.

Title: LR–236–81 Final (TD 8251) Credit for Increasing Research Activity.

Description: This information is necessary to comply with requirements of Code section 41 (section 44F before change by TRA 1984 and section 30 before change by TRA 1986) which describes the situations in which a taxpayer is entitled to an income tax credit for increases in research activity.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 63 hours.

OMB Number: 1545–1703.

Type of Review: Extension.

Title: Return Post Card for the Community Based Outlet Participants.

Form: 12815.

Description: This post card is used by the Community Based Outlet Program (CBOP) participants (i.e. grocery stores/pharmacies, copy centers, corporations, credit unions, city/county governments) to order products. The post card will be returned to the Western Area Distribution Center for processing.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 834 hours.

OMB Number: 1545–1869.

Type of Review: Extension.

Title: Information Return for Acquisition of Control or Substantial Change in Capital Structure.

Form: 8806.

Description: Form 8806 is used to report information regarding transactions involving acquisition of control or substantial change in capital structure under section 6043.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 113 hours.

OMB Number: 1545–1716.

Type of Review: Extension.

Title: Notice 2001–1, Employer-designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC).

Description: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 870 hours.

OMB Number: 1545–0367.

Type of Review: Extension.

Title: Transmittal of Information Returns Reported Magnetically.

Form: 4804.

Description: 26 U.S.C. 6041 and 6042 require all persons engaged in a trade or business and making payments of taxable income to file reports of this income with the IRS. In certain cases, this information must be filed on magnetic media. Form 4804 is used to provide signature and balancing totals for magnetic media filers of information returns.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 20,902 hours.

OMB Number: 1545–1715.

Type of Review: Extension.

Title: Tip Rate Determination Agreement (for use by employers in the food and beverage industry).

Description: Information is required by the Internal Revenue Service in its tax compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 1,737 hours.

OMB Number: 1545–1730.

Type of Review: Extension.

Title: REG–114998–99 (Final) Obligations of States and Political Subdivisions.

Description: Section 142(f)(4) of the Internal Revenue Code of 1986 permits a person engaged in the local furnishing of electric energy or gas that uses facilities financed with exempt facility bonds under section 142(a)(8) and that expands its service area in a manner inconsistent with the requirements of sections 142(a)(8) and 142(f) to make an election to ensure that those bonds will continue to be treated as tax-exempt bonds. The final regulations (1.142(f)–1) set forth the required time and manner of making this statutory election.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 15 hours.

OMB Number: 1545–1219.

Type of Review: Extension.

Title: Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

Form: 8038–T.

Description: Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. These issuers include state and local governments.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 55,475 hours.

OMB Number: 1545–2047.

Type of Review: Extension.

Title: Rev Proc 2007–21 (RP–155431–05) Revenue Procedure Regarding 6707/6707A Rescission Request Procedures.

Description: This revenue procedure provides guidance to persons who are assessed a penalty under section 6707A or 6707 of the Internal Revenue Code, and who may request rescission of those penalties from the Commissioner.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 430 hours.

OMB Number: 1545–0047.

Type of Review: Revision.

Title: Rev Proc 2007–21 (RP–155431–05) Revenue Procedure Regarding 6707/6707A Rescission Request Procedures.

Form: 990.

Description: Form 990 is needed to determine that IRC section 501(a) tax-exempt organizations fulfill the operating conditions within the limitations of their tax exemption.

Respondents: Not-for-profit institutions.

Estimated Total Burden Hours: 56,720,671 hours.

OMB Number: 1545–1669.

Type of Review: Extension.

Title: REG–108639–99 (Final) Retirement Plans; Cash or Deferred Arrangements Under Section 401(k) and Matching Contributions or Employee Contributions Under Section 401(m); Notice 2000–3.

Description: The regulations provide guidance for qualified retirement plans containing cash or deferred arrangements under section 401(k) and providing matching contributions or employee contributions under section 401(m). The IRS needs this information to insure compliance with sections 401(k) and 401(m).

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 26,500 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–6944 Filed 4–11–07; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
April 12, 2007

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Cirsium hydrophilum var. hydrophilum (Suisun thistle) and Cordylanthus mollis ssp. mollis (soft bird's-beak); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

1018-AU44

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Cirsium hydrophilum var. hydrophilum (Suisun thistle) and Cordylanthus mollis ssp. mollis (soft bird's-beak)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (the Service), are designating critical habitat for *Cirsium hydrophilum* var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 2,052 acres (ac) (830 hectares (ha)) fall within the boundaries of the critical habitat designation for *C. hydrophilum* var. *hydrophilum* in Solano County, California, and approximately 2,276 ac (921 ha) for *C. mollis* ssp. *mollis* in Contra Costa, Napa, and Solano Counties, California. Due to overlap of some units, the total area of critical habitat designation for both subspecies is 2,621 ac (1,061 ha).

DATES: This rule becomes effective on May 14, 2007.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Sacramento, California 95825; telephone, 916-414-6600; facsimile, 916-414-6713. People who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act (16 U.S.C. 1531 et seq.)

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 section 4(b)(2), there are significant limitations on the regulatory effect of designation under the Act 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 it is these measures that 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 or the California/Nevada Operations 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 very 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 analysis of the economic effects and the cost 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 the designation of critical habitat in this rule. For more information on *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*, refer to the final listing rule published in the **Federal Register** on November 20, 1997 (62 FR 61916), and the proposed critical habitat designation published in the Federal Register on April 11, 2006 (71 FR 18456).

Previous Federal Actions

On November 17, 2003, the Center for Biological Diversity and other environmental groups filed a lawsuit against the Service (*Center for Biological Diversity, et al.* v. *Gale Norton, Secretary of the Department of the Interior, et al.*, CV 03-5126-CW), leading to a stipulated settlement and court order signed June 14, 2004. We agreed in the settlement to propose critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* by April 1, 2006, and to make a final designation by April 1, 2007. On April 11, 2006, we published the proposed critical habitat designation for the two plants in the **Federal Register** (71 FR 18456). For more information on previous Federal actions concerning *C. hydrophilum* var. *hydrophilum* or *C. mollis* ssp. *mollis*, refer to the proposed critical habitat designation published in the **Federal Register** on April 11, 2006 (71 FR 18456). This final rule complies with the settlement agreement.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* in the proposed rule published on April 11, 2006 (71 FR 18456) and again in a subsequent notice of availability (NOA) of a draft economic analysis published in the **Federal Register** on November 20, 2006 (71 FR 67089). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule.

The first comment period on the proposed designation opened April 11, 2006 and closed on June 12, 2006. During that time, we received six comments: three from peer reviewers, one from a California State agency, and two from private organizations and individuals. We received no comments during the second comment period, which covered both the proposed designation and the draft economic analysis, and was open from November 20, 2006, to December 20, 2006. In total, five commenters supported the designation of critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* and one opposed the designation. Comments received were grouped into general issues specifically relating to the proposed critical habitat designation, and are addressed in the following summary and incorporated into the final rule as appropriate. We did not receive any requests for a public hearing.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from all three of the peer reviewers. The peer reviewers generally concurred with our methods and conclusions regarding the critical habitat under consideration, and provided additional information, clarifications, and suggestions to improve the final rule. Peer reviewer comments are addressed in the following summary and incorporated into this final rule as appropriate.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. We address them in the following summary.

Peer Reviewer Comments

1. *Comment:* The peer reviewers generally supported designation of the proposed areas and also argued for inclusion of additional areas. Two reviewers noted that sea levels are likely to rise in the foreseeable future, and that adjacent gently sloped terrestrial areas and additional higher-elevation marshlands should be designated as refugia.

Our Response: Section 3(5)(A)(ii) does allow us to designate areas outside the geographical area occupied by the subspecies at time of listing if the Secretary of Interior determines that such areas are essential to the conservation of the subspecies. Identifying exactly which areas would be likely to become appropriate habitat for the plants, and how long such new habitat might last, would require a great many assumptions beyond those required to simply project a rise in sea level. Climate, rainfall, soil types, existing and planned roadways and development, and vegetation cover, both in the proposed area and in the watershed, are all confounding variables that could affect where (and for how long) appropriate habitat develops in the future. Given the speculative nature of such an undertaking, we do not consider the available evidence sufficient to support a finding that any particular unoccupied upland area is essential to the conservation of the subspecies. The Act includes procedures for modifying existing critical habitat designations as the need arises. We consider those procedures to be the appropriate and legally supportable means of coping with long-term habitat change.

2. *Comment:* All three peer reviewers commented that we relied too heavily on designating known occupied sites, and not enough on choosing sites that would allow for population colonization and growth necessary to conserve the subspecies. Additional sites specifically suggested for *Cirsium hydrophilum* var. *hydrophilum* included Southampton Marsh (two reviewers) and the Denverton Slough area of Suisun Marsh. Additional sites suggested for *Cordylanthus mollis* ssp. *mollis* included the Huichica-Carneros area of San Pablo Bay, Denverton Slough, Antioch Bridge, Beldon's Landing, Bentley Wharf, Cullinan Ranch, Mare Island, Martinez, Petaluma Marsh, and San Antonio Creek Marsh. Additionally, one reviewer asked us to explain why the *C. mollis* ssp. *mollis* populations at Denverton Slough and Edith Point were not included in the designation, and another reviewer asked why proposed Unit 3 for *C. mollis* ssp. *mollis* did not include a nearby area that was occupied in the 1990s and that may still have a seedbank.

Our Response: Our focus on known occupied sites is based on section 3(5)(A) of the Act, which requires us to look first to sites within the geographical area occupied at the time of listing. In the case of *Cirsium hydrophilum* var. *hydrophilum*, only three sites are known to have been

occupied at the time of listing. We therefore had proposed designating an additional unoccupied site (Hill Slough Marsh) that we believed was essential to the conservation of the subspecies. In the absence of any planned reintroduction projects, Hill Slough Marsh was the only location we considered to be sufficiently likely to support a new occurrence in the foreseeable future. There were three reasons for this: (1) Hill Slough Marsh is the subject of an ongoing tidal marsh restoration project, and thus has already caught the attention of agencies capable of carrying out a reintroduction project; (2) the majority of the unit consists of the Hill Slough Wildlife Area, acquired by the California Department of Fish and Game (CDFG) to help meet the mandates of the Suisun Marsh Preservation Act of 1977 (Becker 2001, p. 1); and (3) the unit is about 2 miles (mi) (3 kilometers (km)) from existing *C. hydrophilum* var. *hydrophilum* occurrences at Rush Ranch and Peytonia Slough Marsh, and so may support natural colonization by seeds from those locations. In contrast, the Denverton Slough area is roughly 5 miles (8 km) from the nearest occupied sites, while Southampton Marsh is about 12 mi (19 km). Although *C. hydrophilum* var. *hydrophilum* seeds have plumes conducive to wind dispersal, the seeds are relatively heavy and tend to detach from the plumes (Service 2005, p. 76). Chances of successful colonization are, therefore, likely to decrease rapidly with distance. *C. hydrophilum* var. *hydrophilum* seeds may also be dispersed by water (LCLA 2003, p. 49), but this is more conducive to dispersals of short distances along tidal channels than to dispersals across miles of sloughs and baywater. Although two peer reviewers pointed out that Southampton Marsh may have supported *C. hydrophilum* var. *hydrophilum* historically, numerous surveys for *C. mollis* ssp. *mollis* dating back to 1978 failed to document *C. hydrophilum* var. *hydrophilum* at the location (CNDDB 2006b, p. 9). We must therefore consider the site unoccupied, both now and at the time of listing. We do note, however, that our designation of Southampton Marsh as critical habitat for *C. mollis* ssp. *mollis* may incidentally help protect the area for the benefit of *C. hydrophilum* var. *hydrophilum*, should that subspecies successfully colonize the area in the future.

In the case of *Cordylanthus mollis* ssp. *mollis*, we proposed only areas containing the features essential to the conservation of the subspecies (PCEs). Section 3(5)(A)(ii) of the Act allows us to include areas unoccupied at the time of listing only on a determination that such areas are essential for the conservation of the subspecies. Section 3(5)(C) of the Act further requires us to avoid including the entire area which can be occupied by the subspecies, except where additional area is essential to conservation of the subspecies. We interpret these provisions to mean that critical habitat must represent core habitat areas without which conservation would be extremely unlikely. Other important occupied habitat areas typically exist, but do not rise to the essential level of importance required for critical habitat designation. Such other areas still benefit from the protections afforded to the subspecies by the Act. Based on the best scientific information available to us at the time, we determined in the proposed designation that the other locations suggested by the peer reviewers for *C. mollis* ssp. *mollis* did not qualify as such core areas. Reasons included size of the area; size and persistence of the *C. mollis* ssp. *mollis* occurrence; and presence, quality, and extent of the listed PCEs. The *C. mollis* ssp. *mollis* occurrence left out of Unit 3 consisted of a single plant observed in 1991. No plants were found at the site during a subsequent survey in 1993 (CNDDB 2006b, p. 13), and the habitat supporting that occurrence is separated from the unit by about a quarter mile of upland. Therefore, extending the unit bounds to include both occurrences did not meet the intentions of the Act.

If in the future important new *C. hydrophilum* var. *hydrophilum* or *C. mollis* ssp. *mollis* occurrences are discovered or established in other areas, or if evidence becomes available showing that we miscalculated the conservation value of undesignated areas, there are provisions in the Act to amend the critical habitat designation to include those areas.

3. *Comment:* All three peer reviewers argued against excluding any units based on expected protections from the Suisun Marsh Habitat Management, Preservation and Restoration Plan (SMHMP). Reasons offered included that the SMHMP is not sufficiently complete.

Our Response: We agree that the SMHMP is not sufficiently complete. Although the draft Programmatic Environmental Impact Statement/Report (PEIS/R) was initially expected to be available for public review and comment in the fall of 2006, the expected completion date has been pushed back to June 2008 (Engle 2006, p. 2).

4. *Comment:* One peer reviewer argued against excluding any units based on existing plans such as the Suisun Marsh Protection Plan. The peer reviewer stated: (a) the historic ranges of both plants extend beyond the Protection Plan boundaries; (b) some organizations with management responsibilities directly affecting the recovery of the plants are not parties to the Protection Plan; and (c) the Protection Plan has failed to prevent detrimental management decisions in the past.

Our Response: We agree with the peer reviewer's conclusion. The Act allows the Secretary of Interior to exclude areas for which the benefits of exclusion outweigh the benefits of inclusion unless the Secretary determines that such exclusion will result in the extinction of the species (16 U.S.C. 1533(b)(2)). We have found nothing to indicate that designation of the units proposed within the Protection Plan's boundaries would negatively affect the Protection Plan. Additionally, our analysis of economic impacts indicates that costs likely to result from designation will be relatively low and will not unduly burden small businesses. We therefore expect the benefits of not designating critical habitat to be low. In contrast, the benefits of designation include: (1) the establishment of an additional layer of protection applicable to situations with a federal nexus; and (2) the calling of attention to each unit's importance for the conservation of the endangered plants. Accordingly, we do not find that the benefits of excluding lands within the bounds of the Suisun Marsh Protection Plan outweigh the benefits of including those lands.

The definition of critical habitat also includes the requirement that designated areas may require special management considerations or protection (16 U.S.C. 1532(5)(A)(i)). We discuss the special management needs of the designated units in the Special Management Considerations section below, as well as in the description of each unit. While these threats may be ameliorated by existing protections such as the Protection Plan, special management may be necessary in any or all of the units despite the existing plan because the populations of both subspecies are low, the threats significant, and the knowledge of how best to avoid or ameliorate those threats lacking. Management decisions taken under the Protection Plan must balance numerous goals. Designation of critical habitat may provide additional protection by pointing out the specific habitat and habitat needs of these

endangered plants, thereby encouraging management decisions specific to those areas that are more beneficial to the listed plants. Accordingly we find that all units, including those subject to the Suisun Marsh Protection Plan, meet the definition of critical habitat in that they may require special management.

5. *Comment:* A peer reviewer asked us to discuss our decision not to propose designation of habitat on land owned by the Concord Naval Weapons Station (CNWS), in light of the possibility of base closure and transfer of land management.

Our Response: Our decision not to propose designation for 402 ac (163 ha) of land on the CNWS was based on section 4(a)(3)(B)(i) of the Act, which requires us to avoid designating Department of Defense (DOD) land that is subject to an Integrated Natural Resources Management Plan (INRMP) if that INRMP benefits the species in question. The Navy has indeed closed most of the base and is considering plans to transfer ownership of most CNWS lands (Hoge 2006, p. 1). Additionally, there is wording in the INRMP to suggest it may have expired in 2006 (USDN 2002, pp. abstract, ES-2, 1-8). However, management of the tidal portion of CNWS lands, which include the excluded *Cordylanthus mollis* ssp. *mollis* habitat, will be transferred to the Army, which will continue to carry out the terms of the INRMP (Rouhafza 2002, p. 1; Wallerstein 2006, p. 1). The INRMP is intended to continue in effect indefinitely, but Navy and Army policy requires review of existing INRMPs every 5 years to keep them up to date. References to a working period ending in 2006 likely were intended to refer to the date of first review. That review has been completed with no significant changes (Wallerstein 2006, p. 1). Therefore, based on the approved INRMP and our obligations under section 4(a)(3)(B)(i) of the Act, we are finalizing our exemption of 402 ac (163 ha) on CNWS.

6. *Comment:* One peer reviewer asked why we were not including any *Cordylanthus mollis* ssp. *mollis* populations in ''diked, managed, and muted'' tidal marshes, given our earlier statement that ''diked and managed marshes account for approximately 14 percent'' of *C. mollis* ssp. *mollis* occurrences. Another peer reviewer pointed out that even natural tidal areas may be muted somewhat by natural features and yet still support *C. mollis* ssp. *mollis*, making our distinction of ''fully tidal'' versus ''diked, managed, and muted'' a false dichotomy. The third reviewer stated that diked and managed marshes account for less than 14 percent of *C. mollis* ssp. *mollis* occurrences. This reviewer indicated that muted tidal regimes can be detrimental to *C. mollis* ssp. *mollis* due to negative correlations with host plants and with seed predation (presumably depending on the degree of muting). This peer reviewer nevertheless noted several areas with somewhat muted tidal action that still support important occurrences. Areas with muted tidal regimes mentioned by the reviewers include Hill Slough Marsh (Unit 2), Point Pinole (Unit 3), and the exempted areas of Concord Naval Weapons Station.

Our Response: We have updated the discussion of primary constituent elements (PCEs) to better indicate that *Cordylanthus mollis* ssp. *mollis* does not readily occur in diked wetlands, but can occur in muted tidal wetlands, and that chances of deleterious effects increase as tidal muting increases. For more information see the Primary Constituent Elements section below.

7. *Comment:* A peer reviewer questioned the use of soil type and salinity as a PCE for *C. mollis* ssp. *mollis*, stating that a recent study (Rejmankova and Grewell 2003) indicated soil physical type and salinity were not predictive of *C. mollis* ssp. *mollis* occurrences, but that host community composition and vigor were predictive, as were canopy light and disturbance gaps.

Our Response: We have changed the PCEs for *Cordylanthus mollis* ssp. *mollis* to reflect this.

8. *Comment:* One peer reviewer noted the following discrepancies in the unit boundaries: (a) Table 2 for the Hill Slough unit mentions 85 ac (34 ha) of private land that do not appear to be included on the map; (b) Unit 2b for *Cirsium hydrophilum* var. *hydrophilum* appears to include areas with diked wetlands and landfill; (c) Unit 1 for *Cordylanthus mollis* ssp. *mollis* includes a large permanent pond that does not constitute habitat for the subspecies, and in fact acts as a threat by creating a dispersal barrier for *C. mollis* ssp. *mollis* seeds and by serving as a propagule source for exotic invasive species; and (d) Unit 5 for *C. mollis* ssp. *mollis* includes a 22 ac (9 ha) Superfund-listed landfill.

Our Response: We have redrawn the maps and adjusted the tables to avoid the areas mentioned lacking PCEs. However, our sources do indicate 85 ac (34 ha) of private land are located in the northeastern portion of the Hill Slough unit (BIA 2001). This land is referred to in the economic analysis (p. 52) as part of the Lang Tule Ranch.

9. *Comment:* One peer reviewer noted that the PCEs for *Cirsium hydrophilum* var. *hydrophilum* discuss the banks of tidal channels but could be interpreted as leaving out tidal channel beds, since such beds are typically below mean high water (MHW). He noted that tidal channel beds are extremely important hydrologically to the subspecies. He also disagreed with our reference in that PCE to the high water mark of natural tidal channels, stating ''there is generally no 'high water mark' along a *tidal* channel edge unless it is lined with an artificial levee.'' Additionally, he defined the edge of ''upland ecotone'' (to which we refer in the first PCE for both plants) as ''extreme high water''.

Our Response: Our intent was to include the tidal channel beds within the mapped bounds of each designated unit. We noted in the mapping section of the proposed rule that tidal channels are included in critical habitat in their entirety because they ''are essential for the conservation of the subspecies based on hydrologic processes, despite the fact that these plants do not normally grow within the banks of such channels and ponds'' (71 FR 18465). We have adjusted the wording of the PCEs so that they now clearly include the entire tidal channel within the bounds of each mapped unit. We have also removed mention of ''high water mark'' and upland ecotone, and have redefined the first PCE of both subspecies in terms of our official wetlands classification system (Cowardin et al 1977, p. 6).

10. *Comment:* One peer reviewer noted that, in the section on Landscape Hydrology of *Cirsium hydrophilum* var. *hydrophilum*, we stated that the plants may typically occur along the banks of canals or ditches because of lowered soil and groundwater salinity. The peer reviewer termed this speculative, and suggested that the physical characteristics of the soil itself at those locations may provide a better explanation than salinity.

Our Response: We have removed comments related to salinity and added the existence of tidal channels themselves as a PCE. We were not able to further characterize the specific characteristics of tidal or alluvial deposits sufficiently to indicate additional soil-based PCEs essential to the subspecies.

Comments from the State

The CDFG provided the following comments concerning the proposed critical habitat designation for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*.

11. *Comment:* The CDFG acknowledged that the proposed areas

provide essential needs for the plants, and so concurred with the proposed designation as it pertains to CDFG lands.

Our Response: We acknowledge and appreciate CDFG's concurrence.

Public Comments Regarding Potential Exclusions of Proposed Units

12. *Comment:* We received one comment supporting designation of all units despite protections expected from the Suisun Marsh Habitat Management, Preservation and Restoration Plan (SMHMP). Another commenter argued that all units in the Suisun Marsh area should be excluded based on the sufficiency of existing and planned protections (SMHMP, Suisun Marsh Preservation Act, Federal endangered species designations) and on the costs likely to result from designation.

Our Response: As discussed above in our response to comments 3 and 4, based on our economic analysis, we do not consider the economic or other impacts of designation to rise to a level where the benefits of exclusion outweigh the benefits of inclusion. We also do not consider existing or planned management protections to rise to the level such that the benefits of exclusion would outweigh the benefits of inclusion for any of the units.

13. *Comment:* One commenter argued that proposed Unit 2A for *Cirsium hydrophilum* var. *hydrophilum* should not be designated for three reasons: (a) it is not known to support *C. hydrophilum* var. *hydrophilum* occurrences; (b) it lacks fully tidal inundations and so does not have a necessary PCE; and (c) designation would result in an undue burden on the landowner's efforts to create an environmental easement on or near the property for the benefit of *Lasthenia conjugens* (Contra Costa goldfields), a federally threatened upland species.

Our Response: Regarding the commenter's first point: Our procedure for mapping critical habitat units has been to include within each unit the entire extent of persistent emergent intertidal estuarine wetland above mean high water that supports the PCEs and that was occupied by the subspecies at the time of listing (except for Unit 1 for *C. hydrophilum* var. *hydrophilum*, which is unoccupied). We contacted a biologist involved in the conservation easement planning process for the area who provided us with a recent rare plants survey report and associated mapping information. Both the survey report and the biologist's observations at the site (Vollmar 2005a, p. 2, 3, 5; Huffman 2006, p. 1) indicate that the sloughs and area beneath the railroad connecting proposed unit 2A to proposed unit 2B are fully tidal and are not blocked by the Union Pacific railroad tracks separating the two proposed subunits. Since there is no intervening area that does not consist of persistent emergent intertidal estuarine wetland, we have combined the two proposed subunits into a single contiguous unit. That unit was occupied at the time of listing (CNDDB 2006a, p.1), although the occupied portion was in the eastern half of the unit. Although the survey report did not note any *C. hydrophilum* var. *hydrophilum* in the western portion of the unit, it did confirm the presence of the PCEs for the subspecies in that area (Vollmar 2005a, p. 5, 7, 18, Figure 9). The report added: ''While this species was not observed during field surveys, it may have been missed since it can be cryptic and areas where it might grow were difficult to access.'' (Vollmar 2005a, p. 18).

Regarding commenter's second point: As discussed above, the survey report and biologist's observations at the site both indicate the general area of the commenter's concern is fully tidal (Vollmar 2005a, p. 2, 3, 5; Huffman 2006, p. 1).

Regarding the commenter's third point: The survey report included detailed mapping information showing a western boundary of ''perennial brackish marsh'' that was somewhat to the east of our proposed unit bounds (Vollmar 2005a, Figure 9). We have adjusted the western bounds of Unit 2 accordingly, thereby removing some of the area referred to by the commenter from critical habitat designation. This should help address concerns regarding the potential for *C. hydrophilum* var. *hydrophilum*'s critical habitat to interfere with the development of a conservation easement for *Lasthenia conjugens*, which is an upland species. Our economic analysis noted that significant economic impacts to private landholders were unlikely as a result of the designation of the area proposed as subunit 2A.

Summary of Changes From Proposed Rule

In preparing this final critical habitat designation for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*, we reviewed and considered comments from the public and peer reviewers on the proposed designation of critical habitat published on April 11, 2006 (71 FR 18456). We received no comments on the draft economic analysis published on November 20, 2006 (71 FR 67089). As a result of comments received on the proposed rule and a reevaluation of the proposed critical habitat boundaries, we made changes to our proposed designation, as follows:

We combined subunits A and B of Unit 2 for *C. hydrophilum* var. *hydrophilum* (Peytonia Slough Marsh) based on new information indicating that the two subunits are not hydrologically divided by the railroad tracks that cut between them. We also removed 18 ac (7 ha) of private land from the western edge of the unit based on mapping information provided by a recent biological survey of the area, and we removed 53 ac (21 ha) of State land from the northeastern edge of what was originally subunit 2B, to exclude diked marsh and landfilled areas pointed out by a peer reviewer. We have updated the map and legal description for the unit accordingly.

(2) We removed 23 ac (9 ha) of State land from the middle of the eastern portion of Unit 1 for *C. mollis* ssp. *mollis* (Fagan Slough Marsh) to exclude a large permanent pond and diked wetland pointed out by a peer reviewer. We have updated the map and legal description for the unit accordingly.

(3) We removed 14 ac (6 ha) of State land from the northwestern portion of Unit 5 for *C. mollis* ssp. *mollis* (Southampton Marsh) to exclude a landfill pointed out by a peer reviewer. We have updated the map and legal description for the unit accordingly.

(4) We changed the wording of the first PCE for both subspecies to apply the terms of our wetlands classification system (Cowardin et al 1977, p. 6) and to better indicate that the seaward edge (defined on the marsh plain by mean high water) should be drawn directly across intervening tidal channels despite the fact that the beds of such channels are typically below mean high water. We also removed references to tidal channel migrations, based on a peer reviewer's assertion that such channels do not typically migrate.

(5) We removed references to soil salinity in the second PCE for both subspecies, based on a peer reviewer's assertion that soil salinity is not predictive of *C. mollis* ssp. *mollis* occurrences within areas identified by PCE 1. Further review also showed that the soils on which both subspecies typically occur are actually strongly saline, not slightly-to-moderately saline as we stated in the proposed designation (USDA 1993, p. 194; NRCS 2005, Joice Series p. 1, Tamba Series p.1). Because essentially all the soils within the area supporting PCE 1 are strongly saline, the identification of soil salinity provided no further predictive value, and was removed for both subspecies.

(6) We changed the wording of all the PCEs to focus on the specific physical or biological features essential to the subspecies, rather than on the areas containing those features.

(7) We changed the second PCE for *C. hydrophilum* var. *hydrophilum* by removing reference to the high water mark of tidal channels (which, as a peer reviewer pointed out, is essentially the bank of the channel), and by identifying the tidal channels and tidally influenced ditches themselves as a PCE.

(8) We added a third PCE for *C. hydrophilum* var. *hydrophilum* to address the threat posed by invasive *Lepidium latifolium* (perennial peppergrass), which appears to prevent seedling establishment of *C. hydrophilum* var. *hydrophilum* by growing very densely (CDWR 1999, p. 171; Service 2005, p. 78).

(9) Based on a peer reviewer's comments, we changed the third PCE for *C. mollis* ssp. *mollis* by removing references to canopy height and focused instead on canopy cover and germination openings.

(10) We renumbered the fourth PCE for *C. mollis* ssp. *mollis*, making it the second PCE. We also rephrased the PCE to focus more on the rarity or absence of unsuitable host plants rather than on the presence of suitable host plants. The presence of suitable host plants is presumed by the canopy cover requirements of the third PCE.

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 the 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 which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to 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 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 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

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

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management considerations or protection. 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 pursuant to section 4(b)(2) of the Act.) Areas outside of the geographic area occupied by the species at the time of listing may only be included in critical habitat if they are essential for the conservation of the species. 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 occupied by the species at the time of listing. However, an area that is currently occupied by the species, but which 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, eligible for inclusion 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 (P.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 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 (P.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 data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*, 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. Section 7(a)(1) directs all other Federal agencies to utilize their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of listed species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas

may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat within areas occupied by the species at the time of listing, we consider those physical and biological features (PCEs) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific PCEs required for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* are derived from the biological needs of the two plants as described below and in the proposed critical habitat designation published in the **Federal Register** on April 11, 2006 (71 FR 18456).

Cirsium hydrophilum var. hydrophilum: Space for Individual and Population Growth

Cirsium hydrophilum var. *hydrophilum* appears to have been historically restricted to Suisun Marsh in Solano County, California (CDWR 1999, p. 171). *Cirsium hydrophilum* var. *hydrophilum* is only known to occur in persistent emergent intertidal estuarine wetland, from the landward edge of that habitat type down to the mean high water line (Service 2005, p. 22). A wetland is an area that is at least periodically saturated or covered by water of up to 6 feet (2 meters). An estuarine wetland is a wetland exposed at least occasionally to both ocean tides and freshwater runoff from the land. ''Intertidal'' means the area is occasionally flooded by tides, rather than being continuously submerged. ''Emergent'' indicates that the area is dominated by erect, rooted plants adapted to growth in saturated, low oxygen soils. Such areas are ''persistent'' when these plants normally remain standing at least until the beginning of the next growing season (Cowardin et al 1977, pp. 11, 18, 19, 35, 36). The landward limit of such a wetland is the highest point that is still occasionally flooded by tides (Cowardin et al 1977, p. 19). This wetland type extends down below mean high water, to the seaward limit of persistent emergent vegetation (Cowardin et al 1977, p. 18), but *C. hydrophilum* var. *hydrophilum* is not known from areas below the mean high water line. Within these limits, most *C. hydrophilum* var. *hydrophilum* plants grow along the banks of small natural tidal channels and tidally influenced ditches (CDWR 1999, p. 171; LCLA 2003, p. 19; Service 2005, p. 22; CNDDB 2006a, pp. 2, 3). Occurrences also exist on low-order floodplain unassociated with any water channel, but this is rare (LCLA 2003, p. 19). The subspecies does not appear to thrive in diked wetlands (CDWR 1999, p. 172), presumably because such wetlands become nonestuarine due to the lack of tidal inundations.

Specific conditions for germination and growth of *Cirsium hydrophilum* var. *hydrophilum* are not known, but field observations suggest they are associated with small gaps or sparsely vegetated areas. Dense vegetative cover, particularly *Lepidium latifolium* (perennial peppergrass) restricts the establishment of the subspecies (CDWR 1999, p. 171; LCLA 2003, p 21).

Cirsium hydrophilum var. hydrophilum: Sites Providing Nutritional or Physiological Requirements

Cirsium hydrophilum var. *hydrophilum* tends to grow along the banks of tidal channels and tidally influenced ditches (CDWR 1999, p. 171). Tidal channels are characterized as being open conduits that either periodically or continuously contain moving water (Cowardin et al 1977, p. 69). Such channels in an estuarine wetland would extend landward to the point where ocean-derived salts measure less than 0.5 percent during the period of average annual flow (Cowardin et al 1977, p. 18).

Cirsium hydrophilum var. hydrophilum: Sites for Reproduction

Cirsium hydrophilum var. *hydrophilum* is a perennial plant that dies after flowering and bearing seeds. Its vegetative period is usually 1 year, but if small vegetative plant size or unfavorable environmental conditions delay flowering, a plant may grow back from its central root crown after the winter, and thereby live for more than a year. Flowering occurs throughout the summer during most years and continues through the production of ripe seed heads (Service 2005, p. 75).

Pollination ecology of *Cirsium hydrophilum* var. *hydrophilum* has not been studied to identify specific flower pollinators. Field observations at Rush Ranch indicate that several bee species may be important in pollinating the subspecies (LCLA 2003, pp. 39-40, 47; Service 2005, p. 75). The most common species observed gathering pollen at the ranch was the yellow-faced bumble bee (*Bombus vosnesenskii*) (LCLA 2003, pp. 39-40).

Information on short- and long-distance seed dispersal for *Cirsium hydrophilum* var. *hydrophilum* is lacking, but streams and tidal flows have been shown to be important seed dispersal mechanisms in *C. vinaceum* (Sacramento Mountain thistle) and certain halophytic plants (Koutstaal et al. 1987, p. 226; Huiskes et al. 1995, p. 559; Craddock and Huenneke 1997, p. 215; LCLA 2003, p. 46). *C. hydrophilum* var. *hydrophilum* seeds float in water (LCLA 2003, p. 46), and also have plumes conducive to wind dispersal, but the seeds are relatively heavy and tend to detach from the plumes, making long distance wind dispersal less likely (Service 2005, p. 76).

Cirsium hydrophilum var. hydrophilum: Primary Constituent Elements

Pursuant to our regulations, we are required to identify the known physical and biological features (primary constituent elements (PCEs)) essential to the conservation of *Cirsium hydrophilum* var. *hydrophilum*. All areas except for Unit 1 (Hill Slough Marsh) are currently occupied by *C. hydrophilum* var. *hydrophilum*. All of the critical habitat areas are within the subspecies' historic geographic range, and contain sufficient PCEs to support at least one of the plant's life history functions.

Based on our current knowledge of the life history, biology, and ecology of *Cirsium hydrophilum* var. *hydrophilum* and the requirements of the habitat to sustain the essential life history functions of the subspecies, we have determined that the PCEs for *Cirsium hydrophilum* var. *hydrophilum* are:

(1) Persistent emergent, intertidal, estuarine wetland at or above the mean high-water line (as extended directly across any intersecting channels);

(2) Open channels that periodically contain moving water with ocean-derived salts in excess of 0.5 percent; and

(3) Gaps in surrounding vegetation to allow for seed germination and growth.

Cordylanthus mollis ssp. mollis: Space for Individual and Population Growth

Cordylanthus mollis ssp. *mollis* is somewhat more geographically widespread than *C. hydrophilum* var. *hydrophilum*, growing in tidal marshes of San Pablo Bay, as well as of Suisun Bay (CNDDB 2006b). As with *C. hydrophilum* var. *hydrophilum*, however, *C. mollis* ssp. *mollis* is restricted to persistent emergent intertidal estuarine wetland above the mean high water line (Ruygt 1994, p. 77). *C. mollis* ssp. *molli*s does not typically occur in diked wetlands without tidal action (CDWR 1994, p. 50; Ruygt 1994, p. 77; Grewell et al. 2003, p. 32). Areas with muted tidal regimes can support the subspecies (CDWR 1999, p. 176), but increased tidal muting can constitute a threat to *C. mollis* ssp. *mollis* by increasing the prevalence of unsuitable host plants, and by changing the balance of seed production to seed predation maintained between the plant and seed–eating moths, such as various *Saphenista* species (Grewell 2004, pp. 115, 16; Grewell 2006, p. 3). The moth larvae burrow in the sediment during part of their life cycle, so reduced tidal flooding may improve their survivorship.

Cordylanthus mollis ssp. mollis: Sites Providing Nutritional or Physiological Requirements

Cordylanthus mollis ssp. *mollis* thrives best under a partially open canopy that provides intermediate light levels (average 790 nanomols per square meter per second (nMol/m2/s)) at ground level during seedling emergence in the spring (Grewell et al. 2003, p. 31). The plant establishes fragile, parasitic root connections to its host plants by means of a specialized structure called a haustorium (Chuang and Heckard 1971, p. 218; Grewell et al. 2003, p. 8). These connections produce an extensive network of intertwined roots that provides the subspecies with part of its water and nutritional requirements to augment its growth. *C. mollis* ssp. *mollis* seedlings will attach to a wide range of host plants, but not all plants are suitable hosts. Nonnative winter annuals, such as *Hainardia cylindrica* (barbgrass) and *Polypogon monspeliensis* (annual rabbitsfoot grass), or native winter annuals, such as *Juncus bufoni*us (toad rush), are not suitable hosts because they typically die before *C. mollis* ssp. *mollis* can flower and produce seeds (Grewell et al. 2003, pp. 77, 78; and Grewell 2004, pp. 86, 107). Known suitable hosts include *Distichlis spicata* (salt grass), *Sarcocornia pacifica* (pickleweed), and *Jaumea carnosa* (marsh jaumea). Seedlings suffer increased mortality when they germinate near unsuitable hosts or in habitats with a low availability of suitable hosts (Grewell 2004, pp. 86, 107).

Cordylanthus mollis ssp. mollis: Sites for Reproduction

Cordylanthus mollis ssp. *mollis*, an annual, regenerates from a persistent, dormant seed bank. The longevity of seed banks is unknown, but some populations fail to emerge for several years and then reappear, suggesting long-term viability of dormant seeds (Service 2005, p. 97). The peak seed germination period occurs during the most frequent tidal inundations in areas of bare soil (CDWR 1994, p. 52; Ruygt 1994, p. 78). Accordingly, the presence of small gaps in the surrounding overstory are important to the germination success. Such gaps can be created by *Cuscuta salina* (salt marsh dodder), a parasitic plant (Grewell et. al. 2003, pp. 22, 31). Seed production can be significantly influenced by flower, fruit, and seed predation by lepidopteran larvae (caterpillars) (Ruygt 1994, p. 59; Grewell et al. 2003, pp. 43-45).

Cordylanthus mollis ssp. *mollis* is probably dependent on insects for successful pollination and reproduction. Ruygt (1994, p. 56) observed three bee species that were visitors to various *C. mollis* ssp. *mollis* populations in Napa and Solano Counties. Bumble bees (*Bombus californicus*) were the most frequent visitors seen foraging among flowers. The low number of potential pollinators at some locations suggests that the subspecies may rely to some degree on self-pollination to fertilize flowers within larger populations (Ruygt 1994, p. 58). During a pollinator exclusion experiment, Ruygt (1994, p. 58) observed that several plants were able to produce seeds through self-fertilization, but the viability of these seeds were not tested or compared to those for non-experimental plants. Grewell et al. (2003, pp. 37-39) observed five bee genera and one bee fly acting as potential pollinators at a recently reintroduced population of *C. mollis* ssp. *mollis* at Rush Ranch and a natural population at Hill Slough Marsh. Pre-dispersal predation of *C. mollis* ssp. *mollis* seeds by various moths, including *Saphinista* and *Lipographis* species, can also play a significant role in reproductive success (Grewell et al. 2003, p. 45). The influence of natural tidal regimes on *Saphinista* population levels is discussed above. Populations of these seed predators are also kept in check by various wasps of the Eumenidae and Vespidae families.

Limited information exists on seed dispersal mechanisms for *Cordylanthus mollis* ssp. *mollis*. Seeds may disperse short distances from parent plants by tidal inundations or animals (Grewell et al. 2003, pp. 89-90), but successful long distance dispersal by these or other events has not been documented. Stromberg and Villasenor (1986, p. 6) observed that most of the mature seed capsules remained closed on parent plants. They believed that the majority of the seeds were probably released from seed capsules after mature plants fell to the ground and decayed. This would likely result most often in seeds germinating directly beneath parent plants, but since the seeds can float (Ruygt 1994, p. 31), it would also provide opportunity for dispersal by tidal inundations.

Cordylanthus mollis ssp. mollis: Primary Constituent Elements

Pursuant to our regulations, we are required to identify the known physical and biological features (PCEs) essential to the conservation of *Cordylanthus mollis* ssp. *mollis*. All areas designated as critical habitat for *C. mollis* ssp. *mollis* are occupied by the subspecies, are within the subspecies' historic geographic range, and contain sufficient PCEs to support at least one of the plant's life history functions.

Based on our current knowledge of the life history, biology, and ecology of *Cordylanthus mollis* ssp. *mollis*, we have determined that the PCEs for *Cordylanthus mollis* ssp. *mollis*:

(1) Persistent emergent, intertidal, estuarine wetland at or above the mean high-water line (as extended directly across any intersecting channels);

(2) Rarity or absence of plants that naturally die in late spring (winter annuals); and

(3) Partially open spring canopy cover (approximately 790 nMol/m2/s) at ground level, with many small openings to facilitate seedling germination.

This designation is designed for the conservation of areas supporting PCEs necessary to support the life history functions which were the basis for the proposal. In general, critical habitat units are designated based on sufficient PCEs being present to support one or more of the subspecies' life history functions. Each of the areas proposed in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of the two subspecies. Because not all life history functions require all the PCEs, not all critical habitat will uniformly contain all the PCEs.

Criteria Used To Identify Critical Habitat

As required by section 4 of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. The material included data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports; and regional Geographic Information System (GIS) coverages. With the partial exception of Hill Slough Marsh, we designated no areas outside the geographical area presently occupied by the subspecies. Hill Slough Marsh is designated for both *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis*, but is only currently occupied by *C. mollis* ssp. *mollis*. The area is being designated critical habitat for *C. hydrophilum* var. *hydrophilum* because it contains the PCEs for the species and is required for its conservation due to the plants limited distribution. The Hill Slough Marsh has been identified as the single best area for restoration for *C. hydrophilum* var. *hydrophilum* and is the subject of on-going planning and restoration efforts.

Mapping

After choosing general areas based on the above considerations, we mapped unit bounds to correspond with the contiguous areas supporting the listed PCEs, according to procedures listed in the Mapping section of the proposed rule (71 FR 18465; April 11, 2006). As discussed above (Summary of Changes From the Proposed Rule), we redrew some bounds in this final designation to account for changes to the PCEs, as well as for new information provided by peer reviewers and commenters.

Criteria Used to Identify Critical Habitat for Cirsium hydrophilum var. hydrophilum

The tidally influenced habitat required for *Cirsium hydrophilum* var. *hydrophilum* survival has been greatly reduced from historical levels. Of the estimated 71,000 ac (29,000 ha) of tidal marsh habitat originally within the Suisun Marsh, only about 9,300 ac (3,800 ha) remained as tidal marsh in 1989 (Dedrick 1989, pp. 4, 7). Most of this area is backed by steep levees, allowing for little or no tidally influenced marsh habitat required for the subspecies as identified in the PCE section above. The distribution of *C. hydrophilum* var. *hydrophilum* has also been greatly reduced from historical levels. It was considered very common in Suisun Bay in the late 19th century (CDWR 1999, p. 171). In 1975, the plant was deemed to be extirpated due to a 15–year absence from known locations within the Suisun Marsh. Extensive survey work in 1993 identified two populations in the Suisun Marsh area and identified the Hill Slough area as containing habitat essential for the conservation of the subspecies (Grewell 1993).

The population size of *C. hydrophilum* var. *hydrophilum* varies greatly from year to year. At the time of listing, the subspecies was known from two small areas totaling a few thousand plants occupying an area of less than one acre. Survey work done since the time of listing has identified an additional population within the same general area as the two at the time of listing. These three populations continue to be threatened by the same factors discussed in the listing determination: habitat loss, fragmentation, disruption to the hydrologic regime, invasive competition from nonnative plants, chronic and acute pollution from point and non-point sources, insect or pest outbreaks, and extended drought. Due to their small size, the populations are also subject to increased risk of extirpation from random anthropogenic or natural events.

We have determined that, due to the limited availability of habitat for the subspecies, the limited distribution and small population size of the subspecies, and the subspecies' poor dispersal capabilities, the long-term conservation of this plant is dependent upon the protection of habitat supporting all three existing populations, including surrounding areas that may contain dormant seed banks and that support the PCEs of the subspecies. For the same reasons, the conservation of the subspecies also depends on the establishment of at least one additional population in appropriate habitat. Hill Slough Marsh is not known to be occupied by the subspecies, either now or at the time of listing, but based on the area's size and because it supports all the PCEs of the plant, it is the area best suited for reintroduction. The area is also the subject of ongoing restoration and planning efforts conducted under the auspices of the Suisun Protection Plan (Pacheco 2006, p. 2). Accordingly, we have determined that the area of Hill Slough Marsh proposed below as Unit 1 for *Cirsium hydrophilum* var. *hydrophilum* is essential to the conservation of the subspecies.

Criteria Used to Identify Critical Habitat for Cordylanthus mollis ssp. mollis

Only extant occurrences of *Cordylanthus mollis* ssp. *mollis* in areas supporting PCE 1 were selected because these areas contain the features essential to the conservation of the subspecies and can contribute best to the subspecies' recovery. These widely scattered populations are dependent on tidal events and native halophytic plant communities to complete the subspecies' life cycle. Extant occurrences in diked, managed, and muted tidal marshes were not proposed for designation, because these areas fail to support the tidal hydrology and native plant communities that the subspecies needs for long-term persistence. Populations outside the designation of critical habitat may still be important for recovery of the subspecies, and are still protected under the Act, but their habitat is not considered essential to recovery.

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

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 PCEs may require special management considerations or protection. Most of the PCEs and the known occurrences of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* are threatened by: (1) tidal wetland conversions to diked, managed, or muted tidal marshes; (2) changes to channel water salinity and tidal regimes; (3) mosquito abatement activities; (4) marsh invasions by

nonnative plants; (5) plant-eating insects; (6) urban, industrial, and agricultural encroachment; (7) impacts from livestock overgrazing; (8) feral pigs (*Sus scrofa*); and (9) impacts from unauthorized foot and off-road vehicle traffic. These combined threats result in the loss and fragmentation of suitable habitat for *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis*, which could significantly affect their long-term survival. Individually, these threats may require special management considerations or protection as addressed under the critical habitat unit descriptions below.

Critical Habitat Designation

We are designating three units as critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and five units for *Cordylanthus mollis* ssp. *mollis*. The critical habitat areas described below constitute our best assessment at this time of: (1) areas determined to be occupied at the time of listing, that contain the primary constituent elements essential for the conservation of the species, and that may require special management considerations or protection; and (2) those additional areas that were not occupied at the time of listing, but were found to be essential to the conservation of the subspecies.

Cirsium hydrophilum var. hydrophilum

The three designated units for *Cirsium hydrophilum* var. *hydrophilum* are in Solano County, California. The critical habitat units described below contain the PCEs of the subspecies and may require special management considerations or protection. The acreages of land ownership for units designated as critical habitat are listed in Table 1, and Table 2 indicates occupancy status for each unit.

TABLE 1.—LAND OWNERSHIP OF CRITICAL HABITAT UNITS DESIGNATED FOR *Cirsium Hydrophilum* VAR. *Hydrophilum*

[Area Estimates Reflect All Land Within Critical Habitat Boundaries, Acres (Hectares)]

Unit	State	Land Trust	Private	Total
1. Hill Slough Marsh	440 (178)	0 (0)	85 (35)	525 (213)
2. Peytonia Slough Marsh	192 (78)	0 (0)	154 (62)	346 (140)
3. Rush Ranch/Grizzly Island Wildlife Area	231 (93)	950 (384)	(0.0)	1,181 (477)
Total	863 (349)	950 (384)	239 (97)	2,052 (830)

TABLE 2.—OCCUPANCY BY CRITICAL HABITAT UNIT FOR *Cirsium Hydrophilum* var. *Hydrophilum*

Unit	Occupied at time of listing?	Currently Occupied	Acres (Hectares)
1. Hill Slough Marsh	No	No	525 (213)
2. Peytonia Slough Marsh	Yes	Yes	346 (140)
3. Rush Ranch/Grizzly Island Wildlife Area	Yes	Yes	1,181 (477)
Total			2,052 (830)

Common threats that may require special management considerations or protection of the PCEs for *Cirsium hydrophilum* var. *hydrophilum* in all three units include: (1) alterations to channel water salinity and tidal regimes from the operation of the Suisun Marsh Salinity Control Gates that could affect the depth, duration, and frequency of tidal events and the degree of salinity in the channel water column; (2) mosquito abatement activities (dredging, and chemical spray operations), which may damage the plants directly by trampling and soil disturbance, and indirectly by altering hydrologic processes and by providing relatively dry ground for additional foot and vehicular traffic; (3) rooting, wallowing, trampling, and grazing impacts from livestock and feral pigs that could result in damage or loss to *C. hydrophilum* var. *hydrophilum* colonies, or in soil disturbance and compaction, leading to a disruption in natural marsh ecosystem processes; (4) the proliferation of nonnative invasive plants, especially *Lepidium latifolium*, leading to the invasives outcompeting *C. hydrophilum* var. *hydrophilum*; and (5) programs for the control or removal of non-native invasive plants, which, if not conducted carefully, can damage *C. hydrophilum* var. *hydrophilum* populations through the injudicious application of herbicides, by direct trampling, or through the accidental transport of invasive plant seeds to new areas. An additional threat that may require special management considerations or protection of the PCEs in Units 1 and 2 includes urban or residential encroachment from Suisun City to the north that could increase stormwater and wastewater runoff into these units.

Below we present brief descriptions of all units and the reasons why they contain essential features or are areas that are essential for the conservation of *Cirsium hydrophilum* var. *hydrophilum*. Each unit meets the description of PCE 1 in its entirety. Each unit also includes large areas meeting the descriptions of PCEs 2 and 3. For further discussion of the PCEs, refer to ''Primary Constituent Elements'', above.

Unit 1: Hill Slough Marsh

Unit 1 consists of approximately 525 ac (213 ha) located north of Potrero Hills between Grizzly Island Road and Highway 12. As discussed in ''Criteria Used to Identify Critical Habitat for *Cirsium hydrophilum* var. *hydrophilum*'' above, this unit is currently unoccupied and was unoccupied at the time of listing, but it is essential to the conservation of the subspecies because it is the single best area for establishment of an additional population (see response to Comment 2). It contains all the necessary PCEs and is the subject of ongoing planning and restoration efforts within the Suisun Marsh. The unit consists of approximately 440 ac (178 ha) of State-owned land (Hill Slough Wildlife Area), which is managed by the CDFG, and 85 ac (35 ha) of privately owned land. The unit receives tidal inundations irregularly (not daily) (NWI 2005) from Hill Slough and a flood control channel along the western unit boundary.

Unit 2: Peytonia Slough Marsh

Unit 2 consists of approximately 346 ac (140 ha) of tidal marsh (PCE 1) located adjacent to Cordelia Road to the west, Suisun Slough to the east, Peytonia Slough to the south, and Suisun City to the north. The unit consists of approximately 192 ac (78 ha) of State-owned land (Peytonia Slough Ecological Reserve), which is managed by the CDFG, and 154 ac (62 ha) of privately owned high tidal marsh. Although the unit is bisected, north to south, by an elevated railroad line, much of the track is on trestle rather than berm, allowing tidal waters to reach both sides of the unit through Peytonia Slough and several smaller unnamed sloughs (NWI 2005; Vollmar 2005a, pp. 2, 3, 5; Huffman 2006, p. 1). Because of this hydrological connection, we are treating designated habitat on both sides of the track as a single unit, rather than splitting it into two subunits as we did in the proposed designation. *Cirsium hydrophilum* var. *hydrophilum* occupied the unit at the time of listing as identified in the final listing rule (62 FR 61916; November 20, 1997) and contains the features essential to the conservation of *C. hydrophilum* var. *hydrophilum*.

Unit 3: Rush Ranch/Grizzly Island Wildlife Area

Unit 3 consists of approximately 1,181 ac (477 ha) of tidal marsh located adjacent to Suisun Slough to the west, Cutoff and Montezuma Sloughs to the south, and Potrero Hills to the North. This unit consists of 231 ac (93 ha) of State-owned land (the Joice Island portion of Grizzly Island Wildlife Area), which is managed by the CDFG, and 950 ac (384 ha) of land owned by the Solano Land Trust (local nonprofit public land trust). *Cirsium hydrophilum* var. *hydrophilum* occupied the unit at the time of listing as identified in the final listing rule (62 FR 61916; November 20, 1997) and contains the features essential to the conservation of *C. hydrophilum* var. *hydrophilum*. The unit receives regular tidal inundations at least once daily (NWI 2005) from the above-mentioned tidal sloughs. Additional special management considerations or protection beyond the special management required for common threats, as discussed above, may be required to control the presence of *Rhinocyllus conicus* (a nonnative biological control weevil) or other plant-eating insects that could reduce the reproductive potential of *C. hydrophilum* var. *hydrophilum*.

Cordylanthus mollis ssp. mollis

We are designating five units as critical habitat for *Cordylanthus mollis* ssp. *mollis* in Contra Costa, Napa, and Solano Counties, California. The critical habitat areas described below constitute areas that contain the PCEs and that may require special management considerations or protection. The acreages of land ownership for units designated as critical habitat are listed in Table 3, and Table 4 indicates occupancy status for each unit. Contra Costa, Napa, and Solano Counties have approximately 22 ac (9 ha), 384 ac (156 ha), and 1,870 ac (757 ha) of critical habitat, respectively.

Common threats that may require special management considerations or protections of the PCEs for *Cordylanthus mollis* ssp. *mollis* in all five units include: (1) mosquito abatement activities (ditching, dredging, and chemical spray operations), which may damage the plants directly by trampling and soil disturbance, and indirectly by altering hydrologic processes and by providing relatively dry ground for additional foot and vehicular traffic; (2) general foot and off-road vehicle traffic through *C. mollis* ssp. *mollis* populations that could result in their damage and loss in impacted areas; (3) increases in the proliferation of nonnative invasive plants from human-induced soil disturbances leading to the invasives outcompeting *C. mollis* ssp. *mollis*; (4) control or removal of nonnative invasive plants, especially *Lepidium latifolium*, which, if not carefully managed, can damage *C. mollis* ssp. *mollis* populations through the injudicious application of herbicides, by direct trampling, or through the accidental transport of invasive plant seeds to new areas; and (5) presence of *Lipographis fenestrella* (a moth) larvae that could reduce the reproductive potential of *C. mollis* ssp. *mollis* through flower, fruit, and seed predation.

Threats that may require special management considerations or protection in specific units include a large perennially flooded pond within the outer bounds of Unit 1 (but not itself designated) that presents a dispersal barrier to *C. mollis* ssp. *mollis* seeds and may serve as a propagule source for exotic invasive species. Threats specific to Units 2 and 4 in Suisun Marsh include: (1) alterations to channel water salinity and tidal regimes from the operation of the Suisun Marsh Salinity Control Gates that could affect the depth, duration, and frequency of tidal events and the degree of salinity in the channel water column; and (2) rooting, wallowing, trampling, and grazing impacts from livestock and feral pigs that could result in damage or loss to *Cordylanthus mollis* ssp. *mollis* populations or soil disturbance and compaction, leading to a disruption in natural marsh ecosystem processes. A threat that may require special management consideration or protection of the PCEs for *C. mollis* ssp. *mollis* in Units 3 and 5 is contamination from bay oil spills that could directly impact *C. mollis* ssp. *mollis* populations and seed banks.

Below we present brief descriptions of all units and the reasons why they meet the definition of critical habitat for *Cordylanthus mollis* ssp. *mollis*.

TABLE 3.—LAND OWNERSHIP OF CRITICAL HABITAT UNITS DESIGNATED FOR *Cordylanthus Mollis* SSP. *Mollis*

[Area Estimates Reflect All Land Within Critical Habitat Boundaries, Acres (Hectares)]

Unit	State	County or City	Land Trust	Private	Total
1. Fagan Slough Marsh	297.0 (120.2)	15.0 (6.1)	(0.0)	72.0 (29.1)	384.0 (155.4)
2. Hill Slough Marsh	440.0 (178.1)	(0.0)	(0.0)	85.0 (34.4)	525.0 (212.5)
3. Point Pinole Shoreline	9.0 (3.6)	13.0 (5.3)	(0.0)	(0.0)	22.0 (8.9)
4. Rush Ranch/Grizzly Island Wildlife Area	231.0 (93.5)	(0.0)	950.0 (384.5)	(0.0)	1,181.0 (477.9)
5. Southampton Marsh	164.0 (66.4)	(0.0)	(0.0)	(0.0)	164.0 (66.4)
6. Peytonia Slough Marsh	(0.0)	(0.0)	(0.0)	(0.0)	0.0 (0.0)
Total	1,141.0 (461.8)	28.0 (11.3)	950.0 (384.5)	157.0 (63.5)	2,276.0 (921.1)

TABLE 4.—OCCUPANCY BY CRITICAL HABITAT UNIT FOR *Cordylanthus Mollis* SSP. *Mollis*.

Unit	Occupied at time of listing?	Currently Occupied	Acres (Hectares)
1. Fagan Slough Marsh	Yes	Yes	384.0 (155.4)
2. Hill Slough Marsh	Yes	Yes	525.0 (212.5)
3. Point Pinole Shoreline	Yes	Yes	22.0 (8.9)
4. Rush Ranch/Grizzly Island Wildlife Area	Yes	Yes	1,181.0 (477.9)
5. Southampton Marsh	Yes	Yes	164.0 (66.4)
			2,276 (921)

Unit 1: Fagan Slough Marsh (Napa County)

Unit 1 consists of approximately 384 ac (156 ha) located adjacent to the Napa River to the west, Napa County Airport to the east, Fagan Slough to the south, and Steamboat Slough to the north. This unit consists of 297 ac (120 ha) of State-owned land (Fagan Slough Ecological Reserve), which is managed by the CDFG, 6 ac (2 ha) of county-owned land, 9 ac (4 ha) of land owned by the City of Napa, and 72 ac (29 ha) of privately owned land. *Cordylanthus mollis* ssp. *mollis* occupied the unit at the time of listing as identified in the final listing rule (62 FR 61916; November 20, 1997) and contains the features essential to the conservation of *C. mollis* ssp. *mollis*. The unit receives tidal inundations regularly (NWI 2005) from the above-mentioned tidal sloughs and the Napa River.

Unit 2: Hill Slough Marsh (Solano County)

Unit 2 for *Cordylanthus mollis* ssp. *mollis* consists of approximately 525 ac (213 ha) located north of Potrero Hills between Grizzly Island Road and Highway 12. The unit consists of approximately 440 ac (178 ha) of State-owned land (Hill Slough Wildlife Area), which is managed by the CDFG, and 85 ac (35 ha) of privately owned land. *Cordylanthus mollis* ssp. *mollis* occupied the unit at the time of listing as identified in the final listing rule (62 FR 61916; November 20, 1997) and contains the features essential to the conservation of *C. mollis* ssp. *mollis*. The unit receives tidal inundations irregularly (not daily) (NWI 2005) from Hill Slough and a flood control channel along the western unit boundary.

Unit 3: Point Pinole Shoreline (Contra Costa County)

Unit 3 consists of approximately 22 ac (9 ha) located along the Contra Costa shoreline in San Pablo Bay just east of Point Pinole. This unit consists of 13 ac (5 ha) of County-owned land (Point Pinole Regional Shoreline Park), which is managed by the East Bay Regional Park District, and 9 ac (4 ha) of State-owned land. *Cordylanthus mollis* ssp. *mollis* occupied the unit at the time of listing as identified in the final listing rule (62 FR 61916; November 20, 1997) and contains the features essential to the conservation of *C. mollis* ssp. *mollis*. The unit receives tidal inundations on a regular basis (NWI 2005) from natural and artificial (dredged) tidal channels within the unit. Additional special management considerations or protections beyond those discussed above may be required to minimize the impact of industrial or commercial encroachment from the south that could increase stormwater and wastewater runoff into the unit.

Unit 4: Rush Ranch/Grizzly Island Wildlife Area (Solano County)

Unit 4 for *Cordylanthus mollis* ssp. *mollis* consists of approximately 1,181 ac (477 ha) located adjacent to Suisun Slough to the west, Cutoff and Montezuma Sloughs to the south, and Potrero Hills to the North. This unit consists of 231 ac (93 ha) of State-owned land (Joice Island portion of the Grizzly Island Wildlife Area), which is managed by the CDFG, and 950 ac (384 ha) of land owned and managed by the Solano Land Trust (local non-profit public land trust). *Cordylanthus mollis* ssp. *mollis* occupied the unit at the time of listing as identified in the final listing rule (62 FR 61916; November 20, 1997) and contains the features essential to the conservation of *C. mollis* ssp. *mollis*. The unit receives tidal inundations regularly (at least once daily) (NWI 2005) from the above-mentioned tidal sloughs).

Unit 5: Southampton Marsh (Solano County)

Unit 5 consists of approximately 164 ac (66 ha) of State-owned land managed by the California Department of Parks and Recreation (CDPR) as a wetland natural preserve (CDPR 1991, p. 44). The unit is located in the Benicia State Recreational Area along Interstate Highway 780 and just northwest of the City of Benicia. *Cordylanthus mollis* ssp. *mollis* occupied the unit at the time of listing as identified in the final listing rule (62 FR 61916; November 20, 1997) and contains the features essential to the conservation of *C. mollis* ssp. *mollis*. The unit receives tidal inundations on a regular-to-irregular basis (NWI 2005) from natural and artificial (dredged) tidal channels within the unit. Additional special management considerations or protection of the PCEs beyond those discussed above may be required to minimize the impact of residential encroachment from the north that could increase stormwater and wastewater runoff into the unit.

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.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report, while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) a concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in 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 *Cirsium hydrophilum* var. *hydrophilum*, *Cordylanthus mollis* ssp. *mollis,* or their 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 the Cirsium hydrophilum var. hydrophilum, Cordylanthus mollis ssp. mollis, and their Critical Habitat

Jeopardy Standard

When performing jeopardy analyses for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*, the Service applies an analytical framework that relies heavily on the importance of core area populations to the survival and recovery of the two plants. 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 *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* 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 considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analyses for Federal actions affecting *Cirsium hydrophilum* var. *hydrophilum*'s and *Cordylanthus mollis* ssp. *mollis*'s critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve its intended conservation role for the species. Generally, the conservation role of the critical habitat units for the two plants 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 *Cirsium hydrophilum* var. *hydrophilum* or *Cordylanthus mollis* ssp. *mollis* is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the plants include, but are not limited to:

(1) Actions that would degrade natural tidal hydrology in undiked high tidal marshes supporting *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* populations. Such actions could include, but are not limited to: the construction of new levees, tide gates, mosquito abatement ditches, flash board water control structures, or other marsh impoundment and drainage structures; urban flood control and channelization projects; and human-induced changes to natural saltwater and freshwater inflows into undiked high tidal marshes. These actions could limit the geomorphic processes associated with natural tidal channel networks; alter soil and water chemistry affecting the composition of tidal marsh plant communities; and reduce or eliminate the amount of area experiencing the full range of tidal inundations, especially in relation to potential local sea level rise.

(2) Actions that would degrade or destroy *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* habitat. Such actions could include, but are not limited to, domestic and feral livestock impacts; unauthorized foot and off-road vehicle traffic; and agricultural, urban, and commercial developments. These actions could alter marsh ecosystem form and function by isolating and fragmenting tidal marsh habitat, leading to the further isolation of *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* populations; the introduction or encouragement of the spread and establishment of nonnative invasive plants; the increase of human-induced erosion and sedimentation rates; the boost in trail development and usage that may impact species populations; and lower water quality because of an increase in stormwater and wastewater runoff.

(3) Actions that would remove or destroy *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* plants. Such actions could include, but are not limited to: excavating, grading, plowing, mowing, burning, grazing, farming, or chemical spraying; unauthorized foot and off-road vehicle traffic; and the introduction of nonnative invasive plants in occupied, undiked high tidal marshes.

(4) Actions completed by the U. S. Army Corps of Engineers (for example, under section 404 of the Clean Water Act of 1977 and under section 10 of the Rivers and Harbor Act of 1899), Environmental Protection Agency, and other Federal, State, or local regulatory agencies that would reduce the quantity and quality of undiked, high tidal marsh habitat supporting *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* populations. Such actions could include, but are not limited to: the construction of new levees, agricultural irrigation systems, boat ramps and docks, wharfs, marinas, bank revetments, permanent mooring structures, and aids to navigation; dredge and fill activities; roadway and highway projects (such as road widening and new road construction); unauthorized discharge of non-point source pollutants; stream and tidal channel alternations; and other water-dependent projects or activities. These actions could impact the intertidal wetland habitat and associated vegetation by lowering tidal marsh water quality, decreasing saltwater and freshwater inflows, and causing direct loss of tidal marshes through fill and removal activities.

We consider all of the units designated as critical habitat, as well as those that were excluded, to contain features essential to the conservation of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. All units are within the geographic range of *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis*, respectively, or were occupied by the subspecies at the time of listing, except for Unit 1 for *C. hydrophilum* var. *hydrophilum*, which is considered unoccupied by that subspecies. The same area is also designated as Unit 2 for *C. mollis* ssp. *mollis*, but it is occupied by that subspecies. All units are likely to be used by the plants except for Unit 1 (Hill Slough Marsh) for *C. hydrophilum* var. *hydrophilum*. However, the Hill Slough Marsh area contains all the PCEs for the species and has been identified as an area with high restoration potential. Federal agencies already consult with us on activities in areas currently occupied by the plants, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the subspecies.

Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

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 critical habitat 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.

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 Secretary is afforded broad discretion, and the Congressional record is clear that in making a determination under the section the Secretary has discretion as to which factors and how much weight will be given 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, 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 considered.

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resource Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management, fish and wildlife habitat enhancement or modification, and wetland protection, enhancement, and restoration where necessary to support fish and wildlife and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Public Law No. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. INRMPs developed by military installations located within the range of the critical habitat designation for *Cordylanthus mollis* ssp. *mollis* were analyzed for non-inclusion under the authority of 4(a)(3) of the Act.

Based on the above considerations and information discussed in the proposed designation (71 FR 18456; FR April 11, 2006), and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the conservation efforts identified in the INRMP for Concord Naval Weapons Station will provide benefits to *Cordylanthus mollis* ssp. *mollis* occurring in habitats within or adjacent to Concord Naval Weapons Station. Approximately 402 ac (163 ha) of habitat for *Cordylanthus mollis* ssp. *mollis* is not included in this critical habitat designation. Therefore, we are not including critical habitat for *C. mollis* ssp. *mollis* on this installation pursuant to section 4(a)(3) of the Act.

Relationship of Critical Habitat to Non-Economic and Economic Impacts – Exclusions Under Section 4(b)(2) of the Act

Pursuant to section 4(b)(2) of the Act, after determining critical habitat on the basis of the best scientific data, we must consider relevant impacts of such a designation including economic impacts. We have determined that the lands within the designation of critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* are not owned or managed by the Department of Defense, do not include any Tribal lands or trust resources, and are not covered by current habitat conservation plans or similar management plans or conservation partnerships. Designated areas within the Suisun Marsh are protected by the Suisun Marsh Protection Plan, but the plan does not focus on these particular endangered plants, or on the specific areas designated. Designation is also unlikely to lessen the benefits of the Protection Plan, so there is no benefit to the species of excluding the area covered by that plan. An additional management plan for the Suisun Marsh area, called the Suisun Marsh Habitat Management, Preservation, and Restoration Plan (SMHMP) is currently being developed, but is not sufficiently complete to support exclusion of Suisun Marsh areas from critical habitat designation.

We anticipate no impact to national security, Tribal lands, partnerships, or habitat conservation plans from this critical habitat designation. Based on the best available information including the prepared economic analysis, we believe that all of these units contain the features that are essential for the conservation of this species and that the single unit that was unoccupied by the species at time of listing (Unit 1, Hill Slough, for *C. hydrophilum* var. *hydrophilum*) is essential for the conservation of the subspecies. Our economic analysis indicates an overall low cost resulting from the designation. Therefore, we have found no areas for which the benefits of exclusion outweigh the benefits of inclusion, and so have not excluded any areas from this designation of critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* based on economic or other impacts. As such, we have considered, but not excluded, any lands from this designation based on the potential impacts to these factors.

Economic Analysis

Section 4(b)(2)of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

After publication of the proposed critical habitat designation, we announced the availability of draft economic analysis that estimated the potential economic effect of the designation. The draft analysis was made available for public review and comment on November 20, 2006 (71 FR 67089). We accepted comments on the draft analysis until December 20, 2006. We did not receive any comments on the draft economic analysis.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp.*mollis*. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation based on potential economic impacts of the regulation under consideration. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used

by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies.

The November 20, 2006, notice (71 FR 67089) provides a detailed economics section based on a draft economic analysis, and the slightly revised economic analysis dated December 27, 2006, estimates an economic cost of $1.7 million in undiscounted dollars associated with the designation, spread over 2006 to 2025. At 3 percent discount, the estimated costs would be $1,476,829 ($96,375 annualized); at 7 percent discount, the estimated costs would be $1,305,024 ($115,126 annualized).

Costs were broken down by management actions deemed necessary to address a particular threat to recovery, without regard for whether such actions would be required by critical habitat. The highest costs were associated with projected efforts to prevent damage to the plants resulting from human foot and off-road vehicle traffic, and from cattle and feral pigs. The analysis also did not find likely any impacts to the energy industry, or significant impacts to small businesses. We evaluated the potential economic impact of this designation as identified in the draft analysis. Based on this evaluation, we believe that there are no disproportionate economic impacts that warrant exclusion pursuant to section 4(b)(2) of the Act at this time.

A copy of the economic analysis with supporting documents may be obtained by contacting the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

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 will not 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. As explained above, we prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2). We evaluated the potential economic impact of this designation as identified in the draft analysis. Based on this evaluation, we believe that there are no disproportionate economic impacts that warrant exclusion pursuant to section 4(b)(2) of the Act at this time.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect *Cirsium hydrophilum* var. *hydrophilum* or *Cordylanthus mollis* ssp. *mollis*. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

The designation of critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* is not expected to result in significant small business impacts since revenue losses would be less than 1 percent of total small business revenues in affected areas. The impacts on small business, small governments, and small nonprofits are expected to be negligible. The annual number of affected small firms is two or less for all three counties examined. Consequently, less than one small firm is projected to have annual revenue losses equal to their expected

annual revenues as a consequence of critical habitat designation.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately two small businesses, on average, that may be required to consult with us each year regarding their project's impact on *Cirsium hydrophilum* var. *hydrophilum*, *Cordylanthus mollis* ssp. *mollis* or their habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek a statutory exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation. Within the final critical habitat units, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization implemented or licensed by Federal agencies;

(3) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(4) Hazard mitigation and post-disaster repairs funded by the FEMA; and

(5) Activities funded by the EPA, U.S. Department of Energy, or any other Federal agency.

It is likely that a developer or other project proponent could modify a project or take measures to protect *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and proposed critical habitat designation. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include U.S. Army Corps of Engineers permits, permits we may issue under section 10(a)(1)(B) of the Act, and Federal Highway Administration funding for road improvements. Therefore, for the above reasons and based on currently available information, we certify that the rule will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination (see FOR FURTHER INFORMATION CONTACT for information on obtaining a copy of the final economic analysis).

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule to designate critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)-(7). ''Federal intergovernmental mandate'' includes a regulation that

''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, Small Government Agency Plan is not required.

Takings (E.O. 12630)

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 2,621 ac (1,061 ha) of lands in Contra Costa, Napa, and Solano counties, California as critical habitat for the *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* in a takings implication assessment. The takings implications assessment concludes that this final designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism (E.O. 13132)

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat for *Cirsium hydrophilum* var. *hydrophilum* or *Cordylanthus mollis* ssp. *mollis* may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have an 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 (E.O. 12988)

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Endangered Species Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*.

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 Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position has been sustained by the U.S. Court of Appeals for the Ninth Circuit Court (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands supporting *Cirsium hydrophilum* var. *hydrophilum*'s or *Cordylanthus mollis* ssp. *mollis*'s habitat that meets the definition of critical habitat. Therefore, critical habitat for *C. hydrophilum* var. *hydrophilum* or *C. mollis* ssp. *mollis* has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor,

Sacramento Fish and Wildlife Office (see FOR FURTHER INFORMATION CONTACT).

Author(s)

The primary authors of this notice are staff of the Sacramento Fish and Wildlife Office (see FOR FURTHER INFORMATION CONTACT).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.12(h), revise the entries for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

* * * * *

Species Scientific Name	Species Common Name	Historic Range	Family	Status	When Listed	Critical Habitat	Special Rules
*	*	*	*	*	*		*
FLOWERING PLANTS							
*	*	*	*	*	*		*
Cirsium hydrophilum var. *hydrophilum*	Suisun thistle	U.S.A. (CA)	Asteraceae	E	627	17.96 (a)	NA
*	*	*	*	*	*		*
Cordylanthus mollis ssp. *mollis*	Soft bird's-beak	U.S.A. (CA)	Scrophulariaceae	E	627	17.96 (a)	NA
*	*	*	*	*	*		*

* * * * *

■ 3. Amend § 17.96(a), by adding an entry for *Cirsium hydrophilum* var. *hydrophilum* (Suisun thistle) in alphabetical order under family Asteraceae and an entry for *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak) under family Scrophulariaceae to read as follows:

§ 17.96 Critical Habitat – plants.

(a) *Flowering plants.*

* * * * *

Family Asteraceae: *Cirsium hydrophilum* **var.** *hydrophilum* **(Suisun thistle)**

(1) Critical habitat units are depicted for Solano County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Cirsium hydrophilum* var. *hydrophilum* are:

(i) Persistent emergent, intertidal, estuarine wetland at or above the mean high-water line (as extended directly across any intersecting channels);

(ii) Open channels that periodically contain moving water with ocean-derived salts in excess of 0.5 percent; and

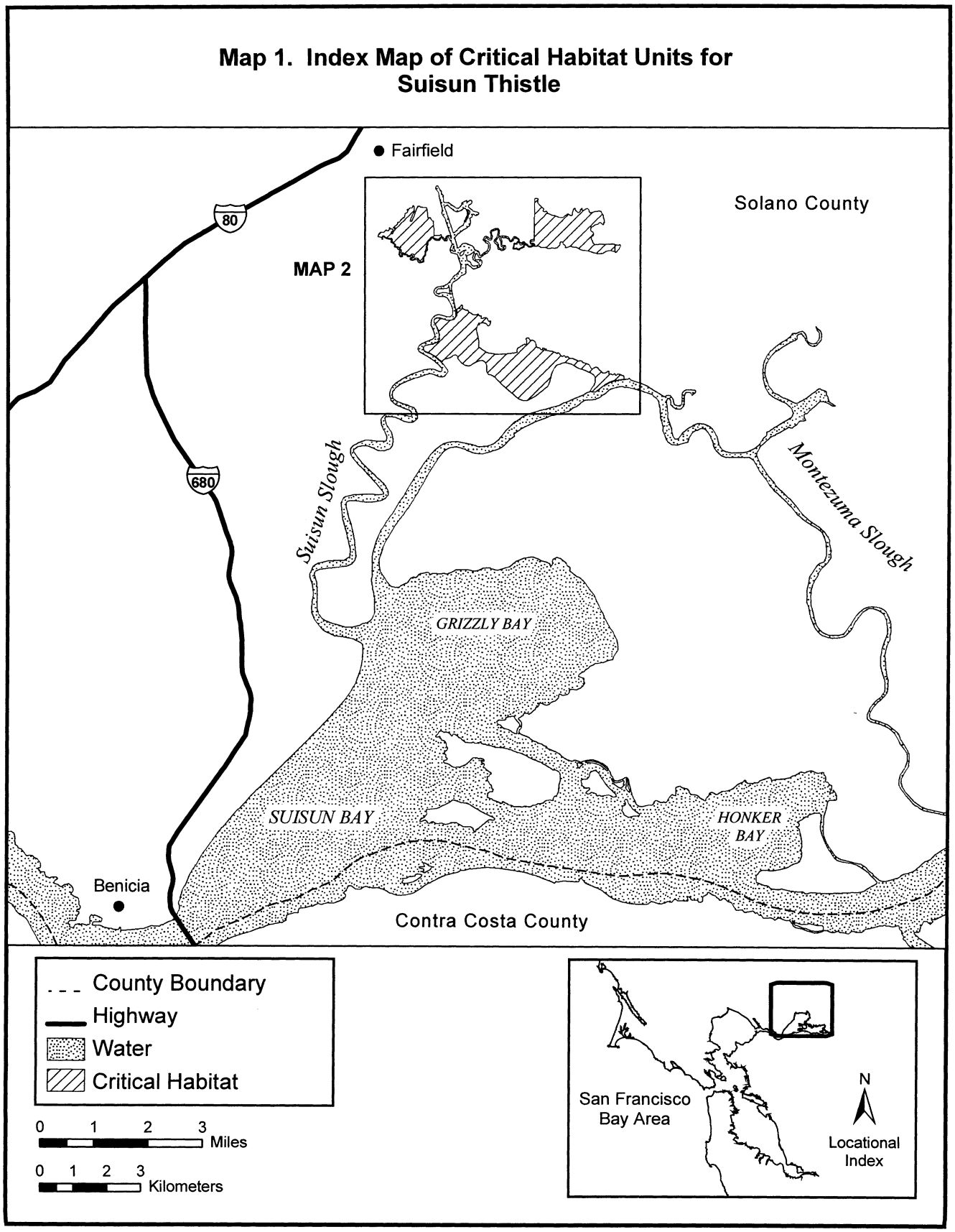
(iii) Gaps in surrounding vegetation to allow for seed germination and growth.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Data layers defining Solano County map units were created on a base map using CDWR color mosaic 1:9,600 scale digital aerial photographs for Suisun Bay captured June 16, 2003 (CDFG 2005c). Critical habitat units were then mapped using Universal Transverse Mercator (UTM) zone 10, North American Datum (NAD) 1983 coordinates.

(5) Note: Index Maps for *Cirsium hydrophilum* var. *hydrophilum* (Map 1) follows:

BILLING CODE 4310–55–S



BILLING CODE 4310–55–C

(6) Unit 1 for *Cirsium hydrophilum* var. *hydrophilum*: Hill Slough Marsh, Solano County, California.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 586821, 4231248; 586825, 4231260; 586834, 4231272; 586848, 4231278; 586868, 4231280; 586930, 4231305; 586934, 4231417; 586934, 4231457; 586933, 4231517; 586936, 4231569; 586931, 4231638; 586933, 4231730; 586930, 4231824; 586927, 4231988; 586932, 4232511; 586935, 4232541; 587032, 4232539; 587031, 4232513; 587025, 4232474; 587022, 4232447; 587028, 4232423; 587045, 4232382; 587207, 4232226; 587186, 4232194; 587189, 4232174; 587211, 4232155; 587232, 4232152; 587246, 4232165; 587275, 4232169; 587294, 4232159; 587307, 4232136; 587314, 4232107; 587310, 4232094; 587350, 4232087; 587391, 4232079; 587427, 4232061; 587470, 4232043; 587490, 4232041; 587513, 4232049; 587544, 4232041; 587602, 4232017; 587641, 4231995; 587689, 4231981; 587738, 4231977; 587763, 4231981; 587776, 4231987; 587790, 4231996; 587803, 4232008; 587814, 4232019; 587826, 4232031; 587844, 4232043; 587859, 4232051; 587882, 4232067; 587897, 4232078; 587933, 4232080; 587944, 4232075; 587951, 4232066; 587957, 4232059; 587985, 4232048; 588000, 4232042; 588016, 4232041; 588028, 4232043; 588041, 4232044; 588050, 4232058; 588051, 4232075; 588048, 4232095; 588055, 4232133; 588083, 4232223; 588094, 4232243; 588105, 4232252; 588114, 4232256; 588124, 4232254; 588136, 4232249; 588141, 4232237; 588137, 4232225; 588132, 4232212; 588149, 4232197; 588157, 4232186; 588162, 4232179; 588182, 4232158; 588195, 4232146; 588218, 4232130; 588228, 4232126; 588241, 4232122; 588245, 4232122; 588255, 4232141; 588259, 4232149; 588270, 4232160; 588277, 4232165; 588284, 4232175; 588287, 4232187; 588287, 4232197; 588290, 4232212; 588295, 4232222; 588306, 4232225; 588311, 4232235; 588316, 4232250; 588324, 4232254; 588334, 4232254; 588340, 4232249; 588339, 4232240; 588333, 4232226; 588333, 4232216; 588336, 4232206; 588345, 4232198; 588353, 4232189; 588360, 4232187; 588379, 4232192; 588390, 4232198; 588452, 4232235; 588471, 4232243; 588492, 4232242; 588511, 4232234; 588530, 4232208; 588547, 4232165; 588556, 4232147; 588566, 4232134; 588574, 4232126; 588583, 4232120; 588601, 4232110; 588612, 4232108; 588611, 4232115; 588610, 4232136; 588651, 4232135; 588671, 4232140; 588699, 4232155; 588721, 4232161; 588740, 4232164; 588767, 4232164; 588782, 4232165; 588804, 4232167; 588849, 4232173; 588861, 4232168; 588872, 4232160; 588883, 4232160; 588895, 4232156; 588905, 4232149; 588912, 4232139; 588942, 4232080; 588952, 4232058; 588960, 4232026; 588977, 4231960; 588981, 4231923; 589001, 4231852; 589003, 4231845; 589000, 4231842; 588992, 4231841; 588981, 4231837; 588977, 4231835; 588974, 4231830; 588978, 4231820; 588984, 4231809; 588977, 4231793; 588953, 4231768; 588939, 4231787; 588924, 4231794; 588893, 4231818; 588880, 4231823; 588863, 4231824; 588851, 4231825; 588836, 4231820; 588792, 4231774; 588775, 4231776; 588755, 4231773; 588721, 4231762; 588681, 4231743; 588675, 4231734; 588658, 4231722; 588638, 4231713; 588608, 4231699; 588595, 4231652; 588586, 4231603; 588608, 4231581; 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(ii) Note: Map of Unit 1 for *Cirsium hydrophilum* var. *hydrophilum* is depicted on Map 2 in paragraph (8)(ii) of this entry.

(7) Unit 2 for *Cirsium hydrophilum* var. *hydrophilum*: Peytonia Slough Marsh, Solano County, California.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 582704, 4231361; 582681, 4231360; 582655, 4231364; 582636, 4231367; 582606, 4231377; 582583, 4231379; 582557, 4231382; 582549, 4231387; 582545, 4231395; 582540, 4231408; 582536, 4231420; 582532, 4231426; 582524, 4231430; 582515, 4231434; 582504, 4231436; 582488, 4231439; 582480, 4231438; 582473, 4231436; 582472, 4231433; 582471, 4231429; 582469, 4231414; 582469, 4231396; 582470, 4231385; 582468, 4231383; 582465, 4231382; 582434, 4231390; 582400, 4231403; 582364, 4231411; 582344, 4231413; 582331, 4231414; 582345, 4231454; 582366, 4231508; 582370, 4231512; 582378, 4231515; 582393, 4231534; 582400, 4231547; 582407, 4231550; 582443, 4231547; 582476, 4231550; 582495, 4231552; 582503, 4231557; 582510, 4231563; 582528, 4231582; 582539, 4231595; 582551, 4231603; 582583, 4231619; 582626, 4231641; 582670, 4231672; 582692, 4231693; 582782, 4231782;

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(ii) **Note:** Unit 2 for *Cirsium hydrophilum* var. *hydrophilum* is depicted on Map 2 in paragraph (8)(ii) of this entry.

(8) Unit 3 for *Cirsium hydrophilum* var. *hydrophilum*: Rush Ranch/Grizzly Island Wildlife Area, Solano County, California.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 583673, 4228103; 583675, 4228133; 583687, 4228156; 583700, 4228170; 583824, 4228206; 583898, 4228219; 583938, 4228221; 583961, 4228228; 583973, 4228240; 584002, 4228252; 584019, 4228251; 584032, 4228262; 584052, 4228268; 584062, 4228278; 584134, 4228347; 584153, 4228375; 584154, 4228398; 584147, 4228405; 584132, 4228407; 584146, 4228473; 584150, 4228514; 584135, 4228552; 584137, 4228573; 584128, 4228593; 584118, 4228631; 584109, 4228660; 584097, 4228672; 584085, 4228696; 584083, 4228711; 584067, 4228730; 584041, 4228786; 584038, 4228800; 584001, 4228862; 583993, 4228899; 583990, 4228918; 583995, 4228944; 583991, 4228950; 583994, 4228962; 584008, 4228976; 584020, 4228979; 584062, 4229001; 584095, 4229004; 584138, 4229000; 584179, 4228989; 584255, 4228968; 584276, 4228967; 584312, 4228956; 584341, 4228946; 584372, 4228940; 584420, 4228939; 584521, 4228954; 584553, 4228947; 584568, 4228965; 584588, 4228974; 584599, 4228997; 584621, 4229013; 584638, 4229054; 584656, 4229083; 584651, 4229091; 584656, 4229119; 584665, 4229146; 584663, 4229177; 584660, 4229211; 584653, 4229240; 584661, 4229251; 584655, 4229260; 584660, 4229271; 584678, 4229276; 584700, 4229277; 584707, 4229273; 584728, 4229274; 584737, 4229282; 584738, 4229292; 584748, 4229290; 584764, 4229294; 584768, 4229301; 584759, 4229305; 584718, 4229301; 584714, 4229313; 584755, 4229341; 584761, 4229345; 584765, 4229352; 584775, 4229376; 584792, 4229388; 584807, 4229388; 584821, 4229381; 584827, 4229366; 584827, 4229352; 584810, 4229333; 584806, 4229329; 584807, 4229325; 584815, 4229320; 584834, 4229291; 584862, 4229269; 584904, 4229244; 584937, 4229237; 584955, 4229235; 584968, 4229239; 584980, 4229233; 584986, 4229223; 584999, 4229211; 585004, 4229191; 585016, 4229175; 585024, 4229167; 585032, 4229163; 585050, 4229158; 585078, 4229144; 585125, 4229112; 585167, 4229099; 585191, 4229094; 585219, 4229094; 585243, 4229102; 585257, 4229113; 585270, 4229116; 585281, 4229116; 585291, 4229113; 585306, 4229090; 585319, 4229076;

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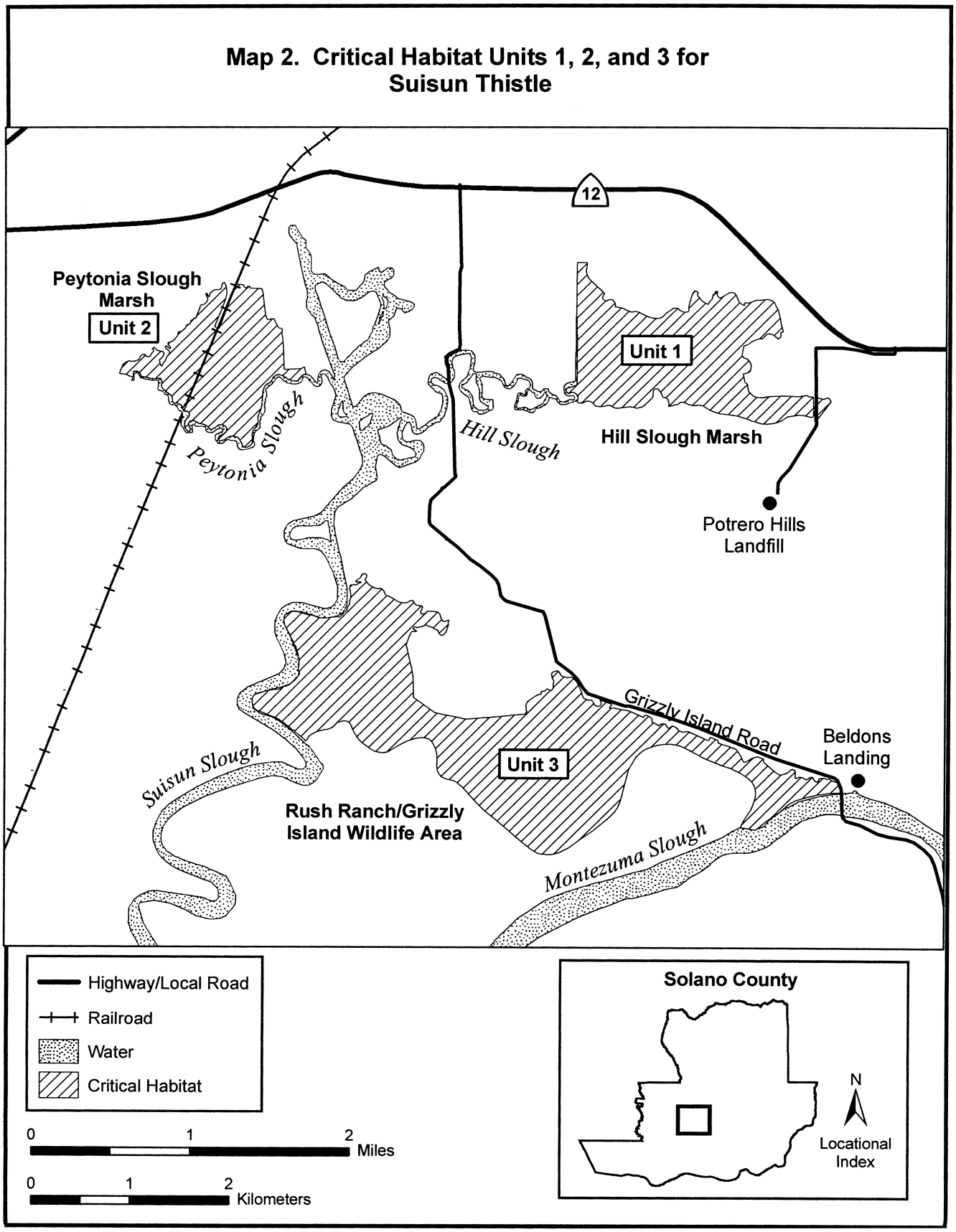
(ii) **Note:** Map of Units 1, 2, and 3 for *Cirsium hydrophilum* var. *hydrophilum* (Map 2) follows:

BILLING CODE 4310–55–S


Map 2. Critical Habitat Units 1, 2, and 3 for Suisun Thistle
12
Peytonia Slough Marsh
Unit 2
Peytonia Slough
Unit 1
Hill Slough
Hill Slough Marsh
Potrero Hills Landfill
Grizzly Island Road
Beldons Landing
Suisun Slough
Unit 3
Rush Ranch/Grizzly Island Wildlife Area
Montezuma Slough
Highway/Local Road
Railroad
Water
Critical Habitat
0 1 2 Miles
0 1 2 Kilometers
Solano County
N
Locational Index

* * * * *

Family Scrophulariaceae: *Cordylanthus mollis* **ssp.** *mollis* **(soft bird's-beak)**

(1) Critical habitat units are depicted for Contra Costa, Napa, and Solano Counties, California, on the maps below

(2) The primary constituent elements of critical habitat for *Cordylanthus mollis* ssp. *mollis* are:

(i) Persistent emergent, intertidal, estuarine wetland at or above the mean high-water line (as extended directly across any intersecting channels);

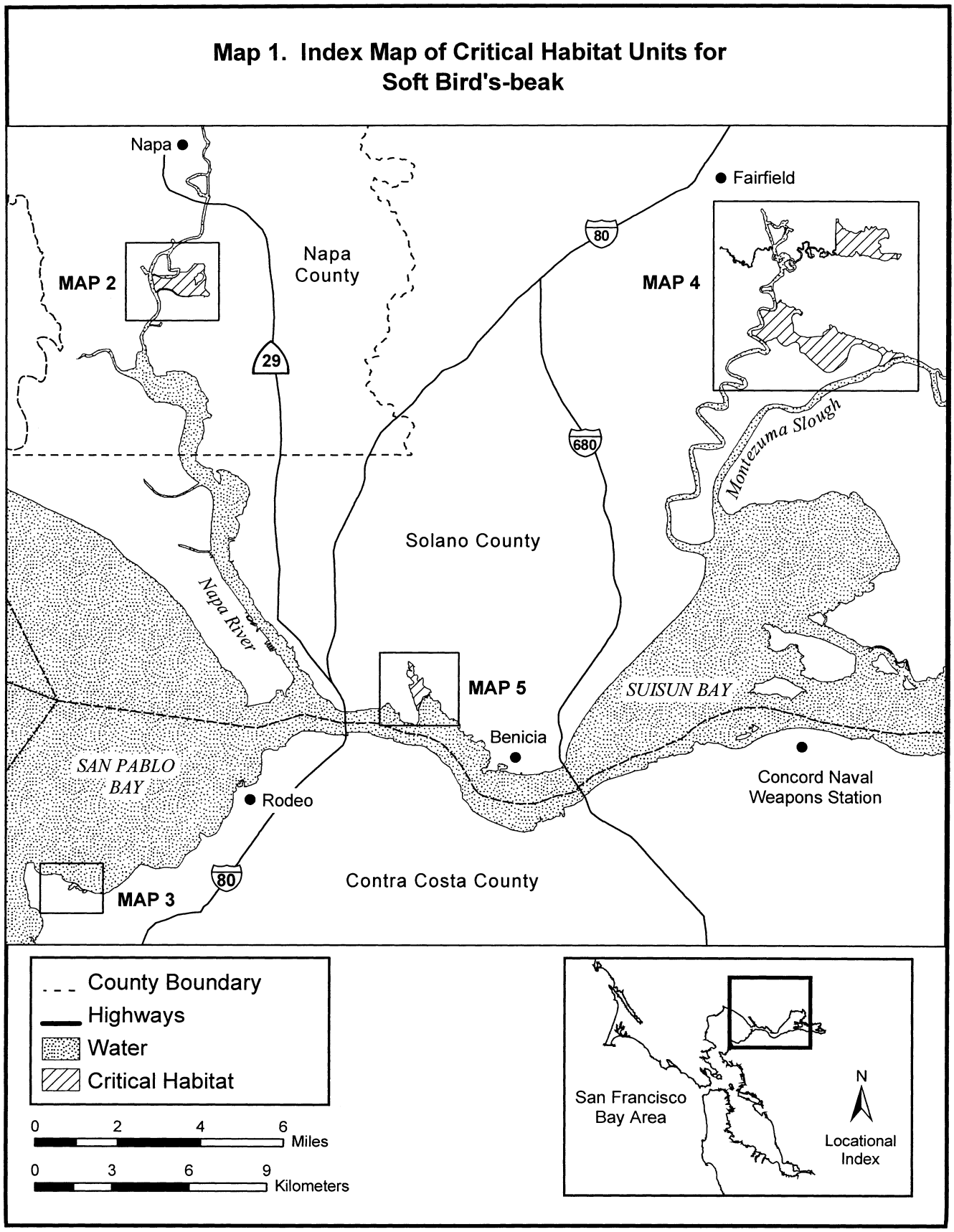
(ii) Rarity or absence of plants that naturally die in late spring (winter annuals); and

(iii) Partially open spring canopy cover (approximately 790 nMol/m2/s) at ground level, with many small openings to facilitate seedling germination.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Data layers defining Contra Costa, Napa, and Solano Counties map units were created on a base map using California Spatial Information Library black and white 1:24,000 scale digital orthophoto quarter quadrangles captured June/July 1993. Critical habitat units were then mapped using UTM zone 10, NAD 1983 coordinates.

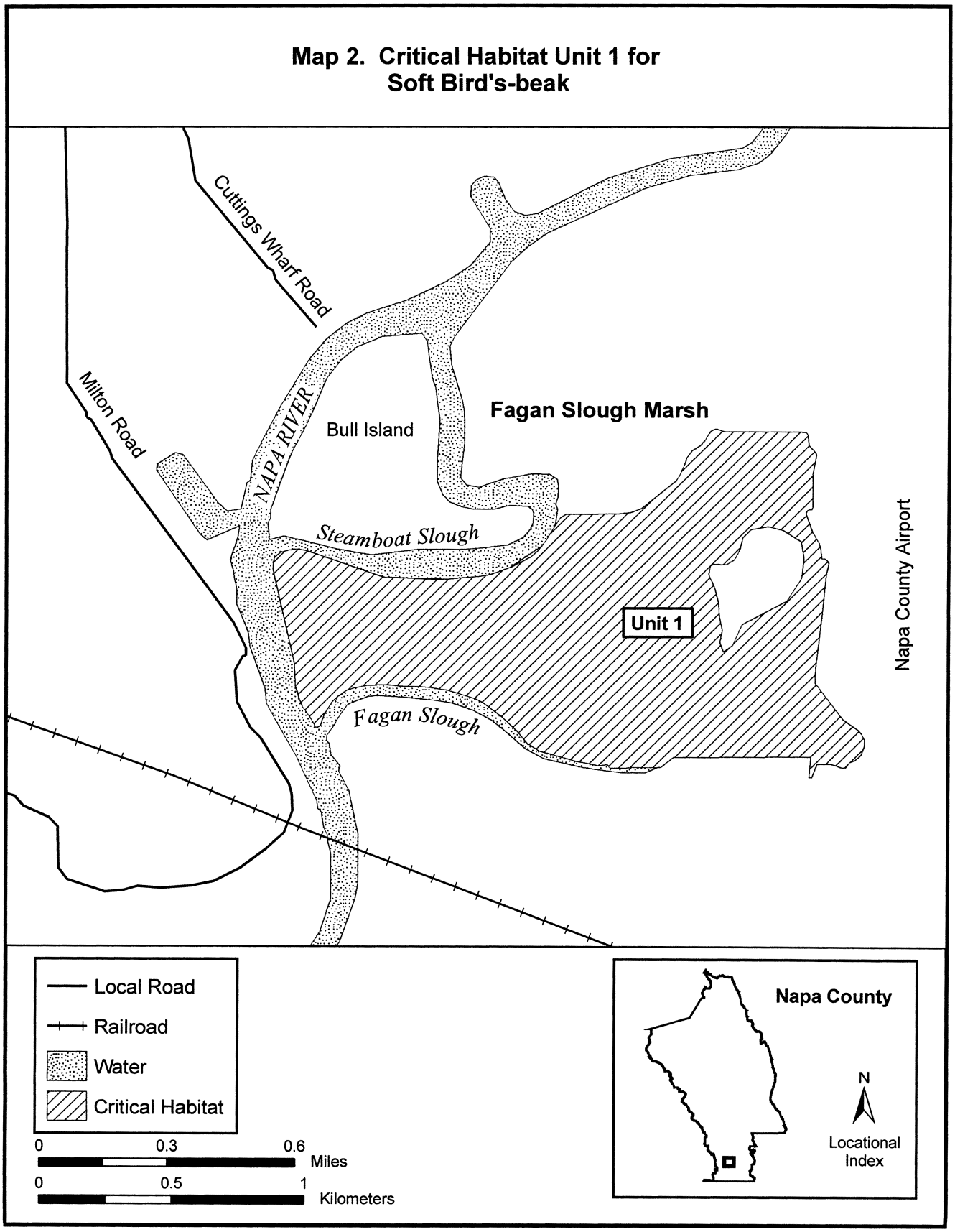
(5) **Note:** Map of index for *Cordylanthus mollis* ssp. *mollis* (Map 1) follows:


Map 1. Index Map of Critical Habitat Units for Soft Bird's-beak
Napa
Napa County
MAP 2
29
80
Fairfield
MAP 4
680
Montezuma Slough
Solano County
Napa River
MAP 5
SUISUN BAY
Benicia
SAN PABLO BAY
Rodeo
Concord Naval Weapons Station
80
Contra Costa County
MAP 3
County Boundary
Highways
Water
Critical Habitat
0 2 4 6 Miles
0 3 6 9 Kilometers
San Francisco Bay Area
N
Locational Index

(6) Unit 1 for *Cordylanthus mollis* ssp. *mollis*: Fagan Slough Marsh, Napa County, California.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 560527, 4229777; 560514, 4229819; 560510, 4229907; 560429, 4230254; 560427, 4230287; 560433, 4230304; 560444, 4230315; 560460, 4230326; 560489, 4230333; 560520, 4230338; 560559, 4230331; 560843, 4230233; 561055, 4230223; 561205, 4230236; 561248, 4230243; 561327, 4230272; 561399, 4230310; 561428, 4230335; 561457, 4230372; 561478, 4230406; 561509, 4230456; 561532, 4230472; 561572, 4230471; 561733, 4230474; 561774, 4230477; 561815, 4230493; 561945, 4230599; 561957, 4230617; 561974, 4230659; 561983, 4230685; 561992, 4230698; 562005, 4230714; 562032, 4230732; 562052, 4230752; 562068, 4230781; 562078, 4230790; 562088, 4230794; 562099, 4230795; 562128, 4230785; 562421, 4230785; 562435, 4230783; 562441, 4230774; 562445, 4230734; 562470, 4230705; 562474, 4230698; 562459, 4230624; 562461, 4230515; 562459, 4230498; 562456, 4230491; 562445, 4230491; 562437, 4230485; 562434, 4230476; 562438, 4230466; 562459, 4230405; 562483, 4230364; 562489, 4230349; 562494, 4230305; 562506, 4230305; 562513, 4230299; 562517, 4230294; 562520, 4230288; 562517, 4230273; 562512, 4230247; 562497, 4230093; 562473, 4229897; 562470, 4229856; 562471, 4229834; 562576, 4229699; 562606, 4229676; 562633, 4229658; 562648, 4229643; 562659, 4229620; 562658, 4229595; 562651, 4229578; 562645, 4229564; 562633, 4229550; 562623, 4229542; 562602, 4229534; 562594, 4229521; 562586, 4229513; 562571, 4229514; 562551, 4229522; 562529, 4229528; 562479, 4229526; 562459, 4229476; 562449, 4229477; 562457, 4229555; 561938, 4229551; 561890, 4229513; 561863, 4229512; 561781, 4229512; 561749, 4229509; 561700, 4229511; 561690, 4229523; 561660, 4229519; 561571, 4229537; 561493, 4229557; 561431, 4229576; 561387, 4229606; 561349, 4229650; 561294, 4229701; 561222, 4229756; 561191, 4229773; 561146, 4229787; 561084, 4229805; 561062, 4229809; 561017, 4229816; 560977, 4229820; 560937, 4229818; 560902, 4229821; 560859, 4229825; 560783, 4229823; 560736, 4229813; 560708, 4229804; 560675, 4229781; 560654, 4229760; 560624, 4229712; 560609, 4229670; 560599, 4229664; 560590, 4229664; 560587, 4229675; 560567, 4229705; 560541, 4229741; 560527, 4229777.

(ii) **Note:** Map of Unit 1 for *Cordylanthus mollis* ssp. *mollis* (Map 2) follows:


Map 2. Critical Habitat Unit 1 for Soft Bird's-beak
Cuttings Wharf Road
Milton Road
NAPA RIVER
Bull Island
Fagan Slough Marsh
Steamboat Slough
Unit 1
Fagan Slough
Napa County Airport
Local Road
Railroad
Water
Critical Habitat
0 0.3 0.6 Miles
0 0.5 1 Kilometers
Napa County
N
Locational Index

(7) Unit 2 for *Cordylanthus mollis* ssp. *mollis*: Hill Slough Marsh, Solano County, California.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 586821, 4231248; 586825, 4231260; 586834, 4231272; 586848, 4231278; 586868, 4231280; 586930, 4231305; 586934, 4231417; 586934, 4231457; 586933, 4231517; 586936, 4231569; 586931, 4231638; 586933, 4231730; 586930, 4231824; 586927, 4231988; 586932, 4232511; 586935, 4232541; 587032, 4232539; 587031, 4232513; 587025, 4232474; 587022, 4232447; 587028, 4232423; 587045, 4232382; 587207, 4232226; 587186, 4232194; 587189, 4232174; 587211, 4232155; 587232, 4232152; 587246, 4232165; 587275, 4232169; 587294, 4232159; 587307, 4232136; 587314, 4232107; 587310, 4232094; 587350, 4232087; 587391, 4232079; 587427, 4232061; 587470, 4232043; 587490, 4232041; 587513, 4232049; 587544, 4232041; 587602, 4232017; 587641, 4231995; 587689, 4231981; 587738, 4231977; 587763, 4231981; 587776, 4231987; 587790, 4231996; 587803, 4232008; 587814, 4232019; 587826, 4232031; 587844, 4232043; 587859, 4232051; 587882, 4232067; 587897, 4232078; 587933, 4232080; 587944, 4232075; 587951, 4232066; 587957, 4232059; 587985, 4232048; 588000, 4232042; 588016, 4232041; 588028, 4232043; 588041, 4232044; 588050, 4232058; 588051, 4232075; 588048, 4232095; 588055, 4232133; 588083, 4232223; 588094, 4232243; 588105, 4232252; 588114, 4232256; 588124, 4232254; 588136, 4232249; 588141, 4232237; 588137, 4232225; 588132, 4232212; 588149, 4232197; 588157, 4232186; 588162, 4232179; 588182, 4232158; 588195, 4232146; 588218, 4232130; 588228, 4232126; 588241, 4232122; 588245, 4232122; 588255, 4232141; 588259, 4232149; 588270, 4232160; 588277, 4232165; 588284, 4232175; 588287, 4232187; 588287, 4232197; 588290, 4232212; 588295, 4232222; 588306, 4232225; 588311, 4232235; 588316, 4232250; 588324, 4232254; 588334, 4232254; 588340, 4232249; 588339, 4232240; 588333, 4232226; 588333, 4232216; 588336, 4232206; 588345, 4232198; 588353, 4232189; 588360, 4232187; 588379, 4232192; 588390, 4232198; 588452, 4232235; 588471, 4232243; 588492, 4232242; 588511, 4232234; 588530, 4232208; 588547, 4232165; 588556, 4232147; 588566, 4232134; 588574, 4232126; 588583, 4232120; 588601, 4232110; 588612, 4232108; 588611, 4232115; 588610, 4232136; 588651, 4232135; 588671, 4232140; 588699, 4232155; 588721, 4232161; 588740, 4232164; 588767, 4232164; 588782, 4232165; 588804, 4232167; 588849, 4232173; 588861, 4232168; 588872, 4232160; 588883, 4232160; 588895, 4232156; 588905, 4232149; 588912, 4232139; 588942, 4232080; 588952, 4232058; 588960, 4232026; 588977, 4231960; 588981, 4231923; 589001, 4231852; 589003, 4231845; 589000, 4231842; 588992, 4231841; 588981, 4231837; 588977, 4231835; 588974, 4231830; 588978, 4231820; 588984, 4231809; 588977, 4231793; 588953, 4231768; 588939, 4231787; 588924, 4231794; 588893, 4231818; 588880, 4231823; 588863, 4231824; 588851, 4231825; 588836, 4231820; 588792, 4231774; 588775, 4231776; 588755, 4231773; 588721, 4231762; 588681, 4231743; 588675, 4231734; 588658, 4231722; 588638, 4231713; 588608, 4231699; 588595, 4231652; 588586, 4231603; 588608, 4231581; 588641, 4231569; 588656, 4231552; 588668, 4231537; 588677, 4231521; 588681, 4231502; 588676, 4231467; 588666, 4231440; 588657, 4231437; 588636, 4231428; 588608, 4231424; 588601, 4231422; 588598, 4231419; 588602, 4231403; 588611, 4231373; 588614, 4231342; 588624, 4231331; 588638, 4231321; 588641, 4231314; 588645, 4231281; 588656, 4231238; 588701, 4231195; 588736, 4231180; 588803, 4231181; 588814, 4231181; 588824, 4231184; 588831, 4231190; 588882, 4231194; 589011, 4231195; 589145, 4231191; 589186, 4231192; 589193, 4231199; 589203, 4231197; 589210, 4231196; 589217, 4231201; 589230, 4231205; 589240, 4231206; 589250, 4231196; 589261, 4231192; 589310, 4231190; 589309, 4231065; 589323, 4231065; 589325, 4231164; 589331, 4231171; 589351, 4231176; 589380, 4231174; 589408, 4231167; 589424, 4231166; 589433, 4231174; 589444, 4231178; 589460, 4231176; 589475, 4231167; 589481, 4231152; 589485, 4231143; 589432, 4231067; 589400, 4231023; 589353, 4230961; 589338, 4230944; 589333, 4230940; 589328, 4230941; 589323, 4230944; 589320, 4230949; 589322, 4231051; 589308, 4231051; 589309, 4230996; 589305, 4230988; 589291, 4230981; 589215, 4230998; 589155, 4231004; 589115, 4230996; 589050, 4230984; 588997, 4230950; 588946, 4230926; 588913, 4230919; 588884, 4230915; 588844, 4230911; 588806, 4230912; 588782, 4230916; 588738, 4230927; 588719, 4230936; 588685, 4230942; 588651, 4230957; 588590, 4230978; 588547, 4230994; 588435, 4231007; 588395, 4231011; 588361, 4231016; 588338, 4231022; 588297, 4231039; 588261, 4231055; 588226, 4231074; 588198, 4231091; 588178, 4231101; 588158, 4231102; 588135, 4231100; 588111, 4231098; 588063, 4231103; 588046, 4231107; 588028, 4231119; 587998, 4231130; 587978, 4231131; 587961, 4231124; 587948, 4231111; 587849, 4231089; 587852, 4231100; 587855, 4231118; 587851, 4231133; 587846, 4231150; 587842, 4231164; 587836, 4231167; 587823, 4231172; 587810, 4231175; 587796, 4231182; 587785, 4231200; 587777, 4231220; 587753, 4231255; 587742, 4231264; 587720, 4231266; 587707, 4231261; 587698, 4231249; 587696, 4231235; 587691, 4231183; 587646, 4231135; 587593, 4231083; 587561, 4231076; 587537, 4231070; 587516, 4231072; 587504, 4231078; 587490, 4231079; 587452, 4231086; 587416, 4231075; 587349, 4231070; 587323, 4231070; 587310, 4231073; 587266, 4231097; 587248, 4231099; 587223, 4231093; 587177, 4231085; 587134, 4231087; 587114, 4231097; 587090, 4231120; 587062, 4231140; 587037, 4231141; 587003, 4231126; 586984, 4231120; 586963, 4231121; 586948, 4231123; 586939, 4231125; 586932, 4231138; 586944, 4231161; 586943, 4231180; 586935, 4231197; 586919, 4231215; 586896, 4231226; 586882, 4231229; 586868, 4231222; 586848, 4231217; 586830, 4231226; 586823, 4231235; 586821, 4231248.

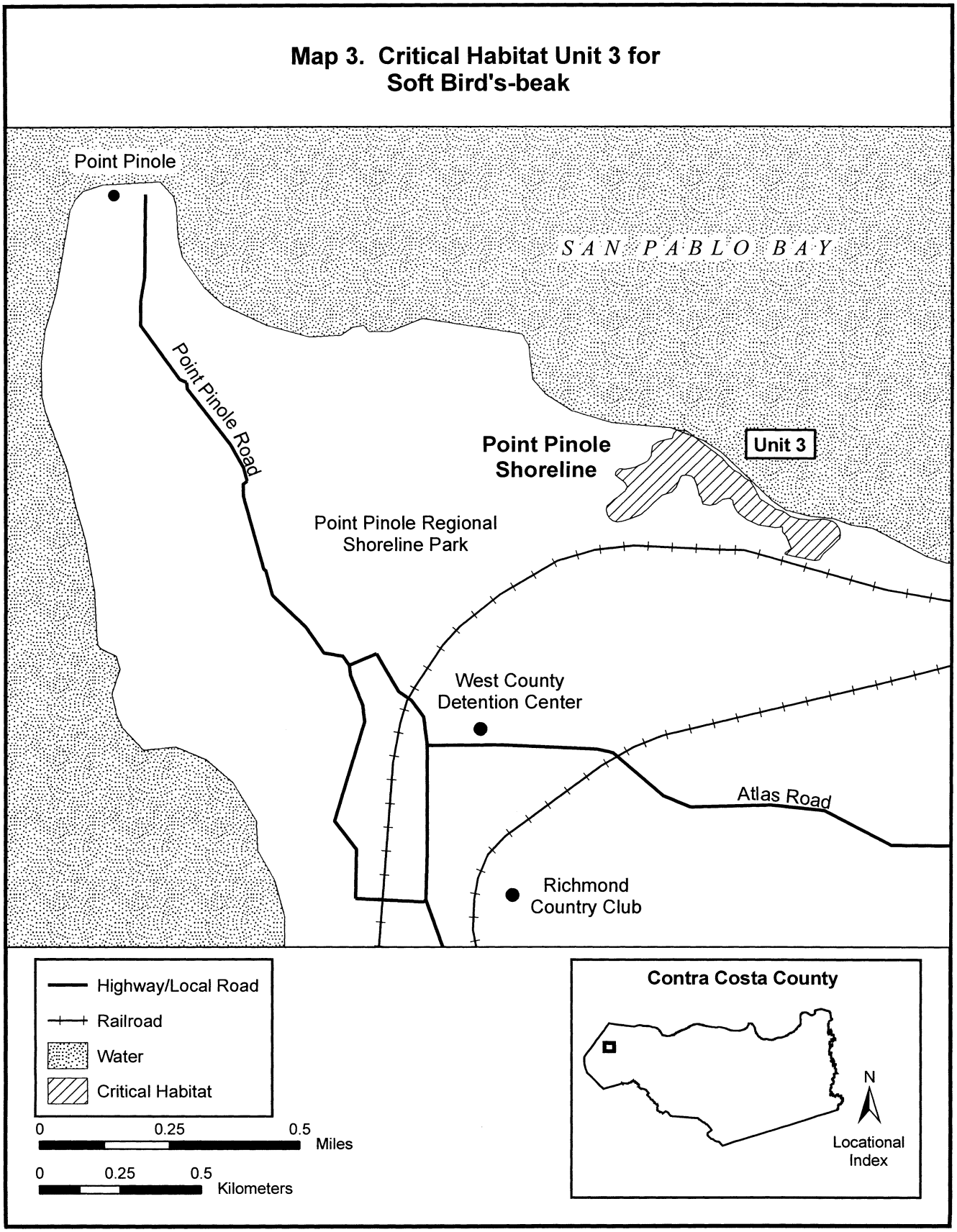
(ii) **Note:** Unit 2 for *Cordylanthus mollis* ssp. *mollis* is depicted on Map 4 in paragraph (9)(ii) of this entry.

(8) Unit 3 for *Cordylanthus mollis* ssp. *mollis*: Point Pinole Shoreline, Contra Costa County, California.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 557436, 4206461; 557427, 4206437; 557413, 4206422; 557385, 4206413; 557364, 4206395; 557341, 4206372; 557318, 4206353; 557292, 4206342; 557263, 4206332; 557245, 4206330; 557231, 4206333; 557222, 4206340; 557214, 4206351; 557211, 4206366; 557212, 4206378; 557222, 4206387; 557236, 4206399; 557253, 4206411; 557270, 4206425; 557275, 4206438; 557270, 4206450; 557257, 4206461; 557248, 4206467; 557239, 4206475; 557240, 4206484; 557247, 4206491; 557253, 4206495; 557269, 4206493; 557299, 4206500; 557315, 4206507; 557329, 4206513; 557339, 4206520; 557349, 4206536; 557351, 4206554; 557353, 4206566; 557367, 4206578; 557378, 4206582; 557403, 4206588; 557415, 4206590; 557418, 4206604; 557428, 4206616; 557456, 4206614; 557468, 4206606; 557526, 4206560; 557567, 4206529; 557584, 4206508; 557600, 4206493; 557623, 4206479; 557638, 4206464; 557646, 4206461; 557653, 4206457; 557666, 4206439;

557685, 4206401; 557720, 4206378; 557732, 4206370; 557744, 4206366; 557754, 4206363; 557766, 4206356; 557777, 4206347; 557806, 4206339; 557844, 4206335; 557875, 4206339; 557891, 4206338; 557909, 4206332; 557922, 4206322; 557929, 4206311; 557932, 4206302; 557933, 4206290; 557931, 4206279; 557912, 4206258; 557881, 4206230; 557868, 4206212; 557855, 4206209; 557767, 4206228; 557761, 4206230; 557763, 4206233; 557769, 4206238; 557781, 4206246; 557765, 4206285; 557754, 4206299; 557753, 4206314; 557731, 4206312; 557678, 4206320; 557643, 4206337; 557616, 4206357; 557608, 4206372; 557602, 4206385; 557601, 4206396; 557588, 4206403; 557569, 4206399; 557550, 4206385; 557528, 4206380; 557508, 4206385; 557502, 4206406; 557496, 4206413; 557493, 4206428; 557489, 4206444; 557482, 4206462; 557474, 4206472; 557465, 4206474; 557457, 4206476; 557445, 4206474; 557440, 4206469; 557436, 4206461.

(ii) **Note:** Map of Unit 3 for *Cordylanthus mollis* ssp. *mollis* (Map 3) follows:

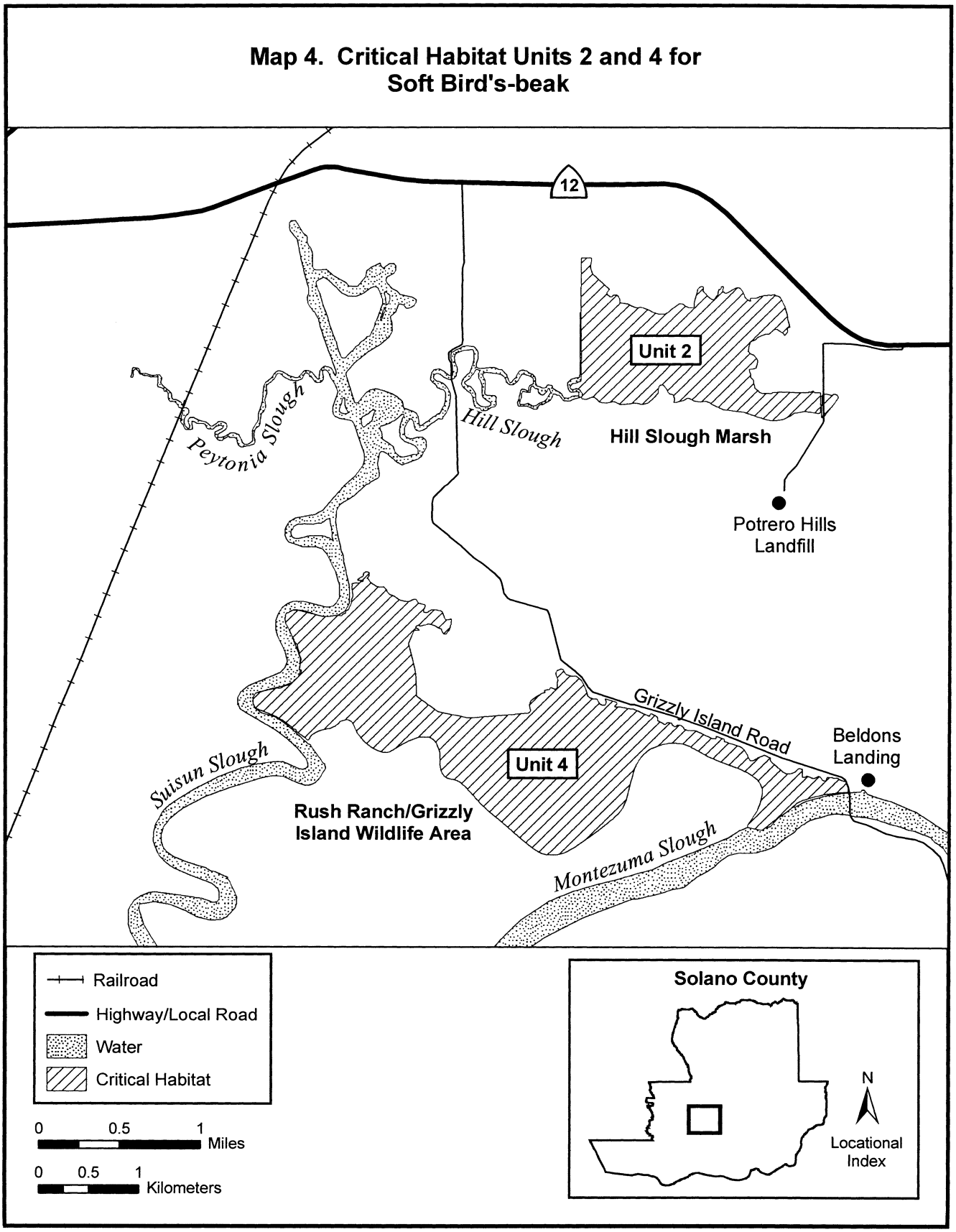

Map 3. Critical Habitat Unit 3 for Soft Bird's-beak
Point Pinole
SAN PABLO BAY
Point Pinole Road
Point Pinole Shoreline
Unit 3
Point Pinole Regional Shoreline Park
West County Detention Center
Atlas Road
Richmond Country Club
Highway/Local Road
Railroad
Water
Critical Habitat
0 0.25 0.5 Miles
0 0.25 0.5 Kilometers
Contra Costa County
N
Locational Index

(9) Unit 4 for *Cordylanthus mollis* ssp. *mollis*: Rush Ranch/Grizzly Island Wildlife Area, Solano County, California.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 583673, 4228103; 583675, 4228133; 583687, 4228156; 583700, 4228170; 583824, 4228206; 583898, 4228219; 583938, 4228221; 583961, 4228228; 583973, 4228240; 584002, 4228252; 584019, 4228251; 584032, 4228262; 584052, 4228268; 584062, 4228278; 584134, 4228347; 584153, 4228375; 584154, 4228398; 584147, 4228405; 584132, 4228407; 584146, 4228473; 584150, 4228514; 584135, 4228552; 584137, 4228573; 584128, 4228593; 584118, 4228631; 584109, 4228660; 584097, 4228672; 584085, 4228696; 584083, 4228711; 584067, 4228730; 584041, 4228786; 584038, 4228800; 584001, 4228862; 583993, 4228899; 583990, 4228918; 583995, 4228944; 583991, 4228950; 583994, 4228962; 584008, 4228976; 584020, 4228979; 584062, 4229001; 584095, 4229004; 584138, 4229000; 584179, 4228989; 584255, 4228968; 584276, 4228967; 584312, 4228956; 584341, 4228946; 584372, 4228940; 584420, 4228939; 584521, 4228954; 584553, 4228947; 584568, 4228965; 584588, 4228974; 584599, 4228997; 584621, 4229013; 584638, 4229054; 584656, 4229083; 584651, 4229091; 584656, 4229119; 584665, 4229146; 584663, 4229177; 584660, 4229211; 584653, 4229240; 584661, 4229251; 584655, 4229260; 584660, 4229271; 584678, 4229276; 584700, 4229277; 584707, 4229273; 584728, 4229274; 584737, 4229282; 584738, 4229292; 584748, 4229290; 584764, 4229294; 584768, 4229301; 584759, 4229305; 584718, 4229301; 584714, 4229313; 584755, 4229341; 584761, 4229345; 584765, 4229352; 584775, 4229376; 584792, 4229388; 584807, 4229388; 584821, 4229381; 584827, 4229366; 584827, 4229352; 584810, 4229333; 584806, 4229329; 584807, 4229325; 584815, 4229320; 584834, 4229291; 584862, 4229269; 584904, 4229244; 584937, 4229237; 584955, 4229235; 584968, 4229239; 584980, 4229233; 584986, 4229223; 584999, 4229211; 585004, 4229191; 585016, 4229175; 585024, 4229167; 585032, 4229163; 585050, 4229158; 585078, 4229144; 585125, 4229112; 585167, 4229099; 585191, 4229094; 585219, 4229094; 585243, 4229102; 585257, 4229113; 585270, 4229116; 585281, 4229116; 585291, 4229113; 585306, 4229090; 585319, 4229076; 585345, 4229068; 585365, 4229067; 585378, 4229061; 585382, 4229055; 585382, 4229047; 585380, 4229039; 585373, 4229029; 585366, 4229013; 585363, 4228998; 585367, 4228988; 585376, 4228983; 585410, 4228987; 585422, 4228998; 585438, 4229008; 585479, 4229011; 585515, 4229006; 585535, 4229002; 585554, 4228984; 585567, 4228949; 585573, 4228933; 585585, 4228913; 585600, 4228907; 585612, 4228908; 585625, 4228912; 585647, 4228920; 585642, 4228890; 585642, 4228873; 585622, 4228807; 585613, 4228795; 585591, 4228769; 585579, 4228766; 585571, 4228769; 585549, 4228793; 585542, 4228817; 585530, 4228822; 585505, 4228833; 585480, 4228849; 585438, 4228864; 585414, 4228871; 585400, 4228865; 585331, 4228844; 585323, 4228852; 585309, 4228850; 585299, 4228849; 585294, 4228846; 585293, 4228841; 585287, 4228835; 585305, 4228820; 585311, 4228824; 585324, 4228804; 585281, 4228807; 585274, 4228801; 585266, 4228782; 585250, 4228748; 585220, 4228671; 585264, 4228486; 585280, 4228425; 585290, 4228350; 585298, 4228147; 585299, 4228142; 585303, 4228138; 585507, 4227990; 585520, 4227986; 585588, 4227972; 585730, 4227946; 585813, 4227928; 585835, 4227927; 586151, 4227951; 586270, 4227960; 586286, 4227964; 586378, 4227971; 586420, 4227977; 586429, 4227988; 586438, 4227998; 586434, 4228018; 586430, 4228035; 586429, 4228066; 586442, 4228101; 586479, 4228127; 586518, 4228154; 586552, 4228173; 586584, 4228180; 586576, 4228199; 586602, 4228212; 586618, 4228207; 586625, 4228212; 586633, 4228227; 586642, 4228230; 586652, 4228229; 586669, 4228218; 586676, 4228213; 586690, 4228219; 586702, 4228228; 586705, 4228243; 586706, 4228267; 586706, 4228288; 586713, 4228308; 586695, 4228350; 586687, 4228381; 586692, 4228392; 586702, 4228402; 586712, 4228407; 586721, 4228406; 586732, 4228413; 586742, 4228414; 586750, 4228413; 586760, 4228409; 586774, 4228386; 586789, 4228366; 586847, 4228346; 586872, 4228350; 586897, 4228347; 586944, 4228304; 586989, 4228208; 586997, 4228176; 587006, 4228147; 587023, 4228133; 587062, 4228118; 587080, 4228122; 587097, 4228118; 587111, 4228087; 587126, 4228069; 587149, 4228056; 587172, 4228056; 587183, 4228065; 587188, 4228079; 587188, 4228094; 587177, 4228122; 587287, 4228085; 587295, 4228072; 587292, 4228064; 587278, 4228055; 587273, 4228038; 587316, 4228041; 587389, 4228027; 587460, 4228016; 587548, 4227976; 587617, 4227944; 587620, 4227957; 587626, 4227967; 587643, 4227967; 587658, 4227960; 587677, 4227954; 587682, 4227945; 587691, 4227939; 587699, 4227933; 587696, 4227905; 587771, 4227862; 587779, 4227871; 587790, 4227881; 587802, 4227886; 587821, 4227882; 587834, 4227875; 587845, 4227859; 587855, 4227849; 587863, 4227839; 587874, 4227841; 587883, 4227845; 587890, 4227853; 587901, 4227860; 587921, 4227856; 587935, 4227850; 587945, 4227839; 587955, 4227833; 587959, 4227820; 587984, 4227809; 588004, 4227799; 588059, 4227806; 588083, 4227797; 588229, 4227730; 588244, 4227721; 588264, 4227721; 588274, 4227718; 588276, 4227731; 588280, 4227749; 588359, 4227718; 588361, 4227693; 588515, 4227643; 588538, 4227632; 588552, 4227619; 588564, 4227604; 588596, 4227554; 588617, 4227507; 588627, 4227498; 588652, 4227502; 588703, 4227534; 588761, 4227555; 588822, 4227530; 588823, 4227505; 588830, 4227492; 588847, 4227475; 588913, 4227418; 588942, 4227396; 588976, 4227373; 589001, 4227370; 589030, 4227376; 589067, 4227391; 589084, 4227403; 589095, 4227419; 589112, 4227426; 589141, 4227416; 589143, 4227392; 589143, 4227340; 589148, 4227335; 589160, 4227337; 589190, 4227350; 589217, 4227341; 589249, 4227323; 589278, 4227331; 589294, 4227348; 589307, 4227349; 589320, 4227341; 589338, 4227311; 589359, 4227301; 589371, 4227303; 589387, 4227334; 589436, 4227339; 589447, 4227329; 589463, 4227327; 589478, 4227331; 589495, 4227329; 589502, 4227319; 589527, 4227309; 589568, 4227297; 589578, 4227294; 589585, 4227275; 589596, 4227236; 589597, 4227189; 589500, 4227183; 589348, 4227165; 589325, 4227155; 589274, 4227145; 589146, 4227108; 589084, 4227075; 588999, 4226997; 588865, 4226906; 588763, 4226822; 588737, 4226808; 588715, 4226811; 588640, 4226826; 588599, 4226831; 588596, 4226841; 588599, 4226860; 588606, 4226870; 588635, 4226918; 588692, 4227005; 588722, 4227076; 588740, 4227152; 588741, 4227188; 588739, 4227225; 588725, 4227262; 588711, 4227287; 588690, 4227313; 588645, 4227348; 588593, 4227381; 588495, 4227429; 588398, 4227461; 588264, 4227514; 588195, 4227547; 588127, 4227585; 588016, 4227644; 587974, 4227661; 587934, 4227670; 587885, 4227676; 587807, 4227674; 587752, 4227664; 587701, 4227650; 587632, 4227621; 587591, 4227595; 587533, 4227537; 587487, 4227456; 587467, 4227410; 587430, 4227281; 587385, 4227098; 587355, 4227029; 587326, 4226985; 587263, 4226919; 587112, 4226798;

586999, 4226714; 586868, 4226625; 586771, 4226575; 586734, 4226563; 586696, 4226556; 586646, 4226554; 586595, 4226558; 586548, 4226571; 586476, 4226611; 586342, 4226720; 586160, 4226880; 586014, 4226997; 585931, 4227078; 585835, 4227185; 585790, 4227234; 585743, 4227274; 585708, 4227298; 585673, 4227309; 585647, 4227312; 585613, 4227321; 585596, 4227329; 585579, 4227340; 585558, 4227365; 585541, 4227403; 585534, 4227449; 585536, 4227504; 585534, 4227570; 585516, 4227631; 585496, 4227674; 585475, 4227703; 585451, 4227721; 585428, 4227732; 585380, 4227737; 585320, 4227730; 585228, 4227698; 585161, 4227662; 585064, 4227603; 585034, 4227589; 585004, 4227581; 584964, 4227585; 584913, 4227597; 584870, 4227620; 584816, 4227660; 584777, 4227693; 584737, 4227738; 584713, 4227772; 584699, 4227799; 584675, 4227858; 584655, 4227890; 584624, 4227903; 584597, 4227902; 584568, 4227897; 584539, 4227888; 584525, 4227871; 584497, 4227842; 584462, 4227827; 584433, 4227814; 584415, 4227814; 584332, 4227794; 584289, 4227774; 584262, 4227754; 584247, 4227740; 584239, 4227722; 584223, 4227701; 584214, 4227700; 584196, 4227724; 584138, 4227768; 584106, 4227792; 584104, 4227804; 584090, 4227810; 584083, 4227808; 584056, 4227836; 583982, 4227893; 583937, 4227918; 583911, 4227932; 583814, 4227974; 583713, 4228012; 583691, 4228033; 583680, 4228053; 583675, 4228063; 583676, 4228074; 583673, 4228103.

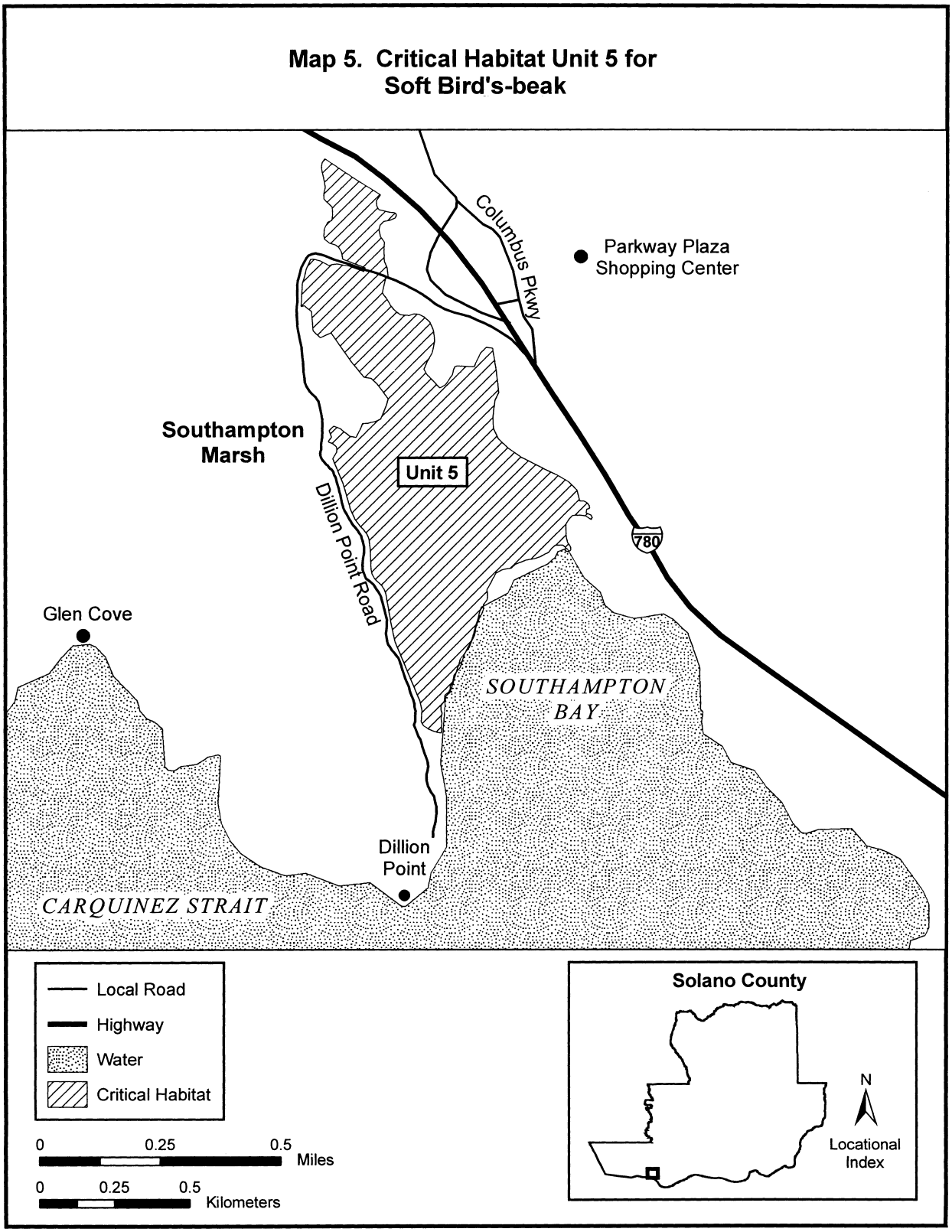
(ii) **Note:** Map of Units 2 and 4 for *Cordylanthus mollis* ssp. *mollis* (Map 4) follows:


Map 4. Critical Habitat Units 2 and 4 for Soft Bird's-beak
12
Unit 2
Hill Slough
Hill Slough Marsh
Peytonia Slough
Potrero Hills Landfill
Grizzly Island Road
Beldons Landing
Suisun Slough
Unit 4
Rush Ranch/Grizzly Island Wildlife Area
Montezuma Slough
Railroad
Highway/Local Road
Water
Critical Habitat
0 0.5 1 Miles
0 0.5 1 Kilometers
Solano County
N
Locational Index

(10) Unit 5 for *Cordylanthus mollis* ssp. *mollis*: Southampton Marsh, Solano County, California.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 570411, 4215261; 570504, 4215198; 570595, 4215141; 570581, 4215120; 570582, 4215104; 570590, 4215091; 570627, 4215082; 570640, 4215081; 570646, 4215078; 570647, 4215073; 570643, 4215063; 570625, 4215056; 570606, 4215052; 570594, 4215040; 570589, 4215024; 570593, 4215004; 570607, 4214983; 570606, 4214949; 570607, 4214919; 570616, 4214898; 570620, 4214869; 570611, 4214859; 570601, 4214815; 570607, 4214803; 570615, 4214795; 570628, 4214771; 570639, 4214756; 570659, 4214739; 570689, 4214737; 570706, 4214742; 570722, 4214741; 570739, 4214732; 570758, 4214716; 570770, 4214688; 570774, 4214652; 570766, 4214613; 570749, 4214580; 570739, 4214558; 570750, 4214539; 570771, 4214516; 570792, 4214494; 570810, 4214506; 570834, 4214540; 570836, 4214555; 570842, 4214566; 570849, 4214569; 570906, 4214566; 570910, 4214575; 570926, 4214610; 570946, 4214630; 570967, 4214627; 570974, 4214587; 570978, 4214555; 570987, 4214480; 570975, 4214453; 570968, 4214400; 570970, 4214360; 570986, 4214324; 571019, 4214293; 571061, 4214263; 571147, 4214219; 571179, 4214204; 571221, 4214180; 571247, 4214152; 571256, 4214116; 571270, 4214116; 571282, 4214109; 571288, 4214101; 571289, 4214091; 571279, 4214088; 571278, 4214076; 571294, 4214069; 571298, 4214063; 571294, 4214053; 571275, 4214066; 571257, 4214069; 571234, 4214068; 571222, 4214057; 571211, 4214038; 571211, 4214017; 571212, 4213995; 571215, 4213978; 571225, 4213964; 571227, 4213952; 571219, 4213945; 571208, 4213950; 571210, 4213958; 571200, 4213968; 571177, 4213969; 571164, 4213957; 571155, 4213946; 571125, 4213929; 571109, 4213924; 571077, 4213918; 571043, 4213905; 571031, 4213893; 570999, 4213886; 570979, 4213875; 570948, 4213819; 570950, 4213808; 570950, 4213796; 570947, 4213785; 570936, 4213770; 570936, 4213754; 570930, 4213737; 570925, 4213733; 570911, 4213693; 570907, 4213668; 570899, 4213652; 570884, 4213627; 570873, 4213602; 570859, 4213560; 570838, 4213534; 570834, 4213513; 570826, 4213498; 570826, 4213488; 570820, 4213479; 570809, 4213467; 570806, 4213447; 570796, 4213433; 570795, 4213417; 570799, 4213408; 570796, 4213390; 570798, 4213376; 570796, 4213343; 570780, 4213346; 570766, 4213351; 570752, 4213357; 570739, 4213365; 570730, 4213379; 570732, 4213416; 570725, 4213446; 570641, 4213647; 570629, 4213707; 570611, 4213810; 570606, 4213823; 570598, 4213834; 570578, 4213854; 570565, 4213875; 570562, 4213891; 570561, 4213954; 570558, 4213979; 570555, 4213993; 570550, 4214006; 570539, 4214020; 570528, 4214031; 570510, 4214056; 570495, 4214091; 570475, 4214160; 570469, 4214178; 570436, 4214258; 570445, 4214272; 570450, 4214281; 570449, 4214297; 570438, 4214308; 570422, 4214316; 570416, 4214331; 570415, 4214358; 570407, 4214435; 570395, 4214459; 570380, 4214478; 570372, 4214489; 570360, 4214514; 570353, 4214529; 570349, 4214563; 570344, 4214626; 570335, 4214670; 570329, 4214728; 570331, 4214760; 570336, 4214843; 570350, 4214894; 570364, 4214925; 570373, 4214927; 570394, 4214921; 570423, 4214905; 570437, 4214908; 570451, 4214910; 570490, 4214903; 570540, 4214884; 570544, 4214897; 570469, 4214926; 570465, 4214952; 570458, 4214965; 570446, 4214973; 570425, 4214981; 570410, 4214992; 570407, 4215005; 570408, 4215025; 570420, 4215050; 570434, 4215056; 570436, 4215072; 570434, 4215100; 570406, 4215127; 570407, 4215143; 570412, 4215166; 570408, 4215189; 570401, 4215216; 570400, 4215236; 570402, 4215249; 570411, 4215261.

(ii) **Note:** Map of Unit 5 for *Cordylanthus mollis* ssp. *mollis* (Map 5) follows:



* * * * *

Dated: March 27, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–1777 Filed 4–11–07; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Thursday,
April 12, 2007

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 63, 65 and 187

Fees for Certification Services and Approvals Performed Outside the United States; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, and 187

[Docket No.: FAA–2007–27043; Amendment Nos. 61–116, 63–35, 65–49, 187–4]

RIN 2120–AI77

Fees for Certification Services and Approvals Performed Outside the United States

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This rule amends the regulations pertaining to payment of fees to the FAA for certification services performed outside the United States. Until now, fees could be paid by check, money order, wire transfer, or draft, payable in U.S. currency and drawn on a U.S. bank. Currently, fees for certain aircraft flights transiting U.S.-controlled airspace can be paid by credit card. The rule amends the regulations also to allow payment by credit card for certification services performed outside the U.S.

This change is necessary to make payment for certification services consistent with payment for other services. It will also expedite payments and support the U.S. Department of the Treasury electronic commerce program.

Also, this rule amends the regulations where it is unclear that fees for airmen certification services apply to all applicants located outside the United States, regardless of citizenship. This action is necessary to provide consistency within FAA regulations.

DATES: Effective June 11, 2007.

Comments for inclusion in the Rules Docket must be received on or before May 14, 2007.

ADDRESSES: You may send comments [identified by Docket Number FAA–2007–27043] using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site*: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Emily A. White, FAA, AFS–50, 800 Independence Ave., SW., Washington, DC 20591, Telephone: 202–385–8073, Fax: 202–493–5888.

SUPPLEMENTARY INFORMATION: This rulemaking amends § 187.15(a) to allow the use of a credit card to pay fees to the FAA for certification services performed outside the United States. Until now, fees could be paid by check, money order, wire transfer, or draft, payable in U.S. currency and drawn on a U.S. bank. Section 187.15(d) already allows the use of a credit card to remit amounts less than $1,000 for certain aircraft flights transiting U.S.-controlled airspace. This rulemaking makes sections (a) and (d) consistent in the methods of payment.

At the time of the original rulemaking, FAA offices were not set up to receive credit card payments and such use was specifically omitted from the 1995 final rule (60 FR 19631) amending part 187. With advances in electronic commerce over the years, there is now distinct value in accepting credit card payment of fees. Further, as FAA accounting systems and offices continue to be consolidated, collecting user fees by credit card allows more timely receipt and provides FAA customers with a convenient method to pay for services. The use of credit card payment supports the U.S. Department of Treasury electronic commerce program. The payment of fees by credit card will be handled through the U.S. Department of Treasury pay.gov program.

This rulemaking also amends §§ 61.13(a)(2), 63.11 and 65.11. The 1995 final rule (60 FR 19631) to amend fees under 14 CFR part 187, appendix A, specifically addressed the fact that user fees extended to all applicants located outside the United States, regardless of citizenship. The final rule brought these regulations in line with the nondiscrimination principles of multilateral trade agreements to which the U.S. is a signatory. These include the principles of the General Agreement on Tariffs and Trade (GATT), including the GATT Aircraft Code and the General Agreement on Trade in Services. When part 187 was amended, other regulations in 14 CFR should have been revised for consistency. These are §§ 61.13(a)(2), 63.11 and 65.11.

Section 61.13(a)(2) currently requires an ''applicant who is neither a citizen of the United States nor a resident alien of the United States'' to show evidence of paying the correct fee prescribed in appendix A to part 187. This must be done when the person applies for a student pilot certificate issued outside the United States or a knowledge test or practical test administered outside the United States. This rulemaking changes the current wording to make it clear that an applicant's citizenship is not at issue. The revised wording also states the fees are for ''airmen certification services.'' There is no need to enumerate those services because they are addressed in appendix A to part 187.

Sections 63.11 and 65.11 contain current wording that specifies: ''Each person who is neither a United States citizen nor a resident alien and applies for written or practical test to be administered outside the United States for any certificate or rating issued under this part must show evidence the fee prescribed in appendix A of part 187 of this chapter has been paid.'' This rulemaking changes that wording as follows: ''Each person who applies for airmen certification services to be administered outside the United States for any certificate or rating issued under this part must show evidence that the fee prescribed in appendix A of part 187 of this chapter has been paid.''

Theses changes provide consistency and update the outdated language.

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A—Air Commerce and Safety, Chapter 447—Safety Regulation, Section 44702, Issuance of certificates, 44703, Airman Certificates, and Chapter 453—Fees. Under those statutory provisions the FAA is charged with

prescribing regulations for promoting safety in civil air commerce, issuing certificates, and charging and receiving fees for such services. This regulation addresses matters within the scope of that authority.

The Direct Final Rule Procedure

The FAA expects that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. *The only changes to the regulations are:*

- To add the ability to use a credit card to pay for FAA certification services performed outside the United States, and
- To clarify that fees for airmen certification services apply to all applicants located outside the United States, regardless of citizenship. U.S. citizens located outside the United States already are paying fees in accordance with Title 14, Code of Federal Regulations, part 187. This change will make the language throughout 14 CFR consistent. The applicability remains the same.

Unless a written adverse or negative comment, or a written notice of intent to file an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirm the date on which the final rule will become effective. If the FAA does receive, within the comment period, a written adverse or negative comment, or written notice of intent to file such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policy web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have reviewed this rulemaking and determined there is no information collection associated with it.

International Compatibility

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because there is not a comparable rule under ICAO standards.

Economic Evaluation, Regulatory Flexibility Act, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law (P.L.) 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (P.L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (P.L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this direct final rule.

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a final rule does not warrant a full evaluation, this order allows a statement to that effect. The basis for the minimal impact must be included in the preamble, if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for that determination follows.

Since this final rule merely revises wording to ensure the regulations are consistent throughout, this change will have a minimal impact, and a regulatory evaluation was not prepared. As noted above, the FAA requests comments with supporting justification on the FAA determination of minimal impact.

FAA has, therefore, determined this rulemaking action is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures. In addition, the FAA has determined that this rulemaking action: (1) Will not have a significant economic impact on a substantial number of small entities; (2) will not affect international trade; and (3) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies consider flexible regulatory proposals, to explain

the rationale for their actions, and to invite comments. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule merely revises wording to ensure the regulations are consistent throughout; this change will have only a minimal impact on any small entity affected by this rulemaking action.

Consequently, as the FAA Administrator, I certify the rulemaking action will not have a significant economic impact on a substantial number of small entities. As noted above, the FAA requests comments with supporting justification regarding this determination.

Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that these international standards be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking action and has determined that it will not impose costs on any international entities and thus have a neutral trade impact.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (P.L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312(d) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 63

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Navigation (air), Reporting and recordkeeping requirements, Security measures.

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Aviation safety, Drug abuse, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 187

Administrative practice and procedure, Air transportation.

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 2. Revise § 61.13(a)(2) introductory text and (a)(2)(i) to read as follows:

§ 61.13 Issuance of airman certificates, ratings, and authorizations.

(a) * * *

(1) * * *

(2) An applicant—

(i) Must show evidence that the appropriate fee prescribed in appendix A to part 187 of this chapter has been paid when that person applies for airmen certification services administered outside the United States.

* * * * *

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

■ 3. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 4. Revise § 63.11(a) to read as follows:

§ 63.11 Application and issue.

(a) An application for a certificate and appropriate class rating, or for an additional rating, under this part must be made on a form and in a manner prescribed by the Administrator. Each person who applies for airmen certification services to be administered outside the United States for any certificate or rating issued under this part must show evidence that the fee prescribed in appendix A of part 187 of this chapter has been paid.

* * * * *

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREW MEMBERS

■ 5. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 6. Revise § 65.11(a) to read as follows:

§ 65.11 Application and issue.

(a) Application for a certificate and appropriate class rating, or for an additional rating, under this part must be made on a form and in a manner prescribed by the Administrator. Each person who applies for airmen certification services to be administered outside the United States or for any certificate or rating issued under this part must show evidence that the fee prescribed in appendix A of part 187 of this chapter has been paid.

* * * * *

PART 187—FEES

■ 7. The authority citation for part 187 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(g), 49 U.S.C. 106(l)(6), 40104–40105, 40109, 40113–40114, 44702.

■ 8. Revise § 187.15(a) to read as follows:

§ 187.15 Payment of fees.

(a) The fees of this part are payable to the Federal Aviation Administration by check, money order, wire transfers, draft, payable in U.S. currency and drawn on a U.S. bank, or by credit card payable in U.S. currency, prior to the provision of any service under this part.

* * * * *

Issued in Washington, DC on March 26, 2007.

Marion C. Blakey,

Administrator.

[FR Doc. E7–6884 Filed 4–11–07; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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