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Federal Register

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 843

RIN 3206–AL31

Federal Employees' Retirement System; Present Value Conversion Factors for Spouses of Deceased Separated Employees

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim rule to revise the table of reduction factors for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities under the Federal Employees' Retirement System (FERS) Act of 1986. These rules are necessary to conform the tables to the economic assumptions adopted by the Board of Actuaries and published previously in the **Federal Register**.

DATES: This interim rule is effective December 19, 2007. We must receive your comments by January 18, 2008.

ADDRESSES: You may submit comments, identified by RIN number 3206-AL31, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: combox@opm.gov.* Include RIN number 3206–AL31 in the subject line of the message.
- *Fax:* (202) 606–0990
- *Mail:* John Panagakos, Manager, Retirement Group, Office of Personnel Management, 1900 E Street NW., RM 4351, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jessica Johnson, (202) 606–0299.

SUPPLEMENTARY INFORMATION: OPM has published a notice in the **Federal Register** at 72 FR 31631 (June 7, 2007) to revise the normal cost percentage under the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99–335, 100 Stat. 514, based on changed economic assumptions and demographic factors adopted by the Board of Actuaries of the Civil Service Retirement System. Those changed economic assumptions require corresponding changes in factors used to produce actuarially equivalent benefits when required by the FERS Act.

Section 843.311 of title 5, Code of Federal Regulations, regulates the benefits for the survivors of separated employees under 5 U.S.C. 8442(c). This section provides a choice of benefits for eligible current and former spouses. If the current or former spouse is the person entitled to the unexpended balance under the order of precedence under 5 U.S.C. 8424, he or she may elect to receive the unexpended balance instead of an annuity.

Alternatively, an eligible current or former spouse may elect to receive an annuity commencing on the day after the employee's death or on the deceased separated employee's 62nd birthday. If the annuity commences on the deceased separated employee's 62nd birthday, it equals 50 percent of the annuity that the separated employee would have received when he or she attained age 62. If the current or former spouse elects the earlier commencing date, the annuity is reduced using the factors in Appendix A to subpart C of part 843 to make the annuity actuarially equivalent to the present value of the annuity that he or she would have received if it commenced on the retiree's 62nd birthday. These rules amend that appendix to conform to the revised economic assumptions.

Waiver of General Notice of Proposed Rulemaking

Under section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good reason exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days. The amendments made by this rule are required by changes in economic assumptions that were published on June 7, 2007. Providing a comment period on the result of mathematical computations resulting from the changed economic assumptions is unnecessary and, to the extent that it would delay benefit payments, is contrary to the public interest.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order (E.O.) 12866, as amended by E.O. 13258 and E.O. 13422.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to surviving current and former spouses of former employees and Members who separated from Federal service with title to a deferred annuity.

List of Subjects in 5 CFR Part 843

Air traffic controllers, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

United States Office of Personnel Management.

Linda M. Springer,

Director.

■ For the reasons stated in the preamble, the Office of Personnel Management amends 5 CFR part 843 as follows:

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

■ 1. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and § 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

Subpart C—Current and Former Spouse Benefits

■ 2. Revise Appendix A to subpart C of part 843 to read as follows:

APPENDIX A TO SUBPART C OF PART 843.—PRESENT VALUE CONVERSION FACTORS FOR EARLIER COMMENCING DATE OF ANNUITIES OF CURRENT AND FORMER SPOUSES OF DECEASED SEPARATED EMPLOYEES

Age of separated employee at birthday before death	Multiplier
With at least 10, but less than 20 years of creditable service—	
26	0.0592
27	.0633
28	.0688
29	.0730
30	.0804
31	.0859
32	.0921
33	.0991
34	.1064
35	.1158
36	.1234
37	.1333
38	.1422
39	.1551
40	.1668
41	.1799
42	.1938
43	.2097
44	.2260
45	.2437
46	.2635

APPENDIX A TO SUBPART C OF PART 843.—PRESENT VALUE CONVERSION FACTORS FOR EARLIER COMMENCING DATE OF ANNUITIES OF CURRENT AND FORMER SPOUSES OF DECEASED SEPARATED EMPLOYEES—Continued

Age of separated employee at birthday before death	Multiplier
47	.2858
48	.3085
49	.3346
50	.3618
51	.3926
52	.4255
53	.4623
54	.5025
55	.5463
56	.5944
57	.6461
58	.7040
59	.7675
60	.8374
61	.9146
With at least 20, but less than 30 years of creditable service—	
36	0.1483
37	.1598
38	.1709

APPENDIX A TO SUBPART C OF PART 843.—PRESENT VALUE CONVERSION FACTORS FOR EARLIER COMMENCING DATE OF ANNUITIES OF CURRENT AND FORMER SPOUSES OF DECEASED SEPARATED EMPLOYEES—Continued

Age of separated employee at birthday before death	Multiplier
39	.1858
40	.2000
41	21.59
42	.2325
43	.2514
44	.2708
45	.2922
46	.3160
47	.3424
48	.3697
49	.4007
50	.4335
51	.4701
52	.5093
53	.5532
54	.6010
55	.6532
56	.7104
57	.7722
58	.8411
59	.9167

Age of separated employee at birthday before death	Multiplier by separated employee's year of birth		
	After 1966	From 1950 through 1966	Before 1950
With at least 30 years of creditable service—			
46	0.4109	0.4476	0.4870
47	.4449	.4843	.5268
48	.4805	.5232	.5691
49	.5204	.5666	.6161
50	.5630	.6130	.6666
51	.6102	.6642	.7222
52	.6610	.7195	.7823
53	.7175	.7807	.8487
54	.7790	.8474	.9210
55	.8461	.9203	1.0000
56	.9195	1.0000	1.0000

[FR Doc. E7–24527 Filed 12–18–07; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. APHIS–2006–0161]

RIN 0579–AC52

Veterinary Diagnostic Services User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to increase the user fees for the veterinary diagnostic services to reflect changes in our operating costs and expenses. We are also setting rates for multiple fiscal years. These actions are necessary to ensure that we recover the actual costs of providing these services. We are also providing for a reasonable balance, or reserve, in the veterinary diagnostics user fee account. The Food, Agriculture, and Conservation Act of 1990, as amended, authorizes us to set and collect these user fees.

DATES: *Effective Date:* January 18, 2008.

FOR FURTHER INFORMATION CONTACT: For information concerning Veterinary Services (VS) Management Support,

contact Ms. Inez Hockaday, Director, Management Support Staff, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231; (301) 734–7517.

For information concerning VS Program Operations at the National Veterinary Services Laboratory, contact Dr. Elizabeth Lautner, Director, National Veterinary Services Laboratories, 1800 Dayton Road, P.O. Box 844, Ames, IA 50010; (515) 633–7357.

For information concerning user fee rate development, contact Mrs. Kris Caraher, User Fees Section Head, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–5901.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import and export related services for live animals and birds and animal products are contained in 9 CFR part 130 (referred to below as the regulations). These user fees are authorized by section 2509(c) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (21 U.S.C. 136a), which provides that the Secretary of Agriculture may, among other things, prescribe regulations and collect fees to recover the costs of veterinary diagnostics relating to the control and eradication of communicable diseases of livestock or poultry within the United States.

On July 23, 2007, we published in the **Federal Register** (72 FR 40082–40090, Docket No. APHIS–2006–0161) a proposal [1] to amend the regulations by increasing the user fees for veterinary diagnostic services to reflect changes in our operating costs and changes in calculating our costs, and to establish rates for multiple fiscal years.

We solicited comments concerning our proposal for 60 days ending September 22, 2007. We received one comment by that date, from a private citizen. The commenter supported the proposed rule. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule.

In this final rule, we have made a minor change to the fiscal year 2011 user fees for complement fixation and enzyme-linked immunosorbent assay in § 130.16(a). In the proposed rule, we mistakenly stated that those two fees would be $17 for that year. The correct fee for both tests is $18.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Below is a summary of the economic analysis for the changes in APHIS user fees in this final rule. The economic analysis provides a cost-benefit analysis and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act. A copy of the full economic analysis, which includes comparisons of the change in each user fee, may be viewed on the Regulations.gov Web site (see footnote 1 for instructions for accessing Regulations.gov) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

APHIS is updating the user fees covering the costs of providing veterinary diagnostics services to take into account the routine increases in the cost of doing business. The costs to operate the Veterinary Services Veterinary Diagnostics Program at National Veterinary Services Laboratory increase slightly from year to year due to increases in employee costs (cost of living increases, etc.) and other operational costs. These fees are necessary to provide for full-cost recovery of Agency activities.

Calculating the potential impacts of these changes to the veterinary diagnostics user fees is hindered by the difficulty in determining the elasticities of demand for the covered services. Therefore, Government savings are assumed equivalent to the total user fee collections for each category associated with the rule.

Veterinary diagnostic services and products are provided to animal importers and exporters, veterinarians, State and Federal agencies and laboratories, commercial laboratories, educational institutions, and foreign governments.

There is reason to believe that the impact on most users of the changes in this rule would be small. About 76 percent of the fees change in total by $10 or less. The majority should also make only small contributions to the total additional collections and therefore have a minor impact on the users of those materials and services. This is either because the change is small or the projected volume associated with the user fee is small, or both. In addition, user fees are not charged when tests are provided in the context of disease control or eradication programs. Also, in addition to the role they play in protecting American agriculture, veterinary diagnostic services and products facilitate international trade and thereby enhance the business interests of many of those requesting these services.

Nearly 80 percent of the total projected change in collections would come from changes in only 13 of the 146 fees. Only these 13 fee changes are projected to generate $10,000 or more in additional annual collections by the end of the period covered in this rule. Several factors suggest, however, that these fees should also not have a significant impact on users. These fees include small fees applied to a large annual volume of users, large fees but very small volume of users, fees that represent a small percentage of the overall costs associated with a user's output, single fees for reagents with numerous final users, and fees that enhance the marketability of the user's final output.

To the extent that the changes in user fees would impact operational costs, any entity that utilizes APHIS veterinary diagnostic services and materials could be impacted by the changes. The degree to which an entity could be affected depends on its market power, that is, the extent to which costs are either absorbed or can be passed on to its buyers. Without information on either profit margins or operational expenses of the affected entities, or the effects of changes in operating costs on the affected industry, the scale of the impacts cannot be precisely predicted. However, some conclusions on the overall impacts to domestic and international commerce can be drawn.

If the user fees cannot be passed on, the profit margins of some entities may decline as user fees for veterinary diagnostic services and materials are increased. However, the impacts are expected to be muted. The majority of the changes to the user fees are either small, associated with few users, or both. Over the period covered by the rule, more than 51 percent of the individual increases are $5 or less, more than 76 percent increase by less than $10, and more than 83 percent are associated with fewer than 500 users. The majority should also make only small contributions to the total additional collections and therefore have a minor impact on the users of those services. This is either because the change is small or the projected volume associated with the user fee is small, or both. Even in those instances in which the change in a user fee generates a

[1] To view the proposed rule and the comment we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0161.*

larger total increase in collections, the impact should not be significant. This is because they are small fees applied to a large annual volume of users, large fees but applied to a very small volume of users, fees that represent a small percentage of the overall costs associated with a user's output, single fees for reagents with numerous final users, or fees that enhance the marketability of the user's final outputs. Therefore, the increases are not generally expected to substantially reduce profits or impede trade. Indeed, the full burden of the user fee changes is not likely to be borne entirely by the purchasers of veterinary diagnostic services and materials.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

■ Accordingly, we are amending 9 CFR part 130 as follows:

PART 130—USER FEES

■ 1. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 130.15, paragraphs (a) and (b), the tables are revised to read as follows:

§ 130.15 User fees for veterinary diagnostic isolation and identification tests performed at NVSL (excluding FADDL) or other authorized site.

(a) * * *

Test	Unit	User fee				
		Jan. 18, 2008–Sept. 30, 2008	Oct. 1, 2008–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Beginning Oct. 1, 2011
Bacterial identification, automated	Isolate	$53.00	$54.00	$55.00	$57.00	$58.00
Bacterial identification, non-automated	Isolate	90.00	92.00	94.00	96.00	98.00
Bacterial isolation	Sample	36.00	37.00	38.00	39.00	40.00
Bacterial serotyping, all other	Isolate	55.00	56.00	56.00	57.00	58.00
Bacterial serotyping, Pasteurella multocida	Isolate	18.00	19.00	19.00	19.00	20.00
Bacterial serotyping, Salmonella	Isolate	36.00	37.00	38.00	39.00	40.00
Bacterial toxin typing	Isolate	120.00	123.00	126.00	128.00	131.00
Bacteriology requiring special characterization	Test	92.00	94.00	96.00	98.00	101.00
DNA fingerprinting	Test	59.00	61.00	62.00	63.00	64.00
DNA probe	Test	83.00	85.00	86.00	88.00	89.00
Fluorescent antibody	Test	19.00	19.00	20.00	20.00	20.00
Mycobacterium identification (biochemical)	Isolate	115.00	117.00	120.00	122.00	125.00
Mycobacterium identification (gas chromatography)	Procedure	96.00	99.00	101.00	103.00	105.00
Mycobacterium isolation, animal inoculations	Submission	844.00	852.00	868.00	884.00	900.00
Mycobacterium isolation, all other	Submission	151.00	154.00	158.00	161.00	165.00
Mycobacterium paratuberculosis isolation	Submission	72.00	74.00	75.00	77.00	79.00
Phage typing, all other	Isolate	42.00	43.00	44.00	45.00	46.00
Phage typing, Salmonella enteritidis	Isolate	24.00	24.00	25.00	25.00	26.00

(b) * * *

Test	Unit	User fee				
		Jan. 18, 2008–Sept. 30, 2008	Oct. 1, 2008–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Beginning Oct. 1, 2011
Fluorescent antibody tissue section	Test	$29.00	$30.00	$30.00	$31.00	$31.00
Virus isolation	Test	48.00	49.00	50.00	51.00	52.00

* * * * *

■ 3. In § 130.16, paragraphs (a) and (b), the tables are revised to read as follows:

§ 130.16 User fees for veterinary diagnostic serology tests performed at NVSL (excluding FADDL) or at authorized sites.

(a) * * *

Test	Unit	User fee				
		Jan. 18, 2008–Sept. 30, 2008	Oct. 1, 2008–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Beginning Oct. 1, 2011
Brucella ring (BRT)	Test	$36.00	$37.00	$38.00	$39.00	$40.00
Brucella ring, heat inactivated (HIRT)	Test	36.00	37.00	38.00	39.00	40.00
Brucella ring, serial (Serial BRT)	Test	54.00	56.00	57.00	58.00	59.00
Buffered acidified plate antigen presumptive	Test	7.00	7.25	7.50	7.50	8.00
Card	Test	4.00	4.00	4.25	4.25	4.50
Complement fixation	Test	16.00	17.00	17.00	18.00	18.00
Enzyme linked immunosorbent assay	Test	16.00	17.00	17.00	18.00	18.00
Indirect fluorescent antibody	Test	14.00	15.00	15.00	15.00	16.00
Microscopic agglutination—includes up to 5 serovars	Sample	24.00	24.00	25.00	25.00	26.00
Microscopic agglutination—each serovar in excess of 5 serovars.	Sample	4.25	4.50	4.50	4.50	4.75
Particle concentration fluorescent immunoassay (PCFIA).	Test	36.00	37.00	38.00	38.00	39.00
Plate	Test	7.00	7.25	7.50	7.50	7.75
Rapid automated presumptive	Test	7.00	7.00	7.25	7.25	7.25
Rivanol	Test	7.00	7.25	7.50	7.50	7.75
Tube agglutination	Test	7.00	7.25	7.50	7.50	7.75

(b) * * *

Test	Unit	User fee				
		Jan. 18, 2008–Sept. 30, 2008	Oct. 1, 2008–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Beginning Oct. 1, 2011
Agar gel immunodiffusion	Test	$16.00	$17.00	$17.00	$17.00	$18.00
Complement fixation	Test	16.00	17.00	17.00	18.00	18.00
Enzyme linked immunosorbent assay	Test	16.00	17.00	17.00	18.00	18.00
Hemagglutination inhibition	Test	14.00	15.00	15.00	15.00	16.00
Indirect fluorescent antibody	Test	14.00	15.00	15.00	15.00	16.00
Latex agglutination	Test	16.00	17.00	17.00	17.00	18.00
Peroxidase linked antibody	Test	15.00	16.00	16.00	16.00	17.00
Plaque reduction neutralization	Test	18.00	18.00	19.00	19.00	19.00
Rabies fluorescent antibody neutralization	Test	45.00	46.00	47.00	49.00	50.00
Virus neutralization	Test	13.00	13.00	14.00	14.00	14.00

* * * * *

■ 4. In § 130.17, paragraph (a), the table is revised to read as follows:

§ 130.17 User fees for other veterinary diagnostic laboratory tests performed at NVSL (excluding FADDL) or at authorized sites.

(a) * * *

Test	Unit	User fee				
		Jan. 18, 2008–Sept. 30, 2008	Oct. 1, 2008–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Beginning Oct. 1, 2011
Aflatoxin quantitation	Test	$30.00	$31.00	$32.00	$32.00	$33.00
Aflatoxin screen	Test	29.00	29.00	30.00	30.00	31.00
Agar gel immunodiffusion spp. identification	Test	13.00	13.00	13.00	14.00	14.00
Antibiotic (bioautography) quantitation	Test	66.00	67.00	68.00	70.00	72.00
Antibiotic (bioautography) screen	Test	119.00	122.00	125.00	128.00	130.00
Antibiotic inhibition	Test	66.00	67.00	68.00	70.00	72.00
Arsenic	Test	17.00	18.00	18.00	19.00	19.00
Ergot alkaloid screen	Test	66.00	67.00	68.00	70.00	72.00
Ergot alkaloid confirmation	Test	86.00	88.00	89.00	91.00	94.00
Feed microscopy	Test	66.00	67.00	68.00	70.00	72.00
Fumonisin only	Test	37.00	38.00	39.00	40.00	40.00
Gossypol	Test	98.00	100.00	103.00	105.00	107.00
Mercury	Test	145.00	148.00	151.00	155.00	158.00
Metals screen	Test	44.00	45.00	46.00	47.00	48.00
Metals single element confirmation	Test	13.00	13.00	13.00	14.00	14.00
Mycotoxin: aflatoxin-liver	Test	119.00	122.00	125.00	128.00	130.00
Mycotoxin screen	Test	48.00	49.00	50.00	51.00	52.00
Nitrate/nitrite	Test	66.00	67.00	68.00	70.00	72.00

Test	Unit	User fee				
		Jan. 18, 2008–Sept. 30, 2008	Oct. 1, 2008–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Beginning Oct. 1, 2011
Organic compound confirmation	Test	88.00	90.00	92.00	94.00	96.00
Organic compound screen	Test	151.00	155.00	158.00	161.00	165.00
Parasitology	Test	29.00	29.00	30.00	30.00	31.00
Pesticide quantitation	Test	132.00	135.00	138.00	141.00	144.00
Pesticide screen	Test	60.00	62.00	63.00	64.00	66.00
pH	Test	26.00	27.00	28.00	28.00	29.00
Plate cylinder	Test	98.00	100.00	103.00	105.00	107.00
Selenium	Test	44.00	45.00	46.00	47.00	48.00
Silicate/carbonate disinfectant	Test	66.00	67.00	68.00	70.00	72.00
Temperature disks	Test	130.00	133.00	136.00	139.00	142.00
Toxicant quantitation, other	Test	110.00	112.00	115.00	117.00	120.00
Toxicant screen, other	Test	33.00	33.00	34.00	35.00	36.00
Vomitoxin only	Test	53.00	54.00	55.00	56.00	58.00
Water activity	Test	33.00	33.00	34.00	35.00	36.00
Zearaleone quantitation	Test	53.00	54.00	55.00	56.00	58.00
Zearaleone screen	Test	29.00	29.00	30.00	30.00	31.00

* * * * *

■ 5. In § 130.18, paragraphs (a) and (b), the tables are revised to read as follows:

§ 130.18 User fees for veterinary diagnostic reagents produced at NVSL or other authorized site (excluding FADDL).

(a) * * *

Reagent	Unit	User fee				
		Jan. 18, 2008–Sept. 30, 2008	Oct. 1, 2008–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Beginning Oct. 1, 2011
Anaplasma card test antigen	2 mL	$95.00	$97.00	$99.00	$101.00	$103.00
Anaplasma card test kit without antigen	Kit	127.00	130.00	133.00	136.00	139.00
Anaplasma CF antigen	2 mL	46.00	46.00	46.00	47.00	47.00
Anaplasma stabilate	4.5 mL	175.00	178.00	181.00	185.00	188.00
Avian origin bacterial antiserums	1 mL	48.00	49.00	50.00	51.00	52.00
Bacterial agglutinating antigens other than brucella and salmonella pullorum.	5 mL	54.00	55.00	57.00	58.00	59.00
Bacterial conjugates	1 mL	96.00	99.00	101.00	103.00	105.00
Bacterial disease CF antigens, all other	1 mL	29.00	30.00	30.00	31.00	32.00
Bacterial ELISA antigens	1 mL	29.00	30.00	31.00	31.00	32.00
Bacterial or protozoal antiserums, all other	1 mL	60.00	61.00	63.00	64.00	66.00
Bacterial reagent culture[1]	Culture	73.00	74.00	76.00	78.00	79.00
Bacterial reference culture[2]	Culture	228.00	233.00	239.00	244.00	249.00
Bacteriophage reference culture	Culture	172.00	176.00	180.00	183.00	188.00
Bovine serum factor	1 mL	18.00	18.00	19.00	19.00	19.00
Brucella abortus CF antigen	60 mL	151.00	154.00	158.00	161.00	165.00
Brucella agglutination antigens, all other	60 mL	151.00	154.00	158.00	161.00	165.00
Brucella buffered plate antigen	60 mL	172.00	176.00	180.00	183.00	188.00
Brucella canis tube antigen	25 mL	114.00	116.00	119.00	121.00	124.00
Brucella card test antigen (packaged)	Package	90.00	92.00	94.00	96.00	98.00
Brucella card test kit without antigen	Kit	113.00	114.00	116.00	117.00	119.00
Brucella cells	Gram	19.00	19.00	19.00	20.00	20.00
Brucella cells, dried	Pellet	6.00	6.00	6.25	6.25	6.25
Brucella ring test antigen	60 mL	241.00	246.00	252.00	257.00	263.00
Brucella rivanol solution	60 mL	29.00	30.00	31.00	31.00	32.00
Dourine CF antigen	1 mL	89.00	91.00	93.00	95.00	97.00
Dourine stabilate	4.5 mL	109.00	111.00	112.00	114.00	116.00
Equine and bovine origin babesia species antiserums	1 mL	127.00	130.00	133.00	136.00	139.00
Equine negative control CF antigen	1 mL	282.00	283.00	286.00	290.00	293.00
Flazo-orange	3 mL	13.00	13.00	13.00	13.00	14.00
Glanders CF antigen	1 mL	77.00	79.00	81.00	82.00	84.00
Hemoparasitic disease CF antigens, all other	1 mL	541.00	553.00	565.00	577.00	590.00
Leptospira transport medium	10 mL	4.25	4.50	4.50	4.50	4.75
Monoclonal antibody	1 mL	95.00	97.00	99.00	101.00	103.00
Mycobacterium spp. old tuberculin	1 mL	24.00	24.00	25.00	25.00	26.00
Mycobacterium spp. PPD	1 mL	18.00	19.00	19.00	19.00	20.00
Mycoplasma hemagglutination antigens	5 mL	180.00	184.00	188.00	192.00	197.00
Negative control serums	1 mL	18.00	19.00	19.00	19.00	20.00
Rabbit origin bacterial antiserum	1 mL	52.00	53.00	54.00	55.00	56.00
Salmonella pullorum microagglutination antigen	5 mL	15.00	16.00	16.00	16.00	17.00

Reagent	Unit	User fee				
		Jan. 18, 2008–Sept. 30, 2008	Oct. 1, 2008–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Beginning Oct. 1, 2011
Stabilates, all other	4.5 mL	684.00	690.00	703.00	716.00	730.00

[1] A reagent culture is a bacterial culture that has been subcultured one or more times after being tested for purity and identity. It is intended for use as a reagent with a diagnostic test such as the leptospiral agglutination test.

[2] A reference culture is a bacterial culture that has been thoroughly tested for purity and identity. It should be suitable as a master seed for future cultures.

(b) * * *

Reagent	Unit	User fee				
		Jan. 18, 2008–Sept. 30, 2008	Oct. 1, 2008–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Beginning Oct. 1, 2011
Antigen, except avian influenza and chlamydia psittaci antigens, any.	2 mL	$61.00	$62.00	$64.00	$65.00	$67.00
Avian antiserum except avian influenza antiserum, any	2 mL	48.00	49.00	51.00	52.00	53.00
Avian influenza antigen, any	2 mL	33.00	34.00	35.00	36.00	36.00
Avian influenza antiserum, any	6 mL	103.00	105.00	108.00	110.00	113.00
Bovine or ovine serum, any	2 mL	127.00	130.00	133.00	136.00	139.00
Cell culture	Flask	151.00	154.00	158.00	161.00	165.00
Chlamydia psittaci spp. of origin monoclonal antibody panel.	Panel	95.00	96.00	98.00	99.00	101.00
Conjugate, any	1 mL	73.00	75.00	76.00	78.00	80.00
Diluted positive control serum, any	2 mL	24.00	25.00	25.00	26.00	27.00
Equine antiserum, any	2 mL	45.00	46.00	47.00	48.00	49.00
Monoclonal antibody	1 mL	102.00	104.00	106.00	108.00	110.00
Other spp. antiserum, any	1 mL	52.00	52.00	52.00	53.00	53.00
Porcine antiserum, any	2 mL	105.00	108.00	110.00	113.00	115.00
Porcine tissue sets	Tissue set	157.00	157.00	158.00	159.00	161.00
Positive control tissues, all	2 cm^2 section.	60.00	62.00	63.00	65.00	66.00
Rabbit origin antiserum	1 mL	52.00	53.00	54.00	55.00	56.00
Reference virus, any	0.6 mL	180.00	184.00	188.00	193.00	197.00
Viruses (except reference viruses), chlamydia psittaci agent or chlamydia psittaci antigen, any.	0.6 mL	30.00	31.00	32.00	32.00	33.00

* * * * *

■ 6. In § 130.19, paragraph (a), the table is revised to read as follows:

§ 130.19 User fees for other veterinary diagnostic services or materials provided at NVSL (excluding FADDL).

(a) * * *

Service	Unit	User fee				
		Jan. 18, 2008–Sept. 30, 2008	Oct. 1, 2008–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Beginning Oct. 1, 2011
Antimicrobial susceptibility test	Isolate	$105.00	$107.00	$109.00	$112.00	$114.00
Avian safety test	Test	4,082.00	4,090.00	4,099.00	4,109.00	4,180.00
Check tests, culture	Kit [1]	176.00	179.00	182.00	185.00	189.00
Check tests, serology	Kit [1]	361.00	369.00	377.00	385.00	394.00
Fetal bovine serum safety test	Verification	1,119.00	1,122.00	1,134.00	1,147.00	1,160.00
Hourly user fees: [2]						
Hour	Hour	104.00	104.00	108.00	112.00	112.00
Quarter hour	Quarter Hour	26.00	26.00	27.00	28.00	28.00
Minimum		30.00	31.00	32.00	33.00	33.00
Manual, brucellosis culture	1 copy	115.00	117.00	120.00	122.00	125.00
Manual, tuberculosis Culture (English or Spanish)	1 copy	172.00	176.00	180.00	183.00	188.00
Manual, Veterinary mycology	1 copy	172.00	176.00	180.00	183.00	188.00
Manuals or standard operating procedure (SOP), all other.	1 copy	34.00	35.00	36.00	37.00	37.00
Manuals or SOP, per page	1 page	2.25	2.50	2.50	2.75	2.75
Training (school or technical assistance)	Per person per day.	332.00	339.00	346.00	354.00	362.00

[1] Any reagents required for the check test will be charged separately.

[2] For veterinary diagnostic services for which there is no flat user fee the Hourly rate user fee will be calculated for the actual time required to provide the service.

* * * * *

Done in Washington, DC, this 13th day of December 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–24602 Filed 12–18–07; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AH80

Incorporation by Reference of American Society of Mechanical Engineers Boiler and Pressure Vessel Code Cases

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to incorporate by reference the latest revisions of two previously incorporated regulatory guides (RGs) that approve Code Cases published by the American Society of Mechanical Engineers (ASME). These RGs are 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' Revision 34, and RG 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 15. This action allows licensees to use the Code Cases listed in the RGs as alternatives to requirements in the ASME Boiler and Pressure Vessel Code regarding the construction and inservice inspection of nuclear power plant components. Concurrent with this action, the NRC is publishing a notice of the issuance and availability of the final RGs. As a result of these related actions, the Code Cases listed in these RGs are incorporated by reference into the NRC's regulations.

DATES: *Effective Date:* January 18, 2008. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Office of the Federal Register as of January 18, 2008.

FOR FURTHER INFORMATION CONTACT: L. Mark Padovan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1423, e-mail *lmp@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following:

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Public File Area O–1F21, Rockville, Maryland. Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's PDR. The PDR reproduction contractor will copy documents for a fee.

The NRC's Public Electronic Reading Room. The NRC's public electronic reading room (e-reading room) is located at *http://www.nrc.gov/reading-rm.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The table below shows some documents related to this rulemaking, and their ADAMS ML numbers. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Document	PDR	Web	e-Reading room
Final Rule—Regulatory Analysis	X	X	ML070360713
RG 1.84, Rev. 34	X	X	ML072070407
RG 1.147, Rev. 15	X	X	ML072070419
RG 1.193, Rev. 1	X	X	ML052140501
Response to Public Comments	X	X	ML071230720

Background

The ASME develops and publishes the *Boiler and Pressure Vessel Code* (BPV Code), which contains the Code requirements for the design, construction, and inservice inspection (ISI) of nuclear power plant components, and the *Code for Operation and Maintenance of Nuclear Power Plants* (OM Code), which contains Code requirements for inservice testing (IST) of nuclear power plant components. In response to BPV and OM Code user requests, the ASME develops Code Cases which provide alternatives to BPV and OM Code requirements under special circumstances.

The NRC staff reviews ASME BPV and OM Code Cases, rules upon the acceptability of each Code Case, and publishes its findings in RGs. The RGs are revised periodically as new Code Cases are published by the ASME. The NRC incorporates by reference the RGs listing acceptable and conditionally acceptable ASME Code Cases in 10 CFR 50.55a. Currently, NRC RG 1.84, Revision 33, *''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,''* NRC RG 1.147, Revisions 0 through 14, *''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,''* and NRC RG 1.192, *''Operation and Maintenance Code Case Acceptability, ASME OM Code''* are incorporated into NRC's regulations, specifically 10 CFR 50.55a, ''Codes and Standards.''

This final rule incorporates by reference the latest revisions of the NRC RGs that list acceptable and conditionally acceptable ASME BPV Code Cases. RG 1.84, Revision 34 supersedes the incorporation by reference of Revision 33 and RG 1.147, Revision 15 supersedes the incorporation by reference of Revisions 0 through 14. Revision 15 of RG 1.147 supersedes all previous revisions of the RG. To make RG 1.147 easier to use, there was an effort to ensure that the tables of annulled Code Cases in Revision 15 were all inclusive. The result should be that licensees will no longer have to refer to multiple versions of this RG in managing Code Case usage in their ISI programs. RG 1.192, ''*Operation and Maintenance Code Case Acceptability, ASME OM Code*'' (June 2003), has not been revised because no new OM Code Cases have been

published by the ASME since the last NRC staff review.

RG 1.193, ''ASME Code Cases Not Approved for Use,'' lists the Code Cases that the NRC has determined are not acceptable for generic use. This guide complements RG 1.84 and RG 1.147 which list the Code Cases that the NRC has determined to be acceptable alternatives to applicable provisions of Section III and Section XI, respectively. Revision 1 to RG 1.193, issued in August 2005, is the latest available revision. On May 19, 2006, Revision 2 of the guide was issued for public comment (Draft Guide DG–1135, ML061210429). The public comment period closed on July 14, 2006. No comment letters were received. Issuance of the final guide was held pending the resolution of public comments on RGs 1.84 and 1.147 to determine if changes to these guides would necessitate a change to RG 1.193. No changes to the draft guide are necessary, and the final guide was issued in October 2007 through a separate notice.

The ASME recently changed its policy with regard to the effective period for Code Cases. Previously, a Code Case was approved with a 3-year expiration date. With the policy change, a Code Case is approved without an expiration date and is effective until the ASME takes action. Some of the Code Cases listed in the RGs were reviewed by the NRC prior to implementation of the new policy (i.e., Code Case reaffirmation dates appear in some tables). Subsequent revisions of the RGs will reflect the discontinuance of expiration dates.

The endorsement of a Code Case in NRC RGs constitutes acceptance of its technical position for applications not precluded by regulatory or other requirements or by the recommendations in these or other RGs. The licensee is responsible for ensuring that use of the Code Case does not conflict with regulatory requirements or licensee commitments. The Code Cases listed in the RGs are acceptable for use within the limits specified in the Code Case.

Code Cases may be revised for many reasons, for example to incorporate operational examination and testing experience and to update material requirements based on research results. On occasion, an inaccuracy in an equation is discovered or an examination as practiced is found not to be adequate to detect a newly discovered degradation mechanism. Hence, when a licensee initially implements a Code Case, 10 CFR 50.55a requires that the licensee implement the most recent version of that Code Case as listed in the RGs incorporated by reference. Code Cases superseded by revision are no longer acceptable for initial application unless otherwise indicated.

Section III applies only to new construction (i.e., the edition and addenda to be used in the construction of a plant are selected based on the date of the construction permit and are not changed thereafter, except voluntarily by the licensee). Hence, if a Section III Code Case is implemented by a licensee and a later version of the Code Case is incorporated by reference into § 50.55a and listed in the RGs, the licensee may use either version of the Code Case (subject, however, to whatever change requirements apply to its licensing basis, e.g., 10 CFR 50.59).

Section XI ISI and OM IST programs are updated every 10 years to the latest edition and addenda of Section XI that was incorporated by reference into § 50.55a and in effect 12 months before the start of the next inspection and testing interval. Licensees who were using a Code Case prior to the effective date of its revision may continue to use the previous version for the remainder of the 120-month ISI or IST interval. This relieves licensees of the burden of having to update their ISI or IST program each time a Code Case is revised by the ASME and approved for use by the NRC. Since Code Cases are applicable to specific editions and addenda, and since Code Cases may be revised because they are no longer accurate or adequate, licensees choosing to continue using a Code Case during the subsequent ISI/IST interval must implement the latest version incorporated by reference into § 50.55a and listed in the RGs.

The ASME may annul Code Cases that are no longer required, are determined to be inaccurate or inadequate, or have been incorporated into the BPV or OM Code. If a licensee applied a Code Case before it was listed as annulled or expired, the licensee may continue to use the Code Case until the licensee updates its construction Code of Record or until the licensee's 120-month ISI/IST update interval expires, after which the continued use of the Code Case is prohibited unless NRC approval is granted under § 50.55a(a)(3). If a Code Case is incorporated by reference into 10 CFR 50.55a and later annulled by the ASME because experience has shown that the design analysis, construction method, examination method, or testing method is inadequate, the NRC will amend 10 CFR 50.55a and the relevant RG to remove the approval of the annulled Code Case. Licensees should not begin to implement such annulled Code Cases in advance of the rulemaking.

Concurrent with this action, the NRC is publishing notices of availability of these RGs listing acceptable ASME BPV Code Cases.

Discussion of Comments

The NRC received no comments on the proposed rulemaking, and 11 public comment letters on the draft regulatory guides. The comments relate to the associated notice of issuance and availability of the proposed RGs (71 FR 62947; October 27, 2006), as discussed below.

RG 1.84, Code Case N–659

Eight of the comments pertained to proposed Revision 34 of Regulatory Guide 1.84. Specifically, all of the comments addressed Code Case N–659, ''Use of Ultrasonic Examination in Lieu of Radiography for Weld Examination, Section III, Division 1.'' All of the commenters had concerns relative to the conditions proposed by the NRC. Several commenters stated that further clarification was needed, and the demonstration program needed to be better defined. Other commenters believed that there was no need to require blind procedure and personnel demonstrations since a blind personnel demonstration would be sufficient, in their opinion, to also demonstrate the procedure. Some specific questions were raised, such as the number of flaws required for the procedure demonstration and false calls.

NRC Response: As noted above, the Statement of Considerations (**Federal Register** Notice 71 FR 62947, published on October 27, 2006) discussed the NRC's intent to add conditions to Code Case N–659 in the final guide unless public comments were received indicating that the staff's proposed technical bases for the conditions were incorrect, not applicable, unnecessary, or not justified. Because interest in using the code case had been expressed by the industry, the NRC developed the proposed conditions in an attempt to resolve the NRC's technical concerns and make the code case available for use. Public comments were received raising issues with the proposed NRC approach. In a separate **Federal Register** Notice (71 FR 32615) published for public comment on June 6, 2006, the industry had been notified that the NRC had determined that changes made to the code case by ASME International, published as Code Case N–659–1, were not acceptable to the NRC.

Accordingly, given the NRC's technical concerns with the demonstration program, the issues

raised in the public comments, and that the changes to Code Case N–659 resulting in Revision 1 to the code case are not acceptable to the NRC, the NRC has determined that a more effective approach for developing a suitable performance demonstration program would be to work with ASME International. Thus, Code Case N–659 will not be endorsed in the final regulatory guide, and the NRC staff will work through the ASME Code process to resolve the issues. To ensure that all stakeholders understand the NRC staff's concerns, responses have been developed to some of the public comments on Code Case N–659 dealing with the concept and motive for performance demonstration. The NRC's responses can be found in the ''Response to Public Comments'' document which is available to the public as indicated in the ''Availability of Documents'' section of this preamble. Responses are not provided for many of the public comments addressing details such as acceptance criteria, as these will be dependent on the scope of the performance demonstration program. The responses should be considered as the staff's preliminary positions on the issues.

RG 1.147

Code Case N–532–4

A commenter suggested that the NRC should consider listing Code Case N–532, Revision 4, rather than Code Case N–532, Revision 3, because Revision 4 addresses the proposed condition in the draft regulatory guide.

NRC Response: The NRC had conditionally approved previous revisions of the Code Case requiring that the inspection report be submitted within 90 days of the completion of each refueling outage. Under the provisions of Revision 3, it could have been several years before licensees submitted the inspection report. Since the change resulting in Code Case N–532–4 is consistent with the previously established regulatory position, the commenter's suggestion has been adopted, and Revision 4 to the Code Case is included in the final guide.

Code Case N–504–2

Two comments were received on Code Case N–504, Revision 2. The first comment was that the reference for obtaining a copy of Section XI, Appendix Q, ''Weld Overlay Repair of Class 1, 2, and 3 Austenitic Stainless Steel Piping Weldments,'' was incorrect.

NRC Response to the first comment: It was an oversight to not delete this reference in the draft guide. Accordingly, the reference has been removed in the final guide.

The second comment on Code Case N–504–2 was that the NRC should consider listing Code Case N–504–3, rather than Code Case N–504–2, because Revision 3 addresses the proposed conditions in the draft regulatory guide.

NRC Response: The revisions in Revision 3 are administrative in nature addressing use of the Code Case with various editions and addenda of Section XI. As these changes to the Code Case are administrative in nature and address the proposed conditions, Code Case N–504–3 is included in the final guide.

Code Case N–554–3

A commenter suggested that the NRC remove the limitation on Code Case N–554, Revision 3, consistent with NRC's letter of August 23, 2006, to Mr. Ken Balkey, Vice President Nuclear Codes and Standards.

NRC Response: In that letter, the NRC stated that it had evaluated ASME International's position on the Code Case, and concluded that there was a reasonable basis for pursuing the removal of the limitation on the Code Case. At the time that the letter was transmitted, the draft regulatory guide was in final concurrence. Hence, it was decided to address this issue in the subsequent revision. However, since the comment is consistent with the regulatory position, the NRC has determined that the limitation can be removed in the final guide. Thus, Code Case N–554–3 will be unconditionally approved in the final guide.

Code Case N–567–1

A commenter suggested that, based on the same letter to Mr. Ken Balkey described above, the proposed limitation for Code Case N–567, Revision 1, should also be removed. The commenter pointed out that the basis for removing the limitation on Code Case N–554–3 equally applies to Code Case N–567–1.

NRC Response: The NRC agrees, and Code Case N–554–3 will be unconditionally approved in the final guide.

Code Case N–533–1

A commenter suggested that the limitations on Code Case N–533, Revision 1, be worded consistent with those in Revision 14 of Regulatory Guide 1.147.

NRC Response: There was no intent to modify the intent of the condition in Revision 15. The intent was to make the condition more succinct. In accordance with the commenter's suggestion, the more descriptive condition contained in Revision 14 will be retained in the final Revision 15.

Code Case N–460

In the draft guide, the NRC proposed to condition Code Case N–460 relative to the manner in which it could be used in conjunction with Code Case N–659. Several commenters suggested that this was not necessary. The commenters believed that the provisions of the Code Case N–460 would prohibit the use of it in the manner discussed, and also suggested that the proposed condition would be burdensome.

NRC Response: The comments raise additional issues that need further consideration. Since these issues are associated with Code Case N–659, and it is not presently being accepted, issues with Code Case N–460 do not need to be resolved at this time. Accordingly, Code Case N–460 will not be conditioned in the final guide.

Code Case N–517–1

A commenter suggested that the limitation on Code Case N–517, Revision 1, should be removed.

NRC Response: Several years ago, NRC staff raised a concern that the Code Case was not consistent with 10 CFR 50, Appendix B, in that it would permit the purchase of materials from sources that do not have approved QA programs. However, the NRC has determined that the requirements of Appendix B are law and remain in effect even when a Code Case takes exception or is otherwise silent on the issue. Accordingly, the condition on Code Case N–517–1 has been removed in the final guide.

Code Cases N–619 and N–648–1

A commenter requested that the NRC clarify the conditions for approval for both Code Case N–619 and N–648, Revision 1. Specifically, clarification was requested relative to the reference to external surfaces on the inner radius of the nozzle.

NRC Response: The conditions in the final guide have been clarified to indicate that the external surface is from point M to point N in the figure.

Code Case N–706

A commenter recommended that the NRC considers including Code Case N–706 in Revision 15 to Regulatory Guide 1.147.

NRC Response: As indicated by the commenter, the NRC has previously approved the strategy identified in Code Case N–706 in relief requests. Technical Letter Report, ''Assessment of ASME Code Examinations on Regenerative, Letdown and Residual Heat Removal Heat Exchangers,'' Pacific Northwest

National Laboratory (PNNL), dated July 2004, gives a technical basis for acceptance of the Code Case. PNNL reviewed the component design, operating conditions, preventative maintenance practices, potential degradation mechanisms, failure history, and risk assessments for these heat exchanges. It concluded that with this change in inspection strategy identified in Code Case N–706, failure frequencies would remain very low, and there would be little impact on core damage or large early release frequencies. In addition, this change would significantly reduce occupational exposures. The NRC has determined that the alternative examination of the subject component provides reasonable assurance of structural integrity. Accordingly, the NRC agrees with the commenter's suggestion, and Code Case N–706 has been approved in the final guide.

Paragraph-by-Paragraph Discussion

On October 27, 2006, the NRC published notices of the proposed rulemaking and availability of proposed revisions to RGs 1.84 and 1.147 (71 FR 62942 and 71 FR 62947). The NRC has considered the public comments on these RGs and has resolved those comments by modifying the guides, as appropriate, or providing its rationale for not doing so. This rulemaking amends 10 CFR 50.55a to incorporate by reference RG 1.84 Revision 34, in place of Revision 33, and RG 1.147 Revision 15, in place of Revisions 0 through 14.

Paragraph 50.55a(b)

In § 50.55a(b), (b)(4), and (b)(5), the reference to the revision number for RG 1.84 is changed from ''Revision 33'' to ''Revision 34,'' and the reference to the revision numbers for RG 1.147 is changed to ''Revision 15.''

Paragraphs 50.55a(f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (f)(4)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(4)(ii)

In these paragraphs, the phrase indicating that revisions of RG 1.147 ''through Revision 14'' are the versions that are incorporated by reference in § 50.55a(b) is modified to read ''Revision 15.'' Incorporation by reference of Revision 15 of RG 1.147 supersedes the incorporation by reference of all previous revisions. The tables of annulled and superseded Code Cases have been reviewed to ensure that the lists are all inclusive.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such standards is inconsistent with applicable law or is otherwise impractical. In this action, the NRC is amending its regulations to incorporate by reference RGs that list ASME BPV Code Cases approved by the NRC. ASME Code Cases, which are ASME-approved alternatives to the provisions of ASME Code editions and addenda, are national consensus standards, as defined in Pub. L. 104–113 and OMB Circular A–119. They are developed by bodies whose members (including the NRC and utilities) have broad and varied interests.

The NRC reviews each Section III and Section XI Code Case published by the ASME to ascertain whether it is consistent with the safe operation of nuclear power plants. Those Code Cases found to be generically acceptable are listed in the RGs that are incorporated by reference in § 50.55a(b). Those that are found to be unacceptable are listed in RG 1.193, titled *Code Cases not Approved for Use;* but licensees may still seek NRC's approval to apply these Code Cases through the relief request process permitted in § 50.55a(a)(3). Other Code Cases, which the NRC finds to be conditionally acceptable, are also listed in the RGs that are incorporated by reference along with the modifications and limitations under which they may be applied. If the NRC did not conditionally accept ASME Code Cases, it would disapprove these Code Cases entirely. The effect would be that licensees would need to submit a larger number of relief requests which would be an unnecessary additional burden for both the licensee and the NRC. The NRC believes that this situation fits the definition of ''impractical'' under Pub. L. 104–113. For these reasons, the treatment of ASME BPV Code Cases, and modifications and conditions placed on them, in this final rule does not conflict with any policy on agency use of consensus standards specified in OMB Circular A–119.

Finding of No Significant Environmental Impact: Environmental Assessment

This action stems from the Commission's practice of incorporating by reference the RGs listing the most recent set of NRC-approved ASME Code Cases. The purpose of this action is to allow licensees to use the Code Cases listed in the RGs as alternatives to requirements in the ASME BPV Code for the construction and inservice inspection of nuclear power plant components. This action is intended to advance the NRC's strategic goals of protecting the public health, safety, and the environment, ensuring openness in the regulatory process, and promoting regulatory effectiveness and efficiency. It also demonstrates the agency's commitment to participate in the national consensus standards process under the National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113.

The National Environmental Policy Act (NEPA), Pub. L. 97–190 (42 U.S.C. 4321, *et seq.*), as amended, requires Federal government agencies to study the impacts of their ''major Federal actions significantly affecting the quality of the human environment,'' and prepare detailed statements on the environmental impacts of the action and alternatives to the action (42 U.S.C. 4332(2)(C)).

The Commission has determined under NEPA, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51 that this rule would not be a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

As alternatives to the ASME Code, NRC-approved Code Cases provide an equivalent level of safety. Therefore, the probability or consequences of accidents is not changed. There are also no significant, non-radiological impacts associated with this action because no changes would be made affecting non-radiological plant effluents nor in activities that would adversely affect the environment.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. The NRC sought public comments and the views of the States on this assessment but received none.

Paperwork Reduction Act Statement

This final rule does not contain a new or an amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The ASME Code Cases listed in the RGs to be incorporated by reference provide voluntary alternatives to the provisions in the ASME BPV Code for design, construction, and ISI of specific structures, systems, and components used in nuclear power plants. Implementation of these Code Cases is not required. Licensees use NRC-approved ASME Code Cases to reduce unnecessary regulatory burden or gain additional operational flexibility. It would be difficult for the NRC to provide these advantages independently of the ASME Code Case publication process without expending considerable additional resources. The NRC has prepared a regulatory analysis addressing the qualitative benefits of the alternatives considered in this final rulemaking and comparing the costs associated with each alternative. The regulatory analysis is available for inspection on public computers in the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, Room O–1 F21. Copies of the regulatory analysis are also available to the public as indicated under the Availability of Documents heading in this preamble.

Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this final rule will not impose a significant economical impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants are not ''small entities'' as defined in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The provisions in this final rulemaking allow licensees to voluntarily apply NRC-approved Code Cases, sometimes with modifications or conditions. Therefore, the voluntary implementation of an approved Code Case does not constitute a backfit. Thus, the Commission finds that this final rule does not involve any provisions that constitute a backfit as defined in 10 CFR 50.109(a)(1), that the backfit rule does not apply to this final rule, and that a backfit analysis is not required.

Congressional Review Act (CRA)

Under the Congressional Review Act (CRA) of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Management and Budget.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(d), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. Section 50.55a is amended by revising the introductory text of paragraphs (b), (b)(4), and (b)(5), and paragraphs (f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (f)(4)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i) and (g)(4)(ii) to read as follows:

§ 50.55a Codes and standards.

* * * * *

(b) The ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants, which are referenced in paragraphs (b)(1), (b)(2), and (b)(3) of this section, were approved for incorporation by reference by the Director of the Office of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. NRC Regulatory Guide 1.84, Revision 34, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III'' (October 2007); NRC Regulatory Guide 1.147, Revision 15, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1'' (October 2007); and Regulatory Guide 1.192, ''Operation and Maintenance Code Case Acceptability, ASME OM Code,'' (June 2003), have been approved for incorporation by reference by the Director of the Office of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These Regulatory Guides list ASME Code cases that the NRC has approved in accordance with the requirements in paragraphs (b)(4), (b)(5), and (b)(6). Copies of the ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants may be purchased from the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016. Single copies of NRC Regulatory Guides 1.84, Revision 34; 1.147, Revision 15; and 1.192 may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; or by fax to 301–415–2289; or by e-mail to *DISTRIBUTION@nrc.gov.* Copies of the ASME Codes and NRC Regulatory Guides incorporated by reference in this section may be inspected at the NRC Technical Library, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852–2738, 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.*

* * * * *

(4) *Design, Fabrication, and Materials Code Cases.* Licensees may apply the ASME Boiler and Pressure Vessel Code cases listed in NRC Regulatory Guide 1.84, Revision 34, without prior NRC approval subject to the following:

* * * * *

(5) *Inservice Inspection Code Cases.* Licensees may apply the ASME Boiler and Pressure Vessel Code cases listed in Regulatory Guide 1.147, Revision 15, without prior NRC approval subject to the following:

* * * * *

(f) * * *

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, pumps and valves which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice tests for operational readiness set forth in editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, or 1.192 that are incorporated by reference in paragraph (b) of this section) in effect 6 months before the date of issuance of the construction permit. The pumps and valves may meet the inservice test requirements set forth in subsequent editions of this Code and addenda which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in NRC Regulatory Guide 1.147, Revision 15, or 1.192 that are incorporated by reference in paragraph (b) of this section), subject to the applicable limitations and modifications listed therein.

(3) * * *

(iii)(A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, or 1.192 that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(iv)(A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 2 and Class 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in NRC Regulatory Guide 1.147, Revision 15, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(4) * * *

(ii) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during successive 120-month intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months before the start of the 120-month interval (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, or 1.192 that are incorporated by reference in paragraph (b) of this section), subject to the limitations and modifications listed in paragraph (b) of this section.

* * * * *

(g) * * *

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, components (including supports) which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice examination of such components (including supports) and must meet the preservice examination requirements set forth in editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, that are incorporated by reference in paragraph (b) of this section) in effect six months before the date of issuance of the construction permit. The components (including supports) may meet the requirements set forth in subsequent editions and addenda of this Code which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, that are incorporated by reference in paragraph (b) of this section), subject to the applicable limitations and modifications.

(3) * * *

(i) Components (including supports) which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice examination of these components and must meet the preservice examination requirements set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular component.

(ii) Components which are classified as ASME Code Class 2 and Class 3 and supports for components which are classified as ASME Code Class 1, Class 2, and Class 3 must be designed and be provided with access to enable the performance of inservice examination of these components and must meet the preservice examination requirements set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in NRC Regulatory Guide 1.147, Revision 15, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular component.

* * * * *

(4) * * *

(i) Inservice examination of components and system pressure tests conducted during the initial 120-month inspection interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months before the date of issuance of the operating license (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, that are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed in paragraph (b) of this section.

(ii) Inservice examination of components and system pressure tests conducted during successive 120-month inspection intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months before the start of the 120-month inspection interval (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, that are incorporated by reference in paragraph (b) of this section), subject to the limitations and modifications listed in paragraph (b) of this section.

* * * * *

Dated at Rockville, Maryland, this 1st day of November, 2007.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E7–24478 Filed 12–18–07; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

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

DATES: The amendments to part 201 (Regulation A) are effective December 19, 2007. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

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

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

The Board approved requests by the Reserve Banks to decrease by 25 basis points the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby decreasing from 5.00 percent to 4.75 percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically decreased from 5.50 percent to 5.25 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The 25-basis-point decrease in the primary credit rate was associated with a similar decrease in the target for the federal funds rate (from 4.50 percent to 4.25 percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions indicated that:

Incoming information suggests that economic growth is slowing, reflecting the intensification of the housing correction and some softening in business and consumer spending. Moreover, strains in financial markets have increased in recent weeks. Today's action, combined with the policy actions taken earlier, should help promote moderate growth over time.

Readings on core inflation have improved modestly this year, but elevated energy and commodity prices, among other factors, may put upward pressure on inflation. In this context, the Committee judges that some inflation risks remain, and it will continue to monitor inflation developments carefully.

Recent developments, including the deterioration in financial market conditions, have increased the uncertainty surrounding the outlook for economic growth and inflation. The Committee will continue to assess the effects of financial and other developments on economic prospects and will act as needed to foster price stability and sustainable economic growth.

Regulatory Flexibility Act Certification

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

Administrative Procedure Act

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

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

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

Authority and Issuance

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

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

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

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

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

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

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

Federal Reserve Bank	Rate	Effective
Boston	4.75	December 12, 2007.
New York	4.75	December 11, 2007.
Philadelphia	4.75	December 11, 2007.
Cleveland	4.75	December 11, 2007.
Richmond	4.75	December 11, 2007.
Atlanta	4.75	December 11, 2007.
Chicago	4.75	December 11, 2007.
St. Louis	4.75	December 12, 2007.
Minneapolis	4.75	December 12, 2007.
Kansas City	4.75	December 13, 2007.
Dallas	4.75	December 12, 2007.
San Francisco	4.75	December 11, 2007.

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

Federal Reserve Bank	Rate	Effective
Boston	5.25	December 12, 2007.
New York	5.25	December 11, 2007.
Philadelphia	5.25	December 11, 2007.
Cleveland	5.25	December 11, 2007.
Richmond	5.25	December 11, 2007.
Atlanta	5.25	December 11, 2007.
Chicago	5.25	December 11, 2007.
St. Louis	5.25	December 12, 2007.
Minneapolis	5.25	December 12, 2007
Kansas City	5.25	December 13, 2007.
Dallas	5.25	December 12, 2007.
San Francisco	5.25	December 11, 2007.

* * * * *

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

By order of the Board of Governors of the Federal Reserve System, December 14, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–24567 Filed 12–18–07; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–29011; Airspace Docket No. 07–AAL–14]

Revision of Class D and E Airspace; Kenai, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class D and E airspace at Kenai, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). Five SIAPs are being amended for the Kenai Municipal Airport at Kenai, AK. Additionally, one textual departure procedure (DP) is being amended. This action revises existing Class D and E airspace upward from the surface, from 700 feet (ft.) and 1,200 ft. above the surface at the Kenai Municipal Airport, Kenai, AK.

DATES: *Effective Date:* 0901 UTC, February 14, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, October 16, 2007, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class D and E airspace upward from the surface, from 700 ft. above the surface and from 1,200 ft. above the surface at Kenai, AK (72 FR 58561). The action was proposed in order to create Class D and E airspace sufficient in size to contain aircraft while executing SIAPs for the Kenai Municipal Airport. The Notice of Proposed Rulemaking contained an incorrect mileage annotation in the Class E5 description. It is corrected in this rule. Additionally, the Class E2 surface area was omitted, which has the same dimension as the Class D airspace. It should have been included and is addressed in this rule. Class D and E controlled airspace extending upward from the surface, from 700 ft. above the surface and from 1,200 ft. above the surface, in the Kenai Municipal Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed with the correction to the mileage annotation and the inclusion of the Class E2 airspace description.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace is published in paragraph 5000 of FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as surface areas are published in paragraph 6002 and 6004 of FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class D and E airspace at the Kenai Municipal Airport, Alaska. This Class D and E airspace is revised to accommodate aircraft executing amended SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at the Kenai Municipal Airport, Kenai, Alaska.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class D and E airspace sufficient in size to contain aircraft executing instrument procedures for the Kenai Municipal Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

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, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective

September 15, 2007, is amended as follows:

* * * * *

Paragragh 5000 General.

* * * * *

AAL AK D Kenai, AK [Revised]

Kenai, Kenai Municipal Airport, AK
(Lat. 60°34′23″ N., long. 151°14′42″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.2-mile radius of the Kenai Municipal Airport, excluding the airspace below 1,100 feet MSL beyond 4 miles from the Kenai Municipal Airport extending from the 310° bearing clockwise to the 350° bearing from the Kenai Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AAL AK E2 Kenai, AK [Revised]

Kenai, Kenai Municipal Airport, AK
(Lat. 60°34′23″ N., long. 151°14′42″ W.)
Kenai VOR/DME
(Lat. 60°36′53″ N., long. 151°11′43″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.2-mile radius of the Kenai Municipal Airport, excluding the airspace below 1,100 feet MSL beyond 4 miles from the Kenai Municipal Airport extending from the 310° bearing clockwise to the 350° bearing from the Kenai Municipal Airport; and that airspace extending upward from the surface within 3.7 miles each side of the 031° radial of the Kenai VOR/DME extending from the 5.2-mile radius of the Kenai Municipal Airport to 10.2 miles northeast of the Kenai Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

AAL AK E4 Kenai, AK [Revised]

Kenai, Kenai Municipal Airport, AK
(Lat. 60°34′23″ N., long. 151°14′42″ W.)
Kenai VOR/DME
(Lat. 60°36′53″ N., long. 151°11′43″ W.)

That airspace extending upward from the surface within 3.7 miles each side of the 031° radial of the Kenai VOR/DME extending from the 5.2-mile radius of the Kenai Municipal Airport to 10.2 miles northeast of the Kenai Municipal Airport.

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Kenai, AK [Revised]

Kenai, Kenai Municipal Airport, AK
(Lat. 60°34′23″ N., long. 151°14′42″ W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of the Kenai Municipal Airport and within 4 miles east and west of the 031° bearing from the Kenai Municipal Airport extending from the 7.7-mile radius to 11 miles north of the Kenai Municipal Airport; and that airspace extending upward from 1,200 feet above the surface within a 75-mile radius of the Kenai Municipal Airport.

* * * * *

Issued in Anchorage, AK, on December 11, 2007.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E7–24402 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0245; Airspace Docket No. 07–ANE–95]

Establishment of Class E Airspace; Lewiston, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E Airspace at Lewiston, ME. The existing controlled airspace from nearby Auburn/Lewiston Municipal Airport does not adequately support a new Area Navigation (RNAV) Global Positioning system (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations. This action enhances the safety and management of Instrument Flight Rule (IFR) operations by providing the required controlled airspace to protect for this approach around the Central Maine Medical Center.

DATES: Effective 0901 UTC, February 14, 2008. The Director of the **Federal Register** approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before February 4, 2008.

ADDRESSES: Send comments on this rule to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2007–0245; Airspace Docket No. 07–ANE–95, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit 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 confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit 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.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded

by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed via *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register's** Web page at *http://www.gpoaccess.gov/fr/index.html.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or you may comment through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–0245; Airspace Docket No. 07–ANE–95.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E5 airspace at Lewiston, ME providing the controlled airspace required to support the new Copter RNAV (GPS) 162 Point in Space (PinS) approach developed to facilitate helicopter arrival and departures at the Central Maine Medical Center. Although Class E airspace exists near the area, it is insufficient for the protection for this approach that will serve medical flights. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required to encompass all instrument approach procedures (IAPs) to the extent practical and for general instrument flight rules (IFR) operations. Therefore, the FAA is amending title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E5 airspace at Lewiston, ME. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007, effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. The regulation is within the scope of that authority as it establishes controlled airspace near the Central Maine Medical Center in Lewiston, ME.

Lists 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 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 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ANE ME E5 Lewiston, ME [NEW]

Central Maine Medical Center Heliport
(Lat. 44°06′12″ N., long. 70°12′54″ W.)
Point in Space Coordinates
(Lat. 44°06′29″ N., long. 70°13′42″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6-mile radius of the Point in Space coordinates (Lat. 44°06′29″ N., long. 70°13′42″ W.) serving the Central Maine Medical Center Heliport.

* * * * *

Issued in College Park, Georgia, on December 10, 2007.

Barry A. Knight,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–6072 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR part 71

[Docket No. FAA–2007–0244; Airspace Docket No. 07–ANE–94]

Establishment of Class E Airspace; Skowhegan, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E Airspace at Skowhegan, ME. The existing controlled airspace from nearby Central Maine Airport does not adequately support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations. This action enhances the safety and management of Instrument Flight Rule (IFR) operations by providing the required controlled airspace to protect for this approach around the Redington-Fairview General Hospital in Skowhegan.

DATES: Effective 0901 UTC, February 14, 2008. The Director of the **Federal Register** approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before February 4, 2008.

ADDRESSES: Send comments on this rule to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: (202) 493–2251. You must identify the Docket Number FAA–2007–0244; Airspace Docket No. 07–ANE–94, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (303) 305–5581.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit 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 confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit 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.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from *http://www.regulations.gov.* Recently published rulemaking dockets can also be accessed through the FAA's web page at *http://www.faa.gov* or the **Federal Register's** web page at *http://www.gpoaccess.gov/fr/index.html.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or you may comment through the website. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–0244; Airspace Docket No. 07–ANE–94.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E5 airspace at Skowhegan, ME providing the controlled airspace required to support the new Copter RNAV (GPS) 240 Point in Space (PinS) approach developed to facilitate helicopter arrival and departures at the Redington-Fairview General Hospital. Although Class E airspace exists near the area, it is insufficient for the protection for this approach that will serve medical flights. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required to encompass all instrument approach procedures (IAPs) to the extent practical and for general instrument flight rules (IFR) operations. Therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E5 airspace at Skowhegan, ME. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007, effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a

routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace near the Redington-Fairview General Hospital in Skowhegan, ME.

Lists 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 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 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, effective September 15, 2007, is amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ANE ME E5 Skowhegan, ME [NEW]

Redington-Fairview General Hospital Heliport
(Lat. 44°45′28″ N., long. 69°42′51″ W.)
Point in Space Coordinates
(Lat. 44°46′03″ N., long. 69°43′14″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6-mile radius of the Point in Space coordinates (lat. 44°46′03″ N., long. 69°43′14″ W.) serving the Redington-Fairview General Hospital Heliport.

* * * * *

Issued in College Park, Georgia, on December 10, 2007.

Barry A. Knight,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–6071 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0243; Airspace Docket No. 07–ANE–93]

Establishment of Class E Airspace; Farmington, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes additional Class E Airspace at Farmington, ME. The existing controlled airspace does not adequately support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations. This action enhances the safety and management of Instrument Flight Rule (IFR) operations by providing the required controlled airspace to protect for this approach around Franklin Memorial Hospital

DATES: Effective 0901 UTC, February 14, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received February 4, 2008.

ADDRESSES: Send comments on this rule to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2007–0243; Airspace Docket No. 07–ANE–93, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit 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 confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit 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.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. The direct final rule is used in this case to facilitate the timing of the charting schedule and enhance the operation at the airport, while still allowing and requesting public comment on this rulemaking action. An electronic copy of this document may be downloaded from *http://www.regulations.gov.* Communications should identify both docket numbers and be submitted in

triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register's** Web page at *http://www.gpoaccess.gov/fr/index.html.*

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–0243; Airspace Docket No. 07–ANE–93.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E Airspace at Farmington, ME providing the controlled airspace required to support the new Copter RNAV (GPS) 288 Point in Space (PinS) approach developed to allow helicopter departure and arrival operations in support of the Franklin Memorial Hospital. Although Class E airspace exists near the area, it is insufficient for the protection for this approach that will serve medical flights. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required to encompass all instrument approach procedures (IAPs) to the extent practical and for general instrument flight rules (IFR) operations, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E5 airspace at Farmington, ME. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 and effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace near the Franklin Memorial Hospital in Farmington, ME.

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 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 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ANE ME E5 Farmington, ME [NEW]

Franklin Memorial Hospital Heliport
(Lat. 44°37′36″ N., long. 70°09′44″ W.)
Point in Space Coordinates
(Lat. 44°38′11″ N., long. 70°09′02″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6-mile radius of the point in space coordinates (lat. 44°38′11″ N., long. 70°09′02″ W.) serving the Franklin Memorial Hospital Heliport.

* * * * *

Issued in College Park, Georgia, on December 10, 2007.

Barry A. Knight,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–6070 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0104; Airspace Docket No. 07–AEA–10]

Establishment of Class E Airspace; Oil City, PA.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E Airspace at Oil City, PA to provide adequate airspace for a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed to serve the Northwest Medical Center (PS42). This action will

enhance the safety and management of Instrument Flight Rule (IFR) operations at Oil City, PA.

DATES: Effective 0901 UTC, February 14, 2008. The Director of the Federal Register approves this incorporation by reference action under title, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before February 4, 2008.

ADDRESSES: Send comments on this rule to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2007–0104; Airspace Docket No. 07–AEA–10, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulation.gov*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An information docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit 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 confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit 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.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from *http://www.regulations.gov.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factural information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–0104; Airspace Docket No. 07–AEA–10.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Oil City, PA, establishing the controlled airspace required to support the new Copter RNAV (GPS) 280 Point in Space (PinS) approach developed for Northwest Medical Center. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required to encompass the IAP and for Instrument Flight Rule (IFR) operations; therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E5 airspace at Oil City, PA. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007, effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace near the Northwest Medical Center, Oil City, PA.

Lists 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 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 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AEA PA E5 Oil City, PA [NEW]

Northwest Medical Center, PA
(Lat. 41°25′42″ N., long. 79°41′48″ W.)
Point in Space Coordinates
(Lat. 41°25′17″ N., long. 79°40′35″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6-mile radius of the point in space (lat. 41°25′17″ N., long. 79°40′35″ W.) serving the Northwest Medical Center at Oil City, PA.

* * * * *

Issued in College Park, Georgia, on November 15, 2007.

Kathy Swann,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–6069 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–29010; Airspace Docket No. 07–AAL–13]

Revision of Class E Airspace; Chevak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Chevak, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). Two SIAPs are being developed for the Chevak Airport. This action revises existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the Chevak Airport, Chevak, AK.

DATES: *Effective Date:* 0901 UTC, February 14, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Tuesday, October 16, 2007, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. above the surface and from 1,200 ft. above the surface at Chevak, AK (72 FR 58567). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing SIAPs for the Chevak Airport. The Notice of Proposed Rulemaking contained incorrect airport location coordinates. This rule corrects the error. Class E controlled airspace extending upward from 700 ft. above the surface and from 1,200 ft. above the surface in the Chevak Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed with the correction to the airport coordinates.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Chevak Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing new SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at the Chevak Airport, Chevak, Alaska.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Chevak Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

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, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, is amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Chevak, AK [Revised]

Chevak, Chevak Airport, AK
(Lat. 61°32′27″ N., long. 165°36′03″W.)
That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Chevak Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Chevak Airport.

* * * * *

Issued in Anchorage, AK, on December 11, 2007.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E7–24401 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27998; Airspace Docket No. 07–AAL–05]

Revision of Class E Airspace; Selawik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Selawik, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). Two SIAPs are being amended for the Selawik Airport. This action revises existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the Selawik Airport, Selawik, AK.

DATES: *Effective Date:* 0901 UTC, February 14, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Tuesday, October 16, 2007, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. above the surface and from 1,200 ft. above the surface at Selawik, AK (72 FR 58566). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing SIAPs for the Selawik Airport. The Notice of Proposed Rulemaking contained airport location data for the incorrect airport (Roland Norton Memorial). This action is associated with the Selawik Airport. This rule corrects that oversite. Class E controlled airspace extending upward from 700 ft. above the surface and from 1,200 ft. above the surface in the Selawik Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed with the correction to the airport name and coordinates.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Selawik Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing amended SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at the Selawik Airport, Selawik, Alaska.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Selawik Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

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, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, is amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Selawik, AK [Revised]

Selawik, Selawik Airport, AK
(Lat. 66°36′01″ N., long. 159°59′09″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the Selawik Airport; and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of the Selawik Airport.

* * * * *

Issued in Anchorage, AK, on December 11, 2007.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E7–24407 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–29009; Airspace Docket No. 07–AAL–12]

Revision of Class E Airspace; Buckland, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Buckland, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). Two SIAPs and a textual departure procedure (DP) are being amended for the Buckland Airport. Additionally, two SIAPs are being developed. This action revises existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the Buckland Airport, Buckland, AK.

DATES: *Effective Date:* 0901 UTC, February 14, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Tuesday, October 16, 2007, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. above the surface and from 1,200 ft. above the surface at Buckland, AK (72 FR 58565). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing SIAPs for the Buckland Airport. The Notice of Proposed Rulemaking contained incorrect airport location coordinates. This rule corrects the error. Class E controlled airspace extending upward from 700 ft. above the surface and from 1,200 ft. above the surface in the Buckland Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed with the correction to the airport coordinates.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9R, *Airspace Designations and Reporting Points,* signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Buckland Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing new and amended SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at the Buckland Airport, Buckland, Alaska.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Buckland Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

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, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Buckland, AK [Revised]

Buckland, Buckland Airport, AK
(Lat. 65°58′54″N., long. 161°08′57″W.)

That airspace extending upward from 700 feet above the surface within a 12.4-mile radius of the Buckland Airport; and that airspace extending upward from 1,200 feet above the surface within a 78-mile radius of the Buckland Airport.

* * * * *

Issued in Anchorage, AK, on December 11, 2007.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E7–24404 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–29100; Airspace Docket No. 07–AAL–16]

Revision of Class E Airspace; Soldotna, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Soldotna, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). Two SIAPs are being developed for the Soldotna Airport. This action revises existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the Soldotna Airport, Soldotna, AK.

DATES: *Effective Date:* 0901 UTC, February 14, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, October 16, 2007, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. above the surface and from 1,200 ft. above the surface at Soldotna, AK (72 FR 58563). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing SIAPs for the Soldotna Airport. Class E controlled airspace extending upward from 700 ft. above the surface and from 1,200 ft. above the surface in the Soldotna Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Soldotna Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing new SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at the Soldotna Airport, Soldotna, Alaska.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Soldotna Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

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, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Soldotna, AK [Revised]

Soldotna, Soldotna Airport, AK
(Lat. 60°28′30″ N., long. 151°02′17″ W.)
Soldotna NDB
(Lat. 60°28′30″ N., long. 150°52′44″ W.)

That airspace extending upward from 700 feet above the surface within a 10.1-mile radius of the Soldotna Airport and within 4 miles either side of the 270° bearing of the Soldotna NDB, AK, extending from the 10.1-mile radius to 21 miles west of the Soldotna Airport, AK, and within 4.6 miles north and 4 miles south of the 090° bearing of the Soldotna NDB, AK, extending from the 10.1-mile radius to 14.3 miles east of the Soldotna Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Soldotna Airport.

* * * * *

Issued in Anchorage, AK, on December 11, 2007.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E7–24409 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–29012; Airspace Docket No. 07–AAL–15]

Revision of Class E Airspace; McGrath, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at McGrath, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). Five SIAPs and a textual departure procedure (DP) are being amended for the McGrath Airport. Additionally, one SIAP is being developed. This action revises existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the McGrath Airport, McGrath, AK.

DATES: *Effective Date:* 0901 UTC, February 14, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, October 16, 2007, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. above the surface and from 1,200 ft. above the surface at McGrath, AK (72 FR 58569). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing SIAPs for the McGrath Airport. Class E controlled airspace extending upward from 700 ft. above the surface and from 1,200 ft. above the surface in the McGrath Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas are published in paragraph 6002 of FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the McGrath Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing new and amended SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at the McGrath Airport, McGrath, Alaska.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the McGrath Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

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, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

AAL AK E2 McGrath, AK [Revised]

McGrath, McGrath Airport, AK
(Lat. 62°57′10″ N., long. 155°36′20″ W.)

That airspace within a 7.6-mile radius of the McGrath Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 McGrath, AK [Revised]

McGrath, McGrath Airport, AK
(Lat. 62°57′10″ N., long. 155°36′20″ W.)

That airspace extending upward from 700 feet above the surface within a 8.1-mile radius of the McGrath Airport and within 4 miles north and 8 miles south of the 123° bearing from the McGrath Airport, AK extending from the 8.1-mile radius to 16 miles southeast of the McGrath Airport, AK, and within 4 miles east and west of the 008° bearing from the McGrath Airport, AK, extending from the 8.1-mile radius to 11.2 miles north of the McGrath Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of the McGrath Airport.

* * * * *

Issued in Anchorage, AK, on December 11, 2007.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E7–24410 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 1980N–0280] (formerly Docket No. 80N–0280)
RIN 0910–AF44

Over-the-Counter Vaginal Contraceptive and Spermicide Drug Products Containing Nonoxynol 9; Required Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing new warning statements and other labeling information for all over-the-counter (OTC) vaginal contraceptive drug products (also known as spermicides, hereinafter referred to as vaginal contraceptives or vaginal contraceptives/spermicides) containing nonoxynol 9 (N9). These warning statements will advise consumers that vaginal contraceptives/spermicides containing N9 do not protect against infection from the human immunodeficiency virus (HIV), the virus that causes acquired immunodeficiency syndrome (AIDS), or against getting other sexually transmitted diseases (STDs). The warnings and labeling information will also advise consumers that use of vaginal contraceptives and spermicides containing N9 can irritate the vagina and rectum and may increase the risk of getting the AIDS virus (HIV) from an infected partner. This final rule is part of FDA's ongoing review of OTC drug products. FDA is issuing this final rule after considering public comments on its proposed regulation, and all relevant data and information on N9 that have come to our attention.

DATES: *Effective Date:* This rule is effective June 19, 2008.

Compliance Date: The compliance date for all products subject to this final rule, including products with annual sales less than $25,000, is June 19, 2008.

FOR FURTHER INFORMATION CONTACT: Arlene Solbeck, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION:

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I. Background

In the **Federal Register** of January 16, 2003 (68 FR 2254), FDA (we) published a proposed rule (the proposed rule) to require new labeling warning statements for all OTC vaginal contraceptive drug products containing N9. These proposed warning statements are intended to

advise consumers that vaginal contraceptives containing N9 do not protect against infection from HIV, the virus that causes AIDS, nor against getting other STDs. The warnings also would advise consumers that frequent use of vaginal contraceptives containing N9 can increase vaginal irritation, and that increased vaginal irritation from the use of N9 may increase the possibility of becoming infected with the AIDS virus (HIV) or other STDs from infected partners. The proposed rule contains the data and scientific evidence that we considered to require these warnings.

N9 is a nonionic surfactant that works as a vaginal contraceptive (spermicide) by damaging the cell membrane of sperm. As stated in the proposed rule (68 FR 2254 at 2255), there are in vitro studies showing that N9 causes damage to the cell wall of certain STD pathogens and has activity against certain bacterial and viral STD pathogens, including HIV. Because N9 inhibits the replication of the AIDS virus (HIV) and other STD pathogens in vitro, it has been suggested over the years that N9 might help prevent or reduce the risk of transmission of the AIDS virus and other STDs in humans (68 FR 2254 at 2255). Thus, research was undertaken to see if N9 would prevent HIV and STDs. In the proposed rule, FDA discussed the evidence that demonstrates that N9 does not prevent or reduce the risk of transmission of the AIDS virus and other STDs in humans (68 FR 2254 to 2259). FDA also discussed recent scientific data that suggest that frequent use of N9 may increase the risk of HIV infection for women at risk for HIV (68 FR 2254 to 2259). Thus, FDA issued the proposed rule to provide a clear, consistent message that N9 is not effective in preventing HIV transmission, and that N9 can facilitate transmission of the disease. We also proposed labeling (warnings and other information) to encourage the use of condoms as a method to help sexually active persons reduce the risk of becoming infected with the AIDS virus (HIV) and other STDs. We requested feedback on whether the proposed warnings adequately convey the safety concerns about N9 and whether there are additional data to support, expand, or refute the proposed warnings.

In response to the proposed rule, we received 153 comments. Two comments were submitted from industry, 8 from consumer advocacy groups, 10 from health associations, 16 from health professionals, and 117 from individual consumers. These comments are on display in the Division of Dockets Management. For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number (s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5360 Fishers Lane, rm. 1061, Rockville, MD 20852. We are responding to the comments, and discussing some additional data that has come to our attention, in this document.

The majority of comments from consumers, consumer advocacy groups, health organizations, and health professionals supported FDA for proposing warnings for N9 vaginal contraceptive OTC drug products that inform consumers that N9 does not protect against HIV and other STDs and that frequent use (more than once a day) may increase the risk of infection of HIV from infected partners. The comments stated that the proposed warnings will inform consumers of the risks so that they can make responsible health care decisions. Forty-six consumers reported getting vaginal irritation, burning, itching, swelling, or increased yeast and urinary infections after using contraceptive products containing N9. These comments stated that the proposed labeling is necessary to warn consumers of the risks related to irritation associated with N9 and to educate consumers who mistakenly believe that vaginal contraceptives/spermicides containing N9 also prevent STDs.

Some comments did not support the proposed warnings. Other comments asked for clarification of the warning language, recommended changes in the wording of the warning language, or provided data to expand the proposed warnings. After reviewing the comments, FDA has revised the proposed warnings in this final rule. The differences between the warning language in the proposed and final rules are as follows:

TABLE 1.—DIFFERENCES IN THE WARNING LANGUAGE IN THE PROPOSED AND FINAL RULES

Proposed Rule	Final Rule
''**For vaginal use only**''	''**For vaginal use only** **Not for rectal (anal) use**'' We explain the reason for this change in section II.H, comment 12, of this document.
''**Sexually transmitted diseases (STDs) alert**: This product does not protect against the AIDS virus (HIV) or other STDs''	''**Sexually transmitted diseases (STDs) alert**: This product does not protect against HIV/AIDS or other STDs and may increase the risk of getting HIV from an infected partner'' We discuss this change in section II.B.2, comment 3 of this document.
''**Ask a doctor before use if you have** • a new sex partner, multiple sex partners, or unprotected sex. Frequent use (more than once a day) of this product can increase vaginal irritation, which may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners. Ask a doctor or other health professional for your best birth control method.''	''**Do not use** if you or your sex partner has HIV/AIDS. If you do not know if you or your sex partner is infected, choose another form of birth control.'' ''**When using this product** you may get vaginal irritation (burning, itching, or a rash)'' We discuss these changes in sections II.B.2, comment 3 and II.C, comment 5 of this document.

TABLE 1.—DIFFERENCES IN THE WARNING LANGUAGE IN THE PROPOSED AND FINAL RULES—Continued

Proposed Rule	Final Rule
• ''Studies have raised safety concerns that frequent use (more than once a day) of products containing nonoxynol 9 can increase vaginal irritation, which may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners. Vaginal irritation may include symptoms such as burning, itching, or a rash, or you may not notice any symptoms at all. If you use these products frequently and/or have a new sex partner, multiple sex partners or unprotected sex, see a doctor or other health professional for your best birth control and methods to prevent STDs.''	• ''studies have raised safety concerns that products containing the spermicide nonoxynol 9 can irritate the vagina and rectum. Sometimes this irritation has no symptoms. This irritation may increase the risk of getting HIV/AIDS from an infected partner'' We discuss this change in section II.B.2, comment 3 of this document. • ''you can use nonoxynol 9 for birth control with or without a diaphragm or condom if you have sex with only one partner who is not infected with HIV and who has no other sexual partners or HIV risk factors''. We discuss this change in sections II.F.3, comment 10 and II.G, comment 11 of this document. • ''use a latex condom without nonoxynol 9 if you or your sex partner has HIV/AIDS, multiple sex partners, or other HIV risk factors''. We discuss this change in section II.F.2, comment 9 of this document. • ''ask a health professional if you have questions about your best birth control and STD prevention methods''. We discuss this change in section II.J.2, comment 15 of this document.
• ''correct use of a latex condom with every sexual act will help reduce the risk of getting the AIDS virus (HIV) and other STDs from infected partners''.	• ''when used correctly every time you have sex, latex condoms greatly reduce, but do not eliminate, the risk of catching or spreading HIV, the virus that causes AIDS. We discuss this change in section II.F.1, comment 8 of this document.
Use of N9 products may increase the risk of HIV and other STDs.	Use of N9 products is associated with an increased risk of HIV. We discuss this change in section II.I, comment 13 of this document.

We describe and respond to the comments received in section II of this document.

II. Comments on the Proposed Rule and FDA's Responses

A. Should N9 Remain Available as an Active Ingredient in OTC Vaginal Contraceptive Drug Products?

(Comment 1) Some comments stated that N9 vaginal contraceptive drug products should be removed from the OTC market or changed from OTC to prescription status for the following reasons:

- N9 does not protect against HIV or STDs.
- N9 causes damage to the vaginal lining and increases the risk of contracting HIV due to this vaginal irritation.
- Many new cases of HIV and STDs will develop if contraceptives with N9 are available without consultation with a health professional.
- Consumers who may not see, read, understand, or follow the advice contained on the warning labels need to be protected from the risks of using N9. They should have to see a health professional before using products containing N9.

Some of these comments also suggested that, alternatively, manufacturers should be required to reformulate their products with other safe and effective spermicides or microbicides.

Many other comments stated that N9 products should remain an OTC contraceptive option for women at low risk for HIV infection for the following reasons:

- N9 products are effective in preventing pregnancy, particularly when used with a barrier method such as a condom or diaphragm.
- N9 products are a contraceptive option for women who cannot tolerate hormone-based birth control methods.
- N9 products are a contraceptive option for women at low risk for HIV and STDs.
- N9 products represent one of the few methods available for women that are controlled by women.
- N9 products offer a ''substantial'' benefit to a ''small but important'' group of users.

(Response) FDA does not agree that vaginal contraceptive drug products containing N9 should be removed from the OTC marketplace. As part of FDA's review of the safety and effectiveness of this class of OTC drugs, the Advisory Review Panel on OTC Contraceptives and Other Vaginal Drug Products classified N9 as Category I (safe and effective) as a spermicide for the prevention of pregnancy on December 12, 1980 (45 FR 82014 at 82028). Comments were received following publication of the panel's report and additional scientific data became available. FDA published the proposed rule on OTC vaginal contraceptive drug products on February 2, 1995 (60 FR 6892). In that proposed rule, FDA considered N9 safe as a vaginal contraceptive; however, data indicated that its effectiveness in final product formulations was highly variable. Therefore, FDA proposed clinical trials for N9 spermicidal products to validate their effectiveness in final formulations.

In November 1996, four FDA advisory committees (Nonprescription Drugs, Reproductive Health Drugs, Antiviral Drugs, and Anti-infective Drugs) met to discuss the type and quality of data needed to support and ensure the spermicidal effectiveness of N9 in final formulations. The advisory committees concluded that the existing data provided evidence of some effectiveness, but they had concerns about variability in dose, different formulations, and duration of effect. The advisory committees recommended that FDA allow interim marketing of N9 vaginal contraceptive drug products pending further clinical trials (68 FR 2254 at 2255).

Current data suggest that the number of women out of 100 who become pregnant in the first year of typical use of N9 spermicide drug products is as follows (Ref. 1):

- 16 for the diaphragm with spermicide.
- 16 to 32 (depending on whether the women have had prior births) for the cervical cap with spermicide.
- 29 for spermicides alone (gel, cream, foam, film, suppository).

The number of women who become pregnant using no contraception is 85 out of 100 (Ref. 1). The Centers for Disease Control and Prevention (CDC) (Ref. 2) report that the combined use of diaphragms with N9 spermicide prevents approximately 460,000 pregnancies in the United States each year. It is important to the public health that consumers have access to multiple methods of contraception to choose from that help prevent unplanned pregnancy.

FDA is currently reviewing newly published data regarding the efficacy of N9 containing spermicides (Ref. 3), and we will publish our conclusions in a future issue of the **Federal Register**. These data are from a clinical trial which compares the effectiveness and safety of five spermicides, which include three gels containing 52.5 milligrams (mg), 100 mg, and 150 mg of N9 per dose and a film and a suppository, each containing 100 mg of N9 per dose. In the meantime, based on its history of safety and effectiveness, we have determined that N9 should remain on the market while we complete our review. Based on the information currently available, we have also determined that women at low risk for HIV can safely use N9 products for their contraceptive needs and that the intervention of a doctor or health care provider is not necessary.

B. What Issues Were Raised by Comments That Did Not Support the Proposed Warning Statements?

1. Will Warning Labels Be Seen, Understood, or Followed?

(Comment 2) Two comments stated that FDA's proposed warnings may not adequately protect consumers against the health risks posed by N9 products because consumers may not see, read, understand, or follow the advice contained on the warning labels. One of the comments referred to a study sponsored by the National Council on Patient Information and Education (NCPIE), conducted in 2001, which surveyed adult consumers and health care professionals on the self-medicating behaviors of the American public. The comment stated that the survey clearly established that consumers do not consistently read caution labels. The comment also mentioned a 1997 study by ''Sansgiry et al.'' of industry labeling practices which stated, according to the comment, that as the OTC package size increased, the font size used for the product increased, except that the font size for warnings remained constant. The comment stated that the study also showed that 22 percent of the product packages examined used smaller than 6-point font type for warnings. The comment concluded from this study that consumers may have difficulty seeing and reading the N9 warning language. The second comment stated that many consumers consider OTC drug products to be safe and present no risks because they are available without a prescription. Thus, consumers may ignore the product labeling because of this false impression. The comment recommended that FDA use consumer surveys and focus groups to test for comprehension of the proposed labeling before publishing a final rule mandating specific language.

(Response) FDA thinks that the warning statements for N9 vaginal contraceptive drug products will be seen, read, understood, and followed by consumers. We are aware of the studies cited by the comment, i.e., the Sansgiry, Cady, and Patil study (Ref. 4), which described OTC industry labeling practices at that time, and the NCPIE study (Ref. 5) that examined the self-medicating behaviors of the American public, including what information consumers seek when reading an OTC drug product label. These studies reinforced the need for FDA to improve the OTC drug product label and also to enhance educational programs to teach consumers about the risks and benefits of OTC drugs. FDA issued new labeling requirements for OTC drug products on March 17, 1999 (64 FR 13254). This labeling regulation, codified in 21 CFR 201.66, requires OTC drug products to be labeled with a standardized ''Drug Facts'' label. The ''Drug Facts'' label offers a more structured, organized, and compact presentation of the product information, which allows consumers to process the information with improved understanding, and provides clear signals regarding important information. The new requirements include a 6-point minimum type size, and bolded type headings and subheadings. When the warning requirements in this final rule for OTC vaginal contraceptive drug products containing N9 become effective, all manufacturers will be required to revise their label using the ''Drug Facts'' format. Use of the revised labeling in the ''Drug Facts'' format will enable consumers to better read and understand the information presented and apply the information to the safe and effective use of OTC vaginal contraceptive drug products.

Additionally, FDA is involved in various initiatives to encourage awareness of the safe and effective use of drugs and the importance of reading drug labels. FDA provides consumer articles, public service announcements, websites, etc., and also partners with many organizations to promote better understanding of the risks and benefits of drug products. For example, in cooperation with FDA, the Consumer Healthcare Products Association (CHPA) and NCPIE's ''Be MedWise'' campaign provide information to consumers on the new OTC drug labels.

2. ''Are the Warnings Supported by the Scientific Literature?''

(Comment 3) Three comments stated that FDA's proposed warning language for N9 vaginal contraceptive drug products implies a link between the use of N9 and an increased risk of HIV that is not sufficiently supported by the scientific literature. These comments stated that the proposed warnings will frighten consumers in a manner that could affect the continued availability of a safe and effective contraceptive. The first comment contended that FDA relies primarily on two studies to support its position that there is a link between the use of N9 vaginal contraceptive drug products and an increased risk of HIV infection as follows: (1) The Van Damme et al. study (2002) (Ref. 6) and (2) the Kreiss et al. study (1992) (Ref. 7). The comment provided the following reasons why the Van Damme et al. study should not be used to support FDA's proposed warnings for N9 products:

- Twenty percent of the study subjects were lost to followup (so the investigators never determined the HIV status of these participants).
- The results between the two test groups (N9 and placebo) were ''barely'' significant (p=0.047).
- The placebo may have had a protective effect.
- A much higher number of unprotected anal sex acts were reported from one of the study centers (Durban) where the most HIV seroconversions (conversions from HIV negative status to HIV positive status) occurred.

The comment also contended that the Kreiss et al. study should not be used to support FDA's proposed warnings for N9 products because:

- The study was terminated early when it was determined that the HIV seroconversion results became inconsistent with the hypothesis that N9 has a clinically beneficial effect in

preventing HIV. The statistical analysis of the data at the time the study was terminated did not support a statistically significant conclusion that N9 increased the risk of HIV transmission.

- The comparator product was changed midstream, indicating design problems.
- More women had preexisting genital ulcers in the N9 test group, indicating randomization problems.
- The sponge dosage form could raise safety issues not associated with other dosage forms.

This comment added that FDA did not consider the results and conclusions of two other studies, Roddy et al. (1998) (Ref. 8) and Richardson et al. (2001) (Ref. 9). The comment stated that these studies either support a conclusion opposite to the Van Damme et al. and Kreiss et al. studies or weaken the conclusion that frequent use of N9 vaginal contraceptives increases the risk of HIV infection from an infected partner. The comment concluded that the link between N9 use and an increased risk of HIV infection is speculation. The comment requested that FDA remove the following proposed warning language that links N9 use with an increased risk of HIV infection:

- ''Ask a doctor before use if you have a new sex partner, multiple sex partners, or unprotected sex. Frequent use (more than once a day) of this product can increase vaginal irritation, which may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners. Ask a doctor or other health professional for your best birth control method.''
- ''Studies have raised safety concerns that frequent use (more than once a day) of products containing nonoxynol 9 can increase vaginal irritation, which may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners. Vaginal irritation may include symptoms such as burning, itching, or a rash, or you may not notice any symptoms at all. If you use these products frequently and/or have a new sex partner, multiple sex partners, or unprotected sex, see a doctor or other health professional for your best birth control and methods to prevent STDs.''

The comment recommended the following language, which it contended more accurately reflects the known science and places the warnings in a more relevant context:

- ''Ask a doctor before use if you have frequent sex (more than three times a day). Frequent use (more than three times a day) of nonoxynol 9 may increase vaginal irritation, which may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners. Ask a doctor or other health professional for your best birth control method.''
- ''Studies concerning some nonoxynol 9 formulations (i.e., gel and sponge) in high risk populations (i.e., prostitutes) have raised very preliminary safety concerns that frequent use (more than three times a day) of products containing nonoxynol 9 can increase vaginal irritation, which may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners. Other studies have shown no such risk for certain formulations (i.e., nonoxynol 9–containing film and gel) in these high risk populations. Vaginal irritation may include symptoms such as burning, itching, or a rash, or you may not notice any symptoms at all. While there is no clear link between the frequent use of nonoxynol 9 and the increased risk of HIV infection or other STDs from infected partners, if you use these products frequently, see a doctor or other health professional for your best birth control and methods to prevent STDs.''

The second comment stated that the Van Damme et al. study results are ''exploratory'' and that the study's ''generalizability'' is a problem because the subjects were sex workers and had highly ''atypical'' sexual activity. This comment contended that previous trials of N9, conducted in sex workers, have shown conflicting results and, taken together, do not show a harmful or a protective effect. The third comment expressed similar concerns about the Van Damme study's generalizability.

(Response) FDA believes that the proposed warning language, which implies a link between frequent use of N9 vaginal contraceptive drug products and an increased risk of HIV, is supported by the scientific literature. As discussed elsewhere in this document, we are deleting the term ''frequent'' from the labeling requirements of this final rule because we believe that if a woman is at risk of HIV/AIDS, she should not be using N9 products, regardless of the frequency of use (see section J.1 of this document). In the proposed rule, FDA cited many studies that demonstrated that daily use of N9 products causes vaginal irritation (i.e., inflammatory changes in the epithelial cells lining the vagina and disruption of these epithelial cells), and causes disruption of the vaginal flora (68 FR 2254 at 2254 to 2258). Some studies suggested that the risk of these adverse events can be increased by frequent or chronic use of N9 products. In general, the various studies cited in the proposed rule defined infrequent or low frequency use as ''use once a day or less.'' It appears from these studies that infrequent use does not result in an increased rate of epithelial disruption. Therefore, FDA defined frequent use in the proposed rule as ''more than once a day'' and believes that the scientific literature supports the statement that frequent use (more than once a day) can increase vaginal irritation.

In the proposed rule, FDA discussed studies that demonstrated that frequent use of N9 products causes increased disruption of the vaginal epithelium which may increase the risk of transmission of the AIDS virus (HIV). The most pivotal of these studies is the Van Damme et al. study (cited at 68 FR 2254 at 2255) (Ref. 6). This was a randomized, placebo-controlled clinical trial to assess the effectiveness of a vaginal gel containing N9 on HIV–1 transmission in female sex workers in Africa and Thailand, all at high risk for HIV. The study gel (COL–1492) contained 52.5 mg N9 (other constituents included a bioadhesive carbomer). The placebo gel differed from COL–1492 in that it did not contain N9 and had more carbomer. At enrollment, women received a supply of study gel (N9 or placebo) and male condoms to use until the next visit. Women were asked to return to the clinic every month for a follow-up visit. There was no limit on the number of gel doses that could be used per day. The primary endpoint of the study was incident HIV–1 infection. Secondary objectives included the effectiveness of this drug in prevention of chlamydial infection, gonorrhea, trichomoniasis, and genital ulcer disease, and safety and acceptability of the gel under situations of long-term use. The treatment period was 48 weeks.

A total of 765 women were included in the primary analysis (376 in the N9 group and 389 in the placebo group) and 563 women completed the 48-week study. The overall retention rate of the participants in the study was 71 percent after 24 weeks and 68 percent after 48 weeks, which is similar to rates projected by the study investigators for their sample size (60 percent retention per year).

Of the 765 women, 59 in the N9 group and 45 in the placebo group seroconverted from HIV–1 negative to HIV–1 positive. Women who used an N9 vaginal gel had a significantly higher risk of becoming infected with HIV–1, compared with women using the placebo gel ($p=0.047$). The HIV–1 incidence per 100 women-years was

14.7 for the N9 group and 10.3 for the placebo group. This conclusion did not change when statistical adjustments were made for differences in the frequency of vaginal and anal sex not protected by condoms.

To test the hypothesis of dose-dependent toxic effects of N9, the investigators divided the mean gel use per working day into three categories based on tertiles. The investigators compared HIV–1 incidence per treatment group and per category of gel use. HIV–1 incidence increased with increasing gel use in the N9 group versus the placebo group. In the N9 group, HIV–1 incidence rose from 8.8 per 100 woman-years in women reporting mean use of 3.5 or fewer applicators per day to 30.6 in women reporting a higher mean daily use (hazard ratio 3.5; 95% Confidence Interval (CI) 2.1–5.8; $p<0.0001$). In the placebo group, HIV–1 incidence in those categories was 8.1 and 14.5 per 100 woman-years, respectively (1.8; CI 1.0–3.3, $p=0.05$). It is important to note that this analysis simply suggests a dose response between the amount of gel used per day and the risk of HIV–1 infection. The data does not support a conclusion that using less than 3.5 applications of N9 per day is associated with an incidence risk for HIV–1 infection similar to placebo. Dividing the data by other methods (e.g., into quartiles), would identify other amounts of N9 per day supporting an association between the amount used and increasing risk.

The study also investigated the frequency of N9 use and the incidence of lesions with epithelial breach, and whether the risk of HIV transmission increases with increasing number of lesions with epithelial breach. They found that the incidence of lesions with an epithelial breach rose with increasing gel use. The increase in incidence of lesions with an epithelial breach was seen in both the placebo and N9 groups, but it happened most rapidly in the N9 group.

FDA finds that one comment's concern about certain aspects of the Van Damme et al. study are valid as follows:

- There was a high loss to followup rate overall (retention rate was 68 percent at 48 weeks). However, the study was designed with an assumption of an annual retention rate of 60 percent.
- There was a higher loss to followup rate in the N9 group compared to the placebo group.
- The highest rates of both seroconversion and retention were observed at the largest center in the study (Durban). This center also reported the highest rate of anal sex.

Although the study was not flawless, it was a large, well designed, randomized, placebo-controlled, multi-center clinical trial. Both the treatment and placebo groups were balanced with respect to baseline characteristics. Even with the noted limitations, we believe that the study is evidence that N9 may increase the risk of HIV–1 infection in a population already at increased risk for HIV–1 infection.

The comment also expressed concerns about the Kreiss et al. study (Ref. 7) that we cited in the proposed rule (68 FR 2254 at 2257). In this study, HIV negative sex workers in Nairobi, Kenya used either a vaginal sponge containing 1,000 mg N9 or a placebo. Women using the N9 sponge had a higher conversion from HIV negative to HIV positive. A total of 21 women (43 percent) of the N9 group and 19 women (35 percent) of the placebo group converted from HIV negative to HIV positive. We acknowledge the study's shortcomings, as noted in the comment. However, we believe that early termination of the study for safety reasons (i.e., that the seroconversion results had become inconsistent with the hypothesis of clinically beneficial effects of N9 in preventing HIV seroconversion) was ethically appropriate, and suggests an outcome consistent with the results of the Van Damme et al. study.

The comment contends that two other studies, Roddy et al. (Ref. 8) and Richardson et al. (Ref. 9), support a conclusion opposite to the Van Damme et al. and Kreiss et al. studies or weaken the conclusion that use of N9 spermicide products may increase the risk of HIV infection from an infected partner. We do not agree. The Roddy et al. study was conducted to determine whether a 70-mg N9 vaginal film provided protection against HIV, gonorrhea, or chlamydia. The study population consisted of 1,170 HIV-negative female sex workers (575 in the placebo group, 595 in the N9 group) residing in Cameroon, Africa, who averaged at least 4 sexual partners per month. The study results showed no difference in the rate of HIV transmission in the N9 group versus the placebo group (48 vs. 46, respectively), although the incidence of genital lesions was slightly higher in the N9 group. The results from this study, while not consistent with the data from the Van Damme et al. study, do not invalidate the Van Damme et al. study results. Roddy et al. reported the total number of sexual acts for placebo and N9 users but did not report the average number of sexual acts per day or per week. There were 595 study participants in the N9 group who recorded a total of 147,996 coital acts. The average length of study followup was 14 months. This averages out to 1 coital act every 1.7 days. The study participants may not have used the N9 film often enough to demonstrate a difference in HIV risk compared to those using the placebo product. The results of the Roddy et al. study do not diminish the importance of the safety signal observed in the Van Damme et al. study. We believe that concerns about an increased risk of HIV transmission with frequent N9 use would apply to all products containing N9, regardless of the formulation. We do not agree with the comment's suggestion that the proposed warnings be revised to read ''Other studies have shown no such risk for certain formulations (i.e., N9 film and gel) in these high risk populations''.

The Richardson et al. study was conducted to determine the effect of a 52.5 mg N9 gel on the acquisition of STDs in HIV negative sex workers in Kenya. The study enrolled a relatively small number of subjects (total of 278 women, 139 in the N9 group and 139 in the placebo group) at only one clinic site. The sample size and the low extent of exposure may not have been sufficient to detect rare events. The authors stated that women enrolled in the Richardson et al. study came from another ongoing prospective cohort study at the same clinic site. Selection of subjects from that study population might have introduced confounding factors into their study. There was relatively low frequency of sexual intercourse and exposure to the test products (median of twice a week). The median compliance with product use was 75 percent in the N9 group and 80 percent in the placebo group (median compliance was 78 percent; the range was 0 to 100 percent). However, only 32 percent of the women in the N9 group and 36 percent of the women in the placebo group were 100 percent compliant. It is not clear how reliable the data collection methods were. The study did not mention if women kept a diary of product use and frequency of sexual intercourse, or if this information was collected by the study staff during the follow-up visits. For all of these reasons, we conclude that this study cannot be reliably used to support the comment's contentions.

In conclusion, FDA does not accept the first comment's request to remove the proposed warning language that links N9 use with an increased risk of HIV infection. FDA is providing information about whether it is safe for consumers to use these products based

on their risk for HIV and STDs. Based on the available scientific evidence, we have determined that women should be advised that use of N9 can cause vaginal irritation and that use of N9 has been associated with an increased risk for HIV transmission in women at high risk for HIV/AIDS. Use of N9 can result in irritated and inflamed genital tissue and may increase a person's risk of getting HIV/AIDS if they have sex with an HIV infected partner. We are, however, revising the proposed warnings to more clearly convey the message that N9 spermicides cause vaginal irritation, may increase the risk of getting HIV from an infected partner, and should not be used by women at high risk for HIV/AIDS. The warnings in § 201.325(b)(2) and (b)(3) of the proposed rule stated:

• **Sexually transmitted diseases (STDs) alert**:

This product does not protect against HIV/AIDS or other STDs

• **Ask a doctor before use if you have**

• a new sex partner, multiple sex partners, or unprotected sex. Frequent use (more than once a day) of this product can increase vaginal irritation, which may increase the risk of becoming infected with the AIDS virus (HIV) or other STDs from infected partners. Ask a doctor or other health professional for your best birth control method.

The revised warnings in this final rule appear under the subheadings ''Sexually transmitted diseases (STDs) alert,'' ''Do not use,'' and ''When using this product'' and state:

Sexually transmitted diseases (STDs) alert: This product does not protect against HIV/AIDS or other STDs and may increase the risk of getting HIV from an infected partner.

Do not use if you or your sex partner has HIV/AIDS. If you do not know if you or your sex partner is infected, choose another form of birth control.

When using this product you may get vaginal irritation (burning, itching, or a rash).

We are also revising the additional labeling information in proposed § 201.325(c)(1) (redesignated as § 201.325(d)(1) in this final rule) to more accurately reflect the scientific literature and to convey the message that N9 spermicides should not be used by women at risk for HIV. (Rectal use of N9 is discussed later in section II.H, comment 12 of this document.) The revised additional labeling information states:

• ''Studies have raised safety concerns that products containing the spermicide nonoxynol 9 can irritate the vagina and rectum. Sometimes this irritation has no symptoms. This irritation may increase the risk of getting HIV/AIDS from an infected partner.''

3. Is FDA Required To Prove Actual Causation to Justify the Warnings?

(Comment 4) One comment stated that the proposed labeling implies a link between the use of N9 and an increased risk of HIV infection that is not sufficiently supported by the scientific literature. The comment contended that the link between N9 use and an increased risk of HIV transmission is ''mere speculation'' that is not suggested by a comprehensive review of the scientific literature. In response to FDA's statement that we need not show actual causation to mandate the proposed warning, the comment stated that it disputes a lesser standard unless FDA can show it will prevent a public harm. The comment suggested that there is not a public harm to prevent, so actual causation must be shown. The comment further asserted that the proof to require this warning must be sufficient to avoid a determination that the warning language requirement is arbitrary and capricious under 5 U.S.C. 706, and suggested that FDA has not provided such proof.

(Response) FDA disagrees with the comment. Based on a review of the available data, FDA believes the known scientific evidence supports its proposed warnings (see section II.B.2, comment 3 of this document). Furthermore, FDA does not need a causal relationship to be definitely established to mandate new warnings. To protect the public health, FDA has determined that the warnings are necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the Federal Food, Drug and Cosmetic Act (the act). The warnings reflect FDA's conclusion that there is reasonable evidence of a causal relation between a clinically significant hazard and the drug.

Courts have upheld FDA's authority to issue regulations requiring label warnings and other affirmative disclosures (see, e.g. *Cosmetic, Toiletry and Fragrance Ass'n* v. *Schmidt*, 409 F. Supp. 57 (D.D.C. 1976), aff'd without opn., Vic. No. 75–1715 (D.C. Cir., August 19, 1977), even in the absence of a proven cause-and-effect relationship between product usage and harm (see *Council for Responsible Nutrition* v. *Goyan*, Civ. No. 80–1124 (D.D.C. August 1, 1980) (see also section III.B of this document). Mandating the warnings included in this final rule does not violate the Administrative Procedure Act's prohibition against arbitrary and capricious conduct, because FDA's action is reasonable based on the sufficiency of the available data and the need to protect the public health.

C. Should Women Ask a Doctor Before Using N9 Products?

(Comment 5) Some comments did not agree with FDA's proposed warning language which advises women to ask a doctor before using N9 vaginal contraceptive drug products if they have a new sex partner, multiple sex partners, or unprotected sex. The comments questioned the need for women to consult physicians about the role of N9 in their pregnancy or STD prevention strategies. One comment doubted that the average physician could provide enough special expertise or insight about the role for N9 in a planned sexual encounter with a new partner to offset the inconvenience, discomfort, or cost of involving a health professional. Several comments stated that it was unclear what a woman should do before she is able to consult a physician (e.g., avoid sex, use alternative methods). Some comments contended that women should be given enough information in the labeling to empower them to act directly, without a health professional intermediary. These comments recommended replacing ''Ask a doctor before use'' with explicit statements such as ''Women who may be at risk of HIV and who plan to use the product more than once a day should consider another form of birth control'' or ''If you use these products more often than once a day and/or have a new sex partner, multiple sex partners, or unprotected sex you should consider another form of birth control''. The comments suggested that adding a clarifying statement for women at low risk and a statement that reinforces the use of latex condoms is preferable to having consumers consult a physician for this information.

(Response) FDA agrees with the comments that questioned the need for women to have to consult with a physician before using N9 vaginal contraceptive drug products if they have a new sex partner, multiple sex partners, or unprotected sex. We try to provide consumers with the appropriate information on the OTC drug product label to make informed decisions on the use of these products. We believe that, by revising the warning language under ''Ask a doctor before use if you have'' and placing it under the subheadings ''Do not use'' and ''When using this product, '' consumers will be able to make appropriate decisions without consulting a physician. We consider this information particularly important for

women who do not see a physician regularly, who will not consult a physician due to the expense, or who cannot get an appointment or consultation with a physician in a timely manner. Therefore, as discussed in section II.B.2, comment 3 of this document, we are revising the warnings under ''Ask a doctor before use if you have'' and placing them under the subheadings ''Do not use'' and ''When using this product.''

We are also revising the additional labeling information proposed in § 201.325(c) to include more information about the use and safety of N9, so women will not have to consult a physician before use. We do not want to discourage consumers from speaking with physicians or other health care providers at any time about important health issues such as birth control and STD prevention. Therefore, we are including a statement in the additional labeling information that women should ask a doctor or other health professional for advice if they choose. The revised additional labeling statements are discussed in sections II.B.2, comment 3; II.F.1, comment 8; II.F.2, comment 9; II.F.3, comment 10; II.G, comment 11; and II.J.2, comment 15 of this document.

D. Where Will the Warnings Appear in the Labeling?

(Comment 6) Several comments addressed the placement of the proposed warning statements on the OTC package. The comments requested that FDA require prominent placement of the proposed warning statements on both the outer carton and package insert to warn consumers most effectively. One comment recommended using large and bold font to help attract the consumer's attention and encourage reading of the package insert.

(Response) FDA is requiring that the warning statements discussed in section II.B.2, comment 3 of this document (under the subheadings ''Do not use'' and ''When using this product''), the warning statements discussed in section II.H., comment 12 of this document (''For vaginal use only'' and ''Not for rectal (anal) use''), and the warning statement under the subheading ''Stop use and ask a doctor if'' (under § 201.325(b)(4) in the proposed rule (68 FR 2254 at 2262)), appear on the outside container or wrapper of the retail package, or on the immediate container label if there is no outside container or wrapper, in the Drug Facts labeling format, in accordance with § 201.66(c)(7). We also proposed additional labeling information in § 201.325(c) that could be placed either on the outside container or wrapper of the retail package, under the ''Other information'' section of the Drug Facts labeling, in accordance with § 201.66(c)(7), or in a package insert. In this final rule, the revised condom usage statement, ''when used correctly every time you have sex, latex condoms greatly reduce but do not eliminate the risk of catching or spreading HIV, the virus that causes AIDS.'' must be located in the Drug Facts labeling under the heading ''Other information'' on the outside container or wrapper of the retail package. The rest of the additional labeling information now located in § 201.325(d) of this final rule can be located on the outside container or wrapper of the retail package, under the ''Other information'' section of the Drug Facts labeling in accordance with § 201.66(c)(7), or in a package insert. In instances where the manufacturer chooses to provide a package insert for the additional information required in § 201.325(d) of this final rule, FDA recommends that a bolded statement such as ''before using this product read the enclosed package insert for complete directions and information'' be included on the outside container or wrapper labeling to alert consumers and encourage reading of the package insert.

E. Where Will the Condom Usage Statement Appear in the Labeling?

(Comment 7) Several comments requested that the proposed condom message, ''Correct use of a latex condom with every sexual act will help reduce the risk of getting the AIDS virus (HIV) and other STDs from infected partners,'' should directly follow the STD alert on the outside container or wrapper as well as appear in a package insert so that consumers are immediately advised that STD/HIV protection is available OTC.

(Response) FDA agrees with the comments that information about HIV/STD protection (i.e., condom use) is important information and is now requiring that it be located on the outside container or wrapper in close proximity to the STD alert and other pertinent warnings. Because the information is not a warning, the statement appears in the Drug Facts labeling, under the heading ''Other information.'' In addition, we are revising the condom usage statement (see section II.F, comment 8 in this document).

F. What Were the Comments on Condoms, Sexual Lubricants, and Barrier Methods?

1. Do Warnings Apply to Condoms and Sexual Lubricants?

(Comment 8) Some comments questioned whether FDA's proposed warnings apply to the labeling of condoms lubricated with N9. Several comments noted that women using condoms and sexual lubricants containing N9 may have a risk similar to those women using vaginal contraceptives and so both groups need to receive the same warnings. Some of these comments stated that FDA should propose warning language similar to the proposed warnings for vaginal contraceptive products for condoms and sexual lubricants containing N9, because of the substantial public health risk posed by N9 containing products when used rectally.

(Response) This final rule requiring warnings for all OTC vaginal contraceptives/spermicides containing N9 applies to drug products. It does not apply to condoms lubricated with N9, which are primarily regulated as medical devices (not drugs). Through rulemaking, spermicidal condoms were classified as Class II medical devices (21 CFR 884.5310) and, as such, FDA's Center for Devices and Radiological Health (CDRH) has primary jurisdiction over their regulation.

Although this final rule does not apply to condoms lubricated with N9, it does contain information for consumers about using condoms as a method to help reduce the risk of becoming infected with the AIDS virus (HIV) and other STDs. In the January 16, 2003, proposed rule, FDA discussed the public health benefit of such information and proposed the following condom usage statement for spermicides containing N9: ''Correct use of a latex condom with every sexual act will help reduce the risk of getting the AIDS virus (HIV) and other STDs from infected partners'' (see 68 FR 2254 at 2258 to 2259 and 2262). Subsequently, FDA reviewed the labeling of condoms (with and without N9) and issued a revised draft guidance (Ref. 10) on condom labeling. Therefore, FDA revised the proposed condom usage statement to be consistent with the statement it recommended in this new guidance. The new revised condom usage statement (in § 201.325(c) in this final rule) reads: ''[bullet] when used correctly every time you have sex, latex condoms greatly reduce, but do not eliminate the risk of catching or spreading HIV, the virus that causes AIDS.''

Vaginal moisturizers and vaginal sexual lubricants are currently being evaluated under the OTC drug review regulatory process. FDA issued a call for data notice on December 31, 2003 (68 FR 75585), requesting safety and effectiveness data on various products, including vaginal moisturizers and vaginal lubricants. FDA will publish its findings in a future issue of the **Federal Register**.

2. Are Condoms Lubricated With N9 Safe to Use?

(Comment 9) Some comments stated that labeling products containing N9 with a warning that usage promotes the transmission of HIV or other STDs may cause sexually active individuals to question whether or not to use a condom at all. One comment expressed concern that after reading FDA's proposed warnings, consumers would perceive that condoms lubricated with N9 were not safe and would use nothing rather than use a condom containing N9. Therefore, several comments stated that the labeling should remind consumers that N9 is still effective in reducing unwanted pregnancies and that we should continue to endorse the use of spermicidal condoms. One of the comments stated that condoms containing N9 provide important consumer and public health care benefits, because N9 in condoms is intended to provide a secondary means of pregnancy prevention if the condom is used incorrectly or breaks.

Other comments were not supportive of N9 condoms. One comment requested that FDA take action to address the health risks posed by N9 as an additive to condoms and sexual lubricants by withdrawing them from the marketplace. This comment stated that N9 is not necessary to the function of lubricants and, in the case of condoms, N9 is not necessary as an additive or lubricant to their function as a physical barrier against pregnancy and disease. Several comments stated that the correct and consistent use of condoms provides excellent protection against pregnancy and HIV even without the addition of N9. One comment concluded that since N9 lubricated condoms and sexual lubricants containing N9 offer no proven benefit to any user group, and pose substantial risks to some users, the risk should be eliminated rather than relying on a ''labeling'' solution. One comment suggested revising the proposed condom statement to read ''Correct use of a (dry) latex condom, (or a silicone lubricated latex condom, but NOT a condom lubricated with N9) with every vaginal sexual act will help reduce the risk of transmitting the AIDS virus (HIV) and other STDs.''

(Response) As discussed in section II.F.1, comment 8 of this document, this rulemaking does not apply to condoms that contain N9. It does, however, provide for information to be added to labeling to inform consumers about using condoms as a method to help reduce the risk of becoming infected with the AIDS virus (HIV) and other STDs. In section II.F.1, comment 8 of this document, FDA discussed a condom usage statement to encourage the use of condoms as a method to help reduce the risk of becoming infected with the AIDS virus (HIV) and other STDs as proposed in the proposed rule. In the revised draft guidance on condom labeling (Ref. 10) discussed previously, FDA recommended the additional warning ''if you or your partner has HIV/AIDS, or you do not know if you or your partner is infected, you should choose a latex condom without N-9''. Because FDA wishes to provide consistent information to consumers regarding products that contain N9, we are including a new labeling statement in § 201.325(d)(3) for vaginal contraceptive drug products containing N9 to read as follows: ''[bullet] use a latex condom without nonoxynol 9 if you or your sex partner has HIV/AIDS, multiple sex partners, or other HIV risk factors.''

3. How Do Warnings Apply to N9 Products Used With Barrier Methods?

(Comment 10) Some comments were concerned with how FDA's proposed warnings apply to consumers using an N9 spermicide product with barrier methods. The comments pointed out that FDA's proposed warning language for vaginal contraceptive drug products containing N9 applies to spermicide use alone, and not to concurrent use of N9 with female barrier methods. The comments stated concerns about how consumers who use N9 products with female barrier methods (such as diaphragms and cervical caps) would apply FDA's proposed warning language to their use. Several comments stated that consumers are currently advised (e.g., in product labeling or by physicians) to use spermicide with diaphragms and cervical caps to improve contraceptive effectiveness and to insert more spermicide (without removal of the diaphragm or cervical cap) if repeat intercourse occurs. The comments stated that FDA's proposed labeling does not provide clear advice for women (particularly those at low risk for HIV) who use these barrier methods. These comments contend that there is not enough data about the effectiveness of diaphragms or caps without additional spermicide to recommend discontinuation of the spermicide. Some comments also stated that FDA's proposed warning language may deter promotion and use of female barrier methods that require additional spermicide. One of these comments stated that a recent report from the CDC (Ref. 2) estimates that N9 used together with diaphragms prevents 460,000 pregnancies each year. The comment stated that the proposed warning language would have a harmful effect on women's health by increasing unintended pregnancies and even STDs among women who would otherwise safely use cervical barriers plus N9, but might switch to a less effective method or no method at all. Another comment stated that clinicians may advise low-risk clients not to use N9 as an adjunct to diaphragm use, which may result in more unintended pregnancies. One comment suggested that FDA advise consumers in the labeling that the studies that have found risks associated with the use of N9 did not study the products with a diaphragm or cervical cap.

(Response) Currently, FDA approved directions for use for cervical caps (Ref. 11) and diaphragms (21 CFR 884.5350) specify use of a spermicide with these devices. FDA believes that women using cervical caps or diaphragms with N9 products are exposed to the same risks as women who use N9 vaginal contraceptive drug products alone because of the nature of the risk. The warning and other labeling information statements that are required by this final rule will inform women how best to use N9 spermicidal jellies and creams with barrier contraceptive methods.

FDA agrees with the comments that women at low risk for HIV should be able to safely use barrier methods along with N9 products and should not be advised to change from a barrier contraceptive method. There have been several studies over the years of cervical caps and diaphragms using N9 that have shown minimal irritation to the vagina and cervical mucosa (Refs. 12, 13, and 14). It is important to note that these were contraceptive studies among women in stable, monogamous relationships and that typical subjects did not use the devices multiple times a day. In section II.G, comment 11 of this document, we discuss labeling revisions that advise women at low risk for HIV that N9 products continue to be safe for contraception for them. Accordingly, FDA is also including barrier method and condom users at low risk for HIV in these statements.

G. Is N9 Safe for Women at Low Risk for HIV/AIDS and STDs?

(Comment 11) A number of comments stated that women at low risk for HIV and STDs should continue to use N9 spermicides as a contraceptive option. One comment stated that some women who use N9 containing vaginal contraceptive drug products for birth control may face a different (lower) STD risk profile than the women studied in the clinical trials, who were at a higher risk for HIV infection. The comment stated that the proposed warnings might exert a harmful net effect on women's health by increasing unintended pregnancy and STDs among women who would otherwise use N9 products safely, but might switch to less effective methods or no method at all because of the warnings. The comment urged that the data need to be properly extrapolated to women at lower risk for HIV who now use N9 products to successfully prevent pregnancy. Another comment stated that until FDA has additional data on the safety of N9 in low risk settings, women currently using N9 containing spermicides for birth control should continue to do so. Similarly, some comments stated that women at high risk for HIV infection should not use N9 products for contraception, but that these products should remain a contraceptive option for women at low risk. These comments stated that if a woman is not at high risk for HIV (because she is in a mutually monogamous relationship with a HIV negative partner), then use of N9 products poses less of a safety hazard. Thus, the comments contended that women at low risk for HIV could safely use N9 products multiple times in a single day.

One comment stated that FDA should qualify the warning language regarding ''frequent use'' for women who are at no or low risk for HIV. The comment suggested that FDA add the following qualifying statements to the labeling: ''Women at low risk of HIV (i.e., those in a mutually monogamous relationship with an HIV negative partner) can safely use nonoxynol 9 (with or without a diaphragm) on multiple intercourse occasions in a single day. Frequent use of nonoxynol 9 is only problematic for women exposed to HIV and other STDs.'' A similar comment stated that FDA must carefully word the warnings to provide consumers with the ability to accurately assess the risks associated with the product's use.

(Response) FDA agrees that many women who use N9 vaginal contraceptive and spermicide drug products containing N9 have lower STD and HIV risk profiles than the women studied in some of the clinical trials discussed in the proposed rule (68 FR 2254) (e.g., the Van Damme et al. study). We also agree that frequent use of N9 products poses no risk of HIV transmission for an HIV negative woman who is in a mutually monogamous relationship with an HIV negative partner. We believe that a woman in such a relationship would not suffer any harm, other than incurring vaginal irritation or epithelial lesions, from frequent use of N9. Accordingly, we are revising the additional labeling information proposed in § 201.325(c)(1) (redesignated as § 201.325(d)(2) in this final rule) to include a new statement advising women that they can continue to use N9 vaginal contraceptive and spermicide drug products if they are at low risk for HIV. The statement reads: ''[bullet] you can use nonoxynol 9 for birth control with or without a diaphragm or condom if you have sex with only one partner who is not infected with HIV and who has no other sexual partners or HIV risk factors.''

H. Is N9 Safe for Rectal Use?

(Comment 12) Ten comments urged FDA to require a warning against the rectal use of vaginal contraceptive drug products containing N9. This is because N9 causes serious damage to the rectal epithelium that may increase the risk of getting HIV or other STDs. The comments stated that although the products are designed for vaginal contraceptive use, they are routinely used for lubrication and (mistakenly) for protection against STDs during anal intercourse. The comments stated that these products are used rectally not only by the male homosexual population, but also by heterosexual couples who engage in both vaginal and anal intercourse. Two comments cited survey studies (Refs. 15 and 16) showing that the routine use of these products within the homosexual male population continues, due to the prevailing misperception that N9 protects against infection by sexually transmitted pathogens. Gross et al. (Ref. 15) surveyed 3,093 gay men from 6 U.S. cities who reported having anal intercourse during the previous 6 months. Of the 2,953 men in the study who used lubricants during anal intercourse, 41 percent actively sought N9 containing products. In another survey study conducted in San Francisco and Oakland in 2001 by Mansergh et al. (Ref. 16), 41 percent (79) of 193 men who had anal sex with men during the previous year used an N9 product without a condom. The men stated that they believed that N9 provided some protection against HIV transmission. The comment stressed that these data were collected after the CDC and the San Francisco Department of Health issued warnings about the dangers of using N9 rectally.

In further support of warnings against rectal use of N9, the comments referred to several studies in animals (Refs. 17 and 18) and one study in humans (Ref. 19) that showed that rectal application of N9 products causes damage to the cells lining the rectum. The comments stated that this damage may compromise a barrier that protects against viral and bacterial infection, thereby increasing the risk of HIV transmission. One comment suggested the following warning: ''Products containing Nonoxynol–9 should never be used rectally; to do so may substantially increase one's risk of contracting HIV from an infected partner.'' Another comment requested that a warning against rectal use be placed on the outer carton as well as in the package insert.

(Response) FDA agrees that products containing N9 should not be used rectally. The studies provided by the comments show that the rectal use of N9 damages the rectal epithelium in both animals and humans (Refs. 17, 18, and 19). One study in mice (Ref. 17) showed that pretreating the rectums of the mice with 2-percent N9 or with spermicide products containing N9 before inoculation with herpes simplex virus 2 (HSV–2) increased the likelihood of infection and shortened the time until infection. In this study, the rectal epithelium appeared to be repaired by 1 hour. The investigators stated that although they chose to use HSV–2, the results could be generalized to HIV transmission in humans because mouse and human epithelia are morphologically similar and because the same type of target cells of HIV, mononuclear blood cells, are present in the connective tissue and become more numerous after tissue damage. A study in monkeys (Ref. 18) investigated the effect of multiple applications of a 4-percent N9 product, placebo gel, or no product in three groups of monkeys. Each group receiving test product or placebo gel got 1 daily intrarectal application for 3 consecutive days, at 24 hour intervals. Before each treatment, animals were given a saline (pretreatment) rectal lavage. Test product was recovered by rectal lavage 15 minutes after administration. Examination of rectal lavage samples indicated an increase in the presence of epithelial cells and sheets of epithelium 15 minutes after N9 application, as compared with placebo gel and no-

product groups. The investigators noted that 1 day after the first exposure, epithelial sloughing was no longer evident, suggesting that repair had occurred rapidly. However, the investigators noted the continued presence of sloughed epidermal sheets 24 hours after repeated product application, indicating a cumulative effect of N9 on rectal tissues.

In a small study in humans, Phillips et al. (Ref. 19) investigated the effects of rectal application of two OTC products containing 2-percent and 1-percent N9, respectively, and two control formulations (not containing N9) in four subjects (three men, one woman). The experimental procedures were self-administered. After a baseline saline rectal lavage, the four formulations were evaluated by placing each test formulation in the rectum for 15 minutes via a syringe, at a minimum of 72 hours between test formulations. After 15 minutes and again 8 to 10 hours later, rectal lavage was performed. The investigators showed that the rectal lavage collected 15 minutes after N9 application revealed sheets of epithelium.

Sheets of rectal epithelium were not present in lavage fluid collected 8 to 12 hours later, or after treatment with control formulations. The authors concluded that N9 caused rapid exfoliation of the rectal epithelium in humans, which is likely to make users more susceptible to HIV infection.

Recently, Phillips et al. (Ref. 20) studied the effects of rectal use of an OTC vaginal contraceptive drug product containing 2-percent N9 in 18 human subjects. Thirteen of the study participants underwent rectal evaluation at baseline and then at 15 minutes or at 2 hours after N9 treatment. The remaining study participants underwent rectal evaluation at 8 hours after treatment. A physician applied the test formulation and did the rectal evaluation, which included biopsies as well as lavage. The investigators observed sheets of epithelium in lavage specimens collected at 15 minutes after N9 treatment. They observed less material in specimens collected at 2 hours, but what they collected appeared to be degraded cells and bacteria. In specimens collected at 8 hours there was no evidence of cellular material. Similarly, biopsies collected at 15 minutes appeared to be different from baseline biopsies; the epithelial tissue appeared missing or separated from the underlying submucosa. At 2 and 8 hours after treatment, the epithelium appeared similar to the baseline specimens, suggesting that the epithelium can repair itself within 2 hours. The investigators concluded that N9 use should be avoided during anal sex, because the rectal epithelium, which is rapidly exfoliated after a single use of 2-percent N9, protects HIV target cells in the submucosa from HIV infection.

We conclude that these data demonstrate that N9 is an irritant to cells lining the rectum. The rectal epithelial damage that occurs with N9 exposure could increase the risk of getting HIV from an infected partner. Furthermore, a one-time rectal application of N9 is sufficient to cause rapid sloughing of extensive areas of the rectal epithelium. Accordingly, FDA is requiring a warning to inform users that these products should not be used rectally. This warning is required to be prominently displayed on the outside container or wrapper of the retail package or the immediate container label if there is no outside container or wrapper, in accordance with the requirements of § 201.66(c). The warning states: ''Not for rectal (anal) use'' [in bold type]. This warning follows the warning that reads ''For vaginal use only'' [in bold type]. In addition, as discussed in section II.B.2, comment 3 of this document, we are revising the additional labeling proposed in § 201.325(c)(1) to convey the message that studies show that N9 can irritate the vagina and rectum and that this may increase the risk of getting HIV/AIDS from an infected partner.

I. Does N9 Use Increase the Risk of STDs Other Than HIV?

(Comment 13) Two comments contended that there is no evidence that N9 increases the risk of getting other STDs, such as *Neisseria gonorrhea* (gonorrhea) and *Chlamydia trachomatis* (chlamydia). The comments asked FDA to delete all referrals to a possible increased risk of getting STDs other than HIV in its proposed warnings for vaginal contraceptive drug products containing N9.

(Response) FDA agrees. While the Van Damme et al. study (Ref. 6) suggested that frequent use of N9 increased the risk of HIV infection compared with use of placebo in the population studied, it did not show sufficient evidence of an increased risk of gonorrhea or chlamydia infection. FDA is not aware of evidence suggesting a link between N9 use and increased risk of STDs other than HIV at this time. Accordingly, we are revising the warnings for N9 vaginal contraceptive and spermicide drug products to delete any reference to a possible increased risk of getting STDs other than HIV when N9 is used by people at risk for these infections. However, this does not affect the warning, which we retain, that N9 does not protect against HIV or other STDs.

J. What Issues Did Other Comments Discuss?

1. Why Did FDA Define Frequent Use of N9 as ''More Than Once a Day''?

(Comment 14) Many comments addressed the definition of ''frequent use'' in the proposed warning language for N9 containing vaginal contraceptive drug products. FDA recommended that ''frequent use'' be defined as ''more than once a day.'' Several comments stated that this definition is reasonable. One comment pointed out that many normal men and women from ''middle America,'' not just prostitutes, have sex several times a day with their partners, and these consumers need to be protected from the risks of using N9.

Other comments stated that FDA's rationale for proposing ''frequent use'' as ''more than once a day'' is unclear. One comment contended that in the Van Damme et al. study (Ref. 6), in which investigators concluded that there was a statistically significant increase in the risk of HIV infection from infected partners, N9 gel use was ''more than 3.5 times a day.'' The comment stated that when the product was used less frequently than 3.5 times a day, there was no difference in risk of HIV transmission between the N9 and placebo users.

Therefore, the comment stated that the definition of frequent use should be changed to ''no more than 3 times a day.'' One comment contended that in the Van Damme et al. study, subjects averaged 3.6 coital acts a day, with a mean of 70 sexual acts a month, which is atypical of the sexual activity for the majority of women worldwide. Some comments questioned whether the results for commercial sex workers in Africa and Thailand can be reasonably extrapolated to the general U.S. population and questioned how the proposed definition of frequent use, ''more than once a day'' was extrapolated from the study data.

Other comments claimed that frequent use, defined as ''more than once a day,'' overstates the risk for many women and seems very restrictive. One comment proposed that women be informed that low frequency use of N9 products has not been shown to increase HIV infection rates, though it may increase vaginal irritation. Another comment stated that if a woman is not at risk for HIV, then frequent use of N9 poses no additional hazard. The comment proposed that women at low risk for HIV could safely use N9 several times in a single day.

(Response) FDA proposed to define frequent use as ''more than once a day'' because studies cited in the proposed rule (68 FR 2254 at 2257 to 2258) showed that if N9 is used more than once a day, the risk of vaginal irritation and epithelial lesions increases. When this occurs, the risk of HIV infection from infected partners increases according to studies discussed in the proposed rule (68 FR 2254 at 2258). The one comment erroneously concludes from the Van Damme et al. study that the risk was only present if women used N9 more than 3.5 times per day. As noted previously, the investigators analyzed dose response by dividing N9 use into categories based on tertiles. The use category of greater than 3.5 times per day identified the lower limit of the upper tertile. The analysis does not identify a dose below which there is not an increased risk. We are not aware of any available data to assist us in identifying a dose of N9 where there is no increased risk for HIV–1 infection in a susceptible population. Because of the nature of the risk, we believe that if a woman is at risk for HIV/AIDS, she should not be using N9 products, regardless of the frequency of use.

In this final rule, we are eliminating references to ''frequent use'' and revising the warning statements as described in section II.B.2, comment 3 of this document. We also agree with the comments that if a woman is not at risk for HIV, then frequent use of N9 poses no additional hazard of HIV infection. Thus, women at low risk for HIV can use N9 for birth control, with or without a diaphragm or condom, regardless of frequency. Accordingly, we are revising the labeling information to include a statement for women at low risk for HIV/AIDS (see section II.G, comment 11 of this document). It is also important to note that as explained in the response to section II.B.2, comment 3 of this document, the comment regarding risk only being present if women used N9 more than 3.5 times a day is erroneous.

2. Should ''Pharmacist'' or ''Health Care Provider'' Be Included on the Label?

(Comment 15) Some comments requested that the proposed warnings that begin with the words ''Ask a doctor'' and ''Stop use and ask a doctor'' be revised to include ''health care provider,'' because consumers receive health information from providers other than doctors. Other comments suggested that FDA include the term ''pharmacists'' in the labeling because pharmacists are the most accessible health providers for consumers.

(Response) In this final rule, we revised the warnings proposed after the subheading ''Ask a doctor before use if you have'' and moved them to after the subheadings ''Do not use'' and ''When using this product.'' Therefore, whether the subheading states ''Ask a doctor before use'' or ''Ask a health care provider before use'' is moot. Regarding the use of the terms ''doctor'' and ''health care provider'' in the subheadings ''Ask a doctor before use if you have'' and ''Stop use and ask a doctor if,'' FDA addressed this issue in the final rule for labeling of OTC human drugs (64 FR 13254 at 13261 to 13262). FDA acknowledged that in addition to physicians, other licensed professionals play an important role in delivering clinical services directly to consumers. FDA decided not to endeavor to list each specific practitioner who is licensed and qualified and decided that ''doctor'' is sufficiently broad and inclusive for this warning. Nonetheless, we are including in the ''Other information'' statements in § 201.325(d) of this final rule, a statement that contains the term ''health professional'' and advises women to ask a ''health professional'' if they have questions about their birth control and STD prevention methods. The statement reads: ''[bullet] ask a health professional if you have questions about your best birth control and STD prevention methods''.

3. What Does ''Unprotected Sex'' Mean?

(Comment 16) Several comments questioned use of the words ''unprotected sex'' in the proposed warning language. The comments asked FDA to clarify whether ''unprotected sex'' means sex without a condom or sex without birth control.

The comments contended that the words ''unprotected sex'' are confusing in the proposed ''Other information'' statement ''if you use these products frequently and/or have a new sex partner, multiple sex partners, or unprotected sex, see a doctor or other health professional for your best birth control and methods to prevent STDs'' because sex with N9 is not unprotected sex. One comment recommended using the words ''unprotected vaginal intercourse.'' Another comment recommended replacing ''unprotected sex'' with the phrase ''sex without condoms.''

(Response) FDA agrees that the wording ''unprotected sex'' could be clearer. As discussed in sections II.B.2., comment 3, II.C., comment 5, II.F.2., comment 9, II.F.3., comment 10, II.G., comment 11 and II.J.2., comment 15 of this document, FDA revised the wording of the warnings and ''Other information'' statements and the words ''unprotected sex'' are no longer used.

4. What Does the Word ''Irritation'' Mean When Referring To ''Vaginal Irritation'' in the Warning Language?

(Comment 17) Two comments recommended that FDA not use the term ''irritation'' when referring to ''vaginal irritation'' in the warning language. The comments stated that epithelial disruption and inflammation can occur in the absence of perceived symptoms of irritation. Therefore, women who do not perceive what they believe is ''irritation'' might mistakenly believe they are safe from N9 hazards. The comments suggested that the proposed warning language (''Frequent use (more than once a day) of this product may increase vaginal irritation, which may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners'') be revised to read ''Frequent use of this product (more than once a day) can damage the cells lining the vagina, a condition that may increase one's risk of becoming infected with HIV or other STDs if exposed to an infected partner.''

(Response) FDA understands the comments' concerns, but considers the term ''irritation'' the proper term to use in the warning language. This term is used throughout the scientific literature to describe the effects of N9 on the vaginal epithelia. Because ''irritation'' is also used widely in educational literature written for consumers, we believe that this term has more meaning for consumers than ''damage to the cells lining the vagina.'' We recognize that vaginal irritation may be asymptomatic; therefore, to protect women at risk for HIV, we advise them in § 201.325(b) in this final rule not to use N9 contraceptive products at all. We are also including in the ''Other information'' statements in § 201.325(d) of this final rule a statement that advises women that sometimes this irritation has no symptoms.

5. Should Warnings Be Printed in Both English and Spanish?

(Comment 18) One comment stated that it would be helpful to have warnings in Spanish as well as English on the package label and the package insert, with toll-free numbers and/or internet websites so that consumers may obtain additional data or clarification.

(Response) FDA allows manufacturers to print their package label and labeling in languages other than English. However, manufacturers must adhere to certain requirements in 21 CFR 201.15(c)(1), (c)(2), and (c)(3). Thus, FDA permits a dual label, e.g., a

complete English label can be accompanied with a complete label in Spanish, side by side. A package insert can be printed in English on one side, and Spanish on the other. Also, manufacturers may include toll-free numbers and internet websites in product labeling. If a manufacturer wants to include this type of information within the Drug Facts box, it must be done in accordance with § 201.66(c)(9).

III. FDA's Final Conclusions on Warnings and Other Labeling Information for OTC Vaginal Contraceptive and Spermicide Drug Products Containing N9

A. Labeling Requirements

FDA is amending part 201 (21 CFR part 201) by adding § 201.325 entitled ''Over-the-counter drugs for vaginal contraceptive and spermicide use containing nonoxynol 9 as the active ingredient; required warnings and labeling information.'' This section will require new warnings and other labeling information for all OTC vaginal contraceptive and spermicide drug products containing N9 as the active ingredient, whether marketed under a New Drug Application (NDA) or the ongoing OTC drug review. The required warnings must be prominently displayed on the outside container or wrapper of the retail package, or the immediate container label if there is no outside container or wrapper, in accordance with the requirements of § 201.66(c), FDA's labeling regulation (Drug Facts) for OTC drug products. FDA is requiring that the following new warnings be added to the labeling of all marketed OTC vaginal contraceptive/spermicide drug products containing N9:

1. Under the heading ''Warnings'' the warning ''Not for rectal (anal) use'' [in bold type]'' will follow the warning ''For vaginal use only'' [in bold type].

2. Under the heading ''Warnings'' the warning ''Sexually transmitted diseases (STDs) alert [in bold type]: This product does not [this word in bold type] protect against HIV/AIDS or other STDs and may increase the risk of getting HIV from an infected partner''.

3. Under the subheading ''Do not use,'' the warning ''Do not use [in bold type] if you or your sex partner has HIV/AIDS. If you do not know if you or your sex partner is infected, choose another form of birth control.''

4. Under the subheading ''When using this product,'' the warning ''When using this product [in bold type][optional, bullet] you may get vaginal irritation (burning, itching, or a rash)''.

5. Under the subheading ''Stop use and ask a doctor if,'' the warning ''Stop use and ask a doctor if [in bold type][optional, bullet] you or your partner get burning, itching, a rash, or other irritation of the vagina or penis.''

FDA is also requiring additional labeling information. This information is to appear either on the outside container or wrapper of the retail package, under the ''Other information'' section of the Drug Facts labeling in accordance with § 201.66(c)(7), or in a package insert. The only exception is the statement in § 201.325(c) about the correct use of latex condoms, which must appear on the outside container or wrapper of the retail package or the immediate container label if there is no outside container or wrapper, under the ''Other information'' section of the ''Drug Facts'' labeling. The additional labeling information is as follows:

- ''studies have raised safety concerns that products containing the spermicide nonoxynol 9 can irritate the vagina and rectum. Sometimes this irritation has no symptoms. This irritation may increase the risk of getting HIV/AIDS from an infected partner''.
- ''you can use nonoxynol 9 for birth control with or without a diaphragm or condom if you have sex with only one partner who is not infected with HIV and who has no other sexual partners or HIV risk factors''.
- ''when used correctly every time you have sex, latex condoms greatly reduce, but do not eliminate, the risk of catching or spreading HIV, the virus that causes AIDS. [this information must appear on the outside container or wrapper labeling in the Drug Facts labeling under ''Other information''].
- ''use a latex condom without nonoxynol 9 if you or your sex partner has HIV/AIDS, multiple sex partners, or other HIV risk factors''.
- ''ask a health professional if you have questions about your best birth control and STD prevention methods''.

FDA is also recommending that all of the required warnings and other labeling information be included in a package insert. Many marketed OTC vaginal contraceptive and spermicide drug products already have a package insert that contains information on how to use the product, and this new information could readily be incorporated in the package insert.

The following is an example of the Drug Facts labeling (for content purposes only) for a vaginal contraceptive/spermicide drug product containing N9 that incorporates all of the required new warnings and labeling information on the Drug Facts label. The quantity of active ingredient per dosage unit, the font sizes for title, headings, subheadings, condensed text, and bullets, and other graphic features, must be in accordance with § 201.66.

BILLING CODE 6111–01–S

Sample Drug Facts

Drug Facts

Active ingredient — **Purpose**

nonoxynol 9 ..... Vaginal contraceptive

Use prevents pregnancy

Warnings

- **For vaginal use only**
- **Not for rectal (anal) use**

Sexually transmitted diseases (STDs) alert: This product does **not** protect against HIV/AIDS or other STDs and may increase the risk of getting HIV from an infected partner

Do not use if you or your sex partner has HIV/AIDS. If you do not know if you or your sex partner is infected, choose another form of birth control.

When using this product

- you may get vaginal irritation (burning, itching, or a rash)

Stop use and ask a doctor if

- you or your partner get burning, itching, a rash or other irritation of the vagina or penis

Keep out of reach of children. If swallowed, get medical help or contact a Poison Control Center right away.

Directions

- [product dependent]

Other information

- studies have raised safety concerns that products containing the spermicide nonoxynol 9 can irritate the vagina and rectum. Sometimes this irritation has no symptoms. This irritation may increase the risk of getting HIV/AIDS from an infected partner.
- you can use nonoxynol 9 for birth control with or without a diaphragm or condom if you have sex with only one partner who is not infected with HIV and who has no other sexual partners or HIV risk factors
- when used correctly every time you have sex, latex condoms greatly reduce, but do not eliminate, the risk of catching or spreading HIV, the virus that causes AIDS
- use a latex condom without nonoxynol 9 if you or your sex partner has HIV/AIDS, multiple sex partners, or other HIV risk factors
- ask a health professional if you have questions about your best birth control and STD prevention methods

Inactive ingredients [product dependent]

Questions or comments? [product dependent]

BILLING CODE 6111–01–C

B. Statement About Warnings

Mandating warnings in an OTC drug product regulation does not require a finding that any or all of the OTC drug products covered by the regulation actually caused an adverse event, and FDA does not so find. Nor does FDA's requirement of warnings repudiate the prior OTC drug monographs and regulations under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that warnings are necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the act. This judgment balances the benefits of these drug products against their potential risks. (See 21 CFR 330.10(a).)

FDA's decision to act in this instance need not meet the standard of proof required to prevail in a private tort action (*Glastetter* v. *Novartis Pharmaceuticals Corp.*, 252 F.3d 986,991 (8th Cir. 2001)). To mandate warnings, or take similar regulatory action, FDA need not show, nor do we allege, actual causation. For an expanded discussion of case law supporting FDA's authority to require such warnings, see the December 6, 2002 (67 FR 72555), final rule entitled ''Labeling of Diphenhydramine-Containing Drug Products for Over-the-Counter Human Use.''

IV. Analysis of Impacts

In accordance with Executive Order 12866, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a significant regulatory action as defined by the Order. The agency has not received any new information or comments that would alter its previous determination.

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes this final rule is not a significant regulatory action under Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the one-time costs to comply with this rule are small, the agency certifies that the final rule will not have a significant economic impact

on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $127 million, using the most current (2006) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

The purpose of this final rule is to require additional labeling for OTC vaginal contraceptive and spermicide drug products containing N9. The labeling includes new warnings and other important information about using these products. These products are currently packaged in an outer carton that should have sufficient space to accommodate this additional labeling. FDA is aware that most of the currently marketed products already include a consumer package insert. Therefore, to allow firms greater flexibility, FDA is allowing some of the new information to appear in the package insert. There are a limited number of products currently marketed that will be affected by this final rule, and the incremental one-time costs are minimal. The one-time costs include designing the new carton, designing a new package insert, and the inventory loss of any unused current labeling. FDA assumes the same weighted average cost to relabel, inflated to reflect current dollars, that it estimated for the final rule requiring uniform label formats of OTC drug products (64 FR 13254 at 13279 to 13281) (i.e., $3,600 x 1.164[1] ($4,190) per stock keeping unit (SKU) (individual products, packages, and sizes)). Inventory loss was estimated using data from a study supporting the previously mentioned rule. With a 6-month implementation period, inventory loss was estimated to be between $582 and $3,492 per SKU, depending on product sales, for an estimated weighted average inventory loss of $2,386. The inventory loss and redesign costs for the package insert are estimated to be about $1,606 per SKU[2].

FDA's Drug Listing System identifies 15 manufacturers and distributors of OTC vaginal contraceptive and spermicide drug products containing N9 that together produce approximately 40 SKUs. At a relabeling cost of $4,190 per SKU and an inventory loss of $2,386 per SKU, estimated total one-time cost of relabeling would be $263,040 (40 x ($4,190 + $2,386))[3]. Even if all required wording is revised on the outer carton, manufacturers may revise their package inserts as well to conform to the revised language. This adds another $64,240 (40 x $1,606) to the one-time cost, for an estimated total of $327,280[4].

As FDA is providing the language of the labeling to be used, all firms should have the necessary skills and personnel to perform the required relabeling either in-house or by contractual arrangement. The final rule does not require any new reporting or recordkeeping activities. No additional professional skills are needed.

About 9 firms affected by this final rule meet the Small Business Administration's definition of a small entity (fewer than 750 employees). The actual impact on these firms will vary depending on the number and nature of the products they manufacture or distribute. All nine entities market additional types of products and have only one or two SKUs affected by this final rule. The average incremental cost per SKU to comply with this final rule is estimated to be $8,182 ($327,280/40 SKUs). Actual costs to the small entities will likely be lower because distributors of low sales volume OTC drug products usually market their products in packaging that costs less than the industry average.

While the costs to individual manufacturers to relabel their products are minimal, the potential benefits to consumers who use these products are substantial. FDA considers it essential that users be aware that these products do not protect against the AIDS virus (HIV) or other STDs. The monetary benefit of potentially preventing any cases of AIDS or STDs is significant compared to the minor cost of relabeling these products to provide the new required information.

FDA considered but rejected several labeling alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. FDA considers it important that this information appear in product labeling as soon as possible, but acknowledges that implementation in a timeframe any less than 6 months would be very difficult for affected manufacturers. However, because of the importance of this new labeling information, FDA considers a period of 12 months too long to implement this new labeling. FDA rejected an exemption for small entities because the new labeling is also needed by consumers who purchase products marketed by those entities.

The analysis shows that this final rule is not economically significant under Executive Order 12866 and that FDA has considered the burden to small entities. Based on this analysis, FDA does not believe manufacturers will incur a significant economic impact. Therefore, FDA certifies that the final rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

V. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

FDA has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule will have a preemptive effect on State law. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express

[1] The annual PPI for pulp, paper, and allied products (the major cost driver for labeling) rose by 16.4 percent between 1998 and 2005 (from 174.1 to 202.6) *http://data.bls.gov/cgi-bin/surveymost*, extracted December 5, 2006. (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

[2] The original values from the uniform label formats rule (64 FR 13254), inventory loss between $500 and $3,000 and a weighted average of $2,050, were inflated by 16.4 percent.

[3] In the proposal for this rule, the estimated total one-time cost of relabeling was reported in error as $266,000, the actual value should have been $226,000.

[4] In the proposed rule this value was reported as $321,000, but should have been $281,200.

preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 751 of the the act (21 U.S.C. 379r) is an express preemption provision. Section 751(a) of the act (21 U.S.C. 379r(a)) provides that: ''* * * no State or political subdivision of a State may establish or continue in effect any requirement— * * * (1) that relates to the regulation of a drug that is not subject to the requirements of section 503(b)(1) or 503(f)(1)(A); and (2) that is different from or in addition to, or that is otherwise not identical with, a requirement under this Act, the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 *et seq.*), or the Fair Packaging and Labeling Act (15 U.S.C. 1451 *et seq.*).''

Currently, this provision operates to preempt States from imposing requirements related to the regulation of nonprescription drug products. (See section 751(b) through (e) of the act for the scope of the express preemption provision, the exemption procedures, and the exceptions to the provision.) This final rule would establish new warning statements and other labeling for all OTC vaginal contraceptive drug products. Although this final rule would have a preemptive effect, in that it would preclude States from promulgating requirements related to labeling for OTC vaginal contraceptive drug products that are different from or in addition to, or not otherwise identical with a requirement in the final rule, this preemptive effect is consistent with what Congress set forth in section 751 of the act. Section 751(a) of the act displaces both State legislative requirements and State common law duties. We also note that even where the express preemption provision is not applicable, implied preemption may arise. See *Geier* v. *American Honda Co.*, 529 US 861 (2000).

FDA believes that the preemptive effect of the final rule would be consistent with Executive Order 13132. Section 4(e) of the Executive order provides that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' FDA provided the States with an opportunity for appropriate participation in this rulemaking when it sought input from all stakeholders through publication of the proposed rule in the **Federal Register** of January 16, 2003 (68 FR 2254). FDA received comments from three State groups on the proposal and considered those comments in drafting this final rule.

In addition, on May 12, 2006, FDA's Division of Federal and State Relations provided notice via fax and email transmission to elected officials of State governments and their representatives of national organization. The notice provided the States with further opportunity for input on the rule. It advised the States of the publication of the proposed rule and encouraged State and local governments to review the notice and to provide any comments to the docket (Docket No. 1980N–0280 (formerly Docket No. 80N–0280)), opened in the January 16, 2003, **Federal Register** proposed rule, by a date 30 days from the date of the notice (i.e., by June 12, 2006), or to contact certain named individuals. FDA received no comments in response to this notice. The notice has been filed in the above numbered docket.

In conclusion, the agency believes that it has complied with all of the applicable requirements under the Executive order and has determined that the preemptive effects of this rule are consistent with Executive Order 13132.

VIII. References

The following references are on display in the Division of Dockets Management, 5630 Fishers Lane, rm 1061, Rockville, MD 20852, under Docket No. 1980N–0280, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Hatcher R. A. et al., *Contraceptive Technology*, 18th revised ed., Ardent Media, New York, NY, p. 792, 2004.

2. CDC, ''Nonoxynol–9 Spermicide Contraception Use—United States, 1999,'' *Morbidity and Mortality Weekly Report*, 51(18):389–392, 2002.

3. Raymond, E., P. Chen, and J. Luoto, ''Contraceptive Effectiveness of Five Nonoxynol–9 Spermicides: A Randomized Trial,'' *Obstetrics and Gynecology*, 103:430–439, 2004.

4. Sansgiry, S. S., P. S. Cady, and S. Patil, ''Readability of Over-the-Counter Medication Labels,'' *Journal of the American Pharmaceutical Association*, NS37(5):522–528, 1997.

5. A National Survey of Consumers and Health Professionals: ''Attitudes and Beliefs About the Use of Over-the-Counter Medicines: A Dose of Reality,'' prepared for The National Council on Patient Information and Education (NCPIE), *www.harrisinteractive.com*, 2002.

6. Van Damme, L. et al., ''Effectiveness of COL–1492, A Nonoxynol–9 Vaginal Gel, on HIV–1 Transmission in Female Sex Workers: A Randomized Controlled Trial,'' *The Lancet*, 360:971–977, 2002.

7. Kreiss, J. et al., ''Efficacy of Nonoxynol 9 Contraceptive Sponge Use in Preventing Heterosexual Acquisition of HIV in Nairobi Prostitutes,'' *Journal of the American Medical Association*, 268:477–482, 1992.

8. Roddy, R. E. et al., ''A Controlled Trial of Nonoxynol 9 Film to Reduce Male-to-Female Transmission of Sexually Transmitted Diseases,'' *New England Journal of Medicine*, 339(8):504–510, 1998.

9. Richardson, B. A. et al., ''Evaluation of a Low-Dose Nonoxynol 9 Gel for the Prevention of Sexually Transmitted Diseases, a Randomized Trial,'' *Sexually Transmitted Diseases*, 28:394–400, 2001.

10. FDA, Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex, Center for Devices and Radiological Health (CDRH), 2005.

11. FDA, FemCap Barrier Contraceptive, User Manual and Instructions for Use, 2003.

12. Bounds, W. et al., ''The Diaphragm With and Without Spermicide: A Randomized, Comparative Efficacy Trial,'' *Journal of Reproductive Medicine*, 40:11:764–774, 1995.

13. Richwald, G. A. *et al.*, ''Effectiveness of the Cavity-Rim Cervical Cap: Results of a Large Clinical Study,'' *Obstetrics and Gynecology*, 74:2:143–148, 1989.

14. Bernstein, G., ''Use-Effectiveness Study of Cervical Caps: Final Report,'' Washington, DC: National Institute of Child Health and Human Development, contract no. NO1–HD–1–2804, 1986.

15. Gross, M. et al., ''Rectal Microbicides for U.S. Gay Men. Are Clinical Trials Needed?,'' *Sexually Transmitted Diseases*, 25:6:296–302, 1998.

16. Mansergh, G. et al., ''Rectal Use of Nonoxynol–9 Among Men Who Have Sex With Men,'' *AIDS*, 17:6:905–909, 2003.

17. Phillips, D. M. and V. R. Zacharopoulos, ''Nonoxynol–9 Enhances Rectal Infection by Herpes Simples Virus in Mice,'' *Contraception*, 57:341–348, 1998.

18. Patton, D. et al., ''Rectal Applications of Nonoxynol–9 Cause Tissue Disruption in a Monkey Model,'' *Sexually Transmitted Diseases*, 29:581–587, 2002.

19. Phillips, D. et al., ''Nonoxynol–9 Causes Rapid Exfoliation of Sheets of

Rectal Epithelium,'' *Contraception*, 62:149–154, 2002.

20. Phillips, D. M. et al., ''Lubricants Containing N–9 May Enhance Rectal Transmission of HIV and Other STIs,'' *Contraception*, 70:107–110, 2004.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 201 is amended as follows:

PART 201—LABELING

■ 1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. Section 201.66 is amended by adding paragraph (c)(5)(ii)(H) to read as follows:

§ 201.66 Format and content requirements for over-the-counter (OTC) drug product labeling.

* * * * *

(c) * * *

(5) * * *

(ii) * * *

(H) Sexually transmitted diseases (STDs) warning for vaginal contraceptive and spermicide drug products containing nonoxynol 9 set forth in § 201.325(b)(2). This warning shall follow the subheading ''Sexually transmitted diseases (STDs) alert:''

* * * * *

■ 3. Section 201.325 is added to subpart G to read as follows:

§ 201.325 Over-the-counter drugs for vaginal contraceptive and spermicide use containing nonoxynol 9 as the active ingredient; required warnings and labeling information.

(a) Studies indicate that use of vaginal contraceptive drug products containing nonoxynol 9 does not protect against infection from the human immunodeficiency virus (HIV), the virus that causes acquired immunodeficiency syndrome (AIDS), or against the transmission of other sexually transmitted diseases (STDs). Studies also indicate that use of vaginal contraceptive drug products containing nonoxynol 9 can increase vaginal irritation, such as the disruption of the vaginal epithelium, and also can cause epithelial disruption when used in the rectum. These effects may increase the risk of transmission of the AIDS virus (HIV) from an infected partner. Therefore, consumers should be warned that these products do not protect against the transmission of the AIDS virus (HIV) or other STDs, that use of these products can increase vaginal and rectal irritation, which may increase the risk of getting the AIDS virus (HIV) from an HIV infected partner, and that the products are not for rectal use. Consumers should also be warned that these products should not be used by persons who have HIV/AIDS or are at high risk for HIV/AIDS.

(b) The labeling of OTC vaginal contraceptive and spermicide drug products containing nonoxynol 9 as the active ingredient, whether subject to the ongoing OTC drug review or an approved drug application, must contain the following warnings under the heading ''Warnings,'' in accordance with 21 CFR 201.66.

(1) ''[bullet] For vaginal use only [bullet] Not for rectal (anal) use'' [both warnings in bold type].

(2) ''Sexually transmitted diseases (STDs) alert [in bold type]: This product does not [word ''not'' in bold type] protect against HIV/AIDS or other STDs and may increase the risk of getting HIV from an infected partner''.

(3) ''Do not use'' [in bold type] if you or your sex partner has HIV/AIDS. If you do not know if you or your sex partner is infected, choose another form of birth control''.

(4) ''When using this product [in bold type] [optional, bullet] you may get vaginal irritation (burning, itching, or a rash)''.

(5) ''Stop use and ask a doctor if [in bold type] [optional, bullet] you or your partner get burning, itching, a rash, or other irritation of the vagina or penis''.

(c) The labeling of this product states under the ''Other information'' section of the Drug Facts labeling in accordance with § 201.66(c)(7), ''[bullet] when used correctly every time you have sex, latex condoms greatly reduce, but do not eliminate, the risk of catching or spreading HIV, the virus that causes AIDS.

(d) The labeling of this product includes the following statements either on the outside container or wrapper of the retail package, under the ''Other information'' section of the Drug Facts labeling in accordance with § 201.66(c)(7), or in a package insert:

(1) ''[bullet] studies have raised safety concerns that products containing the spermicide nonoxynol 9 can irritate the vagina and rectum. Sometimes this irritation has no symptoms. This irritation may increase the risk of getting HIV/AIDS from an infected partner''.

(2) ''[bullet] you can use nonoxynol 9 for birth control with or without a diaphragm or condom if you have sex with only one partner who is not infected with HIV and who has no other sexual partners or HIV risk factors''.

(3) ''[bullet] use a latex condom without nonoxynol 9 if you or your sex partner has HIV/AIDS, multiple sex partners, or other HIV risk factors''.

(4) ''[bullet] ask a health professional if you have questions about your best birth control and STD prevention methods''.

(e) Any drug product subject to this section that is not labeled as required and that is initially introduced or initially delivered for introduction into interstate commerce after June 19, 2008, is misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352), is a new drug under section 505 of the act (21 U.S.C. 355), and is subject to regulatory action.

Dated: December 10, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–6111 Filed 12–18–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 124

[Public Notice 6031]

Amendment to the International Traffic in Arms Regulations: Regarding Dual and Third Country Nationals

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the text of the International Traffic in Arms Regulations (ITAR) to allow access to defense articles and services for dual and third country nationals of certain countries through revisions in procedures for technical assistance agreements and manufacturing licensing agreements. This regulatory change will reduce the burden on exporters of defense articles and on foreign parties to the agreements by reducing the number of individual Non Disclosure Agreements (NDA's) which must be executed and maintained on file.

DATES: *Effective Date:* This rule is effective December 19, 2007.

ADDRESSES: Interested parties may submit comments at any time by any of the following methods:

- *E-mail:* *DDTCResponseTeam@state.gov* with an appropriate subject line.
- *Mail:* Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory change, ITAR

§§ 124.12 and 124.16, SA–1, 12th Floor, Washington, DC 20522–0112.

• *Hand delivery or Courier (regular work hours only):* Department of State Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTENTION: Regulatory Change, ITAR §§ 124.12 and 124.16, SA–1, 12th Floor, 2401 E Street, NW., Washington, DC 20037.

Persons with access to the Internet may also view this notice by going to the regulations.gov Web site at *http://regulations.gov/index.cfm*.

FOR FURTHER INFORMATION CONTACT: Acting Director Terry Davis, Office of Defense Trade Controls Licensing, Department of State, Telephone (202) 663–2739 or Fax (202) 663–3866, E-mail *DDTCResponseTeam@state.gov*. ATTN: Regulatory Change, ITAR §§ 124.12 and 124.16.

SUPPLEMENTARY INFORMATION: The Department of State, Directorate of Defense Trade Controls (DDTC) has recently completed a review of licensing requirements for technical assistance and manufacturing license agreements (TAAs/MLAs) under Part 124 of the ITAR. The Department has long followed a procedure to license to all countries of ultimate destination, including to nationals of countries other than the country to which the items are to be exported under the TAA/MLA. In particular, § 124.8(5) precludes any retransfer of defense articles (hardware or technical data) or defense services pursuant to an approved TAA/MLA to third countries or nationals of third countries unless specifically authorized in the agreement or for which prior written approval has been granted by the Department. For export control purposes, DDTC has considered a third country national to be an individual from a country other than the country which is the foreign signatory to the agreement. A third country national may also be a dual national if he holds nationality from more than one country. In addition to citizenship, DDTC considers country of birth a factor in determining nationality.

Current procedures require that third country/dual nationals authorized under TAA/MLA's execute Non Disclosure Agreements (NDAs) before they receive access to defense articles or defense services. The changes to Part 124 would revise these procedures to permit the U.S. applicant to request further release of technical data and defense services and access to defense articles exported pursuant to or produced as a result of the TAA/MLA to third country/dual national employees of the foreign signatory who are nationals exclusively from countries that are members of the North Atlantic Treaty Organization (NATO), the European Union (EU), Australia, Japan, New Zealand, and Switzerland. These procedural changes would also apply to employees of sub-licensees authorized under the agreement. Execution of NDAs by individuals who are third country or dual nationals meeting the preceding criteria would not be required. These changes are being implemented by an additional clause in the transmittal letter required under § 124.12 (c) whereby the applicant will request retransfer of defense articles and services to third country/dual nationals from these countries under the authority of a new ITAR § 124.16 entitled ''Special Retransfer Authorizations for Unclassified Technical Data and Defense Services to Member States of NATO and the European Union, Australia, Japan, New Zealand, and Switzerland.''

Regulatory Analysis and Notices

Administrative Procedure Act

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554.

Regulatory Flexibility Act

This rule does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Act of 1995

This rule does not require analysis under the Unfunded Mandates Reform Act.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

It is determined that this rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13132.

Executive Order 12866

This amendment is exempt from the review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 124

Arms and Munitions, Exports, Technical Assistance.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 124 is amended as follows:

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

■ 1. The authority citation for part 124 continues to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977, Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub L. 105–261.

■ 2. Section 124.12 is amended by adding a new paragraph (a)(10) to read as follows:

§ 124.12 Required information in letters of transmittal.

(a) * * *

(10) A statement specifying whether the applicant is requesting retransfer of defense articles and defense services pursuant to § 124.16 of this subchapter.

* * * * *

■ 3. Section 124.16 is added to read as follows:

§ 124.16 Special Retransfer Authorizations for Unclassified Technical Data and Defense Services to Member States of NATO and the European Union, Australia, Japan, New Zealand, and Switzerland.

The provisions of § 124.8(5) of this subchapter notwithstanding, pursuant to this subsection the Department may approve access to unclassified defense articles exported in furtherance of or produced as a result of a TAA/MLA, and retransfer of technical data and defense services to individuals who are third country/dual national employees of the foreign signatory or its approved sub-licensees provided they are nationals exclusively of countries that are members of NATO the European Union, Australia, Japan, New Zealand, and Switzerland and their employer is a signatory to the agreement or has executed a Non Disclosure Agreement. The retransfer must take place completely within the physical territories of these countries or the United States. Permanent retransfer of hardware is not authorized.

Dated: November 27, 2007.

John C. Rood,

Acting Under Secretary for Arms Control and International Security, Department of State.

[FR Doc. E7–24651 Filed 12–18–07; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9362]

RIN 1545–BG23

Foreign Tax Credit: Notification of Foreign Tax Redeterminations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to temporary regulations (TD 9362) that were published in the **Federal Register** on Wednesday, November 7, 2007 (72 FR 62771) relating to a United States taxpayer's obligation under section 905(c) of the Internal Revenue Code to notify the IRS of a foreign tax redetermination, which is a change in the taxpayer's foreign tax liability that may affect the taxpayer's foreign tax credit and also relating to the civil penalty under section 6689 for failure to notify the IRS of a foreign tax redetermination as required under section 905(c).

DATES: The correction is effective December 19, 2007.

FOR FURTHER INFORMATION CONTACT: Teresa Burridge Hughes, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (TD 9362) that are the subject of the correction are under section 905(c) of the Internal Revenue Code.

Need for Correction

As published, temporary regulations (TD 9362) contain errors that may prove to be misleading and are in need of clarification.

List of Subject in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following amendments:

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 1.905–3T is amended by revising the eighth sentence of paragraph (d)(3)(iii) *Example*. (i), the first sentence of paragraph (d)(3)(iii) *Example*. (ii), and the third and last sentences of paragraph (d)(3)(iii) *Example*. (iii) as follows:

§ 1.905–3T Adjustments to United States tax liability and to the pools of post-1986 undistributed earnings and post-1986 foreign income taxes as a result of a foreign tax redetermination (temporary).

* * * * *

(d) * * *

(3) * * *

(iii) * * *

Example. * * *

(i) * * * In 2009, CFC paid its actual foreign tax liability for 2008 of 80u. * * *

(ii) *Result in 2009*. If the 20u overaccrual of tax for 2008 were taken into account in 2008, CFC's general category post-1986 undistributed earnings would be 1,020u, CFC's general category post-1986 foreign income taxes would be $280, and P would be deemed to pay $27.45 of tax with respect to the 2008 distribution of 100u (100u/1020u × $280 = $27.45). * * *

(iii) * * * As determined in 2011, CFC's post-1986 undistributed earnings for 2009 are 1350u (1,100u as revised for 2008, less 100u distributed in 2008, plus 350u earned in 2009), and its post-1986 foreign income taxes for 2009 are $281.82 ($200 as revised for 2008, less $18.18 deemed paid in 2008, plus $100 accrued for 2009). As redetermined in 2011, P's deemed paid credit with respect to the 100u distribution from CFC in 2009 is $20.88 (100u/1350u × $281.82).

* * * * *

■ **Par. 3.** Section 1.905–4T is amended by revising the last sentence of paragraph (b)(4) and the second sentence of paragraph (f)(2)(ii) as follows:

§ 1.905–4T Notification of foreign tax redetermination (temporary).

* * * * *

(b) * * *

(4) * * * Because the date for notifying the IRS of the foreign tax redetermination under paragraph (b)(1)(ii) of this section precedes the date of the opening conference concerning the examination of the return for X's 2008 taxable year, paragraph (b)(3) of this section does not apply, and X must notify the IRS of the foreign tax redetermination by filing a amended return, Form 1118, and the statement required in paragraph (c) of this section for the 2008 taxable year by September 15, 2010.

* * * * *

(f) * * *

(2) * * *

(ii) * * * Such notification must be filed no later than the due date (with extensions) of the original return for the taxpayer's first taxable year following the taxable year in which these regulations are first applicable. * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–24674 Filed 12–18–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9362]

RIN 1545–BG23

Foreign Tax Credit: Notification of Foreign Tax Redeterminations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to temporary regulations (TD 9362) that were published in the **Federal Register** on Wednesday, November 7, 2007 (72 FR 62771) relating to a United States taxpayer's obligation under section 905(c) of the Internal Revenue Code to notify the IRS of a foreign tax redetermination, which is a change in the taxpayer's foreign tax liability that may affect the taxpayer's foreign tax credit and also relating to the civil penalty under section 6689 for failure to notify the IRS of a foreign tax redetermination as required under section 905(c).

DATES: The correction is effective December 19, 2007.

FOR FURTHER INFORMATION CONTACT: Teresa Burridge Hughes, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (TD 9362) that are the subject of the correction are under section 905(c) of the Internal Revenue Code.

Need for Correction

As published, temporary regulations (TD 9362) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (TD 9362), which were the subject of FR Doc. E7–21766, is corrected as follows:

On page 62779, column 2, under the paragraph heading ''Effective/Applicability Date'', last line of the first paragraph of the column, the language ''are first effective.'' is corrected to read ''are first applicable.''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–24669 Filed 12–18–07; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2702

Freedom of Information Act Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission (the ''Commission'') is publishing final revisions to its rules implementing the Freedom of Information Act (''FOIA'') in light of its experience under the rules, the need to update its fee schedules, and changes in implementing the FOIA mandated by Executive Order 13392.

DATES: *Effective date:* These revised rules will take effect on December 19, 2007.

Applicability date: The final rules will apply to FOIA requests initiated after the rules take effect. The final rules also will apply to further proceedings in matters pending on the effective date, except to the extent that such application would be infeasible or unfair, in which event the former rules would continue to apply.

ADDRESSES: Questions may be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, or sent via facsimile to 202–434–9944.

FOR FURTHER INFORMATION CONTACT: Michael A. McCord, General Counsel, Office of the General Counsel, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; telephone 202–434–9935; fax 202–434–9944.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is an independent adjudicatory agency that provides hearings and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977 (the ''Mine Act''). Hearings are held before the Commission's Administrative Law Judges, and appellate review is provided by a five-member Review Commission appointed by the President and confirmed by the Senate.

On October 17, 2007, the Commission published proposed revisions to its rules implementing the FOIA and requested written comments to be submitted by November 16, 2007. 72 FR 58790. Upon request, the Commission subsequently reopened the comment period and accepted comments through November 30, 2007. 72 FR 65494. The Commission received comments from the United Mine Workers of America.

The Commission proposed revisions to its FOIA rules that expanded its use of electronic records to better implement the 1996 amendments to the FOIA that addressed electronic record-keeping in federal agencies. Additionally, the proposed rules described changes in the Commission's practices to ensure timely and effective responses to the public's requests for information as mandated by Executive Order 13392. 70 FR 75373. Further, based on its years of experience in implementing the FOIA, the Commission proposed certain changes in its FOIA rules to better reflect agency practice under the rules and to maximize its utilization of the internet to disseminate information. Finally, after a comprehensive review of its fee schedule, the proposed rules increased certain fees and moved others from the rules to the Commission's FOIA Guide for greater flexibility in adjusting the fees. The final rules retain much of the same text set forth in the proposed rules, with a few non-substantive revisions.

II. Section-by-Section Analysis

Set forth below is a summary of the comments received on the Commission's proposed rules and the final actions taken.

PART 2702—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

29 CFR 2702.1

The Commission is revising 29 CFR 2702.1 to clarify that the reference to ''all designated information'' to be made readily available to the public means information subject to disclosure pursuant to FOIA and the Commission's FOIA rules and not otherwise protected by law.

The last sentence in 29 CFR 2702.1 states that the scope of the Commission's FOIA regulations may be limited to requests for information that is not presently the ''subject of litigation before the Commission.'' 29 CFR 2702.1. As currently written, the rule could be read to exclude discovery records from the Commission's disclosure obligation under FOIA. In fact, however, such records could be subject to disclosure pursuant to FOIA, unless they fall under one of the nine exemptions provided in the statute. As proposed, the Commission is adding language stating that the Commission's FOIA rules do not affect discovery in adversary proceedings before the Commission, which are governed by the Commission's Rules of Procedure, 29 CFR Part 2700. This section also has been modified to clarify that the scope of the Commission's FOIA rules is limited to records or information of the agency or within its custody.

Finally, the Commission is amending 29 CFR 2702.1 by making two additional non-substantive revisions: (1) shortening the official title of the agency's guide to ''FOIA Guide'' and (2) including a reference to the Commission's Web site as an alternative means of obtaining the Commission's FOIA Guide.

29 CFR 2702.3

Initial Requests

On December 14, 2005, the President issued Executive Order 13392, which contained several statements of government-wide FOIA policy as well as several additional planning and reporting requirements. The Executive Order requires agencies to appoint a Chief FOIA Officer who has ''agency-wide responsibility for efficient and appropriate compliance with the FOIA.'' *See* Executive Order 13392, sec. 2(b)(I). Under the Commission's current rule, the Executive Director makes the initial determination on a FOIA request with the consent of a majority of the Commissioners. 29 CFR 2702.3(b). Pursuant to the Executive Order, the Commission is revising paragraphs (a) and (b) of 29 CFR 2702.3 to reflect the agency's current practice of initial FOIA requests being handled by the Chief FOIA Officer, instead of the Executive Director, without the consultation of the Commissioners. In addition, the Commission is revising paragraph (b) by deleting the requirement that a majority of the Commission must consent to the Chief FOIA Officer's initial determination of a request.

The commenter suggested that the Commission include in the rule language that specifically allows FOIA requests by e-mail and by fax. The Commission agrees and has revised the

rule to include language that refers to submission by e-mail and fax, as has been the practice under the present rule. In addition, to further assist requesters, the Commission is adding a reference in 29 CFR 2702.3(a) to its FOIA Guide, which specifies the Commission's fax number and e-mail address.

Appeals

FOIA refers to ''the right of [a] person to appeal to the head of the agency any adverse determination.'' 5 U.S.C. 552(a)(6)(A)(I). Under the Commission's current FOIA rules, appeals are to be made to the Chairman, who independently makes a determination on appeal. Consistent with the changes to paragraphs (a) and (b) regarding the handling of initial requests, the Commission is revising paragraph (b) to reflect that appeals from the Chief FOIA Officer's initial determinations on FOIA requests should go to the Commission, with a majority vote of the sitting Commissioners determining the disposition of the appeal. The amended rule provides that, in the event of a tie vote, the Chief FOIA Officer's determination would be affirmed.

Denials

Currently, paragraph (f) only states that when a request is denied, the Commission will attempt to provide an estimate of the volume of records denied. The Commission is amending paragraph (f) to comply with additional statutory requirements regarding denials of requests. When an agency denies a record request, it must notify the requester of his or her right to judicial review, 5 U.S.C. 552(a)(6)(A)(ii), and state the name and title or position of each person responsible for the denial of a FOIA request, 5 U.S.C. 552(a)(6)(C)(I). Accordingly, as proposed, the Commission is revising paragraph (f) to state that a denial of a request, after an administrative appeal, shall include notice of a requester's right to judicial appeal and the name and title or position of each person denying the FOIA request.

Other Revisions

The Commission is adding headings to each paragraph of 29 CFR 2702.3 to make it easier for a reader to locate important information governing the Commission's processing of FOIA requests.

29 CFR 2702.4

Under FOIA, each agency must make available for public inspection and copying (without the need for a formal FOIA request) the following items: final opinions and orders issued in the adjudication of administrative cases; policy statements and interpretations that have been adopted by the agency but which were not published in the **Federal Register**; administrative staff manuals that affect members of the public; and records processed and disclosed in response to a FOIA request which the agency has determined have or will become the subject of similar requests for substantially the same records (often referred to as ''FOIA-processed records''). *See* 5 U.S.C. 552(a)(2). Agencies generally provide access to these records in what is called a reading room, which is open to the public. Records in all four categories must be indexed in order to facilitate the public's access to them. The index must be published and distributed at least quarterly unless an agency determines by order published in the **Federal Register** that the publication would be unnecessary and impracticable.

In addition to an on-site reading room, the E–FOIA amendments of 1996 require each agency to make the records created by it on or after November 1, 1996, in all four categories described above, available to the public by electronic means. 5 U.S.C. 552(a)(2). The index of the FOIA-processed records must be made available electronically. Electronic reading rooms were to be operational by November 1, 1997.

The Commission is revising 29 CFR 2702.4 to refer to a Commission on-site reading room, to state that the four categories of documents as described in 5 U.S.C. 552(a)(2) of the FOIA may be made available at that reading room, and to refer to the Commission's electronic reading room available on its Web site at *http://www.fmshrc.gov.* The commenter stated that the Commission should clarify what information is available to the public. The Commission's rule generally tracks the statutory language in the FOIA. In addition, a more detailed listing of materials available in the Commission's reading rooms is provided in the Commission's FOIA Guide, also available on its Web site.

29 CFR 2702.6

The fees the Commission charges for searching, reviewing, and duplicating records pursuant to FOIA requests are set forth in 29 CFR 2702.6. In its submission, the commenter generally objects to any increase in fees that the Commission charges in responding to FOIA requests. However, the Commission believes it is appropriate to update its fee schedule, which was last revised in 1997, to ensure that the fees represent ''reasonable standard charges'' as required by FOIA. 5 U.S.C. 552(a)(4)(A)(ii). Revisions are also necessary to comply with guidelines promulgated by the Office of Management and Budget, Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012, 10018, Mar. 27, 1987 (''OMB Guidance''), which states that an agency must charge fees that recoup the full allowable direct costs that it incurs.

Accordingly, the Commission is adopting its proposal to revise its search and review fees to charge at the salary rates (basic pay plus 16 percent) of the employees making the search or providing the review. This is consistent with the language of the OMB Guidance. The Commission is adding to the rule the address of its Web site, where the specific hourly rates will be listed.

The Commission's current fee regulation also states that if search charges are likely to be more than $25, the Commission shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. 29 CFR 2704.6(a). This language originated in the Commission's 1988 interim FOIA rule, 53 FR 737, 739, Jan. 12, 1988, published almost twenty years ago. As was proposed, the Commission is increasing the $25 figure to $50.

In addition, the Commission is revising the statement in the current rule that ''[t]ime spent on unsuccessful searches shall be fully charged.'' 29 CFR 2702.6(a). The term ''unsuccessful'' is ambiguous and requires clarification. Pursuant to the OMB Guidance, 29 CFR 2702.6(a) is revised, as proposed, to clarify that fees shall be charged even if the documents are not located or if they are located but withheld on the basis of an exemption. Also, the reference in 29 CFR 2702.6(b) to the Executive Director is being changed to the Chief FOIA Officer for the reasons stated in the discussion above regarding revisions to 29 CFR 2702.3.

The Commission also is adding language in paragraph (c) which states that the Commission shall charge the actual cost of production, including operator time, for copies prepared by computer (such as tapes or printouts). This is consistent with language in the OMB Guidance and replaces the current language in paragraph (a) stating that the fee for computer printouts shall be $.40 per page. With regard to a comment concerning the cost of computer printouts, the Commission notes that it is not increasing the cost of computer printouts, which is presently $.40, but imposing the actual cost of producing a

computer copy, which it anticipates will be close to the $.15 amount charged for other copies. The Commission is moving language about fees for computer copies to paragraph (c) (duplicating fee) from paragraph (a) (search fee) because language addressing fees for computer copies is more similar to that describing a duplicating fee than a search fee. As proposed, the Commission also is adding language to paragraph (c) stating that for other methods of reproduction or duplication, it will charge the actual direct costs of producing the documents. This is also consistent with the OMB Guidance.

29 CFR 2702.7

The Commission is revising paragraph (a), as proposed. That provision states that fees of less than $10 shall be waived, essentially because it is not cost effective for the Commission to collect sums smaller than $10. 29 CFR 2702.7(a). This figure was first utilized in an interim FOIA rule published by the Commission in 1988. 53 FR 737, 739, Jan. 12, 1988. Taking inflation into account, the Commission is amending this figure to $20.

The Commission also is revising paragraph (b)(2), as proposed, to reflect that the Chief FOIA Officer, rather than the Executive Director, shall decide whether a waiver or reduction of fees is warranted. Similarly, the Commission is amending the rule to state that the Commission, rather than the Chairman, decides appeals regarding fee issues. This is consistent with the amendment of the language of 29 CFR 2702.3 requiring that an appeal from the Chief FOIA Officer's initial substantive determination shall be decided by the full Commission, rather than the Chairman.

III. Matters of Regulatory Procedure

The Commission is an independent regulatory agency, and as such, is not subject to the requirement of Executive Order 12866, Sept. 30, 1993; 58 FR 51735, Oct. 4, 1993.

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that these rules will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because these rules do not contain any information collection requirements that require the approval of the OMB.

List of Subjects in 29 CFR Part 2702

Freedom of information.

■ For the reasons stated in the preamble, the Federal Mine Safety and Health Review Commission is amending 29 CFR part 2702 as follows:

PART 2702—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 2702 continues to read as follows:

Authority: Sec. 113, Federal Mine Safety and Health Act of 1977, Pub. L. 95–164 (30 U.S.C. 801 et seq.); 5 U.S.C. 552; E.O. 13392, 70 FR 75373.

■ 2. Revise § 2702.1 to read as follows:

§ 2702.1 Purpose and scope.

The Federal Mine Safety and Health Review Commission (Commission) is an independent agency with authority to adjudicate contests between the Mine Safety and Health Administration of the U.S. Department of Labor and private parties, as well as certain disputes solely between private parties, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* The purpose of the rules in this part is to establish procedures for implementing the Freedom of Information Act, 5 U.S.C. 552, as amended by the Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104–231, 110 Stat. 3048; to provide guidance for those seeking to obtain information from the Commission; and to make all information subject to disclosure pursuant to this subchapter and FOIA, and not otherwise protected by law, readily available to the public. Additional guidance on obtaining information from the Commission can be found in the document entitled ''FOIA Guide,'' which is available upon request from the Commission and on the Commission's Web site (*http://www.fmshrc.gov*). These rules apply only to records or information of the Commission or in the Commission's custody. This part does not affect discovery in adversary proceedings before the Commission. Discovery is governed by the Commission's Rules of Procedure in 29 CFR part 2700.

■ 3. In § 2702.3, add paragraph headings to paragraphs (a) through (g), remove the first sentence of paragraph (a) and add two sentences in its place, revise paragraph (b), and revise paragraph (f) to read as follows:

§ 2702.3 Requests for information.

(a) *Content of request.* All requests for information should be in writing and should be mailed or delivered to Chief FOIA Officer, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001–2021. See FOIA Guide for more information on the submission of requests, including requests submitted electronically or by facsimile. * * *

(b) *Response to request.* The Chief FOIA Officer will determine whether to comply with the request. Except in unusual circumstances, as described in paragraph (c) of this section, the determination will be made within 20 working days of receipt. Appeals of adverse decisions may be made, in writing, to the Chairman of the Commission, at the same address, within 20 working days of the decision. The sitting Commissioners, by majority vote, will decide appeals within 20 working days after receipt. In the event of a tie vote of those Commissioners, the Chief FOIA Officer's initial determination will be deemed approved by the Commission. Records to be disclosed shall be provided with the initial letter setting forth the determination as to the request or shall be sent as soon as possible thereafter.

(c) *Processing of request.* * * *

(d) *Additional time to respond to request.* * * *

(e) *Expedited processing of request.* * * *

(f) *Denial of request.* In denying a request for records, in whole or in part, the Commission shall state the reason for the denial; set forth the name and title or position of the person responsible for the denial of the request; make a reasonable effort to estimate the volume of the records denied; and provide this estimate to the person making the request, unless providing such an estimate would harm an interest protected by the exemption pursuant to which the request is denied. If an appeal is denied, the Commission's notice of denial shall inform the requester of the right to obtain judicial review of the Commission's action under 5 U.S.C. 552(a)(4)(B)–(G).

(g) *Partial response to request.* * * *

■ 4. Revise § 2702.4, to read as follows:

§ 2702.4 Materials available.

(a) *FOIA Reading Room.* Materials which may be made publicly available for inspection and copying at the Commission's on-site FOIA Reading Room, 601 New Jersey Ave., NW., Suite 9500, Washington, DC, include, but are not limited to:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, which have been released to any person under this subpart and which, because of the nature of their subject matter, the Commission has determined have become or are likely to become the subject of subsequent requests for substantially the same records; and

(5) A general index of records referred to under this paragraph (a).

(b) *E–FOIA Reading Room.* Materials created on or after November 1, 1996, under paragraphs (a)(1) through (5) of this section may also be accessed electronically through the Commission's Web site at *http://www.fmshrc.gov.*

■ 5. Revise § 2702.6 to read as follows:

§ 2702.6 Fee schedule.

(a) *Search fee.* The fee for searching for information and records shall be the salary rate (that is, basic pay plus 16%) of the employee making the search. This hourly rate is listed on the Commission's Web site at *http://www.fmshrc.gov.* Fees for searches of computerized records shall be the actual cost to the Commission, but shall not exceed $300 per hour. This fee includes machine time and that of the operator and clerical personnel. If search charges are likely to exceed $50, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Fees may be charged even if the documents are not located or if they are located but withheld on the basis of an exemption.

(b) *Review fee.* The review fee shall be charged for the Chief FOIA Officer's initial examination of documents located in response to a request in order to determine if they may be withheld from disclosure, and for the deletion of portions that are exempt from disclosure, but shall not be charged for review by the Chairman or the Commissioners. See § 2702.3. The review fee is the salary rate (that is, basic pay plus 16%) of the Chief FOIA Officer or the employee designated to perform the review. This hourly rate is listed on the Commission's Web site at *http://www.fmshrc.gov.*

(c) *Duplicating fee.* The copy fee for each page of paper up to 8½″ × 14″ shall be $.15 per copy per page. Any private sector services required, including the fee for copying photographs and nonstandard documents, will be the actual direct cost incurred by the Commission. For copies prepared by computer, such as tapes or printouts, the Commission shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, the Commission will charge the actual direct costs of producing the document(s). If duplication charges are likely to exceed $50, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated.

■ 6. In § 2702.7, revise paragraph (a) and paragraph (b)(2) to read as follows:

§ 2702.7 No fees; waiver or reduction of fees.

(a) No fees shall be charged to any requester, including commercial use requesters, if the anticipated cost of processing and collecting the fee would be equal or greater than the fee itself. Accordingly, the Commission has determined that fees of less than $20 shall be waived.

(b) * * *

(2) The Chief FOIA Officer, upon request, shall determine whether a waiver or reduction of fees is warranted. Requests shall be made concurrently with requests for information under § 2702.3. In accordance with the procedures set forth in § 2702.3, appeals of adverse decisions may be made to the Commission within 5 working days. Determination of appeals will be made by the Commission within 10 working days of receipt.

Dated: December 14, 2007.

Michael F. Duffy,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. E7–24599 Filed 12–18–07; 8:45 am]

BILLING CODE 6735–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AB52

Sealing of Abandoned Areas

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; limited reopening of comment period; availability; notice of public hearing; close of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is reopening the comment period for the Emergency Temporary Standard (ETS) on sealing of abandoned areas of underground coal mines to provide commenters time to review and submit comments on the U.S. Army Corps of Engineers' Draft Report ''CFD [Computational Fluid Dynamics] Study and Structural Analysis of the Sago Mine Accident'' (Report).

DATES: All comments on the ETS published at 72 FR 28796, May 22, 2007, and other appropriate data must be received by midnight, January 18, 2008, Eastern Standard Time. MSHA will hold a public hearing on January 15, 2008. Details about the public hearing are addressed in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Comments must be clearly identified and may be submitted by any of the following methods:

1. *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Electronic mail: zzMSHA-Comments@dol.gov.* Include ''RIN 1219–AB52'' in the subject line of the message.

3. *Telefax:* (202) 693–9441. Include ''RIN 1219–AB52'' in the subject.

4. *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939.

5. *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939. Sign in at the receptionist's desk on the 21st floor.

6. *Docket:* Comments can be accessed electronically at *http://www.msha.gov* under the ''Rules and Regs'' link. MSHA will post all comments on the Internet without change, including any personal information provided. Comments may also be reviewed at the Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a listserve that enables subscribers to receive e-mail notification when rulemaking documents are published in the **Federal Register**. To subscribe to the listserve, go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. Ms. Silvey can be reached at *Silvey.Patricia@dol.gov* (Internet E-mail), (202) 693–9440 (voice), or (202)

693–9441 (facsimile). This notice is available on the Internet at *http://www.msha.gov/REGSINFO.HTM.*

SUPPLEMENTARY INFORMATION:

I. Background

MSHA issued an Emergency Temporary Standard (ETS) on May 22, 2007, (72 FR 28796), and extended the comment period to September 17, 2007. MSHA is seeking additional public comment on the Report. The Report summarizes the preliminary results of a study performed under contract (MSHA NO 1A–AR 6000012) for MSHA's Technical Support Directorate (Technical Support) by the U.S. Army Corps of Engineers (USACE). The USACE conducted research and testing from August 2006 to April 2007. The USACE provided a draft of the Report of their findings to Technical Support in May of 2007. The Report details the USACE's efforts to mathematically model the methane explosion at the Sago Mine and potentially establish the seal overpressures. The Report was not finalized.

MSHA is expressly limiting comments to those which address the Report as it relates to the regulatory provisions in the ETS. The Report is available on the Internet at: *http://www.msha.gov/CFDSagoReport.pdf.* This notice allows commenters sufficient time to review the Report and submit comments. All comments and other appropriate data must be received by midnight, January 18, 2008, Eastern Standard Time.

II. Public Hearing

In addition to accepting written comments, MSHA will hold a public hearing on the Report. The hearing will begin at 9 a.m. and will end after the last speaker speaks, on the following date and location:

Date	Location	Phone
January 15, 2008 ..	Mine Safety and Health Administration, 1100 Wilson Blvd., 25th Floor, Conference Room, Arlington, Virginia 22209.	202–693–9440

Requests to speak should be made at least 5 days prior to the hearing date. Requests to speak may be made by telephone (202–693–9440), facsimile (202–693–9441), or mail (MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939). Any unallocated time at the end of the hearing will be made available to persons making same-day requests to speak.

The hearing will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations to the hearing panel. Speakers will be assigned in the order in which their requests are received. Speakers and attendees may present written information or other articles to the MSHA panel for inclusion in the rulemaking record.

The hearing will be conducted in an informal manner. Formal rules of evidence and cross examination will not apply. The presiding official may limit presentations and exclude irrelevant or unduly repetitious material and questions to ensure the orderly progress of the hearing. The hearing panelists may ask questions of speakers. Speakers and other attendees may present written information to the MSHA panel for inclusion in the rulemaking record.

MSHA will make the transcript available and will also post the transcript of the hearing on MSHA's Web site at *http://www.msha.gov*, and include it in the rulemaking record.

MSHA will accept comments and data for the record from any interested party, including those not presenting oral statements at the hearing.

Dated: December 17, 2007.

Richard E. Stickler,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 07–6128 Filed 12–17–07; 2:31 pm]

BILLING CODE 4510–43–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2007–OS–0117; RIN 0790–AH70]

32 CFR Part 57

Provision of Early Intervention and Special Education Services to Eligible DoD Dependents

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD) school systems [DoD Dependents Schools (DoDDS) and the Defense Dependents Elementary and Secondary Schools (DDESS)] are required by law to provide services and safeguards to children with disabilities consistent with the ''Individuals With Disabilities Education Act'' (IDEA). This will bring the DoDDS and DDESS under a single rule codified at 32 CFR part 57. The rule integrates previous DoD policy memoranda.

DATES: *Effective Date:* This rule is effective December 19, 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Posante, 703–602–4949 x114.

SUPPLEMENTARY INFORMATION: On June 10, 2004 (69 FR 32662), the Department of Defense published an interim final rule. No comments were received. The final rule had not been published sooner due to legal constraints. This rule adopts the rule as published.

See 20 U.S.C. 927(c) (concerning DoDDS) and 10 U.S.C. 2164(f) (concerning DDESS). This final rule updates and amends the DoD implementation of the IDEA within the DoD school systems, as follows: Requires the DoD Education Activity to report annually on the rate special education students (a) participate in system-wide or alternative testing, (b) are disciplined, (c) are suspended, or (d) are expelled; and requires the DoD Education Activity to compare these rates with students who are not disabled; clarifies requirements for three year re-evaluation of special education students; requires individualized education programs (IEPs) to consider special circumstances in the IEP; strengthens the requirement for the school system notice to parents about change of placement or refusal for change of placement; strengthens the protections for students with a disability when facing disciplinary action that might result in suspension or expulsion; requires the schools to provide special education in an interim alternative educational setting for special education students who have been suspended or expelled from school; strengthens requirements for documenting behavioral intervention when disciplining special education students; clarifies the students who must be treated as students with a disability when considering disciplinary action that may result in suspension or expulsion; allows the use of paraprofessionals and assistants (e.g., Certified Occupational Therapy Assistants, Physical Therapy Assistants) to assist in the provision of early

intervention services and special education; requires the schools to advise students of their rights one year prior to the age of majority; sets the age of majority for students in the DoDDS as 18, and for students in the DDESS as the age of majority for the State in which the DDESS is located; consolidates the former National Advisory Panel and the Domestic Advisory Panel into one and requires the majority of advisory panel members be persons with disabilities or the parents of children with disabilities.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR part 57 is not a significant regulatory action. The rule does not:

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule pertains only to the provision of special education and early intervention by Department of Defense entities not by any other entity.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that this rule does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Federalism (Executive Order 13132)

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 57

Education of individuals with disabilities, Elementary and secondary education, Government employees, Military personnel.

PART 57—PROVISION OF EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES TO ELIGIBLE DOD DEPENDENTS

■ Accordingly, the interim rule revising 32 CFR part 57 published at 69 FR 32662 on June 10, 2004, is adopted as a final rule without change.

Dated: December 11, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E7–24353 Filed 12–18–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2007–OS–0041; RIN 0790–AI21]

32 CFR Part 285

DoD Freedom of Information Act (FOIA) Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is updating current policies and procedures reflecting the DoD FOIA Program as prescribed by Executive Order 13392. The changes will ensure appropriate agency disclosure of information and offer consistency with the goals of section 552 of title 5, United States Code.

DATES: *Effective Date:* This rule is effective December 19, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. James Hogan, 703–696–4495.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

On June 15, 2007, the Department of Defense published a proposed rule (72 FR 33180). No comments were received.

It has been certified that 32 CFR part 285 does not:

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Section 202, Pub. L. 104–4, ''Unfunded Mandates Reform Act''

It has been certified that 32 CFR part 285 does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that 32 CFR part 285 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 285 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

It has been certified that 32 CFR part 285 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 285

Freedom of information.

Accordingly, 32 CFR part 285 is revised as follows.

PART 285—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Sec

285.1 Purpose.

285.2 Applicability and scope.
285.3 Policy.
285.4 Responsibilities.
285.5 Information requirements.

Authority: 5 U.S.C. 552.

§ 285.1 Purpose.

This part:

(a) Updates policies and responsibilities for implementing the DoD FOIA Program in accordance with 5 U.S.C. 552 (commonly known as the ''FOIA'').

(b) Continues to authorize 32 CFR part 286 to implement the FOIA Program.

(c) Implements E.O. 13392 within the Department of Defense.

(d) Continues to delegate authorities and responsibilities for the effective administration of the FOIA Program consistent with DoD Directive 5105.53 [1].

§ 285.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the ''DoD Components'').

(b) National Security Agency/Central Security Service records, unless the records are exempt according to 50 U.S.C. 402.

(c) Defense Intelligence Agency, National Reconnaissance Office, and National Geospatial-Intelligence Agency records, unless the records are exempt according to 50 U.S.C. 403–5e, 10 U.S.C. 424 and 455, or other applicable law.

§ 295.3 Policy.

It is DoD policy to:

(a) Promote public trust by making the maximum amount of information available to the public, in both hard copy and electronic formats, on the operation and activities of the Department of Defense, consistent with the DoD responsibility to protect national security and other sensitive DoD information.

(b) Allow a requester to obtain records from the Department of Defense that are available through other public information services without invoking the FOIA.

(c) Make available, according to the procedures established by DoD 32 CFR part 286, DoD records requested by a member of the public who explicitly or implicitly cites the FOIA.

(d) Answer promptly all other requests for DoD information and records under established procedures and practices.

(e) Release DoD records to the public unless those records are exempt from disclosure as outlined in 5 U.S.C. 552.

(f) Process requests by individuals for access to records about themselves contained in a Privacy Act system of records according to the procedures set forth in 32 CFR part 310 and this part, as amplified by DoD 32 CFR part 286.

(g) Provide FOIA requesters with citizen-centered ways to learn about the FOIA process, about DoD records that are publicly available, and about the status of a FOIA request and appropriate information about the DoD response.

§ 285.4 Responsibilities.

(a) The Director, Administration and Management (DA&M) shall:

(1) Serve as the DoD Chief FOIA Officer in accordance with E.O. 13392.

(2) Direct and oversee the DoD FOIA Program to ensure compliance with the policies and procedures that govern administration of the program.

(3) Designate the FOIA Public Liaisons for the Department of Defense in accordance E.O. 13392. The FOIA Public Liaisons for OSD, the Office of the Chairman of the Joint Chiefs of Staff, and the Combatant Commands shall be appointed from the Defense Freedom of Information Policy Office (DFOIPO).

(4) Prepare and submit to the Attorney General the DoD Annual Freedom of Information Act Report as required by 5 U.S.C. 552 and other reports as required by E.O. 13392.

(5) Serve as the appellate authority for appeals to the decisions of the respective Initial Denial Authorities within OSD, the Office of the Chairman of the Joint Chiefs of Staff, the DoD Field Activities (listed in DoD 32 CFR part 286), and the Combatant Commands. The DA&M may delegate this responsibility to an appropriate member of the DA&M or Washington Headquarters Services (WHS) staff.

(6) Prepare and maintain a DoD issuance and other discretionary information to ensure timely and reasonably uniform implementation of the FOIA in the Department of Defense.

(b) The Director, WHS, under the authority, direction, and control of the DA&M, shall administer the FOIA Program, inclusive of training, for OSD and the Office of the Chairman of the Joint Chiefs of Staff.

(c) The General Counsel of the Department of Defense shall:

(1) Provide uniformity in the legal interpretation of this part.

(2) Ensure affected OSD legal advisors, public affairs officers, and legislative affairs officers are aware of releases through litigation channels that may be of significant public, media, or Congressional interest or of interest to senior DoD officials.

(3) Establish procedures to centralize processing of FOIA litigation documents when deemed necessary.

(d) The Under Secretary of Defense for Intelligence shall establish uniform procedures regarding the declassification of national security information made pursuant to requests invoking the FOIA.

(e) The Heads of the DoD Components shall:

(1) Internally administer the DoD FOIA Program; publish any instructions necessary for the administration of this part within their Components that are not prescribed by this part or by other DA&M issuances in the **Federal Register**.

(2) Serve as, or appoint another Component official as, the FOIA appellate authority for the Component.

(3) Establish one or more FOIA Requester Service Centers as prescribed by E.O. 13392.

(4) Submit names of personnel to the DA&M for designation as FOIA Public Liaisons.

(5) Ensure their respective chains of command, affected legal advisors, public affairs officers, and legislative affairs officers are aware of releases through the FOIA, inclusive of releases through litigation channels, that may be of significant public, media, or Congressional interest or of interest to senior DoD officials.

(6) Conduct training on the provisions of this part, 5 U.S.C. 552, and DoD 32 CFR part 286 for officials and employees who implement the FOIA.

(7) Submit to DFOIPO inputs to the DoD FOIA Annual Report prescribed in DoD 32 CFR part 286 and E.O. 13392.

(8) Make the records specified in 5 U.S.C. 552(a)(2) unless such records are published and copies are offered for sale, available for public inspection and copying in an appropriate facility or facilities according to rules published in the **Federal Register**. These records shall be made available to the public in both hard copy and electronic formats.

(9) Maintain and make current indices of all records available for public inspection and copying as required by 5 U.S.C. 552(a)(2).

§ 285.5 Information requirements.

Reporting requirements are in DoD 32 CFR part 286 and have been assigned Report Control Symbol DD–DA&M(A)1365 in accordance with DoD 8910.1–M.

[1] Copies of DoD Directives, Instructions, and Publications may be obtained at *http://www.dtic.mil/whs/directives/*.

Dated: December 11, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E7–24355 Filed 12–18–07; 8:45 am]

BILLING CODE 5001–06–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 382

[Docket No. 2006–1 CRB DSTRA]

Adjustment of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges are publishing final regulations setting the royalty rates and terms for the use of sound recordings and the making of ephemeral phonorecords by preexisting subscription services for the period 2008–2012.

DATES: *Effective Date:* January 1, 2008.

Applicability Date: The regulations apply to the license period January 1, 2008, through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney-Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 106(6) of the Copyright Act, title 17 of the United States Code, gives a copyright owner of sound recordings an exclusive right to perform the copyrighted works publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain non-interactive digital audio services, including preexisting subscription services, to make digital transmissions of a sound recording under a compulsory license, provided the services pay a reasonable royalty fee and comply with the terms of the license. Moreover, these services may make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act. The terms and rates for this statutory license have been adjusted periodically by the Librarian of Congress and appear in 37 CFR Part 260. However, the Copyright Royalty and Distribution Reform Act of 2004, Public Law 108–419, transferred jurisdiction over these rates and terms to the Copyright Royalty Judges (''Judges''). 17 U.S.C. 801(b)(1). The current rates applicable to preexisting subscription services expire on December 31, 2007.

On January 9, 2006, pursuant to 17 U.S.C. 803(b)(1)(A)(i)(V), the Copyright Royalty Judges published a notice in the **Federal Register** announcing the commencement of the proceeding to determine rates and terms of royalty payments under sections 114 and 112 for the activities of preexisting subscription services [1] and requesting interested parties to submit their petitions to participate. 71 FR 1455 (January 9, 2006). Petitions to participate in the proceeding were received from SoundExchange, Inc. and Music Choice.

The Judges set the schedule for the proceeding, including the dates for the filing of written direct statements as well as the dates for oral testimony. Subsequent to the filing of their written direct statements, but prior to the oral presentation of witnesses, SoundExchange and Music Choice informed the Judges that they had reached a full settlement and stated that the settlement agreement would be submitted to the Judges ''for approval and adoption pursuant to 17 U.S.C. 801(b)(7)(A).'' Notice of Settlement at 1–2 (filed June 12, 2007). The settlement agreement, including the proposed rates and terms, was filed on October 12, 2007.

Section 801(b)(7)(A) allows for the adoption of rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided they are submitted to the Copyright Royalty Judges for approval. This section provides that in such event:

> (i) The Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and
>
> (ii) The Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(7)(A). Accordingly, on October 31, 2007, the Judges published a Notice of Proposed Rulemaking (''NPRM'') requesting comment on the proposed rates and terms, with certain modifications, submitted to the Judges. 72 FR 61585. Comments were due by November 30, 2007. In response to the NPRM, the Judges received only one comment, which was submitted by SoundExchange, supporting the adoption of the proposed regulations.

Having received no objections from a party that would be bound by the proposed rates and terms and that would be willing to participate in further proceedings, the Copyright Royalty Judges, by this notice, are adopting final regulations which set the rates and terms for the activities of preexisting subscription services under sections 114 and 112 for the license period 2008–2012.[2]

Effective Date

The final regulations adopted today are effective on January 1, 2008, which is less than 30 days from publication of the notice of the final rule. Section 553 of the Administrative Procedure Act, 5 U.S.C., provides that final rules shall not be effective less than 30 days from their publication unless, *inter alia*, the agency finds good cause, a description of which must be published with the rule. 5 U.S.C. 553(d)(3). Good cause exists in this case.

The final rules adopted today are the product of negotiations between representatives of the copyright owners of sound recordings and the preexisting subscription services performing those sound recordings. All interested parties affected by these rates and terms already have had the opportunity to participate in the process, and any additional interested parties were afforded further opportunity to participate when the Copyright Royalty Judges published them as proposed rules in the **Federal**

[1] The Notice also commenced and requested Petitions to Participate for the proceeding to determine rates and terms for preexisting satellite digital audio radio services (''SDARS''), as required under section 804(b)(3)(B). Unlike the preexisting subscription services, the SDARS did not reach a settlement regarding rates and terms governing their activities under sections 112 and 114 and proceeded to a full hearing before the Judges. Today's final rule applies only to preexisting subscription services.

[2] As noted in the NPRM, Part 382 will also contain the rates and terms governing the SDARS' activities under sections 112 and 114. *See* 72 FR 61586 n.1. Consequently, the heading for Part 382 is revised to reflect the inclusion of those rates and terms. In addition, the rates and terms adopted today will appear as Subpart A while the rates and terms for the SDARS will appear in Subpart B. The SDARS' rates and terms will be published in a separate document.

Register on October 31, 2007. 72 FR 61585. The parties who negotiated the final rules have the expectation that they will become effective on January 1, 2008. Even those parties affected by the rules who did not participate in their negotiation are aware that the current rates applicable to preexisting subscription services expire on December 31, 2007, with the next license period to begin on January 1, 2008. See 72 FR 61586 (October 31, 2007).

Although the notice of settlement was filed in June 2007, the settlement, including proposed rates and terms, was not submitted to the Judges for adoption and approval until October. The proposed rates and terms then were published promptly for comment, affording interested parties an appropriate period in which to submit comments and/or objections. Final regulations could not be adopted until after the expiration of the comment deadline, which was November 30.

Because of these circumstances, and because no parties affected by these rules are prejudiced, good cause exists that they become effective less than 30 days from date of publication of this Notice.

List of Subjects in 37 CFR Part 382

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Final Regulations

■ For the reasons set forth in the preamble, the Copyright Royalty Judges are adding part 382 to Chapter III of title 37 of the Code of Federal Regulations to read as follows:

PART 382—RATES AND TERMS FOR DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND THE REPRODUCTION OF EPHEMERAL RECORDINGS BY PREEXISTING SUBSCRIPTION SERVICES AND PREEXISTING SATELLITE DIGITAL AUDIO RADIO SERVICES

Subpart A—Preexisting Subscription Services

Sec.
382.1 General.
382.2 Royalty fees for the digital performance of sound recordings and the making of ephemeral phonorecords by preexisting subscription services.
382.3 Terms for making payment of royalty fees.
382.4 Confidential information and statements of account.
382.5 Verification of statements of account.
382.6 Verification of royalty payments.
382.7 Unknown copyright owners.

Subpart B—[Reserved]

Authority: 17 U.S.C. 112(e), 114 and 801(b)(1).

Subpart A—Preexisting Subscription Services

§ 382.1 General.

(a) This subpart establishes rates and terms of royalty payments for the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 114(d)(2), and the making of ephemeral phonorecords in connection with the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 112(e).

(b) Upon compliance with 17 U.S.C. 114 and the terms and rates of this subpart, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 114(d)(2).

(c) Upon compliance with 17 U.S.C. 112(e) and the terms and rates of this subpart, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 112(e) without limit to the number of ephemeral phonorecords made.

(d) For the purposes of this subpart, *Licensee* means any preexisting subscription service as defined in 17 U.S.C. 114(j)(11).

§ 382.2 Royalty fees for the digital performance of sound recordings and the making of ephemeral phonorecords by preexisting subscription services.

(a) Commencing January 1, 2008, and continuing through December 31, 2011, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.25% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(b) Commencing January 1, 2012, and continuing through December 31, 2012, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.5% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(c) Each Licensee making digital performances of sound recordings pursuant to 17 U.S.C. 114(d)(2) and ephemeral phonorecords pursuant to 17 U.S.C. 112(e) shall make an advance payment of $100,000 per year, payable no later than January 20th of each year. The annual advance payment shall be nonrefundable, but the royalties due and payable for a given year or any month therein under paragraphs (a) and (b) of this section shall be recoupable against the annual advance payment for such year; Provided, however, that any unused annual advance payment for a given year shall not carry over into a subsequent year.

(d) A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment received after the due date. Late fees shall accrue from the due date until payment is received.

(e)(1) For purposes of this section, *gross revenues* shall mean all monies derived from the operation of the programming service of the Licensee and shall be comprised of the following:

(i) Monies received by Licensee from Licensee's carriers and directly from residential U.S. subscribers for Licensee's programming service;

(ii) Licensee's advertising revenues (as billed), or other monies received from sponsors, if any, less advertising agency commissions not to exceed 15% of those fees incurred to a recognized advertising agency not owned or controlled by Licensee;

(iii) Monies received for the provision of time on the programming service to any third party;

(iv) Monies received from the sale of time to providers of paid programming such as infomercials;

(v) Where merchandise, service, or anything of value is received by Licensee in lieu of cash consideration for the use of Licensee's programming service, the fair market value thereof or Licensee's prevailing published rate, whichever is less;

(vi) Monies or other consideration received by Licensee from Licensee's carriers, but not including monies received by Licensee's carriers from others and not accounted for by Licensee's carriers to Licensee, for the provision of hardware by anyone and used in connection with the programming service;

(vii) Monies or other consideration received for any references to or inclusion of any product or service on the programming service; and

(viii) Bad debts recovered regarding paragraphs (e)(1)(i) through (vii) of this section.

(2) Gross revenues shall include such payments as set forth in paragraphs (e)(1)(i) through (viii) of this section to which Licensee is entitled but which are paid to a parent, subsidiary, division, or affiliate of Licensee, in lieu of payment

to Licensee but not including payments to Licensee's carriers for the programming service. Licensee shall be allowed a deduction from ''gross revenues'' as defined in paragraph (e)(1) of this section for affiliate revenue returned during the reporting period and for bad debts actually written off during reporting period.

(f) During any given payment period, the value of each performance of each digital sound recording shall be the same.

§ 382.3 Terms for making payment of royalty fees.

(a) *Payment to the Collective.* All royalty payments shall be made to the Collective designated for the collection and distribution of royalties for the 2008–2012 time period, which shall be SoundExchange.

(b) *Timing of payment.* Payment shall be made on the forty-fifth day after the end of each month for that month, commencing with the month succeeding the month in which the royalty fees are set.

(c) *Distribution of royalties.* (1) The Collective shall promptly distribute royalties received from Licensees to copyright owners and performers, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those copyright owners, performers, or their designated agents who provide the Collective with such information as is necessary to identify the correct recipient. The Collective shall distribute royalties on a basis that values all performances by a Licensee equally based upon the information provided under the reports of use requirements for Licensees contained in § 370.2 of this chapter.

(2) If the Collective is unable to locate a copyright owner or performer entitled to a distribution of royalties under paragraph (c)(1) of this section within 3 years from the date of payment by a Licensee, such distribution may first be applied to the costs directly attributable to the administration of that distribution. The foregoing shall apply notwithstanding the common law or statutes of any State.

§ 382.4 Confidential information and statements of account.

(a) For purposes of this subpart, confidential information shall include statements of account and any information pertaining to the statements of account designated as confidential by the nonexempt preexisting subscription service filing the statement. Confidential information shall also include any information so designated in a confidentiality agreement which has been duly executed between a nonexempt preexisting subscription service and an interested party, or between one or more interested parties; Provided that all such information shall be made available, for the verification proceedings provided for in §§ 382.5 and 382.6.

(b) Nonexempt preexisting subscription services shall submit monthly statements of account on a form provided by the Collective and the monthly royalty payments.

(c) A statement of account shall include only such information as is necessary to verify the accompanying royalty payment. Additional information beyond that which is sufficient to verify the calculation of the royalty fees shall not be included on the statement of account.

(d) Access to the confidential information pertaining to the royalty payments shall be limited to:

(1) Those employees, agents, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related hereto, who are not also employees or officers of a sound recording copyright owner or performing artist, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records; and

(2) An independent and qualified auditor who is not an employee or officer of a sound recording copyright owner or performing artist, but is authorized to act on behalf of the interested copyright owners with respect to the verification of the royalty payments.

(3) Copyright owners and performers whose works have been used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114(f) by the Licensee whose Confidential Information is being supplied, or agents thereof, subject to an appropriate confidentiality agreement, provided that the sole confidential information that may be shared pursuant to this paragraph (d)(3) are the monthly statements of account that accompany royalty payments.

(e) The Collective or any person identified in paragraph (d) of this section shall implement procedures to safeguard all confidential financial and business information, including, but not limited to royalty payments, submitted as part of the statements of account, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the Collective or such person.

(f) Books and records relating to the payment of the license fees shall be kept in accordance with generally accepted accounting principles for a period of three years. These records shall include, but are not limited to, the statements of account, records documenting an interested party's share of the royalty fees, and the records pertaining to the administration of the collection process and the further distribution of the royalty fees to those interested parties entitled to receive such fees.

§ 382.5 Verification of statements of account.

(a) *General.* This section prescribes general rules pertaining to the verification of the statements of account by interested parties according to terms promulgated by the Copyright Royalty Board.

(b) *Frequency of verification.* Interested parties may conduct a single audit of a nonexempt preexisting subscription service during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit a particular service with the Copyright Royalty Board, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of intent to audit shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more; in which case, the service which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those copyright owners who are entitled to receive royalty fees pursuant to 17

U.S.C. 114(g), their designated agents, or the Collective.

§ 382.6 Verification of royalty payments.

(a) *General.* This section prescribes general rules pertaining to the verification of the payment of royalty fees to those parties entitled to receive such fees, according to terms promulgated by the Copyright Royalty Board.

(b) *Frequency of verification.* Interested parties may conduct a single audit of the Collective during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit the entity making the royalty payment with the Copyright Royalty Board, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of interest shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The interested party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all interested parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more, in which case, the entity which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those who are entitled to receive royalty payments pursuant to 17 U.S.C. 114(g)(2), or their designated agents.

§ 382.7 Unknown copyright owners.

If the Collective is unable to identify or locate a copyright owner or performer who is entitled to receive a royalty distribution under this subpart, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of distribution. No claim to such distribution shall be valid after the expiration of the 3-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Subpart B—[Reserved]

Dated: December 14, 2007.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E7–24625 Filed 12–18–07; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–1057; FRL–8339–2]

Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION**. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective December 19, 2007. Objections and requests for hearings must be received on or before February 19, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–1057. To access the electronic docket, go to *http://www.regulations.go*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: See the table in this unit for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001

Pesticide/CFR Citation	Contact Person
Bifenazate, 180.572 Thiabendazole, 180.242 Thiophanate-methyl, 180.371	Andrea Conrath *conrath.andrea@epa.gov* (703) 308–9356
Chlorothalonil, 180.275 Myclobutanil, 180.443 Thiophanate-methyl, 180.371	Stacey Groce *groce.stacey@epa.gov* (703) 305–2505

Pesticide/CFR Citation	Contact Person
Hexythiazox, 180.448 Sulfentrazone, 180.498 Zeta-cypermethrin, 180.418	Andrew Ertman *ertman.andrew@epa.gov* (703) 308–9367
Mesotrione, 180.571 Tebuconazole, 180.474	Libby Pemberton *pemberton.libby@epa.gov* (703) 308–9364

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–1057 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 19, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–1057, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each pesticide listed. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), was establishing time-limited tolerances.

EPA established the tolerances because section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these pesticide chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and decided that the necessary tolerances under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and discussed in the final rules originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of section 408(l)(6) of FFDCA. Therefore, the time-limited tolerances are extended until the dates listed. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on the commodities after that date will not be unlawful, provided the residues are present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerances were in place at the time of the application, and the residues do not exceed the levels that were authorized by the tolerances. EPA will take action

to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on these pesticides indicate that the residues are not safe

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

1. *Bifenazate*. EPA has authorized under FIFRA section 18 the use of bifenazate on Timothy grass for control of Banks grass mite in Nevada. This regulation extends time-limited tolerances for combined residues of the miticide bifenazate (1-methylethyl 2-(4-methoxy[1,1'-biphenyl]-3-yl)hydrazinecarboxylate) and its metabolite, diazinecarboxylic acid (2-(4-methoxy-[1,1'-biphenyl]-3-yl, 1-methylethyl ester) in or on Timothy forage at 50 parts per million (ppm) and Timothy hay at 150 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2010. The document establishing time-limited tolerances originally published in the **Federal Register** of January 28, 2005 (70 FR 4032) (FRL–7696–2).

2. *Chlorothalonil*. EPA has authorized under FIFRA section 18 the use of chlorothalonil on ginseng for control of botrytis leaf, stem, and flower blight in Michigan and Wisconsin. This regulation extends a time-limited tolerance for combined residues of the fungicide chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile in or on ginseng, root at 0.1 ppm for an additional 1–year period. This tolerance will expire and is revoked on December 31, 2008. A time-limited tolerance was originally published in the **Federal Register** of December 12, 1997 (62 FR 65369) (FRL–5759–5).

3. *Hexythiazox*. EPA has authorized under FIFRA section 18 the use of hexythiazox on field corn for control of spider mites in Texas. This regulation extends time-limited tolerances for combined residues of the miticide hexythiazox (trans-5-(4-chlorophenyl)-N-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety in or on corn, field, grain at 0.05 ppm; and corn, field, forage and corn, field, stover at 2.0 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2010. The document establishing time-limited tolerances originally published in the **Federal Register** of November 10, 2004 (69 FR 65073) (FRL–7684–2).

4. *Mesotrione*. EPA has authorized under FIFRA section 18 the use of mesotrione on cranberry for control of broadleaf weeds in Oregon, Washington, and Wisconsin. This regulation extends a time-limited tolerance for residues of the herbicide mesotrione (2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione) in or on cranberry at 0.01 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2010. A time-limited tolerance was originally published in the **Federal Register** of September 30, 2004 (69 FR 58304) (FRL–7678–8).

5. *Myclobutanil*. EPA has authorized under FIFRA section 18 the use of myclobutanil on artichokes for control of powdery mildew in California. This regulation extends a time-limited tolerance for combined residues of the fungicide myclobutanil (alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile) and its alcohol metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound)), in or on artichoke, globe at 1.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2009. A time-limited tolerance was originally published in the **Federal Register** of September 16, 1998 (63 FR 49472) (FRL–6025–1).

6. *Myclobutanil*. EPA has authorized under FIFRA section 18 the use of myclobutanil on peppers for control of powdery mildew in California and New Mexico. This regulation extends a time-limited tolerance for combined residues of the fungicide myclobutanil (alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile) and its alcohol metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound)), in or on peppers at 1.0 ppm for an additional 1.5 –year period. This tolerance will expire and is revoked on December 31, 2009. A time-limited tolerance was originally published in the **Federal Register** of September 16, 1998 (63 FR 49472) (FRL–6025–1).

7. *Sulfentrazone*. EPA has authorized under FIFRA section 18 the use of sulfentrazone on flax for control of Kochia in North Dakota. This regulation extends a time-limited tolerance for combined residues of the herbicide sulfentrazone, N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl] methanesulfonamide and its metabolites 3-hydroxymethyl sulfentrazone (HMS) and 3-desmethyl sulfentrazone (DMS) in or on flax, seed at 0.2 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2010. A time-limited tolerance was originally published in the **Federal Register** of August 21, 2002 (67 FR 54111) (FRL–7191–5).

8. *Sulfentrazone*. EPA has authorized under FIFRA section 18 the use of sulfentrazone on strawberry for control of various broadleaf weeds in Iowa, Michigan, Ohio, Oregon, Washington, and Wisconsin. This regulation extends a time-limited tolerance for combined residues of the herbicide sulfentrazone, N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl] methanesulfonamide and its metabolites 3-hydroxymethyl sulfentrazone (HMS) and 3-desmethyl sulfentrazone (DMS) in or on strawberry at 0.60 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2010. A time-limited tolerance was originally published in the **Federal Register** of August 1, 2001 (66 FR 39651) (FRL–6793–1).

9. *Tebuconazole*. EPA has authorized under FIFRA section 18 the use of tebuconazole (alpha-[2-(4-chlorophenyl)-ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol) on garlic for control of garlic rust in California. This regulation extends a time-limited tolerance for residues of the fungicide tebuconazole (alpha-[2-(4-chlorophenyl)-ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol) in or on garlic at 0.1 ppm for an additional 1–year period. This tolerance will expire and is revoked on December 31, 2008. A time-limited tolerance was originally published in the **Federal Register** of May 26, 1999 (64 FR 28377) (FRL–6079–1).

10. *Thiabendazole*. EPA has authorized under FIFRA section 18 the use of thiabendazole on lentils for control of Ascochyta blight in Idaho, Montana, North Dakota, Oregon, and Washington. This regulation extends a time-limited tolerance for residues of the fungicide thiabendazole in or on lentil, seed at 0.1 ppm for an additional 1–year period. This tolerance will expire and is revoked on December 31, 2008. A time-limited tolerance was originally published in the **Federal Register** of February 25, 1998 (63 FR 9435) (FRL–5767–6).

11. *Thiophanate-methyl*. EPA has authorized under FIFRA section 18 the use of thiophanate-methyl on cotton for control of fusarium hardlock in Florida. This regulation extends time-limited tolerances for combined residues of the fungicide thiophanate-methyl and its metabolite methyl 2-benzimidazoyl carbamate (MBC) in or on cotton, undelinted seed at 0.05 ppm and cotton, gin byproducts at 5.0 ppm for an additional 1 –year period. These

tolerances will expire and are revoked on December 31, 2008. The document establishing time-limited tolerances originally published in the **Federal Register** of March 23, 2005 (70 FR 14551) (FRL–7699–3).

12. *Thiophanate-methyl*. EPA has authorized under FIFRA section 18 the use of thiophanate-methyl on mushrooms for control of green mold in California, Colorado, Delaware, Maryland, Oregon, Pennsylvania, and Washington. This regulation extends a time-limited tolerance for combined residues of the fungicide thiophanate-methyl and its metabolite methyl 2-benzimidazoyl carbamate (MBC) in or on mushroom at 0.01 ppm for an additional 1–year period. This tolerance will expire and is revoked on December 31, 2008. A time-limited tolerance was originally published in the **Federal Register** of February 5, 2003 (68 FR 5847) (FRL–7285–9).

13. *Zeta-cypermethrin*. EPA has authorized under FIFRA section 18 the use of zeta-cypermethrin on flax for control of grasshoppers in North Dakota. This regulation extends time-limited tolerances for combined residues of the insecticide zeta-cypermethrin (S-cyano(3-phenoxyphenyl) methyl (±))(cis-trans3-(2,2-dichloroethenyl)-2,2 dimethylcyclopropanecarboxylate and its inactive R-isomers in or on flax, meal and flax, seed, each at 0.2 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2010. The document establishing time-limited tolerances originally published in the **Federal Register** of September 4, 2002 (67 FR 56490) (FRL–7197–7).

III. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, 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) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, this rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

IV. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 6, 2007.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.242 [Amended]

2. In § 180.242, in the table to paragraph (b), amend the entry for lentil, seed by removing the expiration date ''12/31/07'' and adding in its place ''12/31/08.''

§ 180.275 [Amended]

3. In § 180.275, in the table to paragraph (b), amend the entry for ginseng by removing the expiration date ''12/31/07'' and adding in its place ''12/31/08.''

§ 180.371 [Amended]

4. In § 180.371, in the table to paragraph (b), amend the entries for cotton, undelinted seed; cotton, gin products; and mushroom by removing the expiration date ''12/31/07'' and adding in its place ''12/31/08.''

§ 180.418 [Amended]

5. In § 180.418, in the table to paragraph (b), amend the entries for flax, meal and flax, seed by removing the expiration date ''6/30/08'' and adding in its place ''12/31/10.''

§ 180.443 [Amended]

6. In § 180.443, in the table to paragraph (b), amend the entry for artichoke, globe by removing the expiration date ''12/31/07'' and adding in its place ''12/31/09''; and amend the entry for pepper by removing the expiration date ''6/30/08'' and adding in its place ''12/31/09.''

§ 180.448 [Amended]

7. In § 180.448, in the table to paragraph (b), amend the entries for corn, field, grain; corn, field, forage; and corn, field, stover by removing the expiration date ''12/31/07'' and adding in its place ''12/31/10.''

§ 180.474 [Amended]

8. In § 180.474, in the table to paragraph (b), amend the entry for garlic by removing the expiration date ''12/31/07'' and adding in its place ''12/31/08.''

§ 180.498 [Amended]

9. In § 180.498, in the table to paragraph (b), amend the entries for flax, seed and strawberry by removing the expiration date ''12/31/07'' and adding in its place ''12/31/10.''

§ 180.571 [Amended]

10. In § 180.571, in the table to paragraph (b), amend the entry for cranberry by removing the expiration date ''12/31/07'' and adding in its place ''12/31/10.''

§ 180.572 [Amended]

11. In § 180.572, in the table to paragraph (b), amend the entries for Timothy, forage and Timothy, hay by removing the expiration date ''12/31/07'' and adding in its place ''12/31/10.''

[FR Doc. E7–24345 Filed 12–18–07; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XD68

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; 2008 Final Harvest Specifications for Groundfish

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

ACTION: Final rule; closures.

SUMMARY: NMFS announces revisions to the 2008 final harvest specifications and prohibited species catch (PSC) allowances for the groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) that are required under the final rules implementing Amendments 80 and 85 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). This action is necessary to establish harvest limits for groundfish at the beginning of the 2008 fishing year consistent with the new allocations for Amendments 80 and 85 and to accomplish the goals and objectives of the FMP. The intended effect of this action is to conserve and manage the groundfish resources in the BSAI and in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The 2008 final harvest specifications and associated apportionment of reserves are effective at 0001 hrs, Alaska local time (A.l.t.), January 1, 2008, until the effective date of the 2008 and 2009 final harvest specifications for BSAI and GOA groundfish, which will be published in the **Federal Register**.

ADDRESSES: Copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (EIS) and Record of Decision (ROD) and the Final Regulatory Flexibility Analyses (FRFAs) prepared for the 2008 harvest specifications and Amendments 80 and 85 to the FMP are available on the Alaska Region website at *http://www.fakr.noaa.gov*. Printed copies can be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian. Copies of the 2006 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the BSAI, dated November 2006, are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99510–2252, 907–271–2809, or from its website at *http://www.fakr.noaa.gov/npfmc*.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or e-mail *mary.furuness@noaa.gov*.

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR part 679 implement the FMP and govern the groundfish fisheries in the BSAI. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it under the Magnuson-Stevens Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The final rule implementing Amendment 80 to the BSAI FMP was published in the **Federal Register** on September 14, 2007 (72 FR 52668). Amendment 80 to the FMP allocates total allowable catch (TAC) of specified groundfish species (Amendment 80 species) and halibut and crab prohibited species catch (PSC) limits among several BSAI non-pollock trawl groundfish fisheries fishing sectors, and facilitates the formation of harvesting cooperatives in the non-American Fisheries Act (non-AFA) trawl catcher/processor sector. The Amendment 80 species are Atka mackerel, flathead sole, Pacific cod, rock sole, yellowfin sole, and Aleutian Islands Pacific ocean perch. In order to limit the ability of participants eligible for the Amendment 80 program to expand their harvest efforts in the GOA, Amendment 80 establishes groundfish and halibut PSC catch limits for Amendment 80 program participants in the GOA.

The final rule implementing Amendment 85 to the BSAI FMP was published in the **Federal Register** on September 4, 2007 (72 FR 50788). Amendment 85 revises the current allocations of BSAI Pacific cod TAC among various harvest sectors and seasonal apportionments. Also, Amendment 85 apportions the halibut PSC allowance annually specified for the hook-and-line Pacific cod fishery between the hook-and-line catcher processor and catcher vessel sectors.

With this final rule NMFS modifies those sections of the text and the tables in the 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007) and for groundfish in the GOA (72 FR 9676, March 5, 2007) that change under the final rules implementing Amendments 80 and 85. This includes Tables 1, 2, 4, 5, 7, 9, 10, 11, 12, 13, 14, and 15 from the final 2008 harvest specifications for the BSAI which may be viewed at the website *http://www.fakr.noaa.gov/frules/72fr9451.pdf*. This final rule uses the same table numbers that were used in the 2008 final harvest specifications. This action also adds a new Table 16 for BSAI flathead sole, rock sole, yellowfin sole, and Aleutian Islands Pacific ocean perch allocations required by Amendment 80. For the GOA, this final rule adds text and Tables 17 and 18 to establish sideboard limits in the Gulf of Alaska for the Amendment 80 vessels. This final rule is necessary to ensure that allocations will be in effect for Amendments 80 and 85 participants at the beginning of the 2008 fishing year. These allocations also will be incorporated in future rulemaking supporting the annual harvest specification process for the Alaska groundfish fisheries.

Revisions to 2008 Final Harvest Specifications for the BSAI

Table 1.

The 2008 final TACs for the BSAI are within the optimum yield range established for the BSAI and do not exceed the acceptable biological catch (ABC) for any single species or complex. Table 1 of the 2008 final harvest specifications (72 FR 9454) lists the 2008 final OFL, ABC, TAC, initial total allowable catch (ITAC), and CDQ groundfish reserve amounts for BSAI groundfish. This action does not change

the 2008 OFL, ABC, TAC, or CDQ groundfish reserve amounts. However, the final rules implementing Amendments 80 and 85 modified the percentage of TAC for the directed fisheries species that are allocated to the Community Development Quota (CDQ) program, per statutory requirements. This action does not need to revise these CDQ reserve amounts because the 2008 final harvest specifications (72 FR 9451, March 2, 2007) used the same percentage of TAC.

As explained in the proposed and final rules for Amendment 80, catch in the CDQ fisheries of species in TAC categories that are not allocated to the CDQ program will be managed under the statutory and regulatory provisions for the non-CDQ groundfish fisheries. Retention of species closed to directed fishing will either be limited to maximum retainable amounts or all catch of the species will be required to be discarded. Notices of closures to directed fishing and retention requirements for these species will apply to the CDQ and non-CDQ sectors. The catch of species not allocated to the CDQ program in the CDQ fisheries will not constrain the catch of other CDQ species unless catch by all sectors approached an overfishing level (OFL). This action changes Table 1 by increasing the 2008 ITAC amounts for the Amendment 80 species from 85 percent to 89.3 percent of their respective TACs. The revised Table 1 below replaces Table 1 in the final harvest specifications (72 FR 9454). The apportionment of TAC amounts among fisheries and seasons is discussed below.

BILLING CODE 6100–22–S

TABLE 1– 2008 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI[1]

[Amounts are in metric tons]

Species	Area	2008				
		OFL	ABC	TAC	ITAC[2]	CDQ[3,4,5]
Pollock[3]	BS	1,431,000	1,318,000	1,318,000	1,186,200	131,800
	AI	50,300	41,000	19,000	17,100	1,900
	Bogoslof	48,000	5,220	10	10	0
Pacific cod[4]	BSAI	154,000	131,000	127,070	113,474	13,596
Sablefish[5]	BS	3,290	2,970	2,970	1,263	111
	AI	3,100	2,800	2,800	596	52
Atka mackerel	BSAI	64,200	54,900	54,900	49,026	5,874
	EAI/BS	n/a	17,600	17,600	15,717	1,883
	CAI	n/a	22,000	22,000	19,646	2,354
	WAI	n/a	15,300	15,300	13,663	1,637
Yellowfin sole	BSAI	261,000	245,000	150,000	133,950	16,050
Rock sole	BSAI	271,000	268,000	75,000	66,975	8,025
Greenland turbot	BSAI	16,000	2,490	2,490	2,117	n/a
	BS	n/a	1,720	1,720	1,462	184
	AI	n/a	770	770	655	0
Arrowtooth flounder	BSAI	208,000	171,000	30,000	25,500	3,210
Flathead sole	BSAI	92,800	77,200	45,000	40,185	4,815
Other flatfish[6]	BSAI	28,500	21,400	21,400	18,190	0
Alaska plaice	BSAI	252,000	199,000	60,000	51,000	0
Pacific ocean perch	BSAI	25,600	21,600	21,600	19,114	n/a
	BS	n/a	4,080	4,080	3,468	0
	EAI	n/a	4,900	4,900	4,376	524
	CAI	n/a	5,000	5,000	4,465	535
	WAI	n/a	7,620	7,620	6,805	815
Northern rockfish	BSAI	9,700	8,150	8,150	6,928	0
Shortraker rockfish	BSAI	564	424	424	360	0
Rougheye rockfish	BSAI	269	202	202	172	0
Other rockfish[7]	BSAI	1,330	999	999	849	0
	BS	n/a	414	414	352	0
	AI	n/a	585	585	497	0
Squid	BSAI	2,620	1,970	1,970	1,675	0
Other species[8]	BSAI	91,700	68,800	58,015	49,313	0
TOTAL		3,014,973	2,642,125	2,000,000	1,783,996	187,491

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

[2] Except for pollock, the portion of the sablefish TAC allocated to hook-and-line and pot gear, and Amendment 80 species, 15 percent of each TAC is put into a reserve. The ITAC for these species is the remainder of the TAC after the subtraction of these reserves.

[3] Under § 679.20(a)(5)(i)(A)(1), the annual Bering Sea subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (2.8 percent), is further allocated by sector for a directed pollock fishery as follows: inshore - 50 percent; catcher/processor - 40 percent; and motherships - 10 percent. Under § 679.20(a)(5)(iii)(B)(2)(i) and (ii), the annual Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery.

[4] The Pacific cod TAC is reduced by three percent from the ABC to account for the State of Alaska's (State) guideline harvest level in State waters of the Aleutian Islands subarea.

[5] For the Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod), 10.7 percent of the TAC is reserved for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31). Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear, 7.5 percent of the sablefish TAC allocated to trawl gear, and 10.7 percent of the TACs for Bering Sea Greenland turbot and arrowtooth flounder are reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(B) and (D)). Aleutian Islands Greenland turbot, "other flatfish," Alaska plaice, Bering Sea Pacific ocean perch, northern rockfish, shortraker rockfish, rougheye rockfish, "other rockfish," squid, and "other species" are not allocated to the CDQ program.

[6] "Other flatfish" includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder, and Alaska plaice.

[7] "Other rockfish" includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

[8] "Other species" includes sculpins, sharks, skates, and octopus. Forage fish, as defined at § 679.2, are not included in the "other species" category.

BILLING CODE 6100–22–C

Non-specified Reserves, CDQ Reserves and the Incidental Catch Allowance (ICA) for Pollock, Atka Mackerel, Flathead Sole, Rock Sole, Sablefish, Yellowfin Sole, and Aleutian Islands

Pacific Ocean Perch

Amendment 80 fully allocates the TACs for Amendment 80 species between the ITAC (89.3 percent) and CDQ reserves (10.7 percent). Therefore, this action changes the amount of the Amendment 80 species allocated to the non-specified reserves from 7.5 percent to 0 percent. Also, for species allocated to the CDQ program, except pollock and the portion of the sablefish TAC allocated to the hook-and-line and pot gear, Amendment 80 increases the CDQ reserves from 7.5 percent to 10.7 percent. Therefore, this action changes the amount of arrowtooth flounder and Bering Sea Greenland turbot allocated to the non-specified reserves from 7.5 percent to 4.3 percent. This action also establishes ICAs for Atka mackerel, flathead sole, rock sole, yellowfin sole, and Aleutian Islands Pacific ocean perch, since Amendment 80 fully allocates these species to the BSAI trawl limited access and Amendment 80 sectors.

Section 679.20(b)(1)(i) requires the placement of 15 percent of the TAC for each target species or ''other species'' category, except for pollock, the hook-and-line and pot gear allocation of sablefish, and the Amendment 80 species, in a non-specified reserve. Section 679.20(b)(1)(ii)(B) requires that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Section 679.20(b)(1)(ii)(D) requires the allocation of 7.5 percent of the trawl gear allocations of sablefish and 10.7 percent of the Bering Sea Greenland turbot and arrowtooth flounder TACs to the respective CDQ reserves. Section 679.20(b)(1)(ii)(C) requires the allocations of 10.7 percent of the TACs for Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod to the CDQ reserves. Sections 679.20(a)(5)(iii)(B)(*2*)(*i*), 679.20(b)(1)(i)(A), and 679.31(a) also require the allocation of 10 percent of the BSAI pollock TACs to the pollock CDQ directed fishing allowance (DFA). The entire Bogoslof District pollock TAC is allocated as an ICA (see §§ 679.20(a)(5)(ii)). With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ allocations by gear. Section 679.21(e)(3)(i)(A) requires withholding of 7.5 percent of the Chinook salmon PSC limit, 10.7 percent of the crab and non-Chinook salmon PSC limits, and 343 metric tons (mt) of halibut PSC as PSQ reserves for the CDQ fisheries. Sections 679.30 and 679.31 set forth regulations governing the management of the CDQ and PSQ reserves.

Pursuant to § 679.20(a)(5)(i)(A)(*1*), NMFS allocates a pollock ICA of 2.8 percent of the Bering Sea subarea pollock TAC after subtraction of the 10 percent CDQ reserve. This allowance is unchanged from the final 2008 harvest specifications for the BSAI (72 FR 9451, March 2, 2007).

Pursuant to § 679.20(a)(8) and (10), NMFS allocates new ICAs of 2,000 mt of flathead sole, 2,000 mt of rock sole, 2,000 mt of yellowfin sole, 10 mt each of Western and Central Aleutian District Pacific ocean perch and Atka mackerel, 100 mt of Eastern Aleutian District Pacific ocean perch, and 1,400 mt of Eastern Aleutian District and Bering Sea subarea Atka mackerel TACs after subtraction of the 10.7 percent CDQ reserve. These allowances are based on NMFS' examination of the incidental catch in other target fisheries from 2003 through 2006.

Pursuant to § 679.20(b)(1)(i), Amendment 80 species are no longer put into a non-specified reserve. Therefore, this action removes from Table 2 the Amendment 80 species (Pacific cod, Atka mackerel and Pacific ocean perch) that were supplemented from the non-specified reserve in Table 2 of the final 2008 harvest specifications (72 FR 9455). The regulations do not designate the remainder of the non-specified reserve by species or species group. Any amount of the reserve may be apportioned to a target species or to the ''other species'' category during the year, provided that such apportionments do not result in overfishing (see § 679.20(b)(1)(ii)). The Regional Administrator has determined that the ITACs specified for the species listed in Table 2 need to be supplemented from the non-specified reserve because U.S. fishing vessels have demonstrated the capacity to catch the full TAC allocations. Therefore, in accordance with § 679.20(b)(3), NMFS is apportioning the amounts shown in Table 2 from the non-specified reserve to increase the ITAC for northern rockfish, shortraker rockfish, rougheye rockfish, and Bering Sea ''other rockfish'' by 7.5 percent of the TAC. The revised Table 2 below replaces Table 2 in the final harvest specifications (72 FR 9455).

BILLING CODE 6100–22–S

TABLE 2–2008 APPORTIONMENT OF RESERVES TO ITAC CATEGORIES

[Amounts are in metric tons]

Species--area or subarea	2008 ITAC	2008 reserve amount	2008 final ITAC
Shortraker rockfish–BSAI	360	32	391
Rougheye rockfish–BSAI	172	15	187
Northern rockfish-BSAI	6,928	611	7,539
Other rockfish--Bering Sea subarea	352	31	383
Total	7,812	689	8,500

BILLING CODE 6100–22–C

Allocation of the Atka Mackerel TAC

Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting first the CDQ reserves, second the ICAs for the BSAI trawl limited access sector and non-trawl gear, and third the jig gear allocation, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91.

Pursuant to § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and Bering Sea subarea Atka mackerel ITAC may be allocated to jig gear. The amount of this allocation is determined

annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. For 2008, the Council recommended, and NMFS approved, a 1 percent allocation of the Atka mackerel ITAC in the Eastern Aleutian District and Bering Sea subarea to jig gear. Based on the 2008 TAC of 17,600 mt the 2008 jig gear allocation is revised to 143 mt.

Section 679.20(a)(8)(ii)(A) apportions the Atka mackerel ITAC into two equal seasonal allowances. The first seasonal allowance is made available for directed fishing from January 1 (January 20 for trawl gear) to April 15 (A season), and the second seasonal allowance is made available from September 1 to November 1 (B season; Table 4). The jig gear allocation is not apportioned by season.

Pursuant to § 679.20(a)(8)(ii)(C)(*1*), the Regional Administrator will establish a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the Central (Area 542) and Western (Area 543) Aleutian Districts. NMFS will establish HLA limits for the CDQ reserve and each of the three non-CDQ fishery categories: the BSAI trawl limited access sector; the Amendment 80 limited access sector; and an aggregate HLA limit applicable to all Amendment 80 cooperatives. NMFS will assign vessels in each of those three non-CDQ sectors that apply to fish for Atka mackerel in the HLA to an HLA fishery based on a random lottery for each sector of the vessels that apply (see § 679.20(a)(8)(iii)).

Each trawl sector will have a separate lottery. A maximum of two HLA fisheries will be established in Area 542 for the BSAI trawl limited access sector. In Area 543, there is no allocation of Atka mackerel or HLA fishery for the BSAI trawl limited access sector. Therefore, the lottery for the BSAI trawl limited access sector will not include Area 543. A maximum of four HLA fisheries will be established for vessels assigned to Amendment 80 cooperatives, a first and second HLA fishery in Area 542, and a first and second HLA fishery in Area 543. A maximum of four HLA fisheries will be established for vessels assigned to the Amendment 80 limited access fishery, a first and second HLA fishery in Area 542, and a first and second HLA fishery in Area 543. NMFS will initially open fishing in the HLA for the first HLA fishery in all three trawl sectors at the same time. The initial opening of fishing in the HLA will be based on the first directed fishing closure of Atka mackerel in the Eastern Aleutian District and Bering Sea subarea for any one of the three trawl sectors allocated Atka mackerel TAC. This action changes the Atka mackerel allocations by subtracting the amount for the ICA. This reduces the amount of Atka mackerel available for the jig gear allocation in the Eastern Aleutian District and Bering Sea subarea. This action also adds the allocations to three sectors: BSAI trawl limited access, Amendment 80 limited access, and Amendment 80 cooperatives. The revised Table 4 below replaces Table 4 in the final harvest specifications (72 FR 9457).

BILLING CODE 6100–22–S

TABLE 4–2008 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC[1]

[Amounts are in metric tons]

Sector[2]	Season[3,4]	Allocation by management area		
		Eastern Aleutian District/Bering Sea[5]	Central Aleutian District	Western Aleutian District
TAC	n/a	17,600	22,000	15,300
CDQ reserve	Total	1,883	2,354	1,637
	HLA[6]	n/a	1,412	982
ICA	Total	1,400	10	10
Jig[7]	Total	143	0	0
BSAI trawl limited access	Total	283	393	0
	A	142	196	0
	HLA[6]	n/a	118	0
	B	142	196	0
	HLA[6]	n/a	118	0
Amendment 80 limited access	Total	7,307	11,598	8,417
	A	3,654	5,799	4,209
	HLA[6]	n/a	3,479	2,525
	B	3,654	5,799	4,209
	HLA[6]	n/a	3,479	2,525
Amendment 80 cooperatives	Total	6,584	7,646	5,236
	A	3,292	3,823	2,618
	HLA[6]	n/a	2,294	1,571
	B	3,292	3,823	2,618
	HLA[6]	n/a	2,294	1,571

[1] Regulations at §§ 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[2] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtraction of the CDQ reserves, ICAs, and jig gear allocation, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC (see §§ 679.20(b)(1)(ii)(C) and 679.31).

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] The A season is January 1 (January 20 for trawl gear) to April 15, and the B season is September 1 to November 1.

[5] Eastern Aleutian District and Bering Sea subarea.

[6] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2008, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

[7] Section 679.20(a)(8)(i) requires the allocation of up to 2 percent of the Eastern Aleutian District and Bering Sea subarea TAC jig gear after subtraction of the CDQ reserve and ICA. The amount of this allocation is 1 percent. The jig gear allocation is not apportioned by season.

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Allocation of the Pacific cod TAC

This action changes the Pacific cod allocations in Table 5 by increasing the hook-and-line and pot catcher vessels less than 60 ft (18.3 m) length overall (LOA), hook-and-line catcher/processors, and pot catcher vessels greater than or equal to 60 ft (18.3 m) LOA allocations and decreasing pot catcher/processors, jig gear, trawl catcher vessels, and trawl catcher/processors. Also, the trawl catcher/processor allocation is separated into allocations for the AFA trawl catcher/processors and non-AFA trawl catcher/processors. Amendment 80 further allocates the non-AFA trawl catcher/processor allocation between the Amendment 80 limited access and cooperatives. Table 5 also revises the seasonal allowances of Pacific cod to various sectors.

Section 679.20(a)(7)(i) and (ii) allocates the Pacific cod TAC in the BSAI, after subtraction of 10.7 percent for the CDQ reserve, as follows: 1.4 percent to vessels using jig gear, 2.0 percent to hook-and-line and pot catcher vessels less than 60 ft (18.3 m) length overall (LOA), 0.2 percent to hook-and-line catcher vessels greater than or equal to 60 ft (18.3 m) LOA, 48.7 percent to hook-and-line catcher/processors, 8.4 percent to pot catcher vessels greater than or equal to 60 ft (18.3 m) LOA, 1.5 percent to pot catcher/processors, 2.3 percent to American Fisheries Act (AFA) trawl catcher/processors, 13.4 percent to non-AFA trawl catcher/processors, and 22.1 percent to trawl catcher vessels. The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. For 2008, the Regional Administrator establishes an ICA of 500 mt based on anticipated incidental catch by these sectors in other fisheries. This allowance is unchanged from the final 2008 harvest specifications for the BSAI (72 FR 9458, March 2, 2007). The allocation of the ITAC for Pacific cod to the Amendment 80 sector is established in Table 33 to part 679 and § 679.91.

Sections 679.20(a)(7) and 679.23(e)(5) apportion seasonal allowances of the Pacific cod ITAC to disperse the Pacific cod fisheries over the fishing year. In accordance with § 679.20(a)(7)(iv)(B) and (C), any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

Sections 679.20(a)(7)(i)(B) and 679.23(e)(5) establish the CDQ season allowances based on gear. For most hook-and-line catcher/processors and hook-and-line catcher vessels greater than or equal to 60 ft (18.3 m) LOA harvesting CDQ Pacific cod, the first seasonal allowance of 60 percent of the ITAC is available for directed fishing from January 1 to June 10, and the second seasonal allowance of 40 percent of the ITAC is available from June 10 to December 31. No seasonal harvest constraints are imposed on the CDQ Pacific cod fishery for pot gear or hook-and-line catcher vessels less than 60 feet (18.3 m) LOA. For vessels harvesting CDQ Pacific cod with trawl gear the first season allowance of 60 percent of the ITAC is available January 20 to April 1. The second season, April 1 to June 10, and the third season, June 10 to November 1, are each allocated 20 percent of the ITAC. The CDQ Pacific cod trawl catcher vessel allocation is further allocated as 70 percent in the first season, 10 percent in the second season, and 20 percent in the third season. The CDQ Pacific cod trawl catcher/processor allocation is 50 percent in the first season, 30 percent in the second season, and 20 percent in the third season. For jig gear, the first and third seasonal allowances are each allocated 40 percent of the ITAC and the second seasonal allowance is allocated 20 percent of the ITAC.

Sections 679.20(a)(7)(iv)(A) and 679.23(e)(5) apportion the non-CDQ season allowances by gear as follows. For hook-and-line and pot catcher/processors and hook-and-line and pot catcher vessels greater than or equal to 60 ft (18.3 m) LOA, the first seasonal allowance of 51 percent of the ITAC is available for directed fishing from January 1 to June 10, and the second seasonal allowance of 49 percent of the ITAC is available from June 10 (September 1 for pot gear) to December 31. No seasonal harvest constraints are imposed on the Pacific cod fishery for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is January 20 to April 1, the second season is April 1 to June 10, and the third season is June 10 to November 1. The trawl catcher vessel allocation is further allocated as 74 percent in the first season, 11 percent in the second season, and 15 percent in the third season. The trawl catcher/processor allocation is allocated 75 percent in the first season, 25 percent in the second season, and zero percent in the third season. For jig gear, the first seasonal allowance is allocated 60 percent of the ITAC and the second and third seasonal allowances are each allocated 20 percent of the ITAC. Table 5 lists the new 2008 allocations and seasonal apportionments of the Pacific cod TAC. The revised Table 5 below replaces Table 5 in the final harvest specifications (72 FR 9458).

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TABLE 5–2008 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Gear sector	Percent	2008 share of gear sector total	2008 share of sector total	2008 seasonal apportionment	
				Date	Amount
Total TAC	100	127,070	n/a	n/a	n/a
CDQ	10.7	13,596	n/a	see §679.20(a)(7)(i)(B)	n/a
Total hook-and-line/pot gear	60.8	68,992	n/a	n/a	n/a
Hook-and-line/pot ICA[1]	n/a	n/a	500	n/a	n/a
Hook-and-line/pot sub-total	n/a	68,492	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	54,861	Jan 1-Jun 10	27,979
				Jun 10-Dec 31	26,882
Hook-and-line catcher vessel ≥ 60 ft LOA	0.2	n/a	225	Jan 1-Jun 10	115
				Jun 10-Dec 31	110
Pot catcher/processor	1.5	n/a	1,690	Jan 1-Jun 10	862
				Sept 1-Dec 31	828
Pot catcher vessel ≥ 60 ft LOA	8.4	n/a	9,463	Jan 1-Jun 10	4,826
				Sept 1-Dec 31	4,637
Catcher vessels < 60 ft LOA using hook-and-line or pot gear	2.0	2,253	2,253	n/a	n/a
Trawl catcher vessels	22.1	25,078	n/a	Jan 20-Apr 1	18,557
			n/a	Apr 1-Jun 10	2,759
			n/a	Jun 10-Nov 1	3,762
AFA trawl catcher/processor	2.3	2,610	n/a	Jan 20-Apr 1	1,957
			n/a	Apr 1- Jun 10	652
			n/a	Jun 10-Nov 1	0
Amendment 80 limited access	n/a	2,452	n/a	Jan 20-Apr 1	1,839
				Apr 1- Jun 10	613
				Jun 10-Nov 1	0
Amendment 80 cooperative	n/a	12,754	n/a	Jan 20-Apr 1	9,566
				Apr 1- Jun 10	3,189
				Jun 10-Nov 1	0
Jig	1.4	1,589	n/a	Jan 1-Apr 30	953
			n/a	Apr 30-Aug 31	318
			n/a	Aug 31-Dec 31	318

[1] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt for 2008 based on anticipated incidental catch in these fisheries.

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Allocation of PSC Limits for Halibut, Salmon, Crab, and Herring

Amendment 80 reduces the allocations of halibut, non-Chinook salmon, and crab PSC limits that may be taken while non-AFA trawl catcher/processors are groundfish fishing in the BSAI. Amendment 80 increases the non-Chinook salmon and crab allocated to the CDQ program as prohibited species quota (PSQ) reserve increases from 7.5 percent to 10.7 percent and increases the percentage of halibut PSQ allocated to the CDQ program. Amendment 85 divides the halibut PSC allowance annually specified for the hook-and-line Pacific cod fishery between two fishery sectors: the hook-and-line catcher/processor sector and the hook-and-line catcher vessel sector.

Amendment 80 also adjusts the maximum limit for red king crab bycatch in the red king crab savings subarea. This action incorporates these allocation changes in Tables 7a-e below. Tables 7a-e do not change the PSC limits that were established in the original harvest specifications for 2008.

Section 679.21(e) sets forth the BSAI PSC limits. Sections 679.21(e)(1)(iv) and (e)(2) establish the 2008 BSAI halibut mortality limits as 3,675 mt for trawl fisheries and 900 mt for the non-trawl fisheries. Section 679.21(e)(3)(i) allocates 276 mt of the trawl halibut mortality limit and § 679.21(e)(4)(i)(A) allocates 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program. Section 679.21(e)(1)(vi) specifies 29,000 fish as the 2008 Chinook salmon PSC limit for the Bering Sea subarea pollock fishery. Section 679.21(e)(3)(i)(A)(*3*)(*i*) allocates 7.5 percent, or 2,175 Chinook salmon, as the Bering Sea subarea PSQ reserve for the CDQ program and allocates the remaining 26,825 Chinook salmon to the non-CDQ fisheries. Section

679.21(e)(1)(viii) specifies 700 fish as the 2008 Chinook salmon PSC limit for the AI subarea pollock fishery. Section 679.21(e)(3)(i)(A)(*3*)(*i*) allocates 7.5 percent, or 53 Chinook salmon, as the AI subarea PSQ reserve for the CDQ program and allocates the remaining 647 Chinook salmon to the non-CDQ fisheries. Section 679.21(e)(1)(vii) specifies 42,000 fish as the 2008 non-Chinook salmon PSC limit for the BSAI. Section 679.21(e)(3)(i)(A)(*3*)(*ii*) allocates 10.7 percent, or 4,494 non-Chinook salmon, as the PSQ reserve for the CDQ program and allocates the remaining 37,506 non-Chinook salmon to the non-CDQ fisheries.

PSC limits for crab and herring are specified annually based on abundance and spawning biomass. Pursuant to § 679.21(e)(3)(i)(A)(*1*), 10.7 percent of each PSC limit specified for crab is allocated as a PSQ reserve for use by the groundfish CDQ program.

The red king crab mature female abundance is estimated from the 2006 survey data at 29.7 million red king crabs and the effective spawning biomass is estimated as 157 million pounds (71,215 mt). Based on the criteria set out at § 679.21(e)(1)(ii), the 2008 PSC limit of red king crab in Zone 1 for trawl gear is 197,000 animals. This limit results from the mature female abundance estimate of more than 8.4 million king crab and the effective spawning biomass estimate of more than 55 million pounds (24,948 mt).

Section 679.21(e)(3)(ii)(B)(*2*) establishes criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations implementing Amendment 80 limit the RKCSS to up to 25 percent of the red king crab PSC allowance. Prior to Amendment 80, regulations limited the RKCSS to up to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/''other flatfish'' fishery category. In December 2006, for 2007 and 2008 the Council recommended and NMFS approved a red king crab bycatch limit equal to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/''other flatfish'' fishery category within the RKCSS. Since this was the maximum limit available for the RKCSS, under the regulations implementing Amendment 80 NMFS is also setting the 2008 red king crab bycatch limit at the maximum amount available for the RKCSS, or 25 percent of the red king crab PSC allowance.

Based on 2006 survey data, Tanner crab (*Chionoecetes bairdi*) abundance is estimated as 866 million animals. Given the criteria set out at § 679.21(e)(1)(iii), the 2008 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2. These limits result from the *C. bairdi* crab abundance estimate of more than 400 million animals.

Pursuant to § 679.21(e)(1)(iv), the PSC limit for snow crab (*C. opilio*) is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the Bering Sea abundance index. Based on the 2006 survey estimate of 3.25 billion animals, the calculated limit is 4,350,000 animals.

Pursuant to § 679.21(e)(1)(vi), the PSC limit of Pacific herring caught while conducting any trawl operation for BSAI groundfish is 1 percent of the annual eastern Bering Sea herring biomass. The best estimate of 2008 herring biomass is 178,652 mt. This amount was derived using 2006 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the herring PSC limit for 2008 is 1,787 mt for all trawl gear.

Section 679.21(e)(3) requires, after subtraction of PSQ reserves, that crab and halibut trawl PSC be apportioned between the BSAI trawl limited access and Amendment 80 sectors as presented in Table 7a. The amount of 2008 PSC assigned to the Amendment 80 sector is specified in Table 35 to part 679. Pursuant to § 679.21(e)(1)(iv) and § 679.91(d) through (f), crab and halibut trawl PSC assigned to the Amendment 80 sector is then sub-allocated to Amendment 80 cooperatives as PSC cooperative quota (CQ) and to the Amendment 80 limited access fishery as presented in Tables 7d and e. PSC CQ assigned to Amendment 80 cooperatives is not allocated to specific fishery categories. Section 679.21(e)(3)(i)(B) requires the apportionment of each trawl PSC limit not assigned to Amendment 80 cooperatives into PSC bycatch allowances for seven specified fishery categories. NMFS used the percentages from the trawl apportionments in Table 7 of the 2007 and 2008 final harvest specifications for the BSAI (72 FR 9460) to derive the fishery category and seasonal apportionments for the BSAI trawl limited assess sector in Table 7c and the Amendment 80 limited access sector in Table 7e, below.

Section 679.21(e)(4)(i)(B) requires the apportionment of halibut to the non-trawl fishery categories based on each category's proportional share of the anticipated bycatch mortality of halibut during a fishing year and the need to optimize the amount of total groundfish harvested under the non-trawl halibut PSC limits. Section 679.21(e)(4)(i)(C) authorizes the apportionment of the non-trawl halibut PSC limit into PSC bycatch allowances among six fishery categories. Table 7c lists the fishery bycatch allowances for the trawl and non-trawl fisheries.

Section 679.21(e)(4)(ii) authorizes the exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, NMFS, after consultation with the Council, exempts pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because (1) the pot gear fisheries have low halibut bycatch mortality, (2) halibut mortality for the jig gear fleet is assumed to be negligible, and (3) the sablefish and halibut IFQ fisheries have low halibut bycatch mortality because the IFQ program (subpart D of 50 CFR part 679) requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder or a hired master is aboard and is holding unused halibut IFQ. In 2006, total groundfish catch for the pot gear fishery in the BSAI was approximately 19,721 mt, with an associated halibut bycatch mortality of about 5 mt. The 2006 jig gear fishery harvested about 84 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and thus are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of jig gear and the low mortality rate of halibut caught with jig gear and released.

Section 679.21(e)(5) authorizes NMFS, after consultation with the Council, to establish seasonal apportionments of PSC amounts in order to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors to be considered are (1) seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species, (3) PSC bycatch needs on a seasonal basis relevant to prohibited species biomass, (4) expected variations in bycatch rates throughout the year, (5) expected start of fishing effort, and (6) economic effects of seasonal PSC apportionments on industry sectors. The Council recommended and NMFS approved the seasonal PSC apportionments in Table 7c to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC based on the above criteria. The revised Tables 7a-e

replace Table 7 in the final harvest specifications (72 FR 9460).

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TABLE 7a–2008 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS

PSC species	Total non-trawl PSC	Non-trawl PSC remaining after CDQ PSQ[2]	Total trawl PSC	Trawl PSC remaining after CDQ PSQ[2]	CDQ PSQ reserve[2]	Amendment 80 sector	BSAI trawl limited access fishery
Halibut mortality (mt) BSAI[1]	900	832	3,675	3,400	343	2,525	875
Herring (mt) BSAI[1]	n/a	n/a	1,787	n/a	n/a	n/a	n/a
Red king crab (animals) Zone 1[1]	n/a	n/a	197,000	175,921	21,079	109,915	53,797
C. opilio (animals) (COBLZ)[1]	n/a	n/a	4,350,000	3,884,550	465,450	2,386,668	1,248,494
C. bairdi crab (animals) Zone 1[1]	n/a	n/a	980,000	875,140	104,860	460,674	411,228
C. bairdi crab (animals) Zone 2[1]	n/a	n/a	2,970,000	2,652,210	317,790	784,789	1,241,500

[1] Refer to § 679.2 for definitions of areas.

[2] Section 679.21(e)(3)(i) allocates 276 mt of the trawl halibut mortality and § 679.21(e)(3)(i)(A)(2) allocates 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program. The PSQ reserve for crab species is 10.7 percent of each crab PSC limit.

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TABLE 7b–2008 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS

Trawl gear	Herring (metric tons) BSAI[1]	Red king crab (animals) Zone 1[1]
Yellowfin sole	153	n/a
Rock sole/other flat/flathead sole[2]	27	n/a
Turbot/arrowtooth/sablefish[3]	12	n/a
Rockfish	n/a	n/a
July 1 - December 31	10	n/a
Pacific cod	27	n/a
Midwater trawl pollock	1,364	n/a
Pollock/Atka mackerel/other[4]	194	n/a
Red king crab savings subarea[5]	n/a	n/a
Non-pelagic trawl gear	n/a	49,250
Total trawl PSC	1,787	197,000

[1] Refer to § 679.2 for definitions of areas.

[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

[3] Greenland turbot, arrowtooth flounder, and sablefish fishery category.

[4] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.

[5] The red king crab bycatch limit for non-pelagic trawl fisheries within the RKCSS is limited to 25 percent of the red king crab PSC allowance (see § 679.21(e)(3)(ii)(B)(2)).

TABLE 7c–2008 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS AND NON-TRAWL FISHERIES

BSAI trawl limited access fisheries	Prohibited species and zone				
	Halibut mortality (mt) BSAI[1]	Red king crab (animals) Zone 1[1]	C. opilio (animals) COBLZ[1]	C. bairdi (animals)	
				Zone 1[1]	Zone 2[1]
Yellowfin sole	241	9,991	961,341	154,622	808,216
January 20 - April 1	80	n/a	n/a	n/a	n/a
April 1 - May 21	50	n/a	n/a	n/a	n/a
May 21 - July 1	13	n/a	n/a	n/a	n/a
July 1 - December 31	98	n/a	n/a	n/a	n/a
Rock sole/other flat/flathead sole[2]	213	35,844	199,759	165,725	269,406
January 20 - April 1	128	n/a	n/a	n/a	n/a
April 1 - July 1	42	n/a	n/a	n/a	n/a
July 1 - December 31	43	n/a	n/a	n/a	n/a
Turbot/arrowtooth/sablefish[3]	0	n/a	12,485	n/a	n/a
Rockfish	n/a	n/a	n/a	n/a	n/a
July 1- December 31	18	0	12,485	n/a	4,966
Pacific cod	343	7,842	37,455	83,068	146,497
Pollock/Atka mackerel/other[4]	60	120	24,970	7,814	12,415
Total BSAI trawl limited access PSC	875	53,797	1,248,494	411,228	1,241,500

Non-trawl fisheries	Catcher processor	Catcher vessel
Pacific cod-Total	760	15
January 1-June 10	314	10
June 10-August 15	0	0
August 15-December 31	446	5
Other non-trawl-Total	58	
May 1-December 31	58	
Groundfish pot and jig	exempt	
Sablefish hook-and-line	exempt	
Total non trawl PSC	833	

[1] Refer to § 679.2 for definitions of areas.

[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

[3] Greenland turbot, arrowtooth flounder, and sablefish fishery category.

[4] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.

TABLE 7d–2008 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI AMENDMENT 80 COOPERATIVES

Amendment 80 cooperative fisheries	Prohibited species and zone				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1[1]	C. opilio (animals) COBLZ[1]	C. bairdi (animals)	
				Zone 1[1]	Zone 2[1]
Total Amendment 80 cooperative PSC	1,837	78,631	1,632,432	340,520	580,311

[1] Refer to § 679.2 for definitions of areas.

TABLE 7e–2008 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI AMENDMENT 80 LIMITED ACCESS FISHERIES

Trawl Amendment 80 limited access fisheries	Prohibited species and zone				
	Halibut mortality (mt) BSAI[1]	Red king crab (animals) Zone 1[1]	C. opilio (animals) COBLZ[1]	C. bairdi (animals) Zone 1[1]	C. bairdi (animals) Zone 2[1]
Yellowfin sole	190	5,810	580,761	45,178	133,115
January 20 - April 1	63	n/a	n/a	n/a	n/a
April 1 - May 21	39	n/a	n/a	n/a	n/a
May 21 - July 1	10	n/a	n/a	n/a	n/a
July 1 - December 31	77	n/a	n/a	n/a	n/a
Rock sole/other flat/flathead sole[2]	168	20,844	120,677	48,422	44,372
January 20 - April 1	101	n/a	n/a	n/a	n/a
April 1 - July 1	33	n/a	n/a	n/a	n/a
July 1 - December 31	34	n/a	n/a	n/a	n/a
Turbot/arrowtooth/sablefish[3]	n/a	n/a	7,542	n/a	n/a
Rockfish	n/a	n/a	n/a	n/a	n/a
July 1 - December 31	14	n/a	7,542	n/a	818
Pacific cod	270	4,560	22,627	24,271	24,129
Pollock/Atka mackerel/other[4]	47	69	15,085	2,283	2,045
Total Amendment 80 limited access PSC	688	31,284	754,235	120,154	204,447

[1] Refer to § 679.2 for definitions of areas.

[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

[3] Greenland turbot, arrowtooth flounder, and sablefish fishery category.

[4] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.

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Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), the Regional Administrator may establish a directed fishing allowance (DFA) for a species or species group, if the Regional Administrator determines that any allocation or apportionment of a target species or "other species" category has been or will be reached. If the Regional Administrator establishes a DFA, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (see § 697.20(d)(1)(iii)). Similarly, pursuant to § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, *C. bairdi* crab or *C. opilio* crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

The Regional Administrator has determined that the allocation amounts in revised Table 9, below, will be necessary as incidental catch to support other anticipated groundfish fisheries for 2008 fishing year. This action changes Table 9 by adding the ICAs for the Amendment 80 species. This revised Table 9 replaces Table 9 in the final harvest specifications (72 FR 9461).

In accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the DFA for the species listed in revised Table 9 as zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for these species in the specified areas effective at 1200 hrs, A.l.t., December 19, 2007, through 2400 hrs, A.l.t., December 31, 2008.

These closures remain effective under authority of these 2008 final harvest specifications. These closures supersede the 2008 closures announced under authority of the 2007 and 2008 final harvest specifications (72 FR 9451). While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip.

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TABLE 9 - 2008 DIRECTED FISHING CLOSURES[1]

[Amounts are in metric tons]

Area	Sector	Species	2008 Incidental catch allowance
Bogoslof District	All	ICA pollock	10
Aleutian Islands subarea	All	ICA pollock	1,600
	All	"Other rockfish"	497
Eastern Aleutian District/Bering Sea	Non-amendment 80 and BSAI trawl limited access	ICA Atka mackerel	1,400
Central Aleutian District	Non-amendment 80 and BSAI trawl limited access	ICA Atka mackerel	10
Western Aleutian District	Non-amendment 80 and BSAI trawl limited access	ICA Atka mackerel	10
Eastern Aleutian District	Non-amendment 80 and BSAI trawl limited access	ICA Pacific ocean perch	100
Central Aleutian District	Non-amendment 80 and BSAI trawl limited access	ICA Pacific ocean perch	10
Western Aleutian District	Non-amendment 80 and BSAI trawl limited access	ICA Pacific ocean perch	10
Bering Sea subarea	All	Pacific ocean perch	3,468
	All	"Other rockfish"	383
	All	ICA pollock	33,214
Bering Sea and Aleutian Islands	All	Northern rockfish	7,539
	All	Shortraker rockfish	392
	All	Rougheye rockfish	187
	All	"Other species"	49,313
	Hook-and-line and pot gear	ICA Pacific cod	500
	Non-amendment 80	ICA flathead sole	2,000
	Non-amendment 80	ICA rock sole	2,000
	Non trawl gear	ICA yellowfin sole	2,000

[1]Maximum retainable amounts may be found in Table 11 to 50 CFR part 679.

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Listed AFA Catcher/Processor Sideboard Limits

Pursuant to § 679.64(a), the Regional Administrator restricts the ability of listed AFA catcher/processors to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. The basis for these sideboard limits is described in detail in the final rules implementing major provisions of the AFA (67 FR 79692, December 30, 2002), Amendment 80 (72 FR 52668, September 14, 2007), and Amendment 85 (72 FR 50788, September 4, 2007). Table 10 lists the 2008 catcher/processor sideboard limits. This action changes Table 10 by removing the Pacific cod and yellowfin sole sideboard limits. A sideboard limit is not necessary for AFA catcher/processors since Amendment 85 allocated Pacific cod specifically to the AFA catcher/

processor sector. Section 679.64(b)(6) exempts AFA catcher processors from a yellowfin sole sideboard limit because the 2008 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector (131,950 mt) is greater than 125,000 mt. Also, this action changes Table 10 by increasing the sideboard limits for flathead sole and rock sole because the ITAC for these species increases from 85 percent to 89.3 percent of the TAC. The sideboard limits for Aleutian Islands Pacific ocean perch and Atka mackerel remain the same because the ITAC is specified as 89.3 percent under revised Table 1 for 2008 final harvest specifications. The revised Table 10 below replaces Table 10 in the final harvest specifications (72 FR 9463).

All harvests of groundfish sideboard species made by listed AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the sideboard limits in the revised Table 10. However, groundfish sideboard species that are delivered to listed catcher/processors by catcher vessels will not be deducted from the 2008 sideboard limits for the listed catcher/processors.

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TABLE 10–2008 LISTED BSAI AMERICAN FISHERIES ACT CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS

[Amounts are in metric tons]

Target species	Area	1995 - 1997			2008 ITAC available to trawl C/Ps	2008 C/P sideboard limit
		Retained catch	Total catch	Ratio of retained catch to total catch		
Sablefish trawl	BS	8	497	0.016	1,263	20
	AI	0	145	0.000	596	0
Atka mackerel [3]	Central AI	n/a	n/a	n/a	n/a	n/a
	A season[1]	n/a	n/a	0.115	9,823	1,130
	HLA limit[2]	n/a	n/a	n/a	5,894	678
	B season[1]	n/a	n/a	0.115	9,823	1,130
	HLA limit[2]	n/a	n/a	n/a	5,894	678
	Western AI	n/a	n/a	n/a	n/a	n/a
	A season[1]	n/a	n/a	0.200	6,831	1,366
	HLA limit[2]	n/a	n/a	n/a	4,099	820
	B season[1]	n/a	n/a	0.200	6,831	1,366
	HLA limit[2]	n/a	n/a	n/a	4,099	820
Yellowfin sole [3,4]	BSAI	100,192	435,788	0.230	131,950	n/a
Rock sole	BSAI	6,317	169,362	0.037	66,975	2,478
Greenland turbot	BS	121	17,305	0.007	1,462	10
	AI	23	4,987	0.005	655	3
Arrowtooth flounder	BSAI	76	33,987	0.002	25,500	51
Flathead sole [3]	BSAI	1,925	52,755	0.036	40,185	1,447
Alaska plaice	BSAI	14	9,438	0.001	51,000	51
Other flatfish	BSAI	3,058	52,298	0.058	18,190	1,055
Pacific ocean perch	BS	12	4,879	0.002	3,468	7
	Eastern AI [3]	125	6,179	0.020	4,376	88
	Central AI [3]	3	5,698	0.001	4,465	4
	Western AI [3]	54	13,598	0.004	6,805	27
Northern rockfish	BSAI	91	13,040	0.007	7,539	53
Shortraker rockfish	BSAI	50	2,811	0.018	392	7
Rougheye rockfish	BSAI	50	2,811	0.018	187	3
Other rockfish	BS	18	621	0.029	383	11
	AI	22	806	0.027	497	13
Squid	BSAI	73	3,328	0.022	1,675	37
Other species	BSAI	553	68,672	0.008	49,313	395

[1] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the annual ITAC specified for the Western Aleutian District, and 11.5 percent of the annual ITAC specified for the Central Aleutian District.

[2] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2008, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

[3] Atka mackerel, flathead sole, rock sole, yellowfin sole, and Aleutian Islands Pacific ocean perch are multiplied by the remainder of the TAC after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

[4] Section 679.64(a)(1)(v) exempts AFA catcher/processors from a yellowfin sole sideboard limit because the 2008 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector (131,950 mt) is greater than 125,000 mt.

Note: Section 679.64(a)(1) exempts Aleutian Islands pollock and BSAI Pacific cod from AFA catcher/processor sideboard limits.

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In the original 2008 harvest specifications, AFA catcher/processor halibut PSC sideboard limits are calculated based on a proportion of the

halibut PSC available to all trawl vessels. Amendment 80 fixes the halibut PSC sideboard limits for AFA catcher/processors at the levels established in the 2006 and 2007 final harvest specifications (71 FR 10894, March 3, 2006) and listed in Table 40 to part 679 in the proposed regulatory text.

In the original 2008 harvest specifications, the amount of trawl crab PSC available to AFA catcher/processors is based on the total crab PSC limit, prior to any allocations to the CDQ reserves. Amendment 80 changes the amount of crab PSC available for AFA catcher/processor sideboard limit calculations to the amount of the trawl PSC limit available after allocation to the CDQ reserves as crab PSQ. Table 41 to part 679 shows the results of this change.

The basis for these sideboard limits is described in detail in the final rules implementing major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007). The revised Table 11 below replaces Table 11 in the final harvest specifications (72 FR 9463–9464).

Halibut and crab PSC listed in revised Table 11 that are caught by listed AFA catcher/processors participating in any groundfish fishery other than pollock will accrue against the 2008 PSC sideboard limits for the listed AFA catcher/processors. Section 679.21(e)(3)(v) authorizes NMFS to close directed fishing for groundfish other than pollock for listed AFA catcher/processors once a 2008 PSC sideboard limit listed in revised Table 11 is reached.

Crab or halibut PSC caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/''other species'' fishery categories under regulations at § 679.21(e)(3)(iv).

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TABLE 11–2008 BSAI AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS [1]

PSC species	Ratio of PSC catch to total PSC	2008 PSC available to trawl vessels after subtraction of PSQ	2008 C/P sideboard limit
Halibut mortality	n/a	n/a	286
Red king crab Zone 1[2]	0.007	175,921	1,231
C. opilio[2]	0.153	3,884,550	594,336
C. bairdi	n/a	n/a	n/a
Zone 1[2]	0.140	875,140	122,520
Zone 2[2]	0.050	2,652,210	132,611

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

[2] Refer to § 679.2 for definitions of areas.

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AFA Catcher Vessel Sideboard Limits

Pursuant to § 679.64(b), the Regional Administrator restricts the ability of AFA catcher vessels to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. Section 679.64(b) establishes a formula for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rules implementing major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007). Tables 12 and 13 list the 2008 AFA catcher vessel sideboard limits.

This action changes Table 12 by removing the yellowfin sole sideboard limit. Section 679.64(b)(6) exempts AFA catcher vessels from a yellowfin sole sideboard limit because the 2008 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector (131,950 mt) is greater than 125,000 mt. Also, this action changes Table 12 by increasing the sideboard limits for flathead sole and rock sole because the ITAC for these species increases from 85 percent to 89.3 percent of the TAC. The sideboard limits for Aleutian Islands Pacific ocean perch and Atka mackerel remain the same because the ITAC was specified as 89.3 percent under revised Table 1 for 2008 final harvest specifications. The revised Table 12 below replaces Table 12 in the final harvest specifications (72 FR 9464–9465).

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, will be deducted from the sideboard limits listed in revised Table 12.

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TABLE 12–2008 BSAI AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD LIMITS

[Amounts are in metric tons]

Species	Fishery by area/season/ processor/gear	Ratio of 1995-1997 AFA CV catch to 1995-1997 TAC	2008 initial TAC	2008 Catcher vessel sideboard limits
Pacific cod	BSAI	n/a	n/a	n/a
	Jig gear	0.0000	1,589	0
	Hook-and-line CV	n/a	n/a	n/a
	Jan 1 - Jun 10	0.0006	115	0
	Jun 10 - Dec 31	0.0006	110	0
	Pot gear CV	n/a	n/a	n/a
	Jan 1 - Jun 10	0.0006	4,826	3
	Sept 1 - Dec 31	0.0006	4,637	3
	CV < 60 feet LOA using hook-and-line or pot gear	0.0006	2,253	1
	Trawl gear CV	n/a	n/a	n/a
	Jan 20 - Apr 1	0.8609	18,557	15,976
	Apr 1 - Jun 10	0.8609	2,759	2,375
	Jun 10 - Nov 1	0.8609	3,762	3,239
Sablefish	BS trawl gear	0.0906	1,263	114
	AI trawl gear	0.0645	596	38
Atka mackerel [1]	Eastern AI/BS	n/a	n/a	n/a
	Jig gear	0.0031	142	0
	Other gear	n/a	n/a	n/a
	Jan 1 - Apr 15	0.0032	7,787	25
	Sept 1 - Nov 1	0.0032	7,787	25
	Central AI	n/a	n/a	n/a
	Jan - Apr 15	0.0001	9,823	1
	HLA limit	0.0001	5,894	1
	Sept 1 - Nov 1	0.0001	9,823	1
	HLA limit	0.0001	5,894	1
	Western AI	n/a	n/a	n/a
	Jan - Apr 15	0.0000	6,831	0
	HLA limit	n/a	4,099	0
	Sept 1 - Nov 1	0.0000	6,831	0
	HLA limit	n/a	4,099	0
Yellowfin sole [1, 2]	BSAI	0.0647	131,950	n/a
Rock sole [1]	BSAI	0.0341	66,975	2,284
Greenland turbot	BS	0.0645	1,462	94
	AI	0.0205	655	13
Arrowtooth flounder	BSAI	0.0690	25,500	1,760
Alaska plaice	BSAI	0.0441	51,000	2,249
Other flatfish	BSAI	0.0441	18,190	802

Species	Fishery by area/season/processor/gear	Ratio of 1995-1997 AFA CV catch to 1995-1997 TAC	2008 initial TAC	2008 Catcher vessel sideboard limits
Pacific ocean perch	BS	0.1000	3,468	347
	Eastern AI [1]	0.0077	4,376	34
	Central AI [1]	0.0025	4,465	11
	Western AI [1]	0.0000	6,805	0
Northern rockfish	BSAI	0.0084	7,539	63
Shortraker rockfish	BSAI	0.0037	392	1
Rougheye rockfish	BSAI	0.0037	187	1
Other rockfish	BS	0.0048	383	2
	AI	0.0095	497	5
Squid	BSAI	0.3827	1,675	641
Other species	BSAI	0.0541	49,313	2,668
Flathead sole [1]	BS trawl gear	0.0505	40,185	2,029

[1] Atka mackerel, flathead sole, rock sole, yellowfin sole, and Aleutian Islands Pacific ocean perch are multiplied by the remainder of the TAC after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

[2] Section 679.64(b)(6) exempts AFA catcher vessels from a yellowfin sole sideboard limit because the 2008 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector (131,950 mt) is greater than 125,000 mt.

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In the original 2008 harvest specifications, AFA catcher vessel halibut PSC sideboard limits are calculated based on a proportion of the halibut PSC available to all trawl vessels. Amendment 80 fixed the halibut PSC sideboard limits for AFA catcher vessels in each fishery complex in the BSAI at the levels established in the 2006 and 2007 final harvest specifications (71 FR 10894, March 3, 2006) and listed in Table 40 to part 679.

In the original 2008 harvest specifications, the AFA catcher vessel crab sideboard calculation is dependent on the distribution of trawl crab PSC among the target fishery categories, and the AFA catcher vessel sideboard limit cannot be calculated until those amounts are determined in the annual harvest specification process. This action changes the AFA catcher vessel crab sideboard limit under Amendment 80. It calculates the proportion of the total trawl crab PSC limit attributed to AFA catcher vessels as the sum of the AFA catcher vessel PSC sideboard limits for each crab PSC species in all target fisheries divided by the sum of the total trawl PSC limit for that crab PSC species as described in the annual harvest specification process in each year. Table 41 to part 679 shows the results of this change. The revised Table 3 below replaces Table 13 in the final harvest specifications (72 FR 9465–9466).

Halibut and crab PSC listed in revised Table 13 that are caught by AFA catcher vessels participating in any groundfish fishery for groundfish other than pollock will accrue against the 2008 PSC sideboard limits for the AFA catcher vessels. Sections 679.21(d)(8) and (e)(3)(v) authorize NMFS to close directed fishing for groundfish other than pollock for AFA catcher vessels once a 2008 PSC sideboard limit listed in revised Table 13 is reached. The PSC that is caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/''other species'' fishery categories under regulations at § 679.21(e)(3)(iv).

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TABLE 13–2008 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI[1]

[Amounts are in metric tons]

PSC species	Target fishery category[2]	AFA catcher vessel crab PSC sideboard limit ratio	2008 PSC limit after subtraction of PSQ reserves	2008 AFA catcher vessel PSC sideboard limit
Halibut BSAI[3]	Pacific cod trawl	n/a	n/a	887
	Pacific cod hook-and-line or pot	n/a	n/a	2
	Yellowfin sole total	n/a	n/a	101
	January 20-April 1	n/a	n/a	34
	April 1-May 21	n/a	n/a	21
	May 21-July 1	n/a	n/a	5
	July 1-December 31	n/a	n/a	41
	Rock sole/flathead sole/other flatfish[5]	n/a	n/a	228
	January 20-April 1	n/a	n/a	137
	April 1-July 1	n/a	n/a	45
	July 1-December 31	n/a	n/a	46
	Turbot/arrowtooth/sablefish	n/a	n/a	0
	Rockfish (July 1 - December 31)	n/a	n/a	2
	Pollock/Atka mackerel/other species	n/a	n/a	5
Red King Crab Zone 1[3,4]	Pacific cod	0.299	25,644	7,668
	Yellowfin sole	0.299	32,672	9,769
	Rock sole/flathead sole/other flatfish[5]	0.299	117,213	35,047
	Pollock/Atka mackerel/other species	0.299	392	117
C. opilio COBLZ[3]	Pacific cod	0.168	120,712	20,280
	Yellowfin sole	0.168	2,991,104	502,505
	Rock sole/flathead sole/other flatfish[5]	0.168	621,528	104,417
	Pollock/Atka mackerel/other species	0.168	77,691	13,052
	Rockfish	0.168	38,845	6,526
	Turbot/Arrowtooth/sablefish	0.168	40,238	6,760
C. bairdi Zone 1[3]	Pacific cod	0.33	176,777	58,336
	Yellowfin sole	0.33	329,052	108,587
	Rock sole/flathead sole/other flatfish[5]	0.33	352,682	116,385
	Pollock/Atka mackerel/other species	0.33	16,628	5,487
C. bairdi Zone 2[3]	Pacific cod	0.186	312,961	58,211
	Yellowfin sole	0.186	1,726,588	321,145
	Rock sole/flathead sole/other flatfish[5]	0.186	575,530	107,049
	Pollock/Atka mackerel/other species	0.186	26,523	4,933
	Rockfish	0.186	10,608	1,973

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).

[3] Refer to § 679.2 for definitions of areas.

[4] In December 2006, the Council recommended that red king crab bycatch for trawl fisheries within the RKCSS be limited to 25 percent of the red king crab PSC allowance (see § 679.21(e)(3)(ii)(B)(2)).

[5] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), arrowtooth flounder, flathead sole, Greenland turbot, rock sole, and yellowfin sole.

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AFA Catcher/Processor and Catcher Vessel Sideboard Directed Fishing Closures

The Regional Administrator has determined that many of the AFA catcher/processor and catcher vessel sideboard limits listed in Tables 14 and 15 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2008 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the sideboard limits listed in Tables 14 and 15 as DFAs. The Regional Administrator finds that many of these DFAs will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by listed AFA catcher/processors for the species in the specified areas set out in Table 14 and directed fishing by non-exempt AFA catcher vessels for the species in the specified areas set out in Table 15. This action changes Table 14 by increasing the 2008 sideboard limit for rock sole from 2,359 mt to 2,478 mt. The 2008 rock sole sideboard limit increased for Amendment 80 species because the allocation to the ITAC increased from 85 percent to 89.3 percent. Also, this action adds flathead sole to Table 14 because flathead sole is fully allocated to the non-AFA trawl catcher/processors. This action changes Table 15 by increasing the 2008 sideboard limit for flathead sole from 1,932 mt to 2,029 mt. The 2008 flathead sole sideboard limit increased for Amendment 80 species because the allocation to the ITAC increased from 85 percent to 89.3 percent. Also, this action adds rock sole to Table 14 because rock sole is fully allocated to the non-AFA trawl catcher/processors. The revised Tables 14 and 15 below replace Tables 14 and 15 in the final harvest specifications (72 FR 9467).

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TABLE 14–2008 AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR SIDEBOARD DIRECTED FISHING CLOSURES[1]

[Amounts are in metric tons]

Species	Area	Gear types	2008 sideboard limit
Sablefish trawl	BS	Trawl	20
	AI	Trawl	0
Rock sole	BSAI	all	2,478
Greenland turbot	BS	all	10
	AI	all	3
Arrowtooth flounder	BSAI	all	51
Flathead sole	BSAI	all	1,447
Pacific ocean perch	BS	all	7
	Eastern AI	all	88
	Central AI	all	4
	Western AI	all	27
Northern rockfish	BSAI	all	53
Shortraker rockfish	BSAI	all	7
Rougheye rockfish	BSAI	all	3
Other rockfish	BS	all	11
	AI	all	13
Squid	BSAI	all	37
"Other species"	BSAI	all	395

[1]Maximum retainable amounts may be found in Table 11 to 50 CFR part 679.

TABLE 15–2008 AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES[1]

[Amounts are in metric tons]

Species	Area	Gear types	2008 Sideboard limit
Pacific cod	BSAI	hook-and-line	0
	BSAI	pot	6
	BSAI	jig	0
Sablefish	BS	trawl	114
	AI	trawl	38
Atka mackerel	Eastern AI/BS	jig	0
	Eastern AI/BS	other	50
	Central AI	all	2
	Western AI	all	0
Rock sole	BSAI	all	2,284
Greenland Turbot	BS	all	94
	AI	all	13
Arrowtooth flounder	BSAI	all	1,760
Flathead sole	BSAI	all	2,029
Pacific ocean perch	BS	all	347
	Eastern AI	all	34
	Central AI	all	11
	Western AI	all	0
Northern rockfish	BSAI	all	63
Shortraker rockfish	BSAI	all	1
Rougheye rockfish	BSAI	all	1
Other rockfish	BS	all	2
	AI	all	5
Squid	BSAI	all	641
"Other species"	BSAI	all	2,668

[1]Maximum retainable amounts may be found in Table 11 to 50 CFR part 679.

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Allocation of the Aleutian Islands Pacific Ocean Perch, Flathead Sole, Rock Sole, and Yellowfin Sole TACs

This action changes the allocations of the flathead sole, rock sole, yellowfin sole, and Aleutian Islands Pacific ocean perch TACs in the BSAI after subtraction of 10.7 percent for the CDQ reserve by further allocating amounts to ICAs, BSAI trawl limited access, Amendment 80 limited access, and Amendment 80 cooperatives. The allocation of the ITAC for flathead sole, rock sole, yellowfin sole, and Aleutian Islands Pacific ocean perch is established in accordance with §§ 679.20(a)(10)(i) and (ii), § 679.91, and Tables 33 and 34 to part 679. Table 16 below lists the 2008 allocations and seasonal apportionments of the flathead sole, rock sole, yellowfin sole, and Aleutian Islands Pacific ocean perch TACs. This Table 16 is added to the final harvest specifications.

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TABLE 16–2008 CDQ RESERVES, INCIDENTAL CATCH AMOUNTS, AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Species	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
Area	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI	BSAI	BSAI
TAC	4,900	5,000	7,620	45,000	75,000	150,000
CDQ	524	535	815	4,815	8,025	16,050
ICA	100	10	10	2,000	2,000	2,000
BSAI trawl limited access	214	223	136	0	0	18,050
Amendment 80 limited access	2,154	2,244	3,531	4,177	15,696	45,314
Amendment 80 cooperatives	1,908	1,988	3,128	34,008	49,279	68,587

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Revisions to the 2008 Final Harvest Specifications for the GOA

GOA Amendment 80 Vessel Groundfish Harvest and PSC Limits

Section 679.92 establishes groundfish harvesting sideboard limits on all Amendment 80 vessels to amounts no greater than the limits shown in Table 37 to part 679. Sideboard limits in the GOA are for pollock in the Western and Central Regulatory Areas and in the West Yakutat District, Pacific cod gulfwide, Pacific ocean perch and pelagic shelf rockfish in the Western Regulatory Area and West Yakutat District, and northern rockfish in the Western Regulatory Area. These sideboard limits are necessary to protect the interests of fishermen who do not directly benefit from vessels who receive exclusive harvesting privileges under the Amendment 80 program unless fishing in the limited access or cooperative sectors in the Central GOA Rockfish Program (Rockfish program). Groundfish sideboard limits for Amendment 80 vessels operating in the GOA are based on their average aggregate harvests from 1998 to 2004.

The harvest of Pacific ocean perch, pelagic shelf rockfish, and northern rockfish in the Central Regulatory Area of the GOA is subject to regulation under the Rockfish program. Amendment 80 vessels not qualified under the Rockfish program are excluded from directed fishing for these rockfish species in the Central GOA. Under the Amendment 80 program the F/V Golden Fleece is prohibited from directed fishing for pollock, Pacific cod, Pacific ocean perch, pelagic shelf rockfish, and northern rockfish in the GOA unless fishing in the Central GOA in the limited access or cooperative sectors in the Rockfish program.

Table 17 below lists the 2008 GOA sideboard limits. All targeted or incidental catch of sideboard species made by Amendment 80 vessels will be deducted from the sideboard limits in Table 17. Table 17 is added to the final 2008 harvest specifications for groundfish of the Gulf of Alaska (72 FR 9676, March 5, 2007).

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Table 17 - 2008 and GOA Amendment 80 Program Vessel Sideboard Limits for Groundfish Program Vessels

Species	Area	Apportionments and allocations by area/season/processor/gear	Ratio of Amendment 80 sector vessels 1998 - 2004 catch to TAC	2008 TAC (mt)	2008 Amendment 80 vessel sideboards (mt)
Pollock	Shumagin (610)	A Season	0.003	5,466	16
	Chirikof (620)	January 20 - February 25	0.002	8,915	18
	Kodiak (630)		0.002	4,023	8
	Shumagin (610)	B season	0.003	5,466	16
	Chirikof (620)	March 10 - May 31	0.002	10,814	22
	Kodiak (630)		0.002	2,124	4
	Shumagin (610)	C season	0.003	9,688	29
	Chirikof (620)	August 25 - September 15	0.002	2,792	6
	Kodiak (630)		0.002	5,924	12
	Shumagin (610)	D season	0.003	9,688	29
	Chirikof (620)	October 1 - November 1	0.002	2,792	6
	Kodiak (630)		0.002	5,924	12
	WYK (640)	Annual	0.002	1,694	3
Pacific cod	W	A season[1]	0.020	12,531	251
	C	January 1 - June 10	0.044	17,672	778
	W	B season[2]	0.020	8,354	167
	C	September 1 - December 31	0.044	11,781	518
	WYK	Annual	0.034	3,856	131
Pacific ocean perch	W	Annual	0.994	4,291	4,265
	WYK		0.961	1,153	1,108
Northern rockfish	W	Annual	1.000	1,383	1,383
Pelagic shelf rockfish	W	Annual	0.764	1,752	1,339
	WYK		0.896	366	328

[1] The Pacific cod A season for trawl gear does not open until January 20.

[2] The Pacific cod B season for trawl gear closes November 1.

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The PSC sideboard limits for Amendment 80 vessels in the GOA are based on the historic use of halibut PSC by Amendment 80 vessels in each PSC target category from 1998 through 2004 (Table 38 to 50 CFR part 679). These values are slightly lower than the average historic use to accommodate two factors: allocation of halibut PSC CQ under the Central GOA Rockfish Program; and the exemption of the F/V GOLDEN FLEECE from this restriction. Table 18 below lists these amounts. Table 18 is added to the final harvest specifications for groundfish of the Gulf of Alaska (72 FR 9676, March 5, 2007).

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Table 18 - 2008 Amendment 80 Vessel Prohibited Species Catch (PSC) Limits for the GOA

PSC species	Season	Target fishery	Historic amendment 80 use of the annual halibut PSC limit catch	2008 annual PSC limit (mt)	2008 Amendment 80 vessel PSC limit (mt)
Halibut	Trawl 1st seasonal allowance January 20 - April 1	shallow-water	0.0048	2,000	10
		deep-water	0.0115	2,000	23
	Trawl 2nd seasonal allowance April 1- July 1	shallow-water	0.0189	2,000	38
		deep-water	0.1072	2,000	214
	Trawl 3rd seasonal allowance July 1 - September 1	shallow-water	0.0146	2,000	29
		deep-water	0.0521	2,000	104
	Trawl 4th seasonal allowance September 1 - October 1	shallow-water	0.0074	2,000	15
		deep-water	0.0014	2,000	3
	Trawl 5th seasonal allowance October 1 - December 31	shallow-water	0.0227	2,000	45
		deep-water	0.0371	2,000	74

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Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule is necessary to revise 2008 final harvest specifications and prohibited species catch limits for the groundfish fishery of the BSAI so that these amounts are consistent with new fishery allocations and limitations established under Amendments 80 and 85. This action affects all fishermen who participate in the BSAI fishery. The specific amounts of OFL, ABC, TAC, and PSC amounts and allocations thereof, are provided in tabular form to assist the reader. NMFS will announce closures of directed fishing in the **Federal Register** and in information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Classification

NMFS determined that the BSAI and GOA FMPs are necessary for the conservation and management of the Alaska groundfish fisheries and that they are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA) finds good cause to waive prior notice and opportunity for public comment on this action as notice and comment is unnecessary. Through this action, NOAA seeks to revise the 2008 BSAI and GOA harvest specifications consistent with the final rules implementing Amendments 80 and 85 and to ensure that the groundfish and PSC allocations and limits implemented under Amendments 80 and 85 will be effective at the beginning of the 2008 fishing year. Prior notice and opportunity for public comment on this action is unnecessary because the revisions being made by this action seek merely to update the 2008 BSAI and GOA harvest specifications to reflect allocations and limitations implemented and required by Amendments 80 and 85 and which have already been subject to notice and comment. This action does not revise the 2008 BSAI and GOA harvest specifications in any substantive manner not previously the subject of notice and comment during the development of Amendments 80 and 85.

The AA also finds good cause to waive the 30-day delay in the effective date requirement of 5 U.S.C. 553(d). The waiver of the 30-day delay in effective date requirement of 5 U.S.C. 553(d) is necessary to ensure that the allocations and limitations required under Amendments 80 and 85 will be effective at the beginning of the 2008 fishing year and to provide the regulated community with the timely, adequate and accurate information necessary to allow the industry to plan for the fishing season, to conduct orderly and efficient fisheries and to avoid potential disruption to the fishing fleet and processors. This rule must be effective on January 1, 2008, because vessels affected by the changes in this final rule will begin fishing immediately after the start of the calendar year when the value from several of these groundfish fisheries, such as rock sole and yellowfin sole, is the highest. If this action is not effective at the start of the fishing year, some vessels would be able to harvest groundfish in amounts that exceed allocations that will be implemented under Amendments 80 and 85, thereby reducing allocations of groundfish intended for other vessels and undermining the intent of Amendments 80 and 85. The economic value of the fisheries for intended recipients under Amendments 80 and 85 would be lost.

NMFS prepared a Final EIS for the harvest strategy implemented by the annual harvest specifications and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the Final EIS. Copies of the Final EIS and ROD for this action are available (see **ADDRESSES**).

Three separate final regulatory flexibility analyses (FRFAs) were prepared to evaluate the impacts on small entities resulting from (1) alternative harvest strategies employed in establishing the 2008 harvest specifications (2) alternatives considered during the development and

approval of Amendment 85, and (3) alternatives considered during the development and approval of Amendment 80. All three of these FRFAs met the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601–612). A summary of each FRFA was published with its relevant final rule and is not repeated here. The summary of the FRFA supporting the final 2008 final harvest specifications was published March 2, 2007 (72 FR 9451) and March 5, 2007 (72 FR 9676); the summary of the FRFA supporting Amendment 85 to the FMP was published September 4, 2007 (72 FR 50788), and the summary of the FRFA supporting Amendment 80 to the FMP was published September 14, 2007 (72 FR 52668).

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; Pub. L. 108 447.

Dated: December 13, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 07–6100 Filed 12–18–07; 8:45 am]

BILLING CODE 6100–22–S

Proposed Rules

Federal Register

Vol. 72, No. 243

Wednesday, December 19, 2007

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0347; Directorate Identifier 2007–NM–253–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Two A330 operators have reported that the guide shaft of the Refuel Isolation Valve has been broken away from the main casting and entered the fuel tank. The Supplier Investigation evidenced that water builds-up in the cavity of the Refuel Isolation Valve and freezes during flight. When refuel pressure is applied to the piston, the ice restricts the piston travel on one side leading to an asymmetric movement of the piston resulting in breakage of the guide shaft. A non-bonded metallic object within the fuel tank can result [in] a potential ignition source, which in combination with a lightning strike constitutes an unsafe condition.

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 January 18, 2008.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0347; Directorate Identifier 2007–NM–253–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Airworthiness Directive 2007–0239, dated September 3, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Two A330 operators have reported that the guide shaft of the Refuel Isolation Valve has been broken away from the main casting and entered the fuel tank. The Supplier Investigation evidenced that water builds-up in the cavity of the Refuel Isolation Valve and freezes during flight. When refuel pressure is applied to the piston, the ice restricts the piston travel on one side leading to an asymmetric movement of the piston resulting in breakage of the guide shaft. A non-bonded metallic object within the fuel tank can result [in] a potential ignition source, which in combination with a lightning strike constitutes an unsafe condition.

For the reasons described above, this Airworthiness Directive (AD) requires replacement of the affected Refuel Isolation Valve with a more robust valve similar to that designed for the A380.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletins A330–28–3103; A340–28–4120; and A340–28–5044; all dated July 17, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S.

operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 34 products of U.S. registry. We also estimate that it would take about 14 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $8,000 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 $310,080, or $9,120 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:

Airbus: Docket No. FAA–2007–0347; Directorate Identifier 2007–NM–253–AD.

Comments Due Date

(a) We must receive comments by January 18, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Airbus Model A330 and A340 airplanes identified in paragraphs (c)(1) and (c)(2) of this AD; certificated in any category; all certified models; all serial numbers.

(1) Model A330 and A340 airplanes except those on which Airbus Modification 55664 has been embodied in production or Airbus Service Bulletin A330–28–3103, A340–28–4120, or A340–28–5044 has been embodied in service.

(2) Model A330–300 series airplanes on which Airbus Modification 40176 (optional LH (left hand) coupling) has been embodied in production or Airbus Service Bulletin A330–28–3018 (optional LH coupling) has been embodied in service; except those on which Airbus Modification 56148 has been embodied in production or Airbus Service Bulletin A330–28–3103 has been embodied in service.

Subject

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

Reason

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

Two A330 operators have reported that the guide shaft of the Refuel Isolation Valve has been broken away from the main casting and entered the fuel tank. The Supplier Investigation evidenced that water builds-up in the cavity of the Refuel Isolation Valve and freezes during flight. When refuel pressure is applied to the piston, the ice restricts the piston travel on one side leading to an asymmetric movement of the piston resulting in breakage of the guide shaft. A non-bonded metallic object within the fuel tank can result [in] a potential ignition source, which in combination with a lightning strike constitutes an unsafe condition.

For the reasons described above, this Airworthiness Directive (AD) requires replacement of the affected Refuel Isolation Valve with a more robust valve similar to that designed for the A380.

Actions and Compliance

(f) Unless already done, do the following actions in accordance with the instructions defined in Airbus Service Bulletin A330–28–3103, A340–28–4120, or A340–28–5044, all dated July 17, 2007, as applicable.

(1) Within 18,000 flight hours from the effective date of this AD: Replace the refuel isolation valve(s); and re-identify the refuel/defuel coupling in accordance with the instructions defined in the applicable service bulletin.

(2) For refuel Isolation Valve and Refuel/Defuel Coupling Spare units: From the effective date of this AD, no person may install an affected refuel isolation valve unit or an affected refuel/defuel coupling unit as a replacement part on an aircraft, unless it has been modified in accordance with the instructions defined in the applicable service bulletin.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from

a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2007–0239, dated September 3, 2007, and Airbus Service Bulletins A330–28–3103, A340–28–4120, and A340–28–5044, all dated July 17, 2007, for related information.

Issued in Renton, Washington, on December 10, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24519 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0346; Directorate Identifier 2007–NM–202–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Model 737–300, –400, and –500 series airplanes. This proposed AD would require an inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service unit and the lavatory and attendant box assemblies, corrective action if necessary, and other specified action. This proposed AD results from a report that several passenger masks with broken in-line flow indicators were found following a mask deployment. We are proposing this AD to prevent the in-line flow indicators of the passenger oxygen masks from fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

DATES: We must receive comments on this proposed AD by February 4, 2008.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Susan Letcher, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6474; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0346; Directorate Identifier 2007–NM–202–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received a report indicating that several passenger masks with broken in-line flow indicators were found following a mask deployment, on a Boeing Model 777–200 series airplane. Operators subsequently found several more broken in-line flow indicators after examining the oxygen mask assemblies on other Model 777 series airplanes and on Model 747–400 series airplanes. Investigation revealed that certain flow indicators are weaker and can fracture because of internal residual stresses caused by the flow indicator joint design and manufacturing processes. Fractures cause the in-line flow indicator to separate and consequently prevent oxygen flow to the mask during an emergency. This condition, if not corrected, could result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

The oxygen masks on certain Model 777 airplanes and Model 747–400 series airplanes have the same flow indicators as those installed on certain Model 737–300, –400, and –500 series airplanes. Therefore, the Model 737–300, –400, and –500 series airplanes may be subject to the identified unsafe condition.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–35–1099, dated April 9, 2007. The service bulletin describes procedures for doing a general visual inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service unit (PSU) and the lavatory and attendant box assemblies. The service bulletin also describes procedures for doing the corrective action if necessary and other specified action. The corrective action includes repairing any B/E Aerospace oxygen mask assembly with a manufacturing date after January 1, 2002, and before March 1, 2006. The service bulletin also specifies that as an alternative to doing the repair (rework), the oxygen mask assembly may be replaced with a new oxygen mask outside the scope of the service bulletin. The other specified action includes doing the oxygen mask drop test.

Boeing Special Attention Service Bulletin 737–35–1099 refers to B/E Aerospace Service Bulletin 174080–35–01, dated February 6, 2006; and

Revision 1, dated May 1, 2006; as additional sources of service information for repairing the oxygen mask assembly. B/E Aerospace Service Bulletin 174080–35–01 describes procedures for modifying the oxygen mask assembly by replacing the flow indicator, part number (P/N) 118023–02, with an improved flow indicator, P/N 118023–12. B/E Aerospace Service Bulletin 174080–35–01 also specifies that, as an alternative to modifying the oxygen mask, operators may replace the oxygen mask with a new oxygen mask having the improved flow indicator.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

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

Clarification Between the Proposed AD and Service Bulletin

Although Boeing Special Attention Service Bulletin 737–35–1099 specifies to repair the oxygen mask assembly, the intent of the service bulletin is to replace it with either a new or modified oxygen mask assembly having an improved flow indicator. Therefore, this proposed AD would require replacing the oxygen mask assembly with a new or modified oxygen mask assembly having an improved flow indicator.

Costs of Compliance

There are about 1,956 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 646 airplanes of U.S. registry. The proposed actions would take about 16 work hours per airplane, for an average of 180 oxygen masks per airplane distributed in about 45 PSU/oxygen boxes, at an average labor rate of $80 per work hour. Required parts would cost about $6 per oxygen mask, or $1,080 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $1,524,560, or $2,360 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–0346; Directorate Identifier 2007–NM–202–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 4, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–35–1099, dated April 9, 2007.

Unsafe Condition

(d) This AD results from a report that several passenger masks with broken in-line flow indicators were found following a mask deployment. We are issuing this AD to prevent the in-line flow indicators of the passenger oxygen masks from fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

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.

Inspection and Related Investigative/Corrective Actions if Necessary

(f) Within 60 months after the effective date of this AD, do a general visual inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service unit and the lavatory and attendant box assemblies, and do the applicable corrective action and other specified action, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–35–1099, dated April 9, 2007; except where the service bulletin specifies repairing the oxygen mask assembly, replace it with a new or modified oxygen mask assembly having an improved flow indicator. The corrective action and other specified action must be done before further flight.

Note 1: Boeing Special Attention Service Bulletin 737–35–1099 refers to B/E Aerospace Service Bulletin 174080–35–01, dated February 6, 2006; and Revision 1, dated May 1, 2006; as additional sources of service information for modifying the oxygen mask assembly by replacing the flow indicator with an improved flow indicator.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time

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

Issued in Renton, Washington, on December 10, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24521 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0345; Directorate Identifier 2007–NM–194–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310–304, –322, –324, and –325 Airplanes; and A300 Model B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, F4–605R, F4–622R, and C4–605R Variant F Airplanes (Commonly Called Model A300–600 Series Airplanes)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

> Due to the recalculation of loads for the Multi Role Transporter and Tanker (MRTT) aircraft, it has been found that a structural reinforcement at the aft section of the fuselage (FR (frame) 87–FR91) is required for A300–600 aircraft and A310 aircraft with a Trim Tank installed. * * *

The unsafe condition is the potential loss of structural integrity in the aft section of the fuselage between FR87 through FR91, inclusive, during extreme rolling and vertical maneuver combinations. 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 January 18, 2008.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0345; Directorate Identifier 2007–NM–194–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0173, dated June 18, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Due to the recalculation of loads for the Multi Role Transporter and Tanker (MRTT) aircraft, it has been found that a structural reinforcement at the aft section of the fuselage (FR (frame) 87–FR91) is required for A300–600 aircraft and A310 aircraft with a Trim Tank installed. * * *

The unsafe condition is the potential loss of structural integrity in the aft section of the fuselage between FR87 through FR91, inclusive, during extreme rolling and vertical maneuver combinations. The corrective action is reinforcing the structure at FR91. Related investigative and corrective actions (reinforcement) include:

- Doing a rotating probe inspection for cracking of the fastener holes;
- Reaming the fastener holes; and
- Contacting Airbus for repair instructions and repairing any crack found in any reamed fastener hole.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletins A310–53–2126 and A300–53–6156, both dated November 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, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 160 products of U.S. registry. We also estimate that it would take about 129 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $5,840 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 $2,585,600, or $16,160 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:

Airbus: Docket No. FAA–2007–0345; Directorate Identifier 2007–NM–194–AD.

Comments Due Date

(a) We must receive comments by January 18, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A310–304, –322, –324, and –325 airplanes, certificated in any category, all serial numbers, except those which have received in service application of Airbus Service Bulletin A310–53–2126 (Airbus modification No. 13011). This AD also applies to Airbus A300 Model B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes (commonly called Model A300–600 series airplanes), certificated in any category, all serial numbers, except those which have received application of Airbus modification No. 13273 in production or application of Airbus Service Bulletin A300–53–6156 in service.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

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

Due to the recalculation of loads for the Multi Role Transporter and Tanker (MRTT) aircraft, it has been found that a structural reinforcement at the aft section of the fuselage (FR (frame) 87–FR91) is required for A300–600 aircraft and A310 aircraft with a Trim Tank installed. * * *

The unsafe condition is the potential loss of structural integrity in the aft section of the fuselage between FR87 through FR91, inclusive, during extreme rolling and vertical maneuver combinations. The corrective action is reinforcing the structure at FR91. Related investigative and corrective actions (reinforcement) include: Doing a rotating probe inspection for cracking of the fastener holes; reaming the fastener holes; and contacting Airbus for repair instructions and repairing any crack found in any reamed fastener hole.

Actions and Compliance

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

(1) Within 2,500 flight cycles after the effective date of this AD, reinforce the aft section of the fuselage, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–53–2126 or Service Bulletin A300–53–6156, as applicable, both dated November 28, 2006. Do all related and investigative corrective actions, as applicable, before further flight.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2007–0173, dated June 18, 2007; Airbus Service Bulletin A310–53–2126, dated November 28, 2006; and Airbus Service Bulletin A300–53–6156, dated November 28, 2006; for related information.

Issued in Renton, Washington, on December 10, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24523 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0344; Directorate Identifier 2007–NM–149–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 767–200 and –300 series airplanes. This proposed AD would require replacing the wire segments of the four Fuel Quantity Indicating System (FQIS) wire bundles with new, improved wire segments. This proposed AD results from operator inspections of the FQIS wire bundles that revealed corrosion at the connections between the ground wire and shield of each of the four FQIS wire bundles. We are proposing this AD to prevent this corrosion, which could reduce system protection of the lightning shield and result in loss of the electrical grounding between the lightning shield and the airplane structure. This condition, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by February 4, 2008.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Philip Sheridan, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0344; Directorate Identifier 2007–NM–149–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

Operator inspections of four Fuel Quantity Indicating System (FQIS) wire bundles revealed corrosion at the connections between the ground wire and shield of each of the four wire bundles, on certain Boeing Model 767–200 and –300 series airplanes. Corrosion occurred at the ferrules, which were used for connection of the ground wire. The wire bundle shielding is part of the system protection against a lightning strike. The corrosion reduces system protection against a lightning strike. This condition, if not corrected, could result in loss of the electrical grounding between the lightning shield and the airplane structure. Loss of the electrical grounding between the lightning shield and the airplane structure, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767–28A0064, Revision 2, dated October 27, 2005. The service bulletin describes procedures for replacing the wire segments of the four FQIS wire bundles with new, improved wire segments. The service bulletin also describes procedures for an operational test of the FQIS following the replacement. Accomplishing the actions specified in the service bulletin is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

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

Difference Between the Proposed AD and Service Bulletin

The service bulletin recommends accomplishing the replacement of the wire segments of the four FQIS wire bundles within 48 months after the release date of the service bulletin, but we have determined that this compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the replacement. In light of all of these factors, we find a compliance time of 36 months after the effective date of the AD for completing the required replacement to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Boeing.

Costs of Compliance

There are about 608 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 169 airplanes of U.S. registry. The proposed replacement would take about 42 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $1,756 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $864,604, or $5,116 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–0344; Directorate Identifier 2007–NM–149–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 4, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200 and –300 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 767–28A0064, Revision 2, dated October 27, 2005.

Unsafe Condition

(d) This AD results from operator inspections of the Fuel Quantity Indicating System (FQIS) wire bundles that revealed corrosion at the connections between the ground wire and shield of each of the four FQIS wire bundles. We are issuing this AD to prevent this corrosion, which could reduce system protection of the lightning shield and result in loss of the electrical grounding between the lightning shield and the airplane structure. This condition, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Replacement

(f) Within 36 months after the effective date of this AD: Replace the wire segments of the four FQIS wire bundles with new, improved wire segments, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–28A0064, Revision 2, dated October 27, 2005.

Credit for Actions Done Using Previous Service Information

(g) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–28A0064, Revision 1, dated February 21, 2002, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on December 10, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24531 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076–AE67

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs proposes to amend its regulations governing the Courts of Indian Offenses (otherwise known as CFR Courts). This amendment will clarify the authority of the Assistant Secretary—Indian Affairs to establish the courts, the jurisdiction of the courts, its relationship to tribal governments and the Department of the Interior, and to provide those courts with an updated code of laws.

DATES: Comments must be received on or before January 18, 2008.

ADDRESSES: You may submit comments, identified by the number 1076–AE67, by any of the following methods:

- *Federal rulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Joseph Little, Office of Justice Services, Bureau of Indian Affairs, 1001 Indian School Road, NW.; Albuquerque, NM 87104.

FOR FURTHER INFORMATION CONTACT: Joseph Little (505) 563–3833.

SUPPLEMENTARY INFORMATION: The authority to issue this amendment is

vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9, and 25 U.S.C. 13 which authorize appropriations for ''Indian judges.'' This rule is published in the exercise of the rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

Background

This proposed amendment:

(1) Provides for the establishment of courts when tribal justice systems do not exist;

(2) Updates the listing of Indian reservations to which the Code applies;

(3) Clarifies the provision on jurisdictional limitations, which excludes from jurisdiction under this part Federal or state employees acting within the scope of their employment;

(4) Adds provisions for drug abuse, abuse of psychotoxic substances, child abuse, prostitution, and family violence; and

(5) Increases the maximum penalties for various offenses in the Code.

The increased penalties are proposed in response to the law enforcement provisions of the Anti-Drug Abuse Act of 1986, amending the sentencing limitations of the Indian Civil Rights Act, 25 U.S.C. 1302. Tribal courts may impose maximum fines up to $5,000 and sentences of imprisonment up to one year.

Section 11.100, Listing of Courts of Indian Offenses, does not defeat the inherent sovereignty of a tribe to establish tribal courts and exercise jurisdiction under tribal law. *Tillett* v. *Lujan,* 931 F.2d 636, 640 (10th Cir. 1991) (CFR courts ''retain some characteristics of an agency of the federal government'' but they ''also function as tribal courts''); *Combrink* v. *Allen,* 20 Indian L. Rep. 6029, 6030 (Ct. Ind. App., Tonkawa, Mar. 5, 1993) (CFR court is a ''federally administered tribal court''); *Ponca Tribal Election Board* v. *Snake,* 17 Indian L. Rep. 6085, 6088 (Ct. Ind. App., Ponca, Nov. 10, 1988) (''The Courts of Indian Offenses act as tribal courts since they are exercising the sovereign authority of the tribe for which the court sits.'') A clarifying sentence has been added to the jurisdictional limitations section to express unambiguously that Federal or state employees acting within the scope of their employment are not subject to the jurisdiction of Courts of Indian Offenses.

The new offenses are abuse of psychotoxic chemical solvents and a dangerous drug offense. They are also proposed to enhance the ability of law enforcement agencies on Indian reservations to prevent and penalize the possession, use and/or distribution of illegal controlled substances.

Prostitution was inadvertently omitted from a prior revision of the Law and Order Code and is, therefore, included here. The crime is a continuation of the provision contained in 25 CFR part 11 which has been in force for many years, with the addition of the crime of solicitation which is intended to facilitate the prosecution of persons soliciting for prostitutes.

Child abuse and neglect has been added as a separate criminal offense. Although there is some overlapping of these offenses and the sexual assault provisions of the revised Law and Order Code, the abuse provision is much broader and will give prosecutors more flexibility in protecting children from abuse. The family violence subpart establishes a new procedure for acts of family violence. This approach to family violence reflects the decision set forth in *Thurman* v. *City of Torrington,* 595 F. Supp. 1521 (D. Conn. 1984). Thurman filed an action against the City alleging a violation of equal protection for the City's failure to provide the same type of protection to persons in a family relationship as it provides to other abused persons. The court, finding that Thurman had a cause of action under the equal protection clause, held that the City had an affirmative duty to treat family partners as it would other abused persons. The knowledge that arrests deter subsequent family violence has resulted in all states passing some type of special legislation for acts of family violence. Forty-eight states have warrant-less arrest provisions and many have special protective orders. This subpart is drawn from those statutes.

The proposed amendment will not require additional staffing for these courts. It is not anticipated that this revision will have a significant effect on the annual caseload of these courts because it does not enlarge their jurisdiction. Prosecutors must routinely use their discretion in balancing their workloads with the time and prosecutorial resources available. Likewise, in sentencing convicted defendants, judges are acutely aware of the constraints imposed by limited jail space. Because we do not foresee any economic effect on Courts of Indian Offenses as a result of these amendments, there will be no requirement of additional outlays by the Federal Government or the tribes affected by the proposed amendments.

These amendments affect a very small segment of the population and a well-defined group within the Indian community. Because consultation has taken place with this identified group and by being substantively involved in the development of these amendments, the Bureau of Indian Affairs is publishing this rule with a 30-day comment period. Further, a 30-day comment period is necessary because these amendments must be published and become effective as soon as possible to address the chronic abuse of controlled substances in Indian country, in particular methamphetamine.

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The establishment of an average Court of Indian Offenses is estimated to cost less than $200,000 annually to operate. The cost associated with the operation of this court will be with the Bureau of Indian Affairs.

(b) This rule will not create inconsistencies with other agencies' actions. The Department of the Interior through the Bureau of Indian Affairs has the sole responsibility and authority to establish Courts of Indian Offenses on Indian reservations.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The establishment of Court of Indian Offenses will not affect any program rights of any Indian tribe. Its primary function will be to administer justice for misdemeanor offenses within Indian country. The court's criminal jurisdiction will be limited to criminal offenses provided in 25 CFR part 11 and the Law and Order Code of Indian tribes as applicable.

(d) This rule will not raise novel legal or policy issues. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in

(e) the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9, and 25 U.S.C. 13, which authorizes appropriations for ''Indian judges.'' The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United*

States v. *Clapox,* 35 F. 575 (D. Ore. 1888).

Regulatory Flexibility Act

The Department of the Interior, Bureau of Indian Affairs, certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The amendment to 25 CFR 11.100(a) updates the list of Court of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical area of Indian country. Accordingly, there will be no impact on any small entities.

Small Business Regulatory Enforcement Fairness Act

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

(a) Does not have an annual effect on the economy of $100 million or more. The establishment of an average Court of Indian Offenses is estimated to cost less than $200,000 per court to operate annually. The cost associated with the operation of these courts will be with the Bureau of Indian Affairs.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This is a court established primarily for the administration of misdemeanor justice for Indians located within the boundaries of Indian country and will not have any cost or price impact on any other entities in the geographical region.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. These are courts established primarily for the administration of misdemeanor justice for Indians located within the boundaries of Indian country, and will not have an adverse impact on competition, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The establishment of a Court of Indian Offenses will not have jurisdiction to affect any rights of the small governments. Its primary function will be to administer justice for misdemeanor offenses within the boundaries of Indian country. Its jurisdiction will be limited to criminal offenses provided in 25 CFR part 11.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings Implication Assessment (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implication. A takings implication assessment is not required. The amendments to 25 CFR part 11 will establish Courts of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical area of Indian country.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for ''Indian judges.'' The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox*, 35 F. 575 (D. Ore. 1888).

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, 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. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for ''Indian judges.'' The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox,* 35 F. 575 (D. Ore. 1888). Part 11 also requires the establishment of an appeals court; hence, the judicial system defined in Executive Order 12988 will not normally be involved in this judicial process.

Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. The amendment to 25 CFR part 11 does not automatically apply to all of the 561 federally recognized tribes, except when it is determined that the administration of justice has failed on an Indian reservation and that the establishment of the provisional Court of Indian Offenses is necessary until that tribe establishes a tribal court to provide for a law and order code and judicial system to deal with law and order within the exterior boundaries of its Indian reservation. The Department of the Interior establishes a provisional court, to fulfill its trust responsibility towards tribal governments and complies with the unique government-to-government relationship that exists between the Federal Government and Indian tribes.

Paperwork Reduction Act

This amendment to the regulation does not require information collection under the Paperwork Reduction Act.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. The establishment of a Court of Indian Offenses conveys personal jurisdiction over the criminal misdemeanor actions of Indians with the exterior boundaries of Indian country.

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–544).

Effects on the Energy Supply (Executive Order 13211)

This rule does not have a significant effect on the nation's energy supply, distribution, or use as defined by Executive Order 13211.

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain

language. This means that each rule we publish must:

- Be logically organized;
- Use the active voice to address readers directly;
- Use clear language rather than jargon;
- Be divided into short sections and sentences; and
- Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments as instructed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the specific sections that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

List of Subjects in 25 CFR Part 11

Courts, Indians—law, Law enforcement, Penalties.

Dated: August 29, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

Editorial Note: The Office of the Federal Register received this document on December 7, 2007.

For the reasons set out in the preamble, the Bureau of Indian Affairs proposes to amend Part 11 of Chapter I of Title 25 of the Code of Federal Regulations as set forth below.

PART 11—COURTS OF INDIAN OFFENSES AND LAW AND ORDER CODE

1. The authority citation for 25 CFR part 11 continues to read as follows:

Authority: 5 U.S.C. 301; R.S. 463; 25 U.S.C. 2; R.S. 465; 25 U.S.C. 9; 42 Stat. 208; 25 U.S.C. 13; 38 Stat. 586; 25 U.S.C. 200.

2. Revise Subpart A to read as follows:

Subpart A—Application; Jurisdiction

Sec.

11.100 Where are Courts of Indian Offenses established?
11.102 What is the purpose of this part?
11.104 When does this part apply?
11.106 Who is an Indian for purposes of this part?
11.108 How are tribal ordinances affected by this part?
11.110 How are tribal customs affected by this part?
11.112 Reserved.
11.114 What is the criminal jurisdiction of the Court of Indian Offenses?
11.116 What is the civil jurisdiction of a Court of Indian Offenses?
11.118 What are the jurisdictional limitations of the Court of Indian Offenses?

§ 11.100 Where are Courts of Indian Offenses established?

(a) Unless indicated otherwise in this title, these Courts of Indian Offenses are established and the regulations in this part apply to the Indian country (as defined in 18 U.S.C. 1151 and by Federal court precedent) occupied by the following tribes:

(1) Te-Moak Band of Western Shoshone Indians (Nevada);

(2) Ute Mountain Ute Tribe (Colorado);

(3) Tribes located in the former Oklahoma Territory (Oklahoma) that are listed in paragraph (b) of this section;

(4) Tribes located in the former Indian Territory (Oklahoma) that are listed in paragraph (c) of this section;

(5) Winnemucca Indian Tribe; and

(6) Santa Fe Indian School Property, including the Santa Fe Indian Health Hospital, and the Albuquerque Indian School Property (land held in trust for the 19 Pueblos of New Mexico).

(b) This part applies to the following tribes located in the former Oklahoma Territory (Oklahoma):

(1) Apache Tribe of Oklahoma;

(2) Caddo Nation of Oklahoma;

(3) Comanche Nation;

(4) Delaware Nation;

(5) Fort Sill Apache Tribe of Oklahoma;

(6) Kiowa Tribe of Oklahoma;

(7) Otoe-Missouria Tribe of Oklahoma; and

(8) Wichita and Affiliated Tribes of Oklahoma.

(c) This part applies to the following tribes located in the former Indian Territory (Oklahoma):

(1) Choctaw Nation;

(2) Seminole Nation;

(3) Eastern Shawnee Tribe;

(4) Miami Tribe;

(5) Modoc Tribe;

(6) Ottawa Tribe;

(7) Peoria Tribe;

(8) Quapaw Tribe; and

(9) Wyandotte Nation.

§ 11.102 What is the purpose of this part?

It is the purpose of the regulations in this part to provide adequate machinery for the administration of justice for Indian tribes in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of state jurisdiction but where tribal courts have not been established to exercise that jurisdiction.

§ 11.104 When does this part apply?

(a) The regulations in this part continue to apply to each tribe listed in § 11.100(a) until either:

(1) BIA and the tribe enter into a contract or compact for the tribe to provide judicial services; or

(2) The tribe has put into effect a law and order code meeting the requirements of paragraph (b) of this section that establishes a court system.

(b) When a tribe adopts a legal code and establishes a judicial system, the tribe must notify the Assistant Secretary—Indian Affairs or his or her designee.

(1) The law and order code must be adopted by the tribe in accordance with its constitution and by-laws or other governing documents.

(2) The effective date for the code's implementation is contingent upon publication in the **Federal Register** of the amendment to § 11.100(a) that provides public notice of the change and removes the tribe from the list in paragraph (a) of this section.

§ 11.106 Who is an Indian for purposes of this part?

For the purposes of the enforcement of the regulations in this part, an Indian is defined as a person who is a member of an Indian tribe which is recognized by the Federal Government as eligible for services for the BIA, and any other individual who is an ''Indian'' for the purposes of 18 U.S.C. 1152–1153.

§ 11.108 How are tribal ordinances affected by this part?

The governing body of each tribe occupying the Indian country over which a Court of Indian Offenses has jurisdiction may enact ordinances which, when approved by the Assistant Secretary—Indian Affairs or his or her designee, shall be enforceable in the Court of Indian Offenses having jurisdiction over the Indian country occupied by that tribe, and shall supersede any conflicting regulation in this part.

§ 11.110 How are tribal customs affected by this part?

Each Court of Indian Offenses shall apply the customs of the tribe occupying the Indian country over which it has jurisdiction to the extent that they are consistent with the regulations of this part.

§ 11.112 Reserved.

§ 11.114 What is the criminal jurisdiction of the Court of Indian Offenses?

(a) Except as otherwise provided in this title, each Court of Indian Offenses shall have jurisdiction over any action by an Indian (hereafter referred to as person) that is made a criminal offense under this part and that occurred within the Indian country subject to the court's jurisdiction.

(b) No person shall be prosecuted, tried or punished for any offense unless the complaint is filed within five years after such offense shall have been committed.

§ 11.116 What is the civil jurisdiction of a Court of Indian Offenses?

(a) Except as otherwise provided in this title, each Court of Indian Offenses has jurisdiction over any civil action arising within the territorial jurisdiction of the court in which:

(1) The claimant is an Indian; or

(2) Claims between Indian claimant or counter-claimants and non-Indian defendants or counter-defendants are brought before the court by stipulation of the parties.

(b) Any civil action commenced in a Court of Indian Offenses shall be barred unless the complaint is filed within three years after the right of action first accrues.

§ 11.118 What are the jurisdictional limitations of the Court of Indian Offenses?

(a) A Court of Indian Offenses may exercise over a Federal or State official only the same jurisdiction that it could exercise if it were a tribal court. The jurisdiction of Courts of Indian Offenses does not extend to Federal or State employees acting within the scope of their employment.

(b) A Court of Indian Offenses may not adjudicate an election dispute, take jurisdiction over a suit against a tribe, or adjudicate any internal tribal government dispute, unless the relevant tribal governing body passes a resolution, ordinance, or referendum granting the court jurisdiction.

(c) In deciding who is a tribal official, BIA will give deference to a decision of the Court of Indian Offenses, acting as a tribal forum by resolution or ordinance of a tribal governing body under paragraph (b) of this section.

(d) A tribe may not be sued in a Court of Indian Offenses unless its tribal governing body explicitly waives its tribal immunity by tribal resolution or ordinance.

Subpart B—Courts of Indian Offenses; Personnel; Administration

3. In § 11.200, revise the section heading and paragraph (c) to read as follows:

§ 11.200 What is the composition of the Court of Indian Offenses?

* * * * *

(c) Appeals must be heard by a panel of magistrates who were not involved at the tribal/trial level.

* * * * *

4. In § 11.201, revise the section heading and paragraph (a) to read as follows:

§ 11.201 How are magistrates for the Court of Indian Offenses appointed?

(a) The Assistant Secretary—Indian Affairs or his or her designee will appoint each magistrate after consultation with the tribe or tribes as required.

* * * * *

5. In § 11.202, revise the section heading to read as follows:

§ 11.202 How is a magistrate of the Court of Indian Offenses removed?

* * * * *

6. In § 11.203, revise the section heading to read as follows:

§ 11.203 How are the clerks of the Court of Indian Offenses appointed and what are their duties?

* * * * *

7. In § 11.205, revise the section heading to read as follows:

§ 11.205 Are there standards for the appearance of attorneys and lay counselors?

* * * * *

8. In § 11.206, revise the section heading to read as follows:

§ 11.206 Is the Court of Indian Offenses a court of record?

* * * * *

9. In § 11.207, revise the section heading to read as follows:

§ 11.207 What are the responsibilities of Bureau of Indian Affairs employees?

* * * * *

10. In § 11.208, revise the section heading to read as follows:

§ 11.208 May Individual Indian Money accounts be used for payment of judgments?

* * * * *

11. In § 11.209, revise the section heading to read as follows:

§ 11.209 How does the Court of Indian Offenses dispose of fines?

* * * * *

Subpart C—Criminal Procedure

12. In § 11.314, redesignate paragraphs (c) through (e) as paragraphs (d) through (f), revise paragraphs (a) and (b), and add a new paragraph (c), to read as follows:

§ 11.314 Jury trials.

(a) A defendant has a right, upon demand, to a jury trial in any criminal case:

(1) That is punishable by a maximum sentence of one year incarceration; or

(2) In which the prosecutor informs the court before the case comes to trial that a jail sentence will be sought.

(b) If the prosecutor informs the court that no sentence of incarceration will be sought, the court may not impose a sentence of incarceration for the offense.

(c) A jury must consist of 12 residents of the vicinity in which trial is held, selected from a list of eligible jurors prepared each year by the court.

(1) An eligible juror must:

(i) Be at least 18 years of age;

(ii) Not have been convicted of a felony; and

(iii) Be otherwise qualified according to standards established by the Court of Indian Offenses under its general rulemaking authority.

(2) Any party may challenge without cause a maximum of three members of the jury panel chosen under this section.

* * * * *

13. In § 11.315, revise paragraph (a) to read as follows:

§ 11.315 Sentencing.

(a) Any person who has been convicted in a Court of Indian Offenses of a criminal offense under the regulations of this part may be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period up to the maximum permitted by the section defining the offense, but in no case for longer than one year; and

(2) A fine in an amount up to the maximum permitted by the section defining the offense, but in no case greater than $5,000.

* * * * *

Subpart D—Criminal Offenses

14. Revise § 11.450 to read as follows:

§ 11.450 Maximum fines and sentences of imprisonment.

A person convicted of an offense under the regulations in this part may be sentenced as follows:

Type of offense	Maximum allowable sentence
(a) Misdemeanor ..	Up to1 year in prison, or a fine of up to $5,000, or both.
(b) Petty misdemeanor.	Up to 6 months in prison, or a fine of up to $2,500, or both.
(c) Violation	Up to 3 months in prison, or a fine of up to $1,000, or both.

15. Add new §§ 11.451 through 11.454 to read as follows:

§ 11.451 Abuse of psychotoxic chemical solvents.

(a) It is unlawful to:

(1) Intentionally smell or inhale the fumes of any psychotoxic chemical solvent or possess, purchase, or attempt to possess or purchase any psychotoxic chemical solvent, for the purpose of causing intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system; or

(2) Sell, give away, dispense, or distribute, or offer to sell, give away, dispense, or distribute, any psychotoxic chemical solvent knowing or believing that the purchaser or another person intends to use the solvent in violation of this section.

(b) This section does not apply to inhalation of anesthesia for medical or dental purposes.

(c) As used in this section, ''psychotoxic chemical solvent'' means any glue, gasoline, paint, hair spray, Lysol, or other substance containing one or more of the following chemical compounds:

(1) Acetone and acetate;

(2) Benzene;

(3) Butyl-alcohol;

(4) Methyl ethyl;

(6) Peptone;

(7) Pentachlorophenol;

(8) Petroleum ether; or

(9) Any other chemical substance the inhalation of whose fumes or vapors can cause intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system.

(d) The statement listing the contents of a substance packaged in a container by the manufacturer or producer thereof is rebuttable proof of the contents of the substance without further expert testimony if it reasonably appears that the substance in the container is the same substance placed therein by the manufacturer or producer.

(e) Abuse of psychotoxic chemical solvents, as defined in this section, is punishable as a petty misdemeanor, and the court may order any person using psychotoxic chemical solvents as described in paragraph (a) of this section to be committed to a facility for treatment for up to 6 months.

(f) Psychotoxic chemical solvents kept or used in violation of this section are declared contraband and upon proof of a violation must be forfeited to the Federal government by order of the court, following public notice and an opportunity for any person claiming an interest therein to be heard.

§ 11.452 Possession of a Controlled Substance.

(a) It is unlawful for a person to knowingly or intentionally possess any controlled substance listed in 21 CFR Part 1308, as amended, unless:

(1) The Controlled Substances Act or Drug Enforcement Agency regulations specifically authorizes possession of the substance;

(2) The substance or preparation is excluded or exempted by 21 CFR 1308.21 through 1308.35, as amended; or

(3) The provisions of 42 U.S.C. 1996a (regarding traditional Indian religious use of peyote) apply.

(b) Violations of paragraph (a) of this section are punishable as a misdemeanor.

(c) Any controlled substance involved in violation of this section is declared to be contraband. Upon proof of a violation of this section, the controlled substance must be forfeited to the Federal Government by order of the court, after public notice and an opportunity for any person claiming an interest in the substance to be heard.

(d) Any personal property used to transport, conceal, manufacture, cultivate, or distribute the controlled substance in violation of this section is subject to forfeiture to the Federal Government by order of the court upon proof of such use, following public notice and opportunity for any person claiming an interest in the property to be heard.

§ 11.453 Prostitution or Solicitation.

A person who commits prostitution or solicitation or who knowingly keeps, maintains, rents, or leases, any house, room, tent, or other place for the purpose of prostitution is guilty of a misdemeanor.

§ 11.454 Domestic violence.

(a) A person who commits domestic violence by inflicting physical harm, bodily injury, or sexual assault, or inflicting the fear of imminent physical harm, bodily injury, or sexual assault on a family member is guilty of a misdemeanor.

(b) For purposes of this section, a family member is any of the following:

(1) A spouse;

(2) A former spouse;

(3) A person related by blood;

(4) A person related by existing or prior marriage;

(5) A person who resides or resided with the defendant; or

(6) A person with whom the defendant has a child in common.

16. Revise § 11.500 to read as follows.

§ 11.500 Law applicable to civil actions.

(a) In all civil cases, the Magistrate of a Court of Indian Offenses shall have discretion to apply:

(1) Any laws of the United States that may be applicable;

(2) Any authorized regulations contained in the Code of Federal Regulations; and

(3) Any laws or customs of the tribe occupying the area of Indian country over which the court has jurisdiction that are not prohibited by Federal laws.

This delineation does not establish a hierarchy relative to the applicability of specific law in specific cases.

(b) Where any doubt arises as to the customs of the tribe, the court may request the advice of counselors familiar with those customs.

(c) Any matters that are not covered by the laws or customs of the tribe, or by applicable Federal laws and regulations, may be decided by the Court of Indian Offenses according to the laws of the State in which the matter in dispute lies.

17. Add a new Subpart L to read as follows:

Subpart L—Child Protection and Domestic Violence Procedures

Sec.

11.1200 Definitions.
11.1202 How to petition for an order of protection.
11.1204 Obtaining an emergency order of protection.
11.1206 Obtaining a regular (non-emergency) order of protection.
11.1208 Service of the protection order.
11.1210 Duration and renewal of a regular protection order.
11.1212 Consequences of disobedience or interference.
11.1214 Relationship of this part to other remedies.

§ 11.1200 Definitions.

Domestic violence means to inflict physical harm, bodily injury, or sexual assault, or the fear of imminent physical harm, bodily injury, or sexual assault on a family member.

Family member means any of the following:

(1) A spouse;

(2) A former spouse;

(3) A person related by blood;

(4) A person related by existing or prior marriage;

(5) A person who resides or resided with the defendant; or

(6) A person with whom the defendant has a child in common.

Parent means persons who have a child in common, regardless of whether they have been married or have lived together at any time.

§ 11.1202 How to petition for an order of protection.

A victim of a domestic violence, or the parent, guardian of a victim, or a concerned adult may petition the court under this subpart for an order of protection.

(a) The petition must be made under oath or accompanied by a sworn affidavit setting out specific facts describing the act of domestic violence.

(b) The petitioner is not required to file for annulment, separation, or divorce in order to obtain an order of protection. However, the petition should state whether any legal action is pending between the petitioner and the respondent.

(c) The Court may develop simplified petition forms with instructions for completion and make them available to petitioners not represented by counsel. Law enforcement agencies may keep the forms on hand and make them available upon request to victims of domestic violence.

§ 11.1204 Obtaining an emergency order of protection.

(a) When a victim files a petition for an order of protection under § 11.202(a), the court may immediately grant an ex parte emergency order of protection if the petition clearly shows that an act of domestic violence has occurred. The order must meet the content requirements of § 11.206 (a) and (b).

(b) If the court does not immediately grant an emergency order of protection under paragraph (a) of this section, the court must either:

(1) Within 72 hours after the victim files a petition, serve notice to appear upon both parties and hold a hearing on the petition for order of protection; or

(2) If a notice of hearing cannot be served within 72 hours, issue an emergency order of protection.

(c) If the court issues an ex parte emergency order of protection under paragraph (a) of this section, it must within 10 days hold a hearing on the question of continuing the order. If notice of hearing cannot be served within 10 days:

(1) The emergency order of protection is automatically extended for 10 days; and

(2) If after the 10-day extension, notice to appear cannot be served, the emergency order of protection expires.

(d) If the court issues an ex parte emergency order of protection under paragraph (b)(2) of this section, it must cause the order to be served on the person alleged to have committed a family violence act and seek to hold a hearing as soon as possible. If a hearing cannot be held within 10 days, the petitioner may ask the court to renew the emergency protection order.

§ 11.1206 Obtaining a regular (non-emergency) order of protection.

Following a hearing and finding that an act of domestic violence occurred, the court may issue an order of protection. The order must meet the requirements of paragraph (a) of this section and may meet the requirements of paragraph (b) of this section. Either party may request a review hearing to amend or vacate the order of protection.

(a) The order of protection must do all of the following:

(1) Specifically describe in clear language the behavior the court has ordered he or she do or refrain from doing;

(2) Give notice that violation of any provision of the order of protection constitutes contempt of court and may result in a fine or imprisonment, or both; and

(3) Indicate whether the order of protection supersedes or alters prior orders pertaining to matters between the parties.

(b) The order of protection may do any of the following:

(1) Order the person who committed the act of domestic violence to refrain from acts or threats of violence against the petitioner or any other family member;

(2) Order that the person who committed the act of domestic violence be removed from the home of the petitioner;

(3) Grant sole possession of the residence or household to the petitioner during the period the order of protection is effective, or order the person who has committed an act of domestic violence to provide temporary suitable alternative housing for the petitioner and other family members to whom the respondent owes a legal obligation of support;

(4) Award temporary custody of any children involved when appropriate and provide for visitation rights, child support, and temporary support for the petitioner on a basis which gives primary consideration to the safety of the petitioner and other household members;

(5) Order that the person who is found to have committed an act of domestic violence to not initiate contact with the petitioner;

(6) Restrain the parties from transferring, concealing, encumbering, or otherwise disposing of one another's property or the joint property of the parties except in the usual course of business or for the necessities of life; and to account to the court for all such transferring, encumbrances, and expenditures made after the order is served or communicated; and

(7) Order other injunctive relief as the court deems necessary for the protection of the petitioner including orders to law enforcement agencies as provided by this subpart.

§ 11.1208 Service of the protection order.

When an order of protection is granted under this subpart:

(a) The petitioner must file it with the clerk of the court and a copy will be sent by the clerk of the court to a law enforcement agency with jurisdiction over the area in which the court is located.

(b) The order must be personally served upon the respondent, unless the respondent or his or her attorney was present at the time the order was issued.

(c) If the court finds the petitioner unable to pay court costs, the order will be served without cost to the petitioner.

§ 11.1210 Duration and renewal of a regular protection order.

An order of protection granted by the court:

(a) Is effective for a fixed period of time, which is up to a maximum of 6 months; and

(b) May be extended for good cause upon motion of the petitioner for an additional period of up to 6 months each time a petition is presented. A petitioner may request as many extensions as necessary provided that the court determines that good cause exists.

§ 11.1212 Consequences of disobedience or interference.

Any willful disobedience or interference with any court order constitutes contempt of court which may result in a fine or imprisonment, or both, in accordance with this part.

§ 11.1214 Relationship of this subpart to other remedies.

The remedies provided in this subpart are in addition to the other civil or criminal remedies available to the petitioner.

[FR Doc. E7–24043 Filed 12–18–07; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113891–07]

RIN 1545–BG72

Benefit Restrictions for Underfunded Pension Plans; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides a notice of public hearing on proposed rulemaking providing guidance regarding the use of certain funding balances maintained for defined benefit pension plans and regarding benefit restrictions for certain underfunded defined benefit pension plans.

DATES: The public hearing is being held on Monday, January 28, 2008, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by January 7, 2008.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

Mail outlines to CC:PA:LPD:PR (REG–113891–07), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–113891–07), Couriers 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–113891–07).

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, Kelly Banks at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–113891–07) that was published in the **Federal Register** on Friday, August 31, 2007 (72 FR 50544).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic by January 7, 2008.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available free of charge at the hearing. Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing. 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 document.

LaNita Van Dyke,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–24670 Filed 12–18–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209020–86]

RIN 1545–AC09

Foreign Tax Credit: Notification of Foreign Tax Redeterminations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains corrections to a notice of proposed rulemaking by cross-reference to temporary regulations (REG–209020–86) that was published in the **Federal Register** on Wednesday, November 7, 2007 (72 FR 62805) relating to a taxpayer's obligation under section 905(c) of the Internal Revenue Code to notify IRS of a foreign tax redetermination and also relating to the civil penalty under section 6689 for failure to notify the IRS of a foreign tax redetermination as required under section 905(c).

FOR FURTHER INFORMATION CONTACT: Teresa Burridge Hughes at (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 905(c) of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–209020–86) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking by cross-reference to the temporary regulations (REG–209020–86), which was the subject of FR Doc. E7–21727, is corrected as follows:

1. On page 62806, column 1, in the preamble, under the caption ''**ADDRESSES:**'', line 8, the language ''CC:PA:LPD:PR (REG–209020–90),'' is corrected to read ''CC:PA:LPD:PR (REG–209020–86),''.

§ 1.905–5 [Corrected]

2. On page 62807, column 2, § 1.905–5, the word (temporary) is removed from the end of the section title.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–24673 Filed 12–18–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2560

RIN 1210–AB24

Civil Penalties Under ERISA Section 502(c)(4)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Proposed regulation.

SUMMARY: This document contains a proposed regulation that, upon adoption, would establish procedures relating to the assessment of civil penalties by the Department of Labor under section 502(c)(4) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). The regulation is necessary to reflect recent amendments to section 502(c)(4) by the Pension Protection Act of 2006, under which the Secretary of Labor is granted authority to assess civil penalties not to exceed $1,000 per day for each violation of section 101(j), (k), or (l), or section 514(e)(3) of ERISA. The regulation would affect employee benefit plans,

plan administrators and sponsors, fiduciaries, as well as participants, beneficiaries, employee representatives, and certain employers.

DATES: Written comments on the proposed regulation should be received by the Department of Labor no later than February 19, 2008.

ADDRESSES: You may submit comments, identified by RIN 1210–AB24, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: e-ORI@dol.gov.* Include RIN 1210–AB24 in the subject line of the message.
- *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Civil Penalties Under 502(c)(4).

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. Comments received will be posted without change to *www.regulations.gov* and *http://www.dol.gov/ebsa,* and available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, including any personal information provided. Persons submitting comments electronically are encouraged not to submit paper copies.

FOR FURTHER INFORMATION CONTACT: Melissa R. Spurgeon, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

On August 17, 2006, the Pension Protection Act of 2006 (PPA), Public Law 109–280, 120 Stat. 780, amended title I of ERISA by adding or revising a substantial number of substantive provisions. In conjunction with many of these new or revised provisions, the PPA also amended the civil enforcement provisions in ERISA to provide the Secretary of Labor with authority to assess civil monetary penalties for violations of the substantive provisions.

Specifically, section 103(b)(1) of the PPA amended section 101 of ERISA by adding a new disclosure requirement under subsection (j), under which the plan administrator of a single-employer defined benefit pension plan must provide written notice of limitations on benefits and benefit accruals to participants and beneficiaries pursuant to section 206(g) of ERISA (or the parallel Internal Revenue Code provision at section 436(b)).[1] A notice of benefit limitations must be furnished within 30 days after a plan becomes subject to an ERISA section 206(g) funding-based restriction and at such other time as may be determined by the Secretary of the Treasury. Section 103(b)(2) of the PPA amended section 502(c)(4) of ERISA to provide the Secretary of Labor with the authority to assess a civil penalty of not more than $1,000 a day for each violation of ERISA section 101(j). The effective date of the provisions added by PPA section 103(b) is for plan years beginning on or after January 1, 2008.

Section 502(a)(1) of the PPA amended section 101 of ERISA by adding subsection (k), under which the plan administrator of a multiemployer pension plan must, upon written request, furnish certain documents to any plan participant, beneficiary, employee representative, or any employer that has an obligation to contribute to the plan. Section 502(a)(2) of the PPA amended section 502(c)(4) of ERISA to provide the Secretary of Labor with the authority to assess a civil penalty of not more than $1,000 a day for each violation of ERISA section 101(k). The effective date of the provisions added by PPA section 502(a) is for plan years beginning on or after January 1, 2008.

Section 502(b)(1) of the PPA amended section 101 of ERISA by adding subsection (l), under which a plan sponsor or plan administrator of a multiemployer employee benefit plan must, upon written request, furnish to any employer with an obligation to contribute to such plan, notice of potential withdrawal liability. Section 502(b)(2) of the PPA amended section 502(c)(4) of ERISA to provide the Secretary of Labor with the authority to assess a civil penalty of not more than $1,000 a day for each violation of ERISA section 101(l). The effective date of the provisions added by PPA section 502(b) is for plan years beginning on or after January 1, 2008.

Section 902(f)(1) of the PPA amended section 514 of ERISA by adding subsection (e)(3), under which the plan administrator of a plan with an automatic contribution arrangement shall provide to each participant to whom the arrangement applies, notice of the participant's rights and obligations under such arrangement. Notice under section 514(e)(3) of ERISA must be furnished within such time period prescribed in section 2550.404c–5(c)(3), generally at least 30 days in advance of a participant's date of plan eligibility and within a reasonable period of time of at least 30 days in advance of each subsequent plan year. Section 902(f)(2) of the PPA amended section 502(c)(4) of ERISA to provide the Secretary of Labor with the authority to assess a civil penalty of not more than $1,000 a day for each violation of ERISA section 514(e)(3). The effective date of the provisions added by PPA section 902(f) is August 17, 2006.

B. Overview of § 2560.502c–4

In general, the proposed regulation sets forth how the maximum penalty amounts are computed, identifies the circumstances under which a penalty may be assessed, sets forth certain procedural rules for service and filing, and provides a plan administrator a means to contest an assessment by the Department by requesting an administrative hearing.

Paragraph (a) of the regulation addresses the general application of section 502(c)(4) of ERISA, under which the plan administrator of an eligible plan shall be liable for civil penalties assessed by the Secretary of Labor in each case in which there is a failure or refusal, in whole or in part, to furnish the item(s) to each person entitled under the requirements of section 101(j), (k), or (l), or section 514(e)(3) of ERISA, as applicable.

Paragraph (b) of the regulation sets forth the amount of penalties that may be assessed under section 502(c)(4) of ERISA and provides that the penalty assessed under section 502(c)(4) for each separate violation is to be determined by the Department, taking into consideration the degree or willfulness of the failure or refusal. Paragraph (b) provides that the maximum amount assessed for each violation shall not exceed $1,000 a day per violation.[2]

Paragraph (c) of the regulation provides that, prior to assessing a penalty under ERISA section 502(c)(4),

[1] Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over section 206(g) of ERISA.

[2] The Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act), Public Law 101–410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996 (the Act), Public Law 104–134, 110 Stat. 1321–373, generally provides that federal agencies adjust certain civil monetary penalties for inflation no later than 180 days after the enactment of the Act, and at least once every four years thereafter, in accordance with the guidelines specified in the 1990 Act. The Act specifies that any such increase in a civil monetary penalty shall apply only to violations that occur after the date the increase takes effect.

the Department shall provide the plan administrator with written notice of the Department's intent to assess a penalty, the amount of such penalty, the number of individuals (e.g., participants and beneficiaries) on which the penalty is based, the period to which the penalty applies, and the reason(s) for the penalty. The notice would indicate the specific provision violated (i.e., section 101(j), (k), or (l), or section 514(e)(3) of ERISA). The notice is to be served in accordance with paragraph (i) of the regulation (service of notice provision).

Paragraph (d) of the regulation provides that the Department may determine not to assess a penalty, or to waive all or part of the penalty to be assessed, under ERISA 502(c)(4), upon a showing by the administrator, under paragraph (e) of the regulation, of compliance with section 101(j), (k), or (l), or section 514(e)(3) of ERISA or that there were mitigating circumstances for noncompliance. Under paragraph (e) of the regulation, the administrator has 30 days from the date of the service of the notice issued under paragraph (c) of the regulation within which to file a statement making such a showing. When the Department serves the notice under paragraph (c) by certified mail, service is complete upon mailing but five (5) days are added to the time allowed for the filing of the statement (see § 2560.502c–4(i)(2)).

Paragraph (f) of the regulation provides that a failure to file a timely statement under paragraph (e) shall be deemed to be a waiver of the right to appear and contest the facts alleged in the Department's notice of intent to assess a penalty for purposes of any adjudicatory proceeding involving the assessment of the penalty under section 502(c)(4) of ERISA, and to be an admission of the facts alleged in the notice of intent to assess. Such notice then becomes a final order of the Secretary 45 days from the date of service of the notice.

Paragraph (g)(1) of the regulation provides that, following a review of the facts alleged in the statement under paragraph (e), the Department shall notify the administrator of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty. Under paragraph (g)(2) of the regulation, this notice becomes a final order 45 days after the date of service of the notice, except as provided in paragraph (h).

Paragraph (h) of the regulation provides that the notice described in paragraph (g) will become a final order of the Department unless, within 30 days of the date of service of the notice, the plan administrator or representative files a request for a hearing to contest the assessment in administrative proceedings set forth in regulations issued under part 2570 of title 29 of the Code of Federal Regulations and files an answer, in writing, opposing the sanction. When the Department serves the notice under paragraph (g) by mail, service is complete upon mailing, but five days are added to the time allowed for the filing of a request for hearing and answer if the notice was served by certified mail (see 2560.502c–4(i)(2)).

Paragraph (i)(1) of the regulation describes the rules relating to service of the Department's notice of penalty assessment (Sec. 2560.502c–4(c)) and the Department's notice of determination on a statement of reasonable cause (Sec. 2560.502c–4(g)). Paragraph (i)(1) provides that service by the Department shall be made by delivering a copy to the administrator or representative thereof; by leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or by mailing a copy to the last known address of the administrator or representative thereof. As noted above, paragraph (i)(2) of this section provides that when service of a notice under paragraph (c) or (g) is by certified mail, service is complete upon mailing, but five days are added to the time allowed for the filing of a statement or a request for hearing and answer, as applicable. Service by regular mail is complete upon receipt by the addressee.

Paragraph (i)(3) of the regulation, which relates to the filing of statements of reasonable cause, provides that a statement of reasonable cause shall be considered filed (i) upon mailing if accomplished using United States Postal Service certified mail or express mail, (ii) upon receipt by the delivery service if accomplished using a ''designated private delivery service'' within the meaning of 26 U.S.C. 7502(f), (iii) upon transmittal if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment, or (iv) in the case of any other method of filing, upon receipt by the Department at the address provided in the notice. This provision does not apply to the filing of requests for hearing and answers with the Office of the Administrative Law Judge (OALJ) which are governed by the Department's OALJ rules in 29 CFR 18.4.

Paragraph (j) of the regulation clarifies the liability of the parties for penalties assessed under section 502(c)(4) of ERISA. Paragraph (j)(1) provides that, if more than one person is responsible as administrator for the failure to provide the required item(s), all such persons shall be jointly and severally liable for such failure. Paragraph (j)(2) provides that any person against whom a penalty is assessed under section 502(c)(4) of ERISA, pursuant to a final order, is personally liable for the payment of such penalty. Paragraph (j)(2) provides that liability for the payment of penalties assessed under section 502(c)(4) of ERISA is a personal liability of the person against whom the penalty is assessed and not a liability of the plan. It is the Department's view that payment of penalties assessed under ERISA section 502(c) from plan assets would not constitute a reasonable expense of administering a plan for purposes of sections 403 and 404 of ERISA. Consistent with section 101(l) of ERISA, for purposes of any civil penalty imposed under section 502(c)(4) of ERISA pursuant to the requirements of section 101(l) of ERISA, the term ''administrator'' shall include plan sponsor (within the meaning of section 3(16)(B) of the Act).

Paragraph (k) of the regulation establishes procedures for hearings before an Administrative Law Judge (ALJ) with respect to assessment by the Department of a civil penalty under ERISA section 502(c)(4), and for appealing an ALJ decision to the Secretary or her delegate. The procedures are the same procedures that would apply in the case of a civil penalty assessment under 502(c)(7) of ERISA.

C. Effective Date

The Department proposes to make this regulation effective 60 days after the date of publication of the final rule in the **Federal Register**.

D. Regulatory Impact Analysis

Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering

with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The Department has determined that these proposed rules relating to the assessment of civil monetary penalties under section 502(c)(4) of ERISA are significant in that they provide guidance on the enforcement of the disclosure provisions of section 101(j), (k), and (l) and section 514(e)(3) of ERISA.

The principal benefit of the statutory penalty provisions and this proposed rule will be greater adherence to the new disclosure requirements. The implementation of orderly and consistent processes for the assessment of penalties and the review of such assessments will also be beneficial for plan administrators. The procedures established in this proposed rule also will allow facts and circumstances related to a failure or refusal to provide appropriate disclosure to be presented by a plan administrator and to be taken into consideration by the Department in assessing penalties under ERISA section 502(c)(4).

The rate of failure or refusal to provide required disclosure, and the dollar value of penalties to be assessed in those cases cannot be predicted. The civil penalty provisions of the statute and this proposed rule impose no mandatory requirements or costs, except where a plan administrator has failed to provide the required disclosure.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA), imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. For purposes of its analyses under the RFA, EBSA continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reporting for pension plans that cover fewer than 100 participants.

The terms of the statute pertaining to the assessment of civil penalties under section 502(c)(4) of ERISA do not vary relative to plan or plan administrator size. The operation of the statute will normally result in the assessment of lower penalties where small plans are involved because penalty assessments are based, in part, on the number of plan participants. The opportunity for a plan administrator to present facts and circumstances related to a failure or refusal to provide appropriate disclosure that may be taken into consideration by the Department in assessing penalties under ERISA section 502(c)(4) may offer some degree of flexibility to small entities subject to penalty assessments. Penalty assessments will have no direct impact on small plans because the plan administrator assessed a civil penalty is personally liable for the payment of that penalty pursuant to section 2560.502c–4(j).

The Department invites interested persons to submit comments on the impact of this notice of proposed rulemaking on small entities, and on any alternative approaches that may serve to minimize the impact on small plans or other entities while accomplishing the objectives of the statutory provisions.

Paperwork Reduction Act

The proposal is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3501, *et seq.*) because it does not contain a collection of information as defined in 44 U.S.C. 3502(3). Information otherwise provided to the Secretary in connection with the administrative and procedural requirements of the proposed rule is excepted from coverage by PRA 95 pursuant to 44 U.S.C. 3518(c)(1)(B), and related regulations at 5 CFR 1320.4(a)(2) and (c). These provisions generally except information provided as a result of an agency's civil or administrative action, investigation, or audit.

Congressional Review Act

This notice of proposed rulemaking is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801, *et seq.*) and, upon finalization, will be transmitted to the Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and does not impose an annual burden exceeding $100 million on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies 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 proposed rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in this proposed rule does not alter the fundamental reporting and disclosure, or administration and enforcement provisions of the statute with respect to employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2560

Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

Accordingly, 29 CFR part 2560 is proposed to be amended as follows:

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

1. The authority citation for part 2560 continues to read as follows:

Authority: 29 U.S.C. 1132, 1135, and Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2560.503–1 also issued under 29 U.S.C. 1133. Section 2560.502c–7 also issued under Pub. L. 109–280, 120 Stat. 780. Sec. 2560.502c–4 also issued under Pub. L. 109–280, 120 Stat. 780.

2. Add § 2560.502c–4 to read as follows:

§ 2560.502c–4 Civil penalties under section 502(c)(4).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(4) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A)

of the Act) shall be liable for civil penalties assessed by the Secretary under section 502(c)(4) of the Act, for failure or refusal to furnish:

(i) Notice of funding-based limits in accordance with section 101(j) of the Act;

(ii) Actuarial, financial or funding information in accordance with section 101(k) of the Act;

(iii) Notice of potential withdrawal liability in accordance with section 101(l) of the Act; or

(iv) Notice of rights and obligations under an automatic contribution arrangement in accordance with section 514(e)(3) of the Act.

(2) For purposes of this section, a failure or refusal to furnish the items referred to in paragraph (a)(1) of this section shall mean a failure or refusal to furnish, in whole or in part, the items required under section 101(j), (k), or (l), or section 514(e)(3) of the Act at the relevant times and manners prescribed in such sections.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(4) of the Act for each separate violation shall be determined by the Department of Labor, taking into consideration the degree or willfulness of the failure or refusal to furnish the items referred to in paragraph (a) of this section. However, the amount assessed for each violation under section 502(c)(4) of the Act shall not exceed $1,000 a day (or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended), computed from the date of the administrator's failure or refusal to furnish the items referred to in paragraph (a) of this section.

(2) For purposes of calculating the amount to be assessed under this section, a failure or refusal to furnish the item with respect to any person entitled to receive such item, shall be treated as a separate violation under section 101(j), (k), or (l), or section 514(e)(3) of the Act, as applicable.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(4) of the Act, the Department shall provide to the administrator of the plan a written notice indicating the Department's intent to assess a penalty under section 502(c)(4) of the Act, the amount of such penalty, the number of individuals on which the penalty is based, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the requirements of section 101(j), (k), or (l), or section 514(e)(3) of the Act, as applicable, or on a showing by such person of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure to file a statement of reasonable cause within the thirty (30) day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(4) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.131(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of determination on statement of reasonable cause.* (1) The Department, following a review of all of the facts in a statement of reasonable cause alleged in support of nonassessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination on the statement of reasonable cause and its determination whether to waive the penalty in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty assessment, not to exceed the amount described in paragraph (c) of this section. This notice is a ''pleading'' for purposes of § 2570.131(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's determination to assess a penalty, shall become a final order, within the meaning of § 2570.131(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.131(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under §§ 2570.130 through 2570.141 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with § 2570.132 of this chapter and § 18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five days shall be added to the time allowed by these rules for the filing of a statement or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or express mail;

(ii) Upon receipt by the delivery service, if accomplished using a ''designated private delivery service'' within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to furnish the items required under section 101(j), (k), or (l),

or section 514(e)(3) of the Act, as applicable, all such persons shall be jointly and severally liable for such failure. For purposes of paragraph (a)(1)(iii) of this section, the term ''administrator'' shall include plan sponsor (within the meaning of section 3(16)(B) of the Act).

(2) Any person, or persons under paragraph (j)(1) of this section, against whom a civil penalty has been assessed under section 502(c)(4) of the Act, pursuant to a final order within the meaning of § 2570.131(g) of this chapter shall be personally liable for the payment of such penalty.

(k) *Cross-references.* (1) The procedural rules in §§ 2570.130 through 2570.141 of this chapter apply to administrative hearings under section 502(c)(4) of the Act.

(2) When applying procedural rules in §§ 2570.130 through 2570.140:

(i) Wherever the term ''502(c)(7)'' appears, such term shall mean ''502(c)(4)'';

(ii) Reference to § 2560.502c–7(g) in 2570.131(c) shall be construed as reference to § 2560.502c–4(g) of this chapter;

(iii) Reference to § 2560.502c–7(e) in § 2570.131(g) shall be construed as reference to § 2560.502c–4(e) of this chapter;

(iv) Reference to § 2560.502c–7(g) in § 2570.131(m) shall be construed as reference to § 2560.502c–4(g); and

(v) Reference to §§ 2560.502c–7(g) and 2560.502c–7(h) in § 2570.134 shall be construed as reference to §§ 2560.502c–4(g) and 2560.502c–4(h), respectively.

Signed at Washington, DC, this 11th day of December, 2007.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E7–24386 Filed 12–18–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2007–OS–0086; 0790–AI24]

32 CFR Part 286

DoD Freedom of Information Act (FOIA) Program Regulation

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense is proposing to update current policies and procedures to reflect the DoD FOIA Program as prescribed by Executive Order 13392. The proposed changes will ensure appropriate agency disclosure of information, and offer consistency with the goals of section 552 of title 5, United States Code.

DATES: Comments must be received by February 19, 2008.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: James Hogan (703) 696–4495.

SUPPLEMENTARY INFORMATION:

Executive Order 13132, ''Federalism''

It has been certified that 32 CFR part 286 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

Executive Order 12866, ''Regulatory Planning and Review''

It has been certified that 32 CFR part 286 does not:

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been certified that 32 CFR part 286 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that 32 CFR part 286 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act '' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 286 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 286

Freedom of information.

Accordingly, 32 CFR part 286 is proposed to be revised to read as follows:

PART 286–DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM REGULATION

Subpart A—General Provisions

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Appendix A to Part 286—DoD FOIA Program Components

Appendix B to Part 286—Addressing FOIA Requests

Authority: 5 U.S.C. 552.

Subpart A—General Provisions

§ 286.1 Purpose.

This part promotes uniformity in the DoD FOIA Program. It shall take precedence over all DoD Component publications that supplement and implement the DoD FOIA Program. A list of the DoD FOIA Program Components is at Appendix A to this part.

§ 286.2 Definitions.

The following terms and meanings shall apply for the purposes of this part:

Administrative appeal. A request by a member of the public, made under the FOIA, asking the appellate authority of the DoD Component to reverse any adverse determination by an Initial Denial Authority (IDA). A requester may also appeal the failure of an agency to respond within the statutory time limits.

Adverse determination. A decision by an IDA to withhold all or part of a requested record, deny a fee category claim by a requester, deny a request for waiver or reduction of fees, deny a request to review an initial fee estimate, deny a request for expedited processing, confirm that no records were located during the initial search, or any determination that a requester believes is adverse in nature.

Agency record. (1) Includes: (i) All products of data compilation made or received by an agency of the U.S. Government under Federal law in connection with the transaction of public business and in DoD possession and control at the time the search in response to a FOIA request is made. Examples include books, papers, maps, photographs, machine-readable materials inclusive of those in electronic form or format, and other documentary materials, regardless of physical form or characteristics.

(ii) Research data produced under a Federal grant used by the Federal Government in developing an agency action that has the force and effect of law (Office of Management and Budget Circular (OMB) A–110).

(2) Does not include:

(i) Objects or articles, such as structures, furniture, vehicles, and equipment, whatever their historical or evidentiary value.

(ii) Anything that is not a tangible or documentary record, such as an individual's memory or an oral communication.

(iii) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee and not distributed to other agency employees for their official use. Personal papers fall into three categories:

(A) Those created before entering Government service.

(B) Private materials brought into, created, or received in the office that were not created or received in the course of transacting Government business.

(C) Work-related personal papers that are not used in the transaction of Government business.

(iv) A record that is not in the possession and control of the Department of Defense when the search is conducted in response to a FOIA request. (There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.)

Appellate authority. The Head of the DoD Component, or designee, having jurisdiction to review and possibly reverse or amend any adverse determination by an IDA.

Direct costs. Those expenditures the DoD Component makes in searching for, reviewing, and duplicating documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay plus 16 percent of that rate to cover benefits) and the costs of operating duplicating machinery. (These factors have been included in the fee rates prescribed at § 286.25. Not included in direct costs are overhead expenses such as the cost of space, heating, or lighting the facility in which the records are stored.

Electronic records. Records (including e-mail) created, stored, and retrievable by electronic means.

Federal agency. Defined in 5 U.S.C. 551(1) and 552(f)(1). (A Federal agency cannot make FOIA requests.)

FOIA office. The DoD Component office that receives FOIA requests from and responds directly to the public.

FOIA public liaison. Defined in E.O. 13392.

FOIA request. A written request for DoD records that reasonably describes the record(s) sought. The request should also indicate a willingness to pay processing fees even if it contains a request for a fee waiver. Written requests may be received by postal service or other commercial delivery means, by facsimile, or electronically. All requests must have a postal mailing address included, even if they are received by facsimile or electronically.

FOIA requester. Any person, including a partnership, corporation, association, State or State agency, foreign government, foreign national, or a lawyer or other representative acting on behalf of any person, who submits a FOIA request. This definition specifically excludes agencies within the Executive Branch of the Federal Government.

FOIA requester service center. Defined in E.O. 13392.

IDA. An official who has been granted authority by the Head of the DoD Component to withhold information requested under the FOIA for one or more of the 9 categories of records exempt from mandatory disclosure. An IDA may also deny a fee category claim by a requester, deny a request for expedited processing, deny a request for a waiver or reduction of fees, review a fee estimate, and confirm that no records were located in response to a request.

Perfected FOIA request. A FOIA request that meets the conditions identified in definition ''FOIA request'' and arrives at the FOIA office of the DoD Component in possession of the records. Also referred to as a ''correct'' request.

Privacy Act system of records. Defined in DoD 5400.11–R [1].

Public interest. The interest in obtaining official information that sheds light on an agency's performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens about their Government's activities.

Search. Includes all time spent looking, both manually and electronically, for records that are responsive to a FOIA request. The term ''search'' also includes a page-by-page or line-by-line identification (if necessary) of material in the record to determine if it, or portions of it, are responsive to the request. Time spent reviewing documents to determine whether to apply one or more of the statutory exemptions is not search time; it is review time.

(1) *Duplication.* The process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper, microfiche, or audiovisual or machine-readable documentation (e.g., magnetic tape or disc), among others.

(2) *Review.* The examination of documents located in response to a FOIA request to determine whether one

[1] Copies of unclassified DoD issuances may be obtained at *http://www.dtic.mil/whs/directives/.*

or more of the statutory exemptions permit withholding. Review also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general, legal or policy issues regarding the application of exemptions.

Submitter. A person or persons outside of the Government providing commercial or financial information or trade secrets to the Government.

Submitter notice. The process required by E.O. 12600 whereby when a Component receives a FOIA request for confidential commercial information, it asks the submitter of the information to advise the Component as to the information it considers exempt from release.

§ 286.3 Public access to DoD information.

(a) The public has a right to information concerning the activities of its Government. DoD policy (32 CFR part 285) is to conduct DoD activities in an open manner and to provide the public a maximum of accurate and timely information concerning DoD activities, consistent with the need for security, public and private interests of the American people, and adherence to other requirements of law and regulation. A record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall not be withheld in whole or in part unless the record is exempt from mandatory, partial or total disclosure under the FOIA. The existence of a sound legal basis to withhold information does not preclude the DoD Component from making a discretionary release if release of that information would serve the public interest. Records requested through public affairs channels by news media representatives that would not be withheld if requested under the FOIA should be released promptly upon request. Similarly, requests from other members of the public for information that would not be withheld under the FOIA should continue to be honored through appropriate means without requiring the requester to invoke the FOIA.

(b) The DoD FOIA Program Components shall prepare, in addition to normal FOIA regulations, a guide, or handbook for the use of the public in obtaining information from their Components as required by 5 U.S.C. 552(g) and section 2(b)(v) of E.O. 13392. This guide should be a short, simple explanation of what the FOIA is designed to do and how the public can use it to access Government records. Within OSD, DFOIPO is responsible for preparing this guide. Each guide shall be available on paper and electronically and shall include:

(1) An index of all major information systems and a description of major information and record locator systems.

(2) The types and categories of records that can be obtained through FOIA requests.

(3) A concise description of the FOIA exemptions and how the Component determines whether the record can be released.

(4) An explanation of how to make a FOIA request, how long the requester can expect to wait for a reply, and the right of appeal.

(5) The location of the FOIA reading rooms(s) within the Component.

(6) The location of the Component's Web site.

(7) A reference to the Component's FOIA regulation and how to obtain a copy.

§ 286.4 Procedures.

(a) *Compliance with the FOIA.* DoD personnel shall comply with the FOIA, this part, and DoD FOIA policy (32 CFR part 285) in both letter and spirit. This strict adherence is necessary to assure uniformity in implementation of the DoD FOIA Program and to create conditions that promote public trust.

(b) *Customer service.* (1) In signing E.O. 13392, the President ordered agencies to emphasize a new citizen-centered approach to the FOIA with a results-oriented focus. Because FOIA requesters are seeking a service from the Federal Government, the DoD Components shall respond courteously and appropriately to FOIA requesters. Additionally, the Components shall provide the public with citizen-centered ways to learn about the FOIA process, information about agency records that are publicly available, and information about the status of a person's FOIA request and appropriate information about the agency's response.

(2) To meet the objectives of E.O. 13392, the DoD Components shall:

(i) Establish one or more FOIA Requester Service Centers. Normally, every DoD Component FOIA office that responds directly to the public is a FOIA Requester Service Center; however, the Components have the discretion to assign more than one FOIA Office under a FOIA Requester Service Center.

(A) Each FOIA Requester Service Center shall have an internet Web site that serves to educate the public on the FOIA process. At a minimum, each Web site shall have the address, telephone number, facsimile number, and electronic mail address to which FOIA requests can be sent; a link to the Component's FOIA handbook or guide; a description of the types of records that can be requested; the name and contact information of the Component's FOIA Public Liaison; and information on how a requester can obtain the status of a request. Additionally, each FOIA Requester Service Center Web site will have an electronic FOIA reading room as described in Subpart B to this part.

(B) The Web sites of DoD Component Headquarters FOIA Requester Service Centers shall link to the Web sites of the other Requester Service Centers within their Components.

(C) The Internet home page of every DoD Component shall link to the FOIA Requester Service Center for that activity.

(ii) Submit to the Director of Administration and Management (DA&M), OSD, the names of personnel to serve as DoD Component FOIA Public Liaisons. Each Component shall have at least one FOIA Public Liaison. Intermediate level Public Liaisons may be named within those Components that have a large number of FOIA Requester Service Centers. The FOIA Public Liaisons are responsible to ensure that the FOIA Requester Service Centers' Web sites comply with § 286.4 (b)(2)(i)(A). Additionally, the FOIA Public Liaisons are responsible for the Component's compliance with the objectives of E.O. 13392, to include the reduction or elimination of FOIA backlogs.

(c) *Prompt action on requests.* (1) When a member of the public complies with the procedures in this part and DoD Component supplementing regulations for obtaining DoD records, and the request is received by the official designated to respond, the DoD Component shall endeavor to provide a final response determination within the statutory 20 working days (5 U.S.C. 552(a)(6)(A)(i)). If unusual circumstances prevent a final response determination within the statutory time period, the Component shall advise the requester of this in writing, and provide a new completion date, which shall be not later than an additional 10 working days. If the Component needs more than this 10-day extension, it will provide the requester an opportunity to narrow the scope of the request, or arrange for an alternative timeframe.

(i) Unusual circumstances are:

(A) The responsive documents are located at a facility geographically separated from the office processing the FOIA request.

(B) The responsive documents are voluminous.

(C) One or more other outside agencies have a substantial interest in either the determination or the subject matter of the request, requiring the DoD Component processing the request to consult with the other agencies. This would include the submitter notice process (§ 286.18(d)(1)(i)(A)).

(ii) A final response determination is notification to the requester that the records are released, or that the records cannot be provided for one or more of the reasons in § 286.13. Interim responses acknowledging receipt of the request are encouraged, as are negotiations with the requester concerning the scope of the request, the response timeframe, and the fee agreement. Such communications do not, however, constitute a final response determination.

(2) If a request fails to meet the minimum requirements of this part, the DoD Component shall inform the requester how to perfect or correct the request. The statutory 20-working day time limit applies upon receipt of a perfected or correct FOIA.

(d) *Use of exemptions.* It is DoD policy (32 CFR part 285) to make records publicly available, unless the record or portions thereof qualify for withholding under one or more of the 9 exemptions.

(e) *Waiver of exemptions.* Records released under the authority of this part are considered to be in the public domain. The disclosure of exempt records without authorization by the appropriate DoD official is not considered a FOIA release. Such a release does not waive the Department of Defense's authority to assert FOIA exemptions to withhold the same records in response to a FOIA request. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

(f) *Creating a record.* (1) A record must exist and be in DoD possession and control at the time of the search to be subject to this part and the FOIA. The DoD Components are not obligated to create, compile, or obtain a record to satisfy a FOIA request. The DoD Components, however, may compile a new record when so doing would result in a more useful response to the requester or would be less burdensome to the agency than providing existing records. Any such compilation should be coordinated with and approved by the requester. The cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee that would be charged for providing the existing record. Fee assessments shall be in accordance with § 286.25.

(2) With regards to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when processing FOIA requests for electronic data where creation of a record, programming, or organizing in a particular format is questionable, if the Component has the capability to respond to the request, and the effort would be a business-as-usual approach then the request should be processed.

(i) A business as usual approach exists when the Component has the capability to process the request without a significant expenditure of resources. If processing a request would cause a significant interference with the operation of the Component's automated information system, then it has a significant expenditure of resources.

(ii) Creating computer programs and/or purchasing additional hardware to extract electronic mail that has been archived for the purpose of emergency retrieval normally are not viewed as business as usual. This is especially true if extensive resources are needed to complete the project.

(iii) Creating a computer program that produces specific requested fields or records contained within a database normally is viewed as business as usual. The time to create this program shall be considered as ''computer operator'' [clarify] search time for fee assessment purposes and the requester may be assessed fees in accordance with § 286.25.

(3) The DoD Components are not required to expend DoD funds to establish data links that provide real-time or near-real-time data to a FOIA requester. The Components are responsible to provide existing data downloaded to electronic media or printed in hard copy at the time the FOIA request is received or processed. If the information would serve the public interest or need, and is economically feasible, the Component may consider posting the information on the Internet.

(g) *Description of a requested record.* The requester is responsible to provide a description of the desired record that enables the Government to locate the record with a reasonable amount of effort. Generally, a reasonable description contains sufficient information to permit the conduct of an organized, non-random search for the record based on the DoD Component's filing arrangements and existing retrieval systems. The DoD Component's decision on the reasonableness of the description must be based on a knowledge of its files, and not on the potential volume of records that may be located and the concurrent review effort to determine releasability. The fact that a FOIA request appears broad or burdensome does not, in itself, entitle the DoD Component to deny the request on the grounds that it does not reasonably describe the record sought.

(h) *Consultations and referrals.* The DoD FOIA referral procedures are based on the concept that the originator of information contained within a record shall make a release determination on that information.

(1) If the DoD Component receives a request for records originated by another DoD Component, it should contact that Component to determine if it also received the request, and if not, obtain concurrence to transfer the request or to advise the requester to send the request to the correct Component. If the request is to be transferred, the requester shall be advised of the action taken, unless exempt information would be revealed by the fact of the referral. Any DoD Component receiving a request that has been misaddressed shall transfer the request to the proper address and advise the requester. DoD Components transferring requests shall include point of contact name, telephone number, and e-mail address in the cover memorandum.

(2) The DoD Component holding a record originated by another DoD Component or agency outside the Department of Defense shall refer a FOIA request for that record, as well as the record, to the originating agency for response directly to the requester. If the DoD Component holding the record has an equity in the document, it shall provide an opinion on the releasability of the record with the referral. If appropriate, the name of the IDA responsible for the decision to withhold all or parts of the record should be provided. Whenever a record is referred to another DoD Component or to an agency outside of the Department of Defense for a release determination and direct response, the requester shall be informed of the referral, unless it has been determined that notification would reveal exempt information. Referred records shall only be identified to the extent consistent with security requirements. DoD Components referring requests shall include point of contact name, telephone number, and e-mail address in the cover memorandum.

(3) At times, a DoD Component may locate a responsive record that it

originated and determine another DoD Component or agency outside the Department of Defense to have a valid interest or equity in the record. In such situations, the DoD Component shall consult with the other DoD Component or agency and obtain its release recommendation. The consulted agency will provide its release recommendation back to the originating Component, which will then respond to the requester. Normally, the requester will not be advised of this consultation unless information is withheld by the consulted agency. However, if the record was created for the use of the other DoD Component or agency by the originating DoD Component (e.g., Defense Contract Audit Agency audit reports), then the procedures of § 286.18(a) apply.

(4) DoD Components receiving transferred or referred requests shall answer them in accordance with the time limits established by the FOIA, this part, and their multi-track processing systems, based upon the date of initial receipt of the request at the referring component or agency.

(5) Prior to notifying a requester of a transfer or referral to another DoD Component or agency outside the Department of Defense, the DoD Component possessing the initial request shall, as appropriate, consult with the other agency to determine if that agency's association with the subject of the request is exempt. If the association is exempt, the DoD Component possessing the initial request will protect the association and any exempt information without revealing the identity of the protected agency. The protected agency shall be responsible for submitting the justifications required in any litigation.

(6) DoD Components locating records originating with the National Security Council (NSC), the White House, or the White House Military Office (WHMO) or containing information in which these agencies would have a concurrent reviewing interest, shall forward the records to the Executive Services Directorate, Office of Freedom of Information (OFOI). OFOI is also the FOIA Requester Service Center for the OSD/Joint Staff. Its address is at Appendix B to this part. The OFOI shall coordinate with the NSC, White House, or WHMO and return the records to the originating agency after coordination for response to the requester.

(7) On occasion, the Department of Defense receives FOIA requests for U.S. Government Accountability Office (GAO) records containing DoD information. Even though the GAO is outside the Executive Branch and not subject to the FOIA, all FOIA requests for GAO documents containing DoD information received either from the public, or on referral from the GAO, shall be processed under the provisions of the FOIA.

(i) *Authentication.* At the request of a FOIA requester, records provided under this part shall be authenticated with an appropriate seal whenever necessary to fulfill an official Government or other legal function. This service is in addition to that required under the FOIA and is not included in the FOIA fee schedule. The DoD Components may charge a fee of $5.20 for each authentication.

(j) *Combatant commands.* (1) The Combatant Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department or the Chairman of the Joint Chiefs of Staff, for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3; it authorizes and requires the Combatant Commands to process FOIA requests in accordance with 32 CFR part 285 and this part. When requested, the Combatant Commands shall forward directly to the DFOIPO all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. The Combatant Commands will advise requesters that they have the right to appeal any adverse determinations to the DFOIPO.

(2) The Combatant Commands shall comply with all provisions of this part that apply to the DoD Components except the appointments of an appellate authority and a FOIA Public Liaison.

(k) *Security clearances and access for FOIA personnel.* Due to the nature of their duties and responsibilities, FOIA personnel need access to all records requested through their respective offices, regardless of the sensitivity or classification of the information. The DoD Components shall ensure FOIA personnel have the appropriate clearances and accesses to perform their duties.

(l) *Use of Contractors in FOIA Administration.* According to DoD Instruction 1100.22 and OMB Circular A–76, there are certain functions, known as inherently governmental activities that cannot be outsourced to a contractor. Since some of the functions of the FOIA Officer are inherently governmental, the DoD Components shall be careful not to outsource those FOIA functions that are inherently governmental. Primarily, activities which require the exercise of substantial discretion in applying government authority or in making decisions for the government are inherently governmental. Inherently governmental FOIA functions include:

(1) Formulating and/or approving FOIA policies and procedures.

(2) Making final determinations regarding whether to treat incoming correspondence as a FOIA or Privacy Act request.

(3) Deciding any issues regarding the scope or interpretation of the request.

(4) Determining the appropriateness of claimed exemptions.

(5) Approving the approach taken in negotiations/discussions with the requester.

(6) Deciding administrative appeals.

(7) Conducting final review of all outgoing correspondence, memoranda, and release packages.

(8) Drafting court documents for filing in FOIA lawsuit in which the government's legal strategy and affirmative defense are determined.

(9) Conducting FOIA training if it involves issues of DoD policy.

(10) Making final determination of requests for expedited processing, fee category, and fee waivers.

(m) *Records management.* FOIA records shall be maintained and disposed of in accordance with the National Archives and Records Administration General Records Schedule and DoD Component records schedules.

(n) *Relationship between the FOIA and the Privacy Act.* Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records, nor are all of them aware of appeal procedures. In some instances, requesters may cite either the FOIA or 5 U.S.C. 552a, commonly known as the Privacy Act, or they may cite neither the FOIA nor the Privacy Act but will imply one or both. For these reasons, the below guidelines are provided to ensure requesters receive the greatest access rights under both statutes. Privacy Act requests can be made only by requesters asking for information on themselves contained within a Privacy Act system of records. If the requested information is on another person, the Privacy Act does not apply. These requests shall be processed under the FOIA.

(1) Requesters who seek records about themselves contained in a Privacy Act system of records, and who cite or imply the FOIA and/or the Privacy Act, will have their requests processed under the provisions of both the Privacy Act and the FOIA. If the Privacy Act system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1), and if the records, or any portion thereof, are

exempt under the FOIA, the requester shall be so advised with the appropriate Privacy Act and FOIA exemption(s). Appeals shall be processed under both the FOIA and the Privacy Act.

(2) Requesters who seek records about themselves that are not contained in a Privacy Act system of records and who cite or imply the Privacy Act will have their requests processed under the provisions of the FOIA, since the Privacy Act does not apply to these records. Appeals shall be processed under the FOIA.

(3) Requesters who seek access to agency records and who cite or imply the FOIA will have their requests and appeals processed under the FOIA.

(4) If the record is required to be released under the FOIA, the Privacy Act does not bar its disclosure. Unlike the FOIA, the Privacy Act applies only to U.S. citizens and aliens admitted for permanent residence.

(5) Requesters shall be advised in the final response letter which statutory authorities were used, inclusive of appeal rights.

(o) *Non-responsive information in responsive records.* The DoD Components shall interpret FOIA requests liberally when determining which records are responsive, and may release non-responsive information. Responsive documents may contain large amounts of non-responsive information, the review of which may cause delays in responding to the requester. In these cases, the DoD Components should identify the information which is non-responsive, redact it, and annotate it as non-responsive. The Components shall not apply these procedures to documents that have a relatively small percentage of non-responsive information. Additionally, redactions of non-responsive information shall not be made in sections smaller than the paragraph level. That is, a non-responsive sentence within an otherwise responsive paragraph shall not be redacted as non-responsive.

(p) *Honoring form or format requests.* The DoD Components shall provide the record in any form or format requested if the record is readily reproducible in that form or format in the Component's automated system. Every effort will be made to ensure the copy provided is in a reasonably usable form. The DoD Components shall make reasonable efforts to use available office equipment to digitally reproduce hard copy records onto digital media. If a Component must outsource to reproduce a record into the requested format, the readily-reproducible criterion is not met. In responding to requests for records, the DoD Components shall make reasonable efforts to search for records in electronic form or format if maintained in automated systems, except when such efforts would significantly interfere with the operation of the automated systems. Such determinations shall be made on a case by case basis.

(q) *Annual report.* The Annual FOIA Report is mandated by 5 U.S.C. 552(e)(1) and completed on a fiscal year basis. Additionally, E.O. 13392 requires additional reporting in the annual report through fiscal year 2007. Due to the magnitude of the requested statistics and the need to ensure accuracy, the DoD Components shall track this data as requests are processed. This will also facilitate quick compilation of the statistics in completing the report.

(1) Each September, DFOIPO shall post on its Web site instructions to the Components concerning Component input for the annual report. The DoD Components shall forward their report to DFOIPO no later than November 30. In turn, the DA&M shall produce a consolidated report for submission to the Attorney General, and will place a copy of this report on the Internet for public access. The DoD Components shall use the current edition of DD Form 2564, ''Annual Report: Freedom of Information Act.''

(2) This reporting requirement is assigned Report Control Symbol DD–DA&M(A)1365, Freedom of Information Act Report to Congress.

Subpart B—FOIA Reading Rooms

§ 286.7 Requirements.

(a) *Reading room.* The FOIA requires records described in 5 U.S.C. 552(a)(2)(A), (B), (C), and (D) be made available in an appropriate facility where the public may inspect or copy them. This facility is known as the ''FOIA reading room''. In addition to these records, the DoD Components may elect to place other records in their reading rooms. The DoD Components shall comply with this provision of the FOIA by providing a location accessible to the public for viewing these documents. In lieu of paper copies, the Component may digitize the documents and have them available on a personal computer in the reading room. The DoD Components may share reading room facilities if the public is not unduly inconvenienced, and also may establish decentralized reading rooms.

(b) *Electronic reading room.* The FOIA requires records described in 5 U.S.C. 552(a)(2)(A), (B), (C), and (D) and created on or after November 1, 1996, be made available electronically. The DoD Components will meet the electronically available requirement by posting the records in an electronic reading room on their FOIA Requester Service Center Web sites.

(1) These electronic reading rooms will have four designated sections, each one corresponding to one of the four sections described in paragraph (b) of this section. If a Component does not have relevant documents to post in any of the four sections of the FOIA Requester Service Center electronic reading room, that section of the reading room will contain the annotation that no documents apply.

(2) If a DoD Component has documents that meet the qualifications of 5 U.S.C. 552(a)(2)(A), (B), (C), and (D) posted on a separate Web site, the Component's FOIA Requester Service Center is not required to post these same documents. Instead, the electronic reading room shall link to the other Web site. For example, if a Component maintains electronic copies of its issuances on a separate Web site, then the (a)(2)(C) section of the electronic reading room shall have a link to that site.

(3) *Exemptions.* All information that qualifies for withholding under one or more of the FOIA exemptions described in § 286.14 of this part shall be deleted from all 5 U.S.C. 552(a)(2) records that are made available to the public.

§ 286.8 Record availability.

5 U.S.C. 552(a)(2)(A), (B), (C), and (D) records are:

(a) *''(a)(2)(A)'' records.* Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied on as precedents in future adjudications.

(b) *''(a)(2)(B)'' records.* Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**.

(c) *''(a)(2)(C)'' records.* Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(1) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(2) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and intelligence activities.

(d) *''(a)(2)(D)'' records.* Records released to the public pursuant to 5 U.S.C. 552(a)(3) because of the nature of the subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. Two additional requests satisfy the criterion of subsequent requests. These records are referred to as ''FOIA-processed (a)(2) records.''

(1) The DoD Components shall decide on a case by case basis whether records fall into this category, based on the following factors:

(i) The previous experience of the DoD Component with similar records.

(ii) The particular circumstances of the records involved, including their nature and the type of information they contain.

(iii) The identity and number of requesters and whether there is widespread press, historic, or commercial interest in the records.

(2) This provision of § 286.8 is intended for situations where public access in a timely manner is important. It is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. The DoD Components may remove the (a)(2)(D) records from their Web site when the appropriate officials determine that access is no longer necessary according to the factors of § 286.8(d)(1).

(3) Should a requester submit a FOIA request for FOIA-processed ''(a)(2)'' records and insist that it be processed, the DoD Components shall process the request. However, the DoD Components have no obligation to process a FOIA request for 552(a)(2)(A), (B), and (C) records because these records are required to be made available to the public.

§ 286.9 Indexes.

(a) *''(a)(2)'' records.* (1) Each DoD Component shall maintain in each FOIA reading room an index of records described in § 286.7 that are issued, adopted, or promulgated, after July 4, 1967.

(2) Any ''(a)(2)'' record relied on, used, or cited as precedent by an agency against a party that is issued, promulgated, or adopted after July 4, 1967, must be indexed and either made available or published, or the individual must have actual and timely notice of the contents of such records. Such records issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under § 286.13.

(3) Each DoD Component shall promptly publish quarterly or more frequently, and distribute by sale or otherwise, copies of each index of ''(a)(2)'' records or supplements thereto, unless it publishes in the **Federal Register** an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in § 286.24 of this part.

(4) Each index of ''(a)(2)'' records or supplement thereto shall be arranged by topical or descriptive words, rather than by case name or numbering system, so that the public can readily locate material. Case name and numbering arrangements may also be included for DoD Component convenience.

(5) Listing of electronically available ''(a)(2)'' documents in a Component's electronic reading room satisfies this requirement.

(b) *Major information systems.* 5 U.S.C. 552(g)(1) and (2) require agencies to make publicly available an index of all major information systems and a description of major information and record locator systems. This requirement will be met for the entire Department of Defense by DFOIPO on its Web site.

§ 286.10 ''(a)(1)''records.

(a) Although (a)(1) records are not required to be made available in response to FOIA requests or in FOIA reading rooms, they shall be made available when feasible. Examples of ''(a)(1)'' records are descriptions of an agency's central and field organization and, to the extent they affect the public, rules of procedures; descriptions of forms available; instructions as to the scope and contents of papers, reports, or examinations; and any amendments, revisions, or reports of the aforementioned records.

(b) In accordance with 5 U.S.C. 552(a)(1), each DoD Component shall disclose, through publication in the **Federal Register**, information describing its organization, functions, procedures, substantive rules, and statements of general policy. Any available index of DoD Component records published in the **Federal Register**, in addition to ''(a)(1)'' records, shall be made available to the public in DoD Component FOIA reading rooms and electronically.

Subpart C—Exemptions

§ 286.13 General provisions.

(a) Records that meet FOIA exemption criteria may be withheld from public disclosure and need not be published in the **Federal Register**, made available in a reading room, or provided in response to a FOIA request.

(b) Nine types of records may be withheld in whole or in part from public disclosure unless otherwise prescribed by law. In addition, a discretionary release of a record to one requester shall prevent the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. However, a FOIA exemption may be invoked to withhold information that is similar or related that has been the subject of a discretionary release.

(c) In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant, with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest.

(d) The DoD Components may have a situation where, in responding to a FOIA request, admitting the existence or nonexistence of a record would itself reveal information protected from release by one of the 9 Exemptions. In this situation, the DoD Component shall neither confirm nor deny the existence or nonexistence of the requested record. This is commonly called a ''Glomar'' response (U.S. Attorney General Memorandum), and the appropriate exemption must be cited in the response. This situation most commonly arises with Exemptions 1, 6, and 7; however, it could arise with other exemptions. A ''refusal to confirm or deny'' response must be used consistently, not only when a record exists, but also when a record does not exist. If not used consistently, the pattern of a ''no record'' response when a record does not exist, and a ''refusal to confirm or deny'' when a record does exist, will itself disclose exempt information.

§ 286.14 Applying the FOIA exemptions.

The 9 types of exempted records and procedures for applying them are as follows:

(a) *Exemption 1.* Pursuant to 5 U.S.C. 552(b)(1), records properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by an existing Executive Order establishing classification criteria and implemented by regulation, such as DoD 5200.1–R,

are exempt from disclosure. If the responsive information is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1–R apply in this situation. If the information qualifies as Exemption 1 information, there is no discretion regarding its release. The requester will be advised as to which sections of the Executive Order apply in determining the information classified. In addition, Exemption 1 shall be invoked when the following situations are apparent:

(1) Individual items of unclassified information, when compiled, reveal additional associations or relationships that meet the standard for classification under an existing Executive Order and DoD 5200.1–R, and are not otherwise revealed in the individual items of information. This is known as the ''mosaic,'' or ''compilation'' approach.

(2) The existence or nonexistence of a record would itself reveal classified information.

(b) *Exemption 2.* Pursuant to 5 U.S.C. 552(b)(2), records related solely to the internal personnel rules and practices of the Department of Defense or any of the DoD Components are exempt from disclosure. This exemption has two profiles, high ''(b)(2)'' and low ''(b)(2).''

(1) *High ''(b)(2).''* Records qualifying under high ''(b)(2)'' are those containing or constituting rules, regulations, orders, manuals, directives, instructions, and unclassified portions of security classification guides, the release of which would allow circumvention of these rules, regulations, and policies, thereby substantially hindering the effective performance of the mission of the Department of Defense. Examples include:

(i) Critical infrastructure information that reasonably could be expected to enable someone to succeed in causing the harms described in Homeland Security Presidential Directive 7.[2] This exempt information could include agency vulnerability assessments or evaluations of items of critical infrastructure that are internal to the Government.

(ii) Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must be protected in order for the DoD Component to fulfill a legal requirement.

(iii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(iv) Computer software (Government-owned), the release of which would allow circumvention of a statute or of DoD rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

(2) *Low ''(b)(2).''* Records qualifying under low ''(b)(2)'' are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and for which processing the request would constitute an administrative burden. Examples include rules for personnel use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings.

(c) *Exemption 3.* Pursuant to 5 U.S.C. 552(b)(3), records concerning matters that another statute specifically exempts from disclosure are exempt under this exemption. This exemption allows for the withholding of information because its release is prohibited by another statute only if one of two disjunctive requirements is met: The statute requires that the information be withheld from the public in such a manner as to leave no discretion on the issue, or the statute establishes particular criteria for withholding or refers to particular types of matters to be withheld. The DFOIPO maintains on its Web site a list of Exemption 3 statutes used within the Department of Defense.

(d) *Exemption 4.* Pursuant to 5 U.S.C. 552(b)(4), records containing trade secrets or commercial or financial information received by the DoD Component from a person or organization outside the Government are exempt from release. Information protected by this exemption must be trade secrets or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the submitter providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate Government interest. If the information qualifies as Exemption 4 information, there is no discretion in its release.

(1) Examples of information protected by Exemption 4 include:

(i) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals.

(ii) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures.

(iii) Personal statements given in the course of inspections, investigations, or audits.

(iv) Financial data provided by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(v) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(vi) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, or developed in part with Federal funds and in part at private expense. The contractor or subcontractor must retain legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement, Chapter 2 of title 48 Code of Federal Regulations, Subpart 227.71–227.72. Technical data developed exclusively with Federal funds may be withheld under Exemption 3, if it meets the criteria of 10 U.S.C. 130 and 48 CFR. See § 286.14.

(vii) Copyrighted information under 17 U.S.C. 106.

(viii) Proprietary information submitted strictly on a voluntary basis, absent any exercised authority prescribing criteria for submission. Examples of exercised authorities prescribing criteria for submission are statutes, Executive Orders, regulations, invitations for bids, requests for proposals, and contracts. Submission of information under these authorities is not voluntary.

(2) When the Components receive FOIA requests for information that could be protected by this Exemption, submitter notice shall be provided. See § 286.2.

(e) *Exemption 5.* Pursuant to 5 U.S.C. 552(b)(5), inter-agency or intra-agency memorandums or letters containing information considered privileged in litigation are exempt from disclosure. The courts have construed ''privileged in litigation'' to mean information that is normally privileged in the civil discovery context (U.S. Department of

[2] Copies of Homeland Security Presidential Directive can be viewed at *http://www.whitehouse.gov/news/releases/2003/12/20031217-5.html.*

Justice (DOJ) Guide).[3] Merely being an internal record is an insufficient basis for withholding under this exemption. Records that are not available routinely through the discovery process in the course of litigation with the agency because they are privileged should not be withheld under this exemption. The most common discovery privileges have been incorporated into Exemption 5. These privileges are the deliberative process, the attorney work product, and the attorney client privilege.

(1) *Threshold.* (i) A document must meet the threshold requirement of being an inter- or intra-agency document before the proper privilege can be identified in any given case. Because in many instances the Government must seek expert advice from external entities (or consultants), the courts developed an ''outside consultant'' test which helps in determining whether such an external entity qualifies as an ''agency'' for the purposes of this exemption. If an entity meets the test, then documents it originates may be protected by Exemption 5.

(ii) The Components should be careful to ensure that the outside consultant is not an interested party in the agency decision-making process. In 2001, the U.S. Supreme Court ruled that the threshold of Exemption 5 does not encompass communications between an outside consultant (in this case, several Indian tribes) and the Government (the U.S. Department of the Interior (DOI)). In this case, the outside consultants offered an expert opinion on an issue under consideration by DOI. The Supreme Court found that the tribes had an interest in the outcome of the DOI final decision; therefore, the DOI communications did not meet the threshold of Exemption 5. (DOJ FOIA Post Web site)

(2) The privileges and types of information protected by Exemption 5 include:

(i) *Deliberative process privilege.* To withhold information under this privilege, the information must be both deliberative and predecisional, and part of the decision-making process. Deliberative means the information is internal advice, recommendations, or subjective evaluations, as contrasted with factual matters, that are reflected in records relied upon in the decision-making process of an agency, whether within or among agencies. Predecisional means the information was created before the decision maker reached a final decision. Factual information cannot be withheld from a requester under Exemption 5 except under one of two circumstances. The first circumstance is when the author of a document selects specific facts out of a larger group of facts and this very act is deliberative in nature. This information qualifies for withholding because its release would reveal the author's internal thought processes. The second circumstance exists when the factual information is so inextricably connected to the deliberative material that its disclosure would expose or cause harm to the agency's deliberations. A direction or order from a superior to a subordinate generally does not qualify as a deliberative process document if it constitutes policy guidance or a decision. However, correspondence from a superior to a subordinate may qualify if it constitutes a discussion of preliminary matters or a request for information or advice that would be relied upon in the decision-making process. An agency's final decision cannot be withheld under the privilege unless it becomes part of another, higher-level decision-making process (such as the agency budgetary process). The deliberative process privilege is temporal in nature because once the final agency decision is made the privilege cannot be used to withhold the final decision or any post-decisional documents related to the decision. Examples of deliberative process documents include:

(A) Staff papers, to include after-action reports, inspection reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions.

(B) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(C) Evaluations by DoD Component personnel of contractors and their products.

(D) Information of a speculative, tentative, or evaluative nature, or such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate Government functions.

(E) Agency materials underlying the President's budget decisions as described in OMB Circular No. A–11. This includes planning, programming, and budgetary information that is involved in the defense planning and resource allocation process and outyear discretionary data.

(ii) *Attorney client privilege.* This privilege protects confidential communications between an attorney and a client relating to legal matters for which the client has sought professional advice. The information the client supplies to the attorney and the advice the attorney gives to the client in return are protected under this privilege. Courts extend the ''confidential'' element of this privilege to lower echelon Government employees because it is recognized when the Government is seeking legal advice it usually involves more than one client and one attorney. This privilege cannot be used if confidentiallity is compromised.

(iii) *Attorney work product privilege.* This privilege protects documents prepared by an attorney or at an attorney's direction in reasonable anticipation of litigation. Unlike the deliberative process privilege, under the attorney work product privilege all of the information can be withheld, including the facts. Similarly, this privilege has no time limit. This privilege can be used after the litigation is complete.

(iv) *Government trade secret privilege.* This privilege protects trade secrets or other confidential research, development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest.

(v) *Aircraft accident witness statements privilege.* This privilege protects witness statements generated during military aircraft accident investigations.

(vi) *Presidential communications privilege.* This privilege protects communications among the President and his advisors created within an agency to assist the President in the exercise of his nondelegable constitutional duties.

(f) *Exemption 6.* Pursuant to 5 U.S.C. 552(b)(6), information in personnel and medical files, as well as similar in other files, that if disclosed to a requester other than the person whom the information is about, would result in a clearly unwarranted invasion of personal privacy is exempt from disclosure. If the information qualifies as Exemption 6 information, there is no discretion in its release.

(1) When applying this exemption, an agency must balance the public interest in disclosure and the individual's privacy interest. When there is no public interest in the requested

[3] Copies of U.S. Department of Justice (DOJ) Guide can be viewed at *http://www.usdoj.gov/oip/*.

information, the information can be withheld even if there is only a negligible privacy interest. The public interest to be considered when applying this exemption is whether the information sheds light on the operations or activities of the Federal government. The requester has the burden to show there is a public interest in disclosure.

(2) A privacy interest may exist in personal information even though the information has been disclosed at some place and time. This is known as the concept of practical obscurity. For example, information that was once publicly known (a court-martial trial 40 years ago) may no longer be in the public's eye and has faded from memory. In this case, the privacy interest in this type of situation may have increased over time, the public interest may have decreased over time, and therefore an agency can now withhold the once public information.

(3) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(i) Those files compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances or for access to particularly sensitive classified information.

(ii) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action may be taken.

(4) On November 9, 2001, subsequent to the President declaring a national emergency, the DA&M issued a memorandum authorizing the DoD Components to withhold lists of personally identifying information of DoD personnel, to include active duty military personnel, civilian employees, contractors, members of the National Guard and Reserves, and military dependents. Additionally, personally identifying information of DoD military and civilian personnel who are assigned to overseas, sensitive, or routinely deployable, units is exempt from release under Exemption 3, with section 130b of 10 U.S.C. as the withholding statute. Names and duty addresses (postal and/or e-mail) published in telephone directories, organizational charts, rosters, and similar materials for personnel are considered ''lists of personally identifying information;'' and therefore qualify for withholding under Exemption 6 (and Exemption 3 if applicable).

(5) Home addresses, telephone numbers, and private e-mail addresses are normally protected by this exemption. This includes lists of home addressees and military quarters' addressees that do not include the occupants' names.

(6) This exemption shall not be used in an attempt to protect the privacy of a deceased person. It may be used to protect the privacy of the deceased person's surviving family members if disclosure would rekindle grief, anguish, pain, embarrassment, or even disruption of peace of mind of surviving family members. In such situations, the DoD Components shall balance the surviving family members' privacy interests and the public's interest to determine its releasability.

(7) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal information in which a privacy interest exists, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, the DoD Components shall neither confirm nor deny the existence or nonexistence of the record being requested. This is known as a ''Glomar response'', and Exemption 6 must be cited in the response. Refusal to confirm or deny should not be used when:

(i) The person whose personal privacy is in jeopardy has provided the requester with a privacy waiver.

(ii) The person seeking access to an agency record initiated or directly participated in an investigation that leads to the creation of that record.

(iii) The person whose personal privacy is in jeopardy is deceased, the agency is aware of that fact, and disclosure would not invade the privacy of the deceased's family.

(g) *Exemption 7.* Pursuant to 5 U.S.C. 552(b)(7), records or information compiled for law enforcement purposes are exempt from disclosure upon the identification of one of the six harms delineated in the 6 subparts of Exemption 7. Law enforcement purposes include civil, criminal, military, regulatory, and administrative law, including the implementation of Executive Orders or regulations issued pursuant to law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for, law enforcement purposes.

(1) *Conditions under which exception 7 applies.* Exemption 7 applies only when production of such law enforcement records or information:

(i) *Exemption 7A.* This applies when the disclosure of law enforcement records could reasonably be expected to interfere with enforcement proceedings (5 U.S.C. 552(b)(7)(A)).

(ii) *Exemption 7B.* This applies when the disclosure of law enforcement records would deprive a person of the right to a fair trial or to an impartial adjudication (5 U.S.C. 552(b)(7)(B)).

(iii) *Exemption 7C.* This applies when the disclosure of law enforcement records could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a living person, including surviving family members of an individual identified in such a record (5 U.S.C 552(b)(7)(C)).

(iv) *Exemption 7D.* This applies when the disclosure of law enforcement records could reasonably be expected to disclose the identity of a confidential source, including a source within the Department of Defense; a state, local, or foreign agency or authority; or any private institution that furnishes the information on a confidential basis; and could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation (section 5 U.S.C. 552(b)(7)(D)).

(v) *Exemption 7E.* This applies when the disclosure of law enforcement records would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law (5 U.S.C. 552(b)(7)(E)).

(vi) *Exemption 7F.* This applies when the disclosure of law enforcement records could reasonably be expected to endanger the life or physical safety of any individual (5 U.S.C. 552(b)(7)(F)).

(2) *Examples of Exemption 7 applications.* (i) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related Government litigation or adjudicative proceedings may be exempt from disclosure pursuant to Exemptions 7A, 7C, and/or 7D.

(ii) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States may be exempt from disclosure pursuant to Exemptions 7A and/or 7C.

(iii) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or a lawful national security intelligence

investigation, may be exempt from disclosure pursuant to Exemptions 7A, 7C and/or 7D. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(iv) Emergency action plans, guidelines for response to terrorist attacks, analyses of security procedures, and other sensitive information that could prove deadly if obtained by those seeking to do harm to the public on a large scale may be exempt from disclosure pursuant to Exemptions 7E and/or 7F. The Components should also assert Exemption 2 in conjunction with Exemption 7E to withhold this type of law enforcement information.

(3) *Exclusions.* The FOIA contains 3 special protection provisions referred to as record ''exclusions.'' Of these exclusions, only 2 are used by the Department of Defense. These exclusions expressly authorize Department of Defense law enforcement agencies to treat especially sensitive records under certain specified circumstances as not subject to the requirements of the FOIA. The DoD Component considering invoking one of these exclusions shall first consult with legal counsel and with DFOIPO. In turn, DFOIPO will consult with the Office of Information and Privacy, Department of Justice. If the records are determined to be excluded, the response to the requester will state that no records were found.

(i) *Exclusion 1.* The DoD Components may treat records requested as not subject to the FOIA when the following circumstance applies:

(A) The request involves access to records or information compiled for law enforcement purposes.

(B) The investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of the pending investigation or proceeding.

(C) The disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(ii) *Exclusion 2.* The DoD Components may treat records requested as not subject to the FOIA when a third party uses an informant's name or personal identifier to request informant records maintained by a criminal law enforcement organization within the DoD Component, and the informant's status as an informant has not been officially confirmed.

(h) *Exemption 8.* Pursuant to 5 U.S.C. 552(b)(8) of Reference (b), records contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions are exempt from disclosure.

(i) *Exemption 9.* Pursuant to 5 U.S.C. 552(b)(9), records containing geological and geophysical information and data (including maps) concerning wells are exempt from disclosure.

Subpart D—FOIA Request Processing

§ 286.17 General provisions.

(a) *Release of agency records.* 5 U.S.C. 552(a) mandates release of agency records in response to a written request, unless:

(1) The record is subject to one or more FOIA exemptions.

(2) The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

(3) The requester has failed to comply with procedural requirements, including failure to comply with a written agreement to pay any required fee incurred in processing previous requests.

(b) *Requests from private parties.* (1) The provisions of the FOIA are reserved for members of the public as opposed to U.S. Federal agencies seeking official information. Requests may be submitted in person, by mail, facsimile, or electronically. Commercial delivery is acceptable; however, due to security concerns, the DoD Components may refuse to accept commercial delivery of requests.

(2) Individuals seeking DoD information should address their FOIA requests to one of the FOIA Requester Service Center addresses listed in Appendix B to this part. If a requester is not sure where to send a FOIA for DoD information, the request can be sent to the OSD/Joint Staff FOIA Requester Service Center.

(3) The subject of a FOIA request may involve documents located at multiple Federal Government agencies. When this is the case, the DoD Components should try to determine whether the requester sent the request to the other relevant agencies. The requester should be contacted by the Component if the request does not mention any other agencies to which the request was sent.

(4) When personally-identifying information in a record is requested by the subject of the record or the subject's representative and the information is contained within a Privacy Act system of records, it will be processed under both the FOIA and the Privacy Act. The Components shall comply with the provisions of DoD 5400.11–R to confirm the identity of the requester.

(c) *Requests from government officials, Congress, and foreign governments.* (1) State or local Government officials, foreign officials requesting on behalf of their government, foreign individuals, or foreign organizations requesting DoD Component records under the FOIA shall be considered the same as any other FOIA requester. The provisions of the FOIA do not apply to requests from a non-U.S. government entity or representative for records of the DoD Component that is an element of the intelligence community as defined in 50 U.S.C. 401a(4).

(2) Requests from members of Congress who are not seeking records on behalf of a Congressional committee or subcommittee, or on behalf of the House of Representatives or the Senate sitting as a whole, shall be processed as FOIA requests.

(3) Requests submitted by members of Congress for Congressional business that are received by the DoD Component's FOIA office shall be referred to the appropriate office that handles legislative inquiries for processing under DoD Directive 5400.4 or supplementing component directives. Such requests will not be processed under the FOIA.

(4) Requests from officials of foreign governments that do not invoke the FOIA shall be referred to the appropriate office authorized to disclose official DoD information to foreign governments, and the requester shall be so notified.

(5) Because it is a Component of the Department of Defense, requests from *Stars and Stripes* should not be processed under the FOIA. A Federal Agency cannot make a FOIA request.

(d) *Privileged release outside of the FOIA to U.S. government officials.* (1) Records exempt from release to the public under the FOIA may be disclosed in accordance with DoD Component regulations to agencies of the Federal Government, whether legislative, executive, or administrative, as follows:

(i) To other Federal agencies, both executive and administrative, as determined by the Head of the DoD Component or designee.

(ii) In response to a State or Federal court order. The DoD Components shall release this information along with a description of the restrictions on its release to the public.

(2) The DoD Components shall inform officials receiving records under the provisions of this paragraph that those records are exempt from public release

under the FOIA. The DoD Components also shall advise officials of any special handling instructions. Classified information is subject to the provisions of DoD 5200.1–R. Information contained in a Privacy Act system of records is subject to DoD 5400.11–R.

§ 286.18 Processing procedures.

(a) *Receipt and control.* When a request for records is received, DoD FOIA Offices shall open a file in a formal control system designed to ensure accountability and compliance with the FOIA. The control system should include the data elements needed to compile the statistics required in the annual FOIA report or other reports required by another authority. Each request shall be assigned a unique tracking number.

(b) *Multi-track processing.* (1) When a FOIA Office has a significant number of pending requests, the requests shall be processed in a multi-track system.

(2) DoD FOIA Offices shall establish a minimum of three processing tracks, all based on a first-in/first-out concept and with requests ranked by date of receipt. One track shall be for simple requests, one for complex requests, and one for expedited requests. Each FOIA Office shall determine whether a request is simple or complex. Requesters whose requests are categorized as ''complex'' shall be given an opportunity to limit in writing the scope of the request in order to qualify for the simple track.

(c) *Expedited processing.* Two circumstances merit expedited processing according to the procedures that follow. These same procedures apply to requests for expedited processing of administrative appeals.

(1) *Compelling need.* Expedited processing shall be granted to a requester upon a specific request for such and demonstration of a compelling need for the information. The DoD Component shall respond to the requester with the determination whether to grant or deny expedited processing within 10 calendar days after receipt of the request. Once the DoD Component decides to grant expedited processing, the request shall be processed as soon as practicable. Actions by the DoD Components to initially deny or affirm the initial denial on appeal of a request for expedited processing, and failure to respond in a timely manner shall be subject to judicial review if the requester seeks relief in United States District Court.

(i) ''Compelling need'' is the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.

(A) ''An individual primarily engaged in disseminating information'' is a person whose primary activity involves publishing or otherwise disseminating information to the public. To meet this criterion, an organization or person must establish that information dissemination is their principal professional activity or occupation, and not an incidental or secondary activity.

(B) ''Urgently needed'' means the information has a particular value that will be lost if not disseminated quickly, such as a breaking story of general public interest. Information of historical interest only, or information sought for litigation or commercial activities, would not qualify as ''urgently needed,'' nor would a news media publication or broadcast deadline unrelated to the news-breaking nature of the information. The burden of demonstrating that the requested information has a particular value that will be lost if not disseminated quickly is on the requester.

(ii) A ''demonstration of compelling need'' means a statement certified to be true and correct to the best of the requester's knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

(2) *Imminent loss of due process rights.* Expedited processing shall also be granted to a requester if loss of substantial due process rights is imminent. A demonstration of imminent loss of substantial due process rights by the requester shall include a description of the due process rights that would be lost and a statement certified to be true and correct to the best of the requester's knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access. If the DoD Component decides to expedite the request for this reason, the request may be processed in the expedited track behind those requests qualifying for compelling need.

(d) *Consultation and referrals.* The DoD Component shall take appropriate action as described in § 286.4(h)(2) when the record is not under its release authority because it requires consultation with another DoD Component or non-DoD agency, because the record was not originated by the Component, or because the record is not in the Component's system of records but is likely to be held by another DoD Component or non-DoD agency. The following actions are necessary when the record was originated by a non-Government source:

(1) When a request is received for a record that arguably contains information exempt from release under Exemption 4, the provisions of E.O. 12600 apply.

(i) When a FOIA request is received for records that may contain confidential commercial information (e.g., government contracts), the submitter shall be notified promptly of that request and afforded reasonable time (e.g., 20 calendar days) to present any objections concerning release. This practice of giving submitter notice is required by E.O. 12600 for those FOIA requests for data not deemed clearly exempt from disclosure under Exemption 4. The submitter notice letter should include, as an attachment, a copy of the requested information. Any objections to release provided by the submitter shall be evaluated. The final decision to disclose information claimed to be exempt under Exemption 4 shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under the FOIA. When a substantial issue has been raised or when the objections submitted lack specificity, the DoD Component may seek additional information from the submitter and afford the submitter a reasonable opportunity to present arguments on the legal and substantive issues involved prior to making an agency determination. If the Component and submitter cannot come to agreement as to what information is exempt from release under Exemption 4, the Component shall provide the submitter a date on which the information in question will be released to the FOIA requester. This date should provide the submitter sufficient time to block the release of the information by obtaining an injunction in Federal Court (which is known as a reverse FOIA lawsuit), if the submitter so chooses. If no response is forthcoming the component shall release the information on the date provided to the submitted.

(ii) The requester shall be notified when:

(A) The Component notifies the submitter of the FOIA request and asks for comments.

(B) The Component advises the submitter that the requested information will be released over the submitter's objections.

(iii) The submitter shall be notified immediately whenever the requester

brings suit seeking to compel disclosure of the submitter's information.

(iv) If the submitted information is a proposal provided in response to a solicitation for a competitive proposal, and the proposal is in DoD possession and control and meets the requirements of 10 U.S.C. 2305(g), the proposal shall not be disclosed, and no submitter notification and subsequent analysis is required. The proposal shall be withheld from public disclosure pursuant to Reference (m) and Exemption 3. This statute does not apply to bids, unsolicited proposals, or any proposal that is set forth or incorporated by reference in a contract between the DoD Component and the offeror that submitted the proposal. In such situations, normal submitter notice and analysis shall be conducted in accordance with § 286.18 (l) except sealed bids that are opened and read to the public. The term ''proposal'' means information contained in or originating from any proposal, including a technical, management, or cost proposal submitted by an offeror in response to solicitation for a competitive proposal. The term ''proposal'' does not include an offeror's name, total price, or unit prices when set forth in a record other than the proposal itself.

(v) If the record or information was submitted on a strictly voluntary basis, absent any exercised authority that prescribes criteria for submission, and it is absolutely clear that the record or information would customarily not be released to the public the submitter need not be notified. The Component shall withhold this information under Exemption 4.

(2) The coordination provisions of this paragraph apply to the release of responsive information received from multi-national organizations, such as the North Atlantic Treaty Organization (NATO), United Nations Commands, the North American Aerospace Defense Command (NORAD), the Inter-American Defense Board, foreign governments, or international organizations (e.g., the International Committee of the Red Cross).

(i) Coordination with foreign governments under the provisions of this paragraph may be made through the Department of State, the specific foreign embassy, or any other coordination channel the Component has established. OFOI has established a coordination channel with the United Kingdom Ministry of Defence (MOD). If the DoD Component has MOD-originated information within its files, it shall be forwarded to OFOI, which shall coordinate with the MOD for release. The MOD release recommendation will be forwarded by OFOI back to the Component for direct response to the requester. Coordination with most international organizations may be made directly with those organizations. However, for NORAD coordination the Components shall refer the documents to the FOIA Office at the United States Northern Command, which will consult with NORAD.

(ii) If an international organization or foreign government asks the Department of Defense to withhold classified information originated by the multi-national organization or foreign government, it will be withheld under the provisions of Exemption 1.

(iii) If the DoD Component is asked to withhold sensitive unclassified information originated by the multi-national organization or foreign government, then the Component will withhold it under the provisions of Exemption 3, and shall reference the relevant statute as 10 U.S.C. 130c. To qualify for withholding under this statute, the Component IDA must make the three following determinations concerning the requested foreign information:

(A) The information was provided by or produced in cooperation with a foreign government or international organization.

(B) The information is withheld from public disclosure by the foreign government or international organization (the foreign government or international organization should make this representation in writing).

(C) Any of the following three conditions are met:

(*1*) The foreign government or international organization requests in writing that the information be withheld.

(*2*) The foreign government or international organization provides the information to the U.S. Government on the condition that it not released to the public.

(*3*) The requested information is specified in agency regulations as being information the release of which would have an adverse effect on the ability of the Government to obtain the same or similar information in the future.

(D) To qualify for withholding, the information must meet the following limitations:

(*1*) If the information came into the possession or under the control of the U.S. Government prior to October 30, 2000, and more than 25 years prior to receipt of the FOIA request, the DoD Component shall notify the foreign government or international organization of the request for disclosure. The information then qualifies for withholding only if the foreign government or international organization requests in writing that the information not be disclosed for a specific period of time. This date can be extended with a later request by the foreign government or international organization.

(*2*) If the information came into the possession or under the control of the U.S. Government after October 30, 2000, the information cannot be withheld after the release date specified by the foreign government or international organization. In the case where one or more foreign governments or international organizations provided the information, the latest date specified by any of them will be used. If no release date was specified, and the information came into the possession of the DoD Component more than 10 years prior to receipt of the FOIA request, the procedures set forth in § 286.18(d)(1)(i) apply.

§ 286.19 Initial determinations.

(a) *IDA.* (1) The determination whether to withhold information responsive to a FOIA request shall be made by any suitable official designated in writing as an IDA by the DoD Component. In designating IDAs, the DoD Component shall balance the goals of centralization of authority to promote uniform decisions, and decentralization to facilitate responding to each request within the time limitations of the FOIA. The IDA shall review all withheld information to determine whether it meets the criteria for withholding under one or more of the FOIA exemptions. This determination may be made upon the recommendation of a review official.

(2) IDAs and review officials shall not use the existence of classification markings, distribution limiting statements, such as ''For Official Use Only'' markings, as justification to withhold information. Information so marked must be reviewed after the receipt of a FOIA request to determine if the markings still apply.

(3) To deny, in whole or in part, a requested record that is in the possession and control of the DoD Component, the IDA must determine that one or more of the FOIA exemptions justify withholding all or part of the record.

(4) The IDA should consult with public affairs officers (PAOs) to become familiar with subject matter considered to be newsworthy at the local or national level, and advise PAOs of all requests from news media representatives. In addition, the IDA should inform PAOs in advance when they intend to withhold or partially

withhold a record if it appears the withholding action may be a media issue.

(b) *Reasons for not releasing a record.* The following are reasons for not complying with a request for a record pursuant to 5 U.S.C. 552(a)(3). These reasons are data items that should be maintained in the control system database for ease of retrieval and reporting in the Annual FOIA Report.

(1) *No records.* A reasonable search of files failed to identify responsive records.

(2) *Referrals.* The request is transferred to another DoD Component or Federal agency.

(3) *Request withdrawn.* The request is withdrawn by the requester.

(4) *Fee-related reason.* The requester is unwilling to pay fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with the fee estimate.

(5) *Records not reasonably described.* A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(6) *Not a proper FOIA request for some other reason.* The requester has failed to comply with procedural requirements, other than fee-related requirements, imposed by this part or by DoD Component supplementing regulations.

(7) *Not an agency record.* The information requested is not a record within the meaning of the FOIA and this part.

(8) *Duplicate request.* The request is a duplicate request (e.g., a requester asks for the same information more than once). This includes identical requests received through different means (e.g., electronic mail, facsimile, mail, courier) at the same or different times.

(9) *Other* (Specify). Any other reason a requester does not comply with published rules other than those outlined in paragraph (b) of this section.

(10) *Partial or total denial.* The record is denied in whole or in part in accordance with procedures set forth in the FOIA.

(c) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester. Unless disclosing the extent of the deletion would harm an interest protected by an exemption, the amount of deleted information shall be indicated on the released portion of paper records by use of brackets or darkened areas. In no case shall the deleted areas be left ''white'' without the use of brackets to show the bounds of deleted information. In the case of electronic deletion or deletion in audiovisual or microfiche records, if technically feasible, the amount of redacted information shall be indicated at the place in the record such deletion was made, unless including the indication would harm an interest protected by the exemption under which the deletion was made. This may be done by use of brackets, shaded areas, or some other identifiable technique that will clearly show the limits of the deleted information.

(d) *Response to requester.* (1) When a decision is made to release a record, a copy should be made available promptly to the requester.

(2) When a request for a record is denied in whole or in part, the official designated to respond shall provide the requester a written explanation of the substantive basis for denial including specific citation of the statutory exemption applied under provisions of this part (e.g., 5 U.S.C. 552 (b)(1)) and advise the requester of their appeal rights, including the address to which any appeal should be mailed. The basis for the determination shall be in sufficient detail to permit the requester to make a decision concerning an appeal. If the IDA does not sign the response letter, the name and duty title of the IDA will be specified in the letter. The official also shall advise the requester that any appeal to the adverse determination must be postmarked no later than 60 days after the date of the initial denial letter.

(3) The DoD Component shall make a reasonable effort to estimate the volume of the records denied and provide this estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption of the FOIA. This estimate should be in number of pages or in some other reasonable form of estimation.

(4) When a denial is based on a statute qualifying as a FOIA Exemption 3 statute, the DoD Components shall state the particular statute relied upon to deny the information.

(5) When a requester is assessed fees for processing a request, the requester's fee category shall be specified in the final response letter. The DoD Components also shall provide the requester with a complete cost breakdown (e.g., 15 pages of office reproduction at $.15 per page; three hours of professional level search at $53.00 per hour, etc.) in the response letter.

(e) *File of initial denials.* Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation. Records denied for any of the reasons contained in § 286.14 (for which no appeal was filed) shall be maintained for a period of 6 years to meet the statute of limitations requirement.

(f) *Special mail services.* The DoD Components are authorized to use registered mail, certified mail, certificates of mailing, and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence. The requester shall be notified that they are responsible for the full costs of special services. A commercial delivery service may be used provided the requester asks for such service to receive the requested information in a timelier manner and the requester pays directly for the service.

(g) *Receipt account.* The Treasurer of the United States has established an account for FOIA receipts. This account, receipt account 3210, shall be used for depositing all FOIA receipts, except receipts for ''Working Capital'' and non appropriated funded activities. Components are reminded that the account number must be preceded by the appropriate disbursing office two-digit prefix. ''Working Capital'' and non-appropriated funded activity FOIA receipts shall be deposited to the applicable fund. All money orders or checks remitting FOIA fees should be made payable to the U.S. Treasurer.

§ 286.20 Appeals

(a) *General.* If the DoD Component IDA denies a record for any of the reasons contained in § 286.14 the DoD Component shall advise the requester that the decision may be appealed in writing to a designated appellate authority. The Component will further advise the requester that the appeal should be accompanied by a copy of the denial letter. In addition to appeal rights associated with the denial of information, the following are adverse determinations and are subject to appeal:

(1) The disapproval of a fee category claim by a requester, the disapproval of a request for waiver or reduction of fees, and a dispute regarding fee estimates.

(2) A determination not to grant expedited processing.

(3) Not providing a response determination to a FOIA request within the statutory time limits.

(4) Any determination found to be adverse in nature by the requester.

(b) *FOIA/Privacy Act appeals.* When denials have been made under the provisions of the Privacy Act and the

FOIA and the denied information is contained in a Privacy Act system of records, appeals shall be processed under both the Privacy Act and the FOIA. If the denied information is not maintained in a Privacy Act system of records, the appeal shall be processed under the FOIA.

(c) *Time of receipt.* A FOIA appeal has been received by the DoD Component when it reaches the office of an appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(d) *Time limits.* (1) If the requester submits an appeal after the conclusion of the 60-day time established by the date of the initial denial letter, the appeal may be considered closed. However, the Components are encouraged to make exceptions on a case by case basis. In cases where the requester is provided several incremental determinations for a single request, the time period for the appeal shall not begin until the date of the final response. Denied records shall be retained for a period of 6 years after final adjudication to meet the statute of limitations requirement.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt. When the DoD Component has a significant number of appeals preventing a response determination within 20 working days, the appeals shall be processed in a multi-track system, based at a minimum, on the three processing tracks established for initial requests according to § 286.18(b). The provisions of § 286.18(b) also apply to appeals of initial determinations, to include establishing additional processing tracks as needed.

(e) *Delay in responding to an appeal.* If a determination cannot be made and the requester notified within 20 working days, the appellate authority or the appellate authority's representative shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 286.4(b)(2)(ii)(C), they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response.

(f) *Response to the requester.* (1) When an appellate authority makes a final determination to release all or a portion of records withheld by an IDA, a written response and a copy of the records released should be forwarded promptly to the requester. If the requester owes outstanding fees from the initial request, and these fees were not appealed, the final appellate response will not be made until the fees are paid.

(2) Final denial of an appeal must be made in writing and signed by the appellate authority. The response shall include the following:

(i) The basis for the denial, to include an explanation of the applicable statutory exemption or exemptions invoked under provisions of the FOIA, and of other appeal matters set forth in § 286.20(a).

(ii) A determination that the record meets the cited criteria and rationale of the governing Executive Order if the final refusal is based in whole or in part on Exemption 1.

(iii) A statement that the information being denied does not contain meaningful portions that are reasonably segregable in the case of appeals for total denial of records.

(iv) The requester's right to judicial review.

(g) *Consultation.* (1) Final denial of access involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components ordinarily should not be made before consultation with the DoD Office of the General Counsel.

(2) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other Government agencies shall be discussed with the DoD Office of the General Counsel.

§ 286.21 Judicial actions.

(a) *General.* (1) This paragraph states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind the Department of Defense to particular judicial interpretations or procedures.

(2) A requester may seek an order from a U.S. District Court to compel release of a record after administrative remedies have been exhausted; i.e., when the requester has filed an administrative appeal from the denied access to a record by the Head of the DoD Component or an appellate designee, or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and in this part.

(b) *Venue.* The requester may bring suit in the U.S. District Court in the district in which the requester resides, the district where the requester's place of business is located, the district in which the record is located, or the District of Columbia.

(c) *Burden of proof.* The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case *de novo* (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

(d) *Actions by the court.* (1) The U.S. District Court for the District of Columbia has ruled that, when the DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, to include negotiating with the requester to modify the scope of their request, the court may retain jurisdiction and allow the Component additional time to complete its review of the records (Department of Justice FOIA Update Web site). The Component must request that the Court retain jurisdiction by seeking an ''Open America'' stay (Department of Justice FOIA Update Web site).

(2) If the Court determines that the plaintiff substantially prevails, it may require the United States to pay reasonable attorney fees and other litigation costs.

(3) When the Court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions as to whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board shall conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

(4) The Court may punish the responsible official for contempt when the DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly, or to otherwise comply with a court order.

(e) *Non-United States Government source information (business information).* A requester may bring suit in a U.S. District Court to compel the release of records obtained from a submitter or records based on information obtained from a submitter. The submitter shall be notified promptly of the court action pursuant to E.O. 12600. When the submitter advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the

complainant as long as permitted by the court, or until a decision is rendered in the court action of the source, whichever is sooner.

(f) *FOIA litigation*. Personnel responsible for processing FOIA requests at the DoD Component level shall be aware of litigation under the FOIA. Whenever a complaint is filed in a U.S. District Court under the FOIA, the DoD Component named in the complaint shall forward a copy of the complaint to DFOIPO with an information copy to the DoD Office of the General Counsel, ATTN: Office of Legal Counsel.

Subpart E—Fee Schedule

§ 286.24 General provisions.

(a) *Application*. (1) The fees described in this subpart apply to requests submitted pursuant to 5 U.S.C. 551, 552, and 552(a) and conform to the OMB Uniform Freedom of Information Act Fee Schedule and Guidelines S. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents.

(2) The fees are neither intended to imply they must be charged in connection with providing information to the public pursuant to the FOIA request nor are they meant to substitute for any other charges established by the Department of Defense, such as DoD 7000.14–R, to recoup direct costs of authorized services provided by DoD Components that are not FOIA related.

(3) Nothing in this subpart shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records, such as the GPO or the National Technical Information Service. The Components should ensure documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs and inform requesters of the steps necessary to obtain records from those sources.

(b) *Fee restrictions*. (1) No fees may be charged by any DoD Component if the total assessable fees are less than or equal $25.00. For requesters in the educational institution, noncommercial scientific institution, or news media categories, the Components shall provide all search time and the first 100 pages of duplication without charge. For requesters in the ''all other'' category, the Components shall provide the first 2 hours of search time, and the first 100 pages of duplication without charge. The Components shall provide all review time without charge except for requesters in the commercial category. Time expended shall be computed to the nearest 15 minutes.

(2) Requesters receiving the first 2 hours of search and the first 100 pages of duplication without charge are entitled to such only once per request. Therefore, if the Component, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DoD Component, or another Federal agency for action on their portion of the request, the referring Component shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(3) For the purposes of these restrictions, the word ''pages'' refers to paper copies of a standard size, which will normally be ''8½ x 11'' or ''11 x 14''. Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example.

(4) In the case of computer searches, the first 2 free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $40.00 (2 hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time. In the event the direct operating cost of the hardware configuration cannot be determined, computer search shall be based on the salary scale of the operator executing the computer search. See § 286.25(b)(1) for further details regarding fees for computer searches.

(c) *Fee waivers*. (1) When assessable costs for a FOIA request total $25.00 or less, fees shall be waived automatically for all requesters, regardless of category.

(2) Documents shall be furnished without charge, or at a reduced charge, when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester. Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis and after a search for responsive records is completed, consistent with the following factors:

(i) Disclosure of the information ''is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government.'' The factors identified must be met to some degree to warrant waiving or reducing assessable fees in the ''public interest.''

(A) *The subject of the request*. The Components should analyze whether the subject matter of the request involves issues will significantly contribute to the public understanding of the operations or activities of the Department of Defense. Requests for records in the possession of the Department of Defense that were originated by non-government organizations and are sought for their intrinsic content, rather than informative value, will likely not contribute to public understanding of the operations or activities of the Department of Defense. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the Department of Defense; however, the age of a particular record shall not be the sole criterion for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current DoD activities, based on historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of DoD operations and activities.

(B) *The informative value of the information to be disclosed*. This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of the Department of Defense. While the subject of a request may contain information that concerns the Department of Defense, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a previously released record that has been heavily redacted, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of DoD operations or activities must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative or nearly identical information already existing in the

public domain may not add meaningful new information concerning the operations and activities of the Department of Defense.

(C) *The contribution to an understanding of the subject by the general public likely to result from disclosure*. The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigence are insufficient without demonstrating the capacity to further disclose the information in a manner that will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(D) *The significance of the contribution to public understanding*. In applying this factor, the Components must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public? A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. The Components shall not make value judgments as to whether the information is important enough to be made public.

(ii) Disclosure of the information ''is not primarily in the commercial interest of the requester.'' Determining ''commercial interest'' requires consideration of the following issues:

(A) *The existence and magnitude of a commercial interest*. If the request is determined to be of a commercial interest, the Components should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, the Components may draw inference from the requester's identity and circumstances of the request. The Components are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or non-profit interest.

(B) *The primary interest in disclosure*. Once a requester's commercial interest has been determined, the Components should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile Government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(3) Components are reminded that the factors and examples used in this paragraph are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to charging or waiving the fee cannot be clearly resolved, Components should rule in favor of the requester.

(4) In addition, the following additional circumstances describe situations where waivers or reductions of fees are most likely to be warranted:

(i) A record is voluntarily created to prevent an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(ii) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. $25.00–$50.00).

(d) *Fee assessment*. (1) Fees may not be used to discourage requesters. Assessable FOIA fees are limited to standard charges for direct search, review (in the case of commercial requesters), and duplication.

(2) Fees are assessed based on the category determined to be appropriate for the requester's status and the FOIA request should contain a willingness to pay fees appropriate to that category. The categories are identified below:

(i) *Commercial*. Requesters should indicate a willingness to pay all search, review, and duplication costs when the records are requested for commercial use.

(A) The term ''commercial use'' request refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, Components must determine the use to which a requester will put the documents requested. Moreover, where a Component has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Components should seek additional clarification from the requester before assigning the request to a specific category.

(B) When the Components receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Accordingly, commercial requesters are not entitled to 2 hours of free search time and 100 free pages of reproduction.

(C) Commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criterion, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial

use. Such situations must be addressed on a case-by-case basis.

(ii) *Educational, non-commercial scientific institution, or news media.* Requesters should indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(A) *Educational institution.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. The term ''educational institution'' refers to a pre-school, 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, and an institution of vocational education, which operates a program or programs of scholarly research. Fees shall be waived or reduced in the public interest if the fee waiver criteria are met.

(B) *Non-commercial scientific institution.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. The term ''non-commercial scientific institution'' refers to an institution that is not operated on a ''commercial'' basis as defined in § 286.24(d)(2)(i)(A), and is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. Fees shall be waived or reduced in the public interest if the fee waiver criteria are met.

(C) *Representatives of the news media.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages). Fees shall be waived or reduced if the fee waiver criteria are met.

(*1*) The term ''representative of the news media'' refers to 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 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 when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services and the Internet), such alternative media might be included in this category.

(*2*) To be eligible for inclusion in this category, a requester must meet the criteria in the preceding paragraph, and his or her request must not be made for commercial use. In the case of ''freelance'' journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication though that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Components may also look to the past publication record of a requester in making this determination. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(*3*) ''Representative of the news media'' does not include private libraries, private repositories of Government records, information vendors, data brokers or similar marketers of information whether to industries and businesses, or other entities.

(D) *All others.* Requesters who do not fit into any of the categories described above should indicate a willingness to pay assessable search and duplication costs if more than 2 hours of search effort or 100 pages of records are desired. Fees shall be waived or reduced if the fee waiver criteria are met.

(E) The fee provisions of E.O. 12600 apply when requesters ask for information about themselves under the Privacy Act of 1974. In these cases, the only assessable processing fees are for duplication. Components are reminded in these cases requesters may also be eligible for a waiver or reduction of fees if the fee waiver criteria are met.

(3) To be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, the Components shall adhere to the following procedures:

(i) Analyze each request to determine the category of the requester. If the Component determination regarding the category of the requester is different than that claimed by the requester, the Component shall:

(A) Notify the requester to provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (e.g., 30 calendar days), the Component shall render a final category determination and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(B) Advise the requester, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the Component.

(ii) If these conditions are not met the request need not be processed and the requester shall be so informed.

(iii) The Components must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Components, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. If Components' actual costs exceed the amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement. Even though Components do not need to advise requesters of their appeal rights when provided fee estimates, such estimates may be appealed and litigated by the requester.

(iv) No DoD Component may require advance payment of any fee; i.e., payment before work starts or continued on a request, unless either of the following conditions are met:

(A) The requester has a history of failing to pay fees in a timely fashion (within 30 days of the billing date) on a previous request

(B) The Component determines that the fee will exceed $250.00.

(iv) Where the Component estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the Component shall notify the requester of the likely cost and obtain satisfactory assurance of full payment. The Component may ask for an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment or a history of late payments. If the Component learns that a requester has an outstanding overdue debt with any other DoD Component or other Federal agency, the Component may administratively close all of the requester's requests after giving notice to the requester.

(v) Where a requester has previously failed to pay a fee charged in a timely fashion to any Federal agency, the Component may require the requester to pay the full amount owed, plus any applicable interest, before the Component begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 32 U.S.C. 3717, and confirmed with respective Finance and Accounting Offices.

(vi) When the Components dispute a requester's fee category assertion, the administrative time limits of the FOIA will begin only after the Component has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

(vii) The Components may charge for time spent searching for records, even if that search fails to locate records responsive to the request. The Components may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure.

(viii) If the Component estimates processing charges are likely to exceed what the requester is willing to pay, it shall notify the requester of the estimate of fees. Such a notice shall offer the requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(e) *Aggregating requests.* Except requests that are for a commercial use, the Component may not charge for the first 2 hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When a Component reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the Component may aggregate any such requests and charge accordingly. One element to be considered in determining whether this belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30 day period had been made to avoid fees. For requests made over a longer period however, such a presumption becomes harder to sustain and Components should have a solid basis for determining that aggregation is warranted in such cases. Components are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may Components aggregate multiple requests on unrelated subjects from one requester.

(f) *Effect of the ''Debt Collection Act of 1982'' (Pub. L. 97–365).* The Debt Collection Act of 1982 provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in DoD 7000.14–R, Volume 11A. Components should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Components may submit the debt to respective Finance and Accounting Offices for collection pursuant to the Debt Collection Act of 1982.

(g) *Computation of fees.* The fee schedule in this subchapter shall be used to compute the assessable fees based upon the time actually spent on the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized. The appropriate fee category of the requester shall be determined before computing fees. All time computations will be to the nearest 15 minutes or quarter hour.

(h) *Refunds.* In the event a Component discovers it has overcharged a requester or a requester has overpaid, the Component shall promptly refund the charge to the requester by reimbursement methods that are agreeable to the requester and the Component.

§ 286.25 Collection of fees and fee rates.

(a) *Collection of fees.* Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs.

(b) *Fees for search time.* (1) *Manual search fees.* This table shows FOIA hourly processing fees.

Type	Grade	Hourly rate ($)
Clerical	E9/GS8 and below/NSPS pay band 1	27.00
Professional	O1–O6/W01–05/GS9–GS15/NSPS pay bands 2 and 3	53.00
Executive	O7/GS16/SES and above	108.00
Contractor		53.00

(2) *Computer search.* Fee assessments for computer search consists of 2 parts; individual time (hereafter referred to as human time), and machine time.

(i) *Human time.* Human time is all the time spent by humans performing the necessary tasks to prepare the job for a machine to execute the run command. This includes the time spent to create a program to extract specific fields out of a database. If execution of a run requires monitoring by a human, that human time may be also assessed as computer search. The terms ''programmer/operator'' shall not be limited to the traditional programmers or operators. Rather, the terms shall be interpreted in their broadest sense to incorporate any human involved in performing the computer job (e.g., technician, administrative support, operator, programmer, database administrator, or action officer).

(ii) *Machine time.* Machine time involves only direct costs of the Central Processing Unit (CPU), input/output devices, and memory capacity used in the actual computer configuration. Only this CPU rate shall be charged. No other machine related costs shall be charged. In situations where the capability does not exist to calculate CPU time, no machine costs can be passed on to the requester. When CPU calculations are not available, only human time costs shall be assessed to requesters. Should the DoD Components lease computers, the services charged by the lessor shall not be passed to the requester under the FOIA.

(c) *Duplication.* This table shows duplication costs.

Type	Cost per page (cents)
Pre-Printed material	02.
Office copy	15.
Microfiche	25.
Computer copies (tapes, discs or printouts)	Actual cost of duplicating the tape, disc or printout (includes operator's time and cost of the medium).

(d) *Review Fees.* See paragraph (b)(1) of this section.

(e) *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. If the duplication is performed by a contractor, then the actual cost charged to the government by the contractor is passed on to the requester. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(f) *Other records.* Direct search and duplication cost for any record not described in this paragraph shall be computed in the manner described for audiovisual documentary material.

(g) *Costs for special services.* Complying with requests for special services is at the discretion of the Components. Neither the FOIA nor its fee structure covers these kinds of services. Therefore, Components may recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail, etc.

§ 286.26 Fees for technical data.

(a) Technical data is recorded information related to experimental, developmental, or engineering works that can be used to define an engineering or manufacturing process or to design, procure, produce, support, maintain, operate, repair, or overhaul material. The data may be graphic or pictorial delineations in media, such as drawings or photographs, text in specification or related performance or design type documents, or computer printouts. Examples of tech data include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information and computer software documentation.

(b) Unless technical data qualifies for withholding from public release under one or more of the FOIA exemptions, it shall be released to the requester after all reasonable costs attributed to search, duplication, and review are paid as authorized by 10 U.S.C. 2328. All reasonable costs are the full costs to the Federal Government for rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographic area. In the absence of a known market value, charges will be based on recovery of all direct and indirect costs to conduct the search, review, and duplicate the documents. This cost is to be differentiated from the direct costs allowable under § 286.24 for other types of information released under the FOIA.

(1) The DoD Components shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request.

(2) The DoD Components that process FOIA requests for technical data and are eligible to recoup the direct costs for providing the records shall establish an appropriate fee schedule taking into account the prevailing commercial rates.

(c) *Waiver.* The DoD Components shall waive the payment of costs required in § 286.24(a) which are greater than the costs that would be required for release of this same information under § 186.25(a) of this subchapter if:

(1) The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, DoD Components may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(2) The release of technical data is requested in order to comply with the terms of an international agreement; or,

(3) The Component determines in accordance with § 286.24(c)(4)(i)(D) that such a waiver is in the interest of the United States.

§ 286.27 Fees for research data.

Research data described in § 286.2, definition ''Agency record'' obtained by the DoD Component from a grant recipient solely in response to a request submitted by a FOIA requester, may charge that requester a reasonable fee equaling the full incremental cost of obtaining the research data. The fee should reflect costs incurred by the Component, grant recipient, and sub-recipients. This fee is in addition to any fees the Component may assess under the FOIA.

Subpart F—Education and Training

§ 286.30 Purpose and responsibility.

(a) *Purpose.* The purpose of the Component FOIA educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program. Fulfilling this purpose will improve customer service with members of the public and improve the public trust in the Department of Defense.

(b) *Responsibility.* Each DoD Component shall establish educational and training programs on the provisions and requirements of this part. These should be targeted toward developing in all Component personnel a general understanding and appreciation of the DoD FOIA Program. The training programs should be focused on providing personnel involved in the day-to-day processing of FOIA requests with a thorough understanding of the procedures outlined in this part.

(c) *Scope and principles.* Each DoD Component shall design its FOIA educational and training programs to fit the particular requirements of its personnel, dependent upon their degree of involvement in implementing this part. These programs should be designed for two target audiences; those personnel who are involved in the day-to-day processing of FOIA requests, and those staff personnel who provide search and/or review staff support to the Component FOIA process. The programs should be designed to accomplish the following objectives:

(1) Familiarize personnel with the requirements of the FOIA and its implementation by this part.

(2) Instruct personnel who act in FOIA matters on the provisions of this part; advise them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(3) Provide procedural and legal guidance and instruction to initial denial and appellate authorities concerning the discharge of their responsibilities.

(4) Emphasize that the processing of FOIA requests must be citizen-centered and results-oriented.

(5) Advise personnel of the penalties for noncompliance with the FOIA.

§ 28.31 Implementation.

To ensure uniformity of interpretation, the Components should coordinate their educational and training programs with DFOIPO.

Appendix A to Part 286—DoD FOIA Program Components ′

List of DoD FOIA Program Components

Office of the Secretary of Defense
Office of the Chairman of the Joint Chiefs of Staff
Combatant Commands
DoD Field Activities
Department of the Army
Department of the Navy
Department of the Air Force
Defense Commissary Agency
Defense Contract Audit Agency
Defense Contract Management Agency
Defense Finance and Accounting Service
Defense Information Systems Agency
Defense Intelligence Agency
Defense Logistics Agency
Defense Security Service
Defense Threat Reduction Agency
National Geospatial Intelligence Agency
National Reconnaissance Office
National Security Agency
Office of the Inspector General, Department of Defense

Appendix B to Part 286—Addressing FOIA Requests

AP2.1. *General.*

AP2.1.1. The Department of Defense does not have a central repository for DoD records. FOIA requests, therefore, should be addressed to the FOIA Requester Service Center of the DoD Component that has custody of the record desired. DFOIPO maintains a current list of links to FOIA Requester Service Centers at *http://www.dod.mil/odam/DFOIPO/ServiceCenters.html.*

AP2.1.2. If uncertain as to the ownership of the record, DoD personnel shall refer the requester to the FOIA Requester Service Center most likely to have the record, or to the OSD/ Joint Staff FOIA Requester Service Center.

AP2.2. *DoD Component FOIA Requester Service Center Addresses.*

AP2.2.1. *OSD and the Chairman of the Joint Chiefs of Staff.*

AP2.2.1.1. Address all requests to: FOIA Requester Service Center, Office of the Secretary of Defense/Joint Staff, 1155 Defense Pentagon, Washington, DC 20301–1155. *http://www.dod.mil/pubs/foi/index.html.* The OSD/Joint Staff FOIA Requester Service Center also processes FOIA requests for the activities in paragraph AP2.2.1.2.

AP2.2.1.2. *Activities for Which the OSD/Joint Staff FOIA Requester Service Center Processes Requests.*

American Forces Information Service
Armed Forces Radiology Research Institute
Defense Acquisition University
Defense Advanced Research Projects Agency
Defense Business Transformation Agency
Defense Prisoner of War/Missing Persons Office
Defense Security Cooperation Agency
Defense Systems Management College
Defense Technology Security Administration
DoD Counterintelligence Field Activity
DoD Human Resources Activity
Joint Professional Military Education Colleges
Missile Defense Agency
National Defense University
Pentagon Force Protection Agency
Uniformed Services University of the Health Sciences
Washington Headquarters Services
White House Military Office

AP2.2.2. *Department of the Army.* Address requests for Headquarters, U.S. Army, records, or if there is uncertainty as to which Army activity may have the records, address requests to: Department of the Army, Freedom of Information and Privacy Acts Office, TAPC–PDR–PF, 7798 Cissna Road, Suite 205, Springfield, VA 22150–3166. *https://www.rmda.belvoir.army.mil/rmdaxml/rmda/FPHomePage.asp.*

AP2.2.3. *Department of the Navy.* Address requests to the Commanding Officer of any Navy or Marine Corps activity. Clearly indicate that the request is a FOIA request. For Secretary of the Navy, Chief of Naval Operations, and Naval Historical Center records, or if there is uncertainty as to which Navy activity may have the records, send requests to: Chief of Naval Operations, DNS–36, 2000 Navy Pentagon, Washington, DC 20350–2000. Electronic requests may be filed at *http://foia.navy.mil/.* For U.S. Marine Corps records, or if there is uncertainty as to which Marine activity may have the records, send requests to: Commandant of the Marine Corps, HQ USMC (ARSF), 2 Navy Annex, Washington, DC 20380–0001. *http://hqinet001.hqmc.usmc.mil/FOIA/index.htm.*

AP2.2.4. *Department of the Air Force.* Address requests to the Commander of any Air Force installation, major command, or field operating agency, to the attention of the FOIA Requester Service Center. For Headquarters, United States Air Force, records, or if there is uncertainty as to which Air Force activity may have the records, send requests to: Department of the Air Force, HAF/ICIOD (FOIA), 1000 Air Force Pentagon, Washington, DC 20330–1000. *http://www.foia.af.mil/.*

AP2.2.5. *Defense Commissary Agency.* Defense Commissary Agency, FOIA/Privacy Act Officer, 1300 E. Avenue, Fort Lee, VA 23801–1800. *http://www.commissaries.com/foiainfo.cfm.*

AP2.2.6. *Defense Contract Audit Agency* (DCAA). Address requests to any DCAA regional office or to DCAA Headquarters. For Headquarters, DCAA, records, or if there is uncertainty as to which DCAA region may have the records, send requests to: Defense Contract Audit Agency, ATTN: CMR, FOIA Requester Service Center, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219. DCAA regional office addresses can be found at: *http://www.dcaa.mil/foia.htm.*

AP2.2.7. *Defense Contract Management Agency.* Defense Contract Management Agency, Attn: DCMA–DSA, 6350 Walker Lane #300, Alexandria, VA 22310–3226. *http://www.dcma.mil/foia.htm.*

AP2.2.8. *Defense Finance and Accounting Service* (DFAS). Address requests to any DFAS regional office or to Headquarters, DFAS. For Headquarters, DFAS, records, or if there is uncertainty as to which DFAS region may have the records, address requests to: Defense Finance and Accounting Service, DFAS–HAC/DE, Corporate Communications, 6760 East Irvington Place, Denver, CO 80279–8000. Addresses for DFAS regional office FOIA Requester Service Centers are located at *http://www.dfas.mil.*

AP2.2.9. *Defense Information Systems Agency* (DISA). DISA records may be requested from any DISA field activity or from its Headquarters. Requesters should send FOIA requests to Defense Information Systems Agency, Attn: Headquarters FOIA Requester Service Center, P.O. Box 4502, Arlington, VA 22204–4502. *http://www.disa.mil/gc/foia/foia.html.*

AP2.2.10. *Defense Intelligence Agency.* Defense Intelligence Agency, Attn: DIAC, DAN–1A (FOIA), Washington, DC 20340–5100. *http://www.dia.mil/publicaffairs/Foia/foia.htm.*

AP2.2.11. *Defense Logistics Agency* (DLA). DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOIA requests to Defense Logistics Agency, Attn: DP–FOIA, 8725 John J. Kingman Road, Suite 2533, Ft. Belvoir, VA 22060–6221. Addresses for DLA field activity FOIA Requester Service Centers are located at *http://www.dla.mil/public_info/efoia/FOIAPOC.html.*

AP2.2.12. *Defense Security Service.* Defense Security Service, Office of FOIA and Privacy, 1340 Braddock Place, Alexandria, VA 22314–1651. *http://www.dss.mil/foia/foia.html.*

AP2.2.13. *Defense Threat Reduction Agency.* Defense Threat Reduction Agency, COSMI FOI/Privacy Office, 8725 John J. Kingman Rd., Fort Belvoir, VA 22060–6201. *http://www.dtra.mil/be/FOIA/index.cfm.*

AP2.2.14. *National Geospatial-Intelligence Agency.* National Geospatial-Intelligence Agency, Office of General Counsel, Attn: GCP, Mail Stop D–10, 4600 Sangamore Road, Bethesda, MD 20816–5003. *http://www.nga.mil.*

AP2.2.15. *National Reconnaissance Office.* National Reconnaissance Office, Information Access and Release Center, Attn: FOIA Officer, 14675 Lee Road, Chantilly, VA

20151–1715. *http://www.nro.gov/foia/index.html*

AP2.2.16. *National Security Agency.* National Security Agency/Central Security Service, FOIA/PA Services, DC34, 9800 Savage Road, Suite 6248, Fort George G. Meade, MD 20755–6248. *http://www.nsa.gov/foia/index.cfm.*

AP2.2.17. *Inspector General of the Department of Defense.* Inspector General of the Department of Defense, Chief FOIA/PA Office, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704. *http://www.dodig.osd.mil/fo/Foia/foia.htm.*

AP2.3. *DoD Field Activity And Combatant Command Addresses*

Although the below FOIA Requester Service Centers are OSD Components for the purposes of the FOIA, these Centers respond directly to the public on initial requests. Accordingly, initial requests should be sent to the addresses indicated.

AP2.3.1. *DoD TRICARE Management Activity.* TRICARE Management Activity, Attention: Freedom of Information Act Officer, 16401 East Centretech Parkway, Aurora, CO 80011–9043. *http://www.tricare.mil/tmaprivacy/foia.cfm.*

AP2.3.2. *Chairman, Armed Services Board of Contract Appeals.* Chairman, Armed Services Board of Contract Appeals, Skyline Six Room 703, 5109 Leesburg Pike, Falls Church, VA 22041–3208.

AP2.3.3. *Defense Technical Information Center.* Defense Technical Information Center, Attn: FOIA Program Manager, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22062–6218. *http://www.dtic.mil/dtic/foia/.*

AP2.3.4 *DoD Education Activity.* DoD Education Activity, Freedom of Information Act Officer, 4040 North Fairfax Dr., Arlington, VA 22203–1635. *http://www.dodea.edu/foia/.*

AP2.3.5. *U.S. Central Command.* U.S. Central Command, CCJ6–RD (FOIA), 7115 South Boundary Blvd., MacDill Air Force Base, FL 33621–5101. *http://www.centcom.mil/sites/foia/default.aspx.*

AP2.3.6. *U.S. European Command.* U.S. European Command, FOIA Requester Service Center, Unit 30400 Box 1000, APO AE 09131. *http://www.eucom.mil/english/FOIA/main.asp.*

AP2.3.7. *U.S. Joint Forces Command.* U.S. Joint Forces Command, Code J024, 1526 Mitscher Ave., Ste. 200, Norfolk, VA 23511–5100. *http://www.jfcom.mil/about/foia.htm.*

AP2.3.8. *U.S. Northern Command.* U.S. Northern Command, FOIA Officer, 250 Vandenberg Street, Suite B016, Peterson Air Force Base, CO 80914–38040. *http://www.northcom.mil/foia/home.htm.*

AP2.3.9. *U.S. Pacific Command.* U.S. Pacific Command, J151 FOIA, Box 64017, Camp H. M. Smith, HI 96861–4017. *http://www.pacom.mil/foia/homepage.shtml.*

AP2.3.10. *U.S. Southern Command.* U.S. Southern Command, SCJ1–A (FOIA), 3511 NW .91st Avenue, Miami, FL 33172–1217. *http://www.southcom.mil/AppsSC/pages/foia.php.*

AP2.3.11. *U.S. Special Operations Command.* U.S. Special Operations Command, SOCS–SJS–I/FOIA Requester Service Center, 7701 Tampa Point Blvd., MacDill Air Force Base, FL 33621–5323. *http://www.socom.mil/foia/.*

AP2.3.12. *U.S. Strategic Command.* U.S. Strategic Command, Attn: J01031 (FOIA), 901 SAC Blvd., Suite 1E5, Offutt Air Force Base, NE 68113–6000. *http://www.stratcom.mil/foia/.*

AP2.3.13. *U.S. Transportation Command.* U.S. Transportation Command, Attn: TCCS–IM, 508 Scott Drive, Scott Air Force Base, IL 62225–5357. *http://www.transcom.mil/foia.cfm.*

AP2.4. *National Guard Bureau*

The National Guard Bureau FOIA Requester Service Center is unique in that it processes its own initial FOIA requests; however, FOIA appeals are handled either by the Department of the Army or the Department of the Air Force. The address is: Chief, National Guard Bureau, Attn: NGB–SDA (FOIA), 1411 Jefferson Davis Highway, Arlington, VA 22202–3231. *http://www.ngb.army.mil/sitelinks/foia.aspx.*

Dated: December 11, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E7–24359 Filed 12–18–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of New Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, this annual notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal anti-kickback statute (section 1128B(b) of the Social Security Act), as well as developing new OIG Special Fraud Alerts.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 19, 2008.

ADDRESSES: In commenting, please refer to file code OIG–112–N. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

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

1. *Electronically.* You may submit electronic comments on specific recommendations and proposals through the Federal eRulemaking Portal at *http://www.regulations.gov.* (Attachments should be in Microsoft Word, if possible.)

2. *By regular, express, or overnight mail.* You may send written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–112–N, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver, by hand or courier, your written comments before the close period to Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 358–3141.

For information on viewing public comments, please see the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION: *Submitting Comments:* We welcome comments from the public on recommendations for developing new or revised safe harbors and Special Fraud Alerts. Please assist us by referencing the file code OIG–112–N.

Inspection of Public Comments: All comments received before the end of the comment period are available for viewing by the public. All comments will be posted on *http://www.regulations.gov* as soon as possible after they have been received. Comments received timely will also be available for public inspection as they are received at Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (202) 619–0089.

I. Background

A. OIG Safe Harbor Provisions

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly

and willfully offer, pay, solicit or receive remuneration in order to induce or reward business reimbursable under the Federal health care programs. The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to 5 years. OIG may also impose civil money penalties, in accordance with section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a(a)(7)), or exclusion from the Federal health care programs, in accordance with section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)).

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements may be subject to criminal prosecution or administrative sanction. In response to the above concern, the Medicare and Medicaid Patient and Program Protection Act of 1987, section 14 of Public Law 100–93, specifically required the development and promulgation of regulations, the so-called ''safe harbor'' provisions, specifying various payment and business practices which, although potentially capable of inducing referrals of business reimbursable under the Federal health care programs, would not be treated as criminal offenses under the anti-kickback statute and would not serve as a basis for administrative sanctions. OIG safe harbor provisions have been developed ''to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements'' (56 FR 35952, July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices will not be subject to liability under the anti-kickback statute or related administrative authorities.

Existing OIG safe harbors describing those practices that are sheltered from liability are codified in 42 CFR part 1001.

B. OIG Special Fraud Alerts

OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices OIG finds potentially fraudulent or abusive. The Special Fraud Alerts encourage industry compliance by giving providers guidance that can be applied to their own practices. OIG Special Fraud Alerts are intended for extensive distribution directly to the health care provider community, as well as to those charged with administering the Federal health care programs.

In developing these Special Fraud Alerts, OIG has relied on a number of sources and has consulted directly with experts in the subject field, including those within OIG, other agencies of the Department, other Federal and State agencies, and those in the health care industry.

C. Section 205 of Public Law 104–191

Section 205 of Public Law 104–191 requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for modifying existing safe harbors to the anti-kickback statute and for developing new safe harbors and Special Fraud Alerts.

In developing safe harbors for a criminal statute, OIG is required to engage in a thorough review of the range of factual circumstances that may fall within the proposed safe harbor subject area so as to uncover potential opportunities for fraud and abuse. Only then can OIG determine, in consultation with the Department of Justice, whether it can effectively develop regulatory limitations and controls that will permit beneficial and innocuous arrangements within a subject area while, at the same time, protecting the Federal health care programs and their beneficiaries from abusive practices.

II. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of Public Law 104–191, OIG last published a **Federal Register** solicitation notice for developing new safe harbors and Special Fraud Alerts on December 11, 2006 (71 FR 71501). As required under section 205, a status report of the public comments received in response to that notice is set forth in Appendix D to the OIG's Semiannual Report covering the period April 1, 2007, through September 30, 2007.[1] OIG is not seeking additional public comment on the proposals listed in Appendix D at this time. Rather, this notice seeks additional recommendations regarding the development of proposed or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized in Appendix D to the OIG Semiannual Report referenced above.

A. Criteria for Modifying and Establishing Safe Harbor Provisions

In accordance with section 205 of HIPAA, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would affect an increase or decrease in—

- Access to health care services,
- The quality of services,
- Patient freedom of choice among health care providers,
- Competition among health care providers,
- The cost to Federal health care programs,
- The potential overutilization of the health care services, and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will also take into consideration other factors, including, for example, the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may take into account their decisions whether to (1) order a health care item or service or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

B. Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will also consider whether, and to what extent, the practices that would be identified in a new Special Fraud Alert may result in any of the consequences set forth above, as well as the volume and frequency of the conduct that would be identified in the Special Fraud Alert.

A detailed explanation of justifications for, or empirical data supporting, a suggestion for a safe harbor or Special Fraud Alert would be helpful and should, if possible, be included in any response to this solicitation.

Daniel R. Levinson,

Inspector General.

[FR Doc. E7–24579 Filed 12–18–07; 8:45 am]

BILLING CODE 4150–04–P

[1] The OIG Semiannual Report can be accessed through the OIG web site at *http://oig.hhs.gov/publications/semiannual.html.*

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Service Regulations Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Fish and Wildlife Service (hereinafter Service) will conduct an open meeting on January 30, 2008, to identify and discuss preliminary issues concerning the 2008–09 migratory bird hunting regulations.

DATES: The meeting will be held January 30, 2008.

ADDRESSES: The Service Regulations Committee will meet at the Embassy Suites Hotel, Denver—International Airport, 7001 Yampa Street, Denver, Colorado, (303) 574–3000.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: Under the authority of the Migratory Bird Treaty Act (16 U.S.C. 703–712), the U.S. Fish and Wildlife Service regulates the hunting of migratory game birds. We update the migratory game bird hunting regulations, located at 50 CFR part 20, annually. Through these regulations, we establish the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. To help us in this process, we have administratively divided the nation into four Flyways (Atlantic, Mississippi, Central, and Pacific), each of which has a Flyway Council. Representatives from the Service, the Service's Migratory Bird Regulations Committee, and Flyway Council Consultants will meet on January 30, 2008, at 8:30 a.m. to identify preliminary issues concerning the 2008–09 migratory bird hunting regulations for discussion and review by the Flyway Councils at their March meetings.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee attended by any person outside the Department, these meetings are open to public observation.

Paul R. Schmidt,

Assistant Director, Migratory Birds, U.S. Fish and Wildlife Service.

[FR Doc. E7–24588 Filed 12–18–07; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 72, No. 243

Wednesday, December 19, 2007

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 13, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Stakeholder/Customer Satisfaction Survey.

OMB Control Number: 0579–NEW.

Summary of Collection: In 2003, the Plant Health Program (PHP) unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service (APHIS), obtained from the International Organization of Standardization (ISO, nongovernmental worldwide network of national standards institutes) certification in the ISO 9001;2000 standard for its permit services. To meet the ISO 9001;2000 standards, an organization must demonstrate its ability to consistently provide a product that meets customer quality requirements and applicable regulatory requirements, while aiming to enhance customer satisfaction through effective application of the system, including processes for continual improvement of its performance. In order to remain in compliance with Clause 8.2.1 (Customer Satisfaction) of the ISO 9001;2000 standard, PHP must measure the performance of its quality management system by monitoring information related to customer perception in relationship to customer requirements. PHP has determined that the best method for obtaining this information is through the use of stakeholder/customer satisfaction surveys.

Need and Use of the Information: PHP will collect information from the survey to solicit stakeholder and customer feedback with regards to their satisfaction with the regulatory services of Permit Services, Pest Permit Evaluations, and National Identification Services, which is a compliance requirement of the ISO 9001;2000 standard. Without the information it would seriously affect APHIS' ability to remain in compliance with the ISO 9001;2000 international standards.

Description of Respondents: Business or other for-profit; Individuals or households; Federal Government

Number of Respondents: 500.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 80.

Animal Plant and Health Inspection Service

Title: Update of the Nursery Stock Regulations.

OMB Control Number: 0579–0190.

Summary of Collection: Under the Plant Protection Act (PPA) (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of plant pests and other articles, to prevent the introduction of plant pests into the United States. Regulations authorized by the PPA concerning the importation of nursery stock, plants, roots, bulbs, seeds, and other plant products are contained in Title 7 of the Code of Federal Regulations, ''Nursery Stock,'' 319.37 through 319.34–14. Implementing the nursery stock regulations requires APHIS to collect information from a variety of individuals who are involved in growing, exporting, and importing nursery stock.

Need and Use of the Information: APHIS will collect information to ensure that plant pests are not introduced into the United States. The information APHIS collects serves as the supporting documentation needed to issue required PPQ forms and documents that allow importation of nursery stock.

Description of Respondents: Business or other for-profit.

Number of Respondents: 30.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 75.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–24548 Filed 12–18–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0148]

A Business Plan To Advance Animal Disease Traceability

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that we are making available for review and comment a Business Plan to Advance Animal Disease Traceability. The Business Plan details recommended strategies and actions to enable existing State and Federal regulated and voluntary animal health programs, industry-administered management and marketing programs, and various animal identification methods to work in harmony with the National Animal Identification System.

ADDRESSES: The Business Plan is available on the Internet at *http://animalid.aphis.usda.gov/nais/*. The document may also be viewed in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Hammerschmidt, Coordinator, National Animal Identification System, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737–1231; (301) 734–5571.

SUPPLEMENTARY INFORMATION:

Background

As part of its ongoing efforts to safeguard animal health, the U.S. Department of Agriculture (USDA) initiated implementation of a National Animal Identification System (NAIS) in 2004. The NAIS is a cooperative State-Federal-industry program administered by USDA's Animal and Plant Health Inspection Service (APHIS). The purpose of the NAIS is to provide a streamlined information system that will help producers and animal health officials respond quickly and effectively to animal disease events in the United States.

The ultimate long-term goal of the NAIS is to provide State and Federal officials with the capability to identify all animals and premises that have had direct contact with a disease of concern within 48 hours after discovery. Meeting that goal requires a comprehensive animal-disease traceability infrastructure. We have therefore developed a Business Plan to Advance Animal Disease Traceability. The Business Plan details recommended strategies and actions to enable existing State and Federal regulated and voluntary animal health programs, industry-administered management and marketing programs, and various animal identification methods to work in harmony in the NAIS. The document also includes budget summaries and fiscal year 2008 budget plans, as well as species-specific performance goals and timelines. Elements of the Business Plan are discussed in greater detail below. We are now making the document available to the public for review and comment. We will solicit public comments and stakeholder feedback through the NAIS Web site.

Strategies

Strategy 1: Prioritize Species/Sectors

Prioritization of species and sectors will ensure that resources are applied where traceability advances are of the highest importance. The Business Plan first categorizes species based on existing tracing capabilities and the need for improvement. Priority species include the primary commercial food animal industries: Cattle, poultry (chickens and turkeys), swine, sheep, and goats. Equines are also included as a priority species because the frequency with which some horses are moved significant differences to one or more events where they are commingled with other horses that also may have been moved long distances from a variety of premises of origin raises concerns about the spread of disease. Additionally, sectors within each of the species referred to above have been prioritized to advance traceability where it is most needed.

Strategy 2: Harmonize Animal Identification Systems

The need for unique animal identification in government and industry programs is accelerating. As a result, producers are seeking improved and flexible identification methods and compatible processes and data standards that may be used for multiple purposes. The harmonization of animal identification systems will result in more cost-effective options, benefiting producers while achieving increased animal disease traceability for the entire industry.

Strategy 3: Standardize Data Elements for Disease Programs To Ensure Compatibility

APHIS will take steps to standardize data elements and make use of the standards in existing disease programs. Additionally, APHIS will consider a regulation to require the use of certain standardized data elements for import/export regulations, including the standardized premises identification number (PIN) to identify premises importing and exporting livestock. The use of the PIN on interstate certificates of veterinary inspection will also be facilitated and encouraged. The information on locations participating in official disease control programs and on the animals' origin and destination premises that would be listed on interstate certificates of veterinary inspection and on import/export health certificates would greatly enhance animal disease tracing and emergency response capabilities.

Strategy 4: Integrate Automated Data Capture Technologies Into Disease Programs

APHIS will take steps to integrate electronic data capture and reporting technologies into existing disease programs. By using NAIS-compliant identification devices that support automated data capture technology and integrating handheld computers and readers to replace paper-based forms, animal health officials will be able to electronically record and submit essential data to the USDA's Animal Health and Surveillance Monitoring database and other appropriate animal health databases. We anticipate that the electronic collection of data will increase volume and quality, minimize data errors, and speed data entry into a searchable database.

Strategy 5: Partner With States

Working in close partnership with State, Tribal, and Territorial officials, APHIS will continue to facilitate the development of each State's animal disease traceability infrastructure. Each State's animal health officials will administer and manage localized plans reflecting the animal health priorities in individual regions.

Strategy 6: Collaborate With Industry and Sectors

Producer organizations, representing member interests, can accelerate the adoption of practices that advance traceability. APHIS has entered into cooperative agreements with nonprofit industry organizations to promote premises registration within various species groups. Collaboration with USDA-accredited veterinarians will facilitate the delivery of accurate information to clients, as well as enhance the adoption of animal identification data elements in everyday production management systems and disease-program activities at the producer level. Additional partnership efforts with industry alliances, service providers, auction markets, feedlots, harvesting facilities, and other industry sectors are a priority for APHIS.

Strategy 7: Advance Identification Technologies

Continued advancements in traceability require practical, affordable technology solutions that improve the efficiency and accuracy of animal identification data collection. APHIS will collaborate with stakeholders to facilitate the development of performance standards for identification devices and evaluate emerging technologies, with emphasis on systems that can operate at the ''speed of commerce.''

Outcomes and Timelines

Because the need to advance traceability differs among the various species and sectors, it is important for us to establish clear priorities as we proceed with implementing the NAIS. Targeted timelines for key strategies and actions will guide the implementation of these priorities. Due in part to its size and diversification, the cattle industry, at this time, has the greatest need to advance traceability, including increasing the level of official identification. These challenges require more resources and time to achieve optimum tracing capability for the industry.

Achieving Necessary Participation

The seven strategies discussed above are designed to increase involvement in the NAIS in order to achieve a ''critical mass'' of participation, at which point at least 70 percent of the animals in a specific species would be identified and traceable either to their premises of origin, (e.g., cattle, sheep and goats) or to their last production premises (e.g., swine and poultry). This performance measure will enable us to gauge the progress being made towards the participation levels necessary to achieve the optimum traceability goal; the 70 percent figure is an interim measurement designed to support incremental advancement, particularly in the cattle industry, where significant improvement is necessary.

Comments about the Business Plan or other aspects of the NAIS may be submitted to USDA through the NAIS Web site e-mail address: *animalidcomments@aphis.usda.gov* or by mail to NAIS Program Staff, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737.

Done in Washington, DC, this 14th day of December 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–24656 Filed 12–18–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0147]

National Animal Identification System; User Guide and Additional Information Resources

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that we are have prepared a revised version of the National Animal Identification System (NAIS) User Guide that was originally released in draft form in November 2006. The revised User Guide contains the most current information on how the system works and how producers may participate in the NAIS. We are making the revised User Guide available for review and comment.

ADDRESSES: The revised User Guide is available on the Internet at *http://animalid.aphis.usda.gov/nais/*. The document may also be viewed in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Adam Grow, Director, Surveillance and Identification Programs, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737–1231; (301) 734–3752.

SUPPLEMENTARY INFORMATION:

Background

In November 2006, the Animal and Plant Health Inspection Service (APHIS) prepared a document entitled ''National Animal Identification System (NAIS): A User Guide and Additional Information Resources.'' The document, also known as the Draft User Guide, was intended to provide comprehensive information about the NAIS for people and entities wishing to participate in the system, which is voluntary at the Federal level.

We originally posted the Draft User Guide on the NAIS Internet Web site (*http://animalid.aphis.usda.gov/nais/*) in November 2006. Subsequently, we developed two technical guidance documents to supplement the Draft User Guide. A notice announcing the availability of all three documents for public review and comment was published in the **Federal Register** on February 1, 2007 (72 FR 4680–4681, Docket No. APHIS–2007–0007).

In the February 2007 notice, we stated that the Draft User Guide replaced all previously published program documents, including the 2005 Draft Strategic Plan and Draft Program Standards (announced at 70 FR 23961–23963, May 6, 2005) and the 2006 NAIS Implementation Plan (announced at 71 FR 17805–17806, April 7, 2006). Those earlier documents had provided the opportunity for the public to comment on the NAIS as APHIS worked through many issues involving industry and the States and Tribes. We received valuable feedback from producers, State and Tribal animal health officials, and other interested stakeholders regarding those documents and the NAIS. The Draft User Guide that we then produced to replace the earlier documents represented the most up-to-date general information on the NAIS available at the time of its release.

The Draft User Guide provided comprehensive information about participating in the NAIS. Part I of the document provided a brief overview to familiarize producers with the NAIS, its goals, its organizational components, and other information concerning its ongoing implementation. The remainder of the document discussed each of the NAIS' components in greater detail and provided operational-level ''how to'' information and resources. Part II of the document provided information about premises registration; Part III of the document discussed the animal identification component of the program; and Part IV of the document detailed the animal tracing component.

When we released the Draft User Guide to the public, we noted that the program would continue to evolve as details were addressed through ongoing dialogue with all stakeholders. Recently, we determined that a revision to the Draft User Guide was needed to reflect changes that have been made in the program in order to prevent confusion among stakeholders about these changes and to provide the most up-to-date information on the status of the NAIS. We are, therefore, now making available to the public for review and comment an updated version of the User Guide. We will accept public comments and stakeholder feedback on the document on an ongoing basis (see **ADDRESSES** above for commenting instructions). We expect that as the NAIS continues to evolve, so, too, will the User Guide.

The revised document incorporates updates to three of the four parts of the original Draft User Guide. These changes are discussed more fully below.

Part I: Overview of the NAIS

Benefit-cost analysis.

In July 2007, APHIS announced that Kansas State University would be conducting a benefit-cost analysis, with a final report to be completed by July/August 2008. This information has been added to the section of the User Guide that discusses the economic benefits of the NAIS in order to inform our stakeholders that more complete analysis and information will be available in the future.

Animal Identification Number Device Distribution Databases (AIN DDDs).

References to AIN DDDs have been removed from Part I of the User Guide, since the development of these databases is no longer being considered, for reasons discussed in greater detail below.

Part III: Animal Identification

Publication of numbering systems final rule.

On July 18, 2007, APHIS published in the **Federal Register** (72 FR 39301–39307, Docket No. 04–052–2) a final rule that, among other things, recognized the AIN as an official means for the identification of individual animals in commerce generally and in disease programs. This information has now been added to the User Guide's discussion of the use of the AIN in the NAIS to ensure that participants are aware that the rule was finalized.

Brand State Working Group.

When the Draft User Guide was first developed, the Brand State Working Group had only recently been formed. Additional information about the objectives of the Brand State Working Group has been added to the revised User Guide.

Integration of AIN tags with existing animal health identification systems—brucellosis.

Although several disease programs had begun integrating NAIS-compliant AIN tags when the Draft User Guide was first published, the brucellosis program was listed as one that would be integrating in the near future. AIN tags are now recognized as official for use in the brucellosis program, if preferred by the producer and if such action does not conflict with State regulations. We have added this information to the revised User Guide in order to clarify an issue that has confused some NAIS participants.

AIN DDDs.

Part III of the revised User Guide explains how the distribution records of AIN devices will be administered using the AIN Management System. At the time of publication of the original Draft User Guide, we were considering the use of databases (AIN DDDs) that would be maintained by AIN device manufacturers, industry organizations, service providers, States, etc., to receive and maintain the records of distribution of AIN devices to a premises (the record that indicates what AIN was on each AIN device that went to each premises), as opposed to having the information received by and maintained in our AIN Management System. APHIS had developed potential information technology (IT) solutions and program administrative processes to support the transition to the AIN DDD infrastructure. We held two public meetings (on March 5–6 and on March 12–13, 2007) to discuss these options and to explore further the administrative and IT requirements for such databases to be practical and effective. At those meetings, various sectors of industry, representatives of livestock markets, service providers, and individuals who either are, or are planning to be, AIN tag managers and AIN tag manufacturers all provided feedback expressing significant concerns about the added costs and increased complexity of maintaining records in such databases. Based on this feedback, we determined that this option did not contribute to a practical and efficient system and was not feasible. Therefore, all references to AIN DDDs have been removed from the revised User Guide, and APHIS will continue to maintain distribution records in the AIN Management System, as before.

Part IV: Animal Tracing

Animal Trace Processing System (ATPS).

In March 2007, APHIS completed the interim development of the ATPS—the Federal portal system that will allow Federal and State animal health officials to request information from the administrators of private/State animal tracking databases (ATDs). In addition, working with State and industry partners, we completed the development of the technical requirements necessary for integration of those ATDs with the ATPS. The technical requirements are available online, for use by organizations with ATDs that are interested in participating in this component of the NAIS. Information on this component of the NAIS has been updated in the revised User Guide to ensure that stakeholders are aware of the potential for participation.

Comments about the revised User Guide or other aspects of the NAIS may be submitted to USDA through the NAIS Web site e-mail address: *animalidcomments@aphis.usda.gov* or by mail to NAIS Program Staff, VS, APHIS, 4700 River Road, Unit 200, Riverdale, MD 20737.

The revised User Guide is considered a ''significant guidance document'' under the terms of the Office of Management and Budget's (OMB) ''Final Bulletin for Agency Good Guidance Practices,'' which was published in the **Federal Register** on January 25, 2007 (72 FR 3432–3440). To learn more about the OMB bulletin and APHIS' implementation of its provisions, visit *http://www.aphis.usda.gov/guidance/.*

Done in Washington, DC, this 14th day of December 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–24653 Filed 12–18–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Clearwater National Forest; Idaho; Travel Management Plan

AGENCY: Forest Service, USDA.

ACTION: Revised notice; intent to prepare an environmental impact statement. The original notice was published in the **Federal Register**/Vol. 72, No. 228, November 28, 2007/Notices, pages 67268–67270.

SUMMARY: On November 28, 2007, the USDA Forest Service announced its intent to prepare a travel planning environmental impact statement (EIS). The proposed action would designate a site-specific transportation system and prohibit indiscriminate cross-country traffic. The EIS will analyze the effects of the proposed action and alternatives. This Revised Notice is being published because the due date for scoping comments has been extended to January 11, 2008. The Clearwater National Forest invites comments and suggestions on the issues to be addressed. The agency gives notice of the National Environmental Policy Act (NEPA) analysis and decision-making process on the proposal so interested and affected members of the public may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by

January 11, 2008. A 45-day public comment period will follow the release of the draft environmental impact statement that is expected in June 2008. The final environmental impact statement is expected in January 2009.

ADDRESSES: Send written or electronic comments to: Lochsa Ranger District, Kamiah Ranger Station; *Attn:* Lois Foster, Interdisciplinary Team Leader; Rt. 2 Box 191; Kamiah, ID 83536; FAX 208–935–4275; E-mail *comments-northern-clearwater@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Lois Foster, Interdisciplinary Team leader, (208) 935–4258.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action is to (1) Implement national OHV Rule direction, (2) Limit indiscriminate cross-country motorized travel, (3) Designate selected roads and trails for motorized travel, (4) Designate appropriate areas or routes for travel with oversnow vehicles, (5) Balance travel opportunities with maintenance and management capability including costs, (6) Provide for a better spectrum of motorized, non-motorized, and non-mechanized travel opportunities across the CNF in recognition of the need to retain the character of lands recommended for Wilderness designation and the CNF's ability to provide for non-motorized recreation opportunities that are not available on other land ownerships, (7) Manage impacts to Forest resources, (8) Improve clarity and consistency of existing travel restrictions, and (9) amend the 1987 Forest Plan as necessary to accomplish the actions described above.

The need for revision of the Forest Plan is supported by nationwide awareness within the Forest Service of the negative effects of indiscriminate off-road travel by motorized users. These concerns led to publication of the Travel Management final rule on November 9, 2005 in the **Federal Register,** 36 CFR Parts 212, 251, 261, 295 ''Travel Management: Designated Routes and Areas for Motor Vehicle Use'' (**Federal Register** 2005: 79FR68264). The rule requires each National Forest to designate those roads, trails, and areas that are open to motor vehicle use. The rule prohibits use of motor vehicles off the designated system, as well as use of motor vehicles on routes and in areas that are not consistent with the designation. The rule does not require that over-snow vehicles, such as snowmobiles, are limited to a designated system by exempting them under 121.51, but also states in 212.81 that ''use by over-snow vehicles...on National Forest System lands may be allowed, restricted, or prohibited.'' The CNF chose to include over-snow vehicles in the analysis.

The Proposed Action would designate motorized road and trail routes for summer travel on the Clearwater National Forest. Existing Conditions include roads and trails identified as open to motorized travel in the 2005 Travel Guide, plus any error corrections or project-level NEPA decisions made since then. The Proposed Action would include any changes from existing conditions, such as road to trail conversions, designating some roads previously not thought to be travelable, and not designating some roads that were previously thought to be travelable.

The transportation system for snow-free travel would include:

- 1,623 miles of open yearlong to all highway-legal vehicles (an increase of 8 miles compared to existing conditions);
- 509 miles of roads open yearlong to small vehicles such as ATV's and motorcycles, but not including UTV's (an increase of 9 miles);
- 633 miles of roads open seasonally to all highway-legal vehicles (a decrease of 13 miles);
- 151 miles of roads open seasonally to small vehicles (a decrease of 1 mile);
- 93 miles of trails open yearlong to small vehicles (a change of 0 miles);
- 226 miles of trails open yearlong to motorcycles (a decrease of 178 miles);
- 75 miles of trails open seasonally to small vehicles (an increase of 2 miles); and
- 93 miles of trails open seasonally to motorcycles (a change of 0 miles).

The proposed action would also modify the dates of seasonal restrictions for roads and trails to reduce the variety of restricted periods, and ultimately improve the clarity of the Motor Vehicle Use Map (MVUM). Motorized travel up to 300 feet off of designated routes to access established campsites would be permitted in most areas. In certain areas, off-route travel would be permitted only to access specifically designated campsites.

Existing restrictions for bicycles on all but one road would be eliminated. Bicycle restrictions on roads would drop from a total of 10 miles currently to only 1 mile, which would be entirely within the CNF seed orchard. Areas recommended for wilderness by the Forest Plan would become off limits to bicycles. System trails available to bicycles would drop from 811 miles to 730 miles (a reduction of 81 miles).

Over-snow vehicle use would be restricted in areas recommended for wilderness by the Forest Plan. Within the areas where over-snow vehicle use would generally be permitted, there would continue to be some specific routes where over-snow vehicles would be restricted. Over-snow vehicle use would be prohibited forest-wide from October 1 to November 4. The transportation system for over-snow vehicles would include:

- 364 miles of groomed snowmobile routes (no change from existing conditions);
- 1,322,943 acres generally open to over-snow vehicles except for certain restricted routes;
- 3,484 miles of roads where over-snow vehicles would be permitted from November 5 until snowmelt in the spring, compared to 3,174 acres available currently (an increase of 310 acres); and
- 503,057 acres closed to over-snow vehicles, compared to 302,856 acres available currently (a decrease of 200,201 acres).

The numbers above are only approximate at this time.

The existing Forest Plan will be amended. When the Forest Plan was completed in 1987, trail vehicles were few and travel planning was focused almost completely on roads and highway vehicles. Motorized use has increase dramatically since then, and modern vehicles such as snowmobiles, ATV's, and motorcycles have capabilities that could not have been envisioned in 1987. The Forest Plan also contains some conflicting information regarding the intent for management of certain areas. Changes may include:

- Better coordination between the level of motorized travel and the focus of certain management areas, primarily those in roadless areas;
- Additions or changes to Forest Plan standards to permit implementation of the national Travel Management rule; and
- Other goals, objectives, and standards affecting travel management.

Possible Alternatives the Forest Service will consider include a no-action alternative, which will serve as a baseline for comparison of alternatives. The proposed action will be considered along with additional alternatives that will be developed to meet the purpose and need for action, and to address significant issues identified during scoping.

The Responsible Official is Thomas K. Reilly, Clearwater Forest Supervisor, Clearwater National Forest, 12730 Highway 12, Orofino, ID 83544.

The Decision To Be Made is whether to adopt the proposed action, in whole or in part, or another alternative; and what mitigation measures and

management requirements will be implemented.

The Scoping Process for the EIS is being initiated with this notice. The scoping process will identify issues to be analyzed in detail and will lead to the development of alternatives to the proposal. The Forest Services is seeking information and comments from other Federal, State, and local agencies; Tribal governments; and organizations and individuals who may be interested in or affected by the proposed action. Comments received in response to this notice, including the names and addresses of those who comment, will be part of the project record and available for public review. Public meetings will be scheduled during the scoping period. Times, dates and locations for the public meetings will be published in the Lewiston, Idaho *Lewiston Morning Tribune*.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The second major opportunity for public input will be when the Draft EIS is published. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Draft EIS is anticipated to be available for public review in June 2008. The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978)).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period for the Draft EIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period for the Draft EIS ends, the Forest Service will analyze comments received and address them in the Final EIS. The Final EIS is scheduled to be released by January 2009. The Responsible Official (Forest Supervisor Thomas K. Reilly) will document the decision and rationale in a Record of Decision (ROD). The decision will be subject to review under Forest Service appeal regulations at 36 CFR Part 215.

Preliminary Issues identified by the Forest Service interdisciplinary team include: changing motorized and non-motorized recreation opportunities, costs of road and trail management and maintenance, soil issues, effects on aquatic environments and species, effects on wildlife, the spread of noxious weeds, changes in motorized access to roads, trails and areas that are not designated as part of the travel planning analysis, and motorized access for people with disabilities.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: December 6, 2007.

Thomas K. Reilly,

Clearwater Forest Supervisor.

[FR Doc. 07–6074 Filed 12–18–07; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the administrative review of the antidumping duty order on certain stainless steel butt–weld pipe fittings from Taiwan. The period of review is June 1, 2005, through May 31, 2006. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: December 19, 2007.

FOR FURTHER INFORMATION CONTACT: Judy Lao or John Drury, Office 7, AD/CVD Operations, 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) 482–0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2007, the Department published the preliminary results of the administrative review of the antidumping duty order on certain stainless steel butt–weld pipe fittings from Taiwan covering the period June 1, 2005, through May 31, 2006. *See* Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part, 72 FR 35970 (July 2, 2007). The final results for the antidumping duty administrative review of certain stainless steel butt–weld pipe fittings from Taiwan are currently due no later than December 14, 2007.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Act requires the Department to issue the results in an administrative review within 120 days of the publication of the preliminary results. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days (or 300 days

if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

In accordance with section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), the Department finds that it is not practicable to complete the review within the original time frame (*i.e.*, by December 14, 2007). Specifically, the Department requires additional time to complete the fact–intensive analysis of the record required by certain issues, such as questions of affiliation, raised in the case briefs. Because it is not practicable to complete this administrative review within the time limit mandated by section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the time limit for completion of the final results of this administrative review by 15 days, to no later than December 31, 2007.[1]

This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 12, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–24621 Filed 12–18–07; 8:45 am]

BILLING CODE 3510–DS–S

[1] The extension of time by 180 days would result in the completion of the final results of review on December 29, 2007. As December 29, 2007, is a Saturday, the completion date falls to the next workday, which is Monday, December 31, 2007.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Rescission of Countervailing Duty Administrative Review

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

SUMMARY: In response to a request from Dai Yang Metal Co., Ltd. (DMC), the Department of Commerce (the Department) initiated an administrative review of the countervailing duty (CVD) order on stainless steel sheet and strip in coils from the Republic of Korea (Korea). This review covers imports of subject merchandise from DMC, for the period of review (POR) January 1, 2006, through December 31, 2006. On November 2, 2007, DMC withdrew its request for an administrative review. No other parties requested a review. The Department is now rescinding this administrative review.

EFFECTIVE DATE: December 19, 2007.

FOR FURTHER INFORMATION CONTACT: Preeti Tolani, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–0395.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1999, the Department published in the **Federal Register** the CVD order on stainless steel sheet and strip in coils from Korea. *See Amended Final Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip from France, Italy and the Republic of Korea*, 64 FR 42923 (August 6, 1999). On August 2, 2007, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the CVD order on stainless steel sheet and strip in coils from Korea. See 72 FR 42383. On August 31, 2007, DMC, a producer of the subject merchandise, requested an administrative review of the CVD order referenced above. On September 25, 2007, the Department published in the **Federal Register** the initiation of this CVD administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 54428 (September 25, 2007).

Scope of Order

The merchandise covered by this order is stainless steel sheet and strip in coils from Korea. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc

remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[2]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

Rescission of Review

A party that requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. *See* 19 CFR 351.213(d)(1). On November 2, 2007, DMC timely withdrew its request for an administrative review. Therefore, the Department is rescinding the administrative review of the CVD order on stainless steel sheet and strip in coils from Korea covering the period January 1, 2006, through December 31, 2006. The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection 15 days after the date of publication of this notice.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: December 12, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–24626 Filed 12–18–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Scientific Advisory Board Notice of Meeting

AGENCY: Department of the Air Force, U.S. Air Force Scientific Advisory Board.

ACTION: Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the United States Air Force Scientific Advisory Board meeting will take place on Tuesday, January 15th, 2008, from 7:30 a.m.–5:30 p.m., at the Under Secretary of the Air Force for Acquisition Conference and Innovation Center, 1560 Wilson Blvd, Suite 400, Rosslyn, VA 22209.

The purpose of the meeting is to hold the United States Air Force Scientific Advisory Board quarterly meeting. The meeting agenda will include media relations training, deliberation of the results of the Fiscal Year 2007 Science and Technology Review of the Air Force Research Laboratory, and briefings and discussion on the four Fiscal Year 2008 study topics approved by the Secretary of the Air Force: Airborne Tactical Laser Feasibility for Gunship Operations, Kinetic Precision Effects, Implications of Spectrum Management for the Air Force, and Defending and Operating in a Contested Cyber Domain.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Administrative Assistant of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that all sessions of the United States Air Force Scientific Advisory Board meeting be closed to the public because they will be concerned with classified information and matters covered by sections 5 U.S.C. 552b(c)(1), (4), and (9)(b).

Any member of the public wishing to provide input to the United States Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the United States Air Force Scientific Advisory Board until its next meeting. The Designated Federal Officer will review all timely submissions with the United States Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the United States Air Force Scientific Advisory Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: The United States Air Force Scientific Advisory Board Executive Director and Designated Federal Officer , Lt Col David J. Lucia, 703–697–8288, United States Air Force Scientific Advisory Board, 1080 Air Force Pentagon, Room 4C759, Washington, DC 20330–1080, *david.lucia@pentagon.af.mil.*

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7–24573 Filed 12–18–07; 8:45 am]

BILLING CODE 5001–05–P

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 January 18, 2008.

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: December 13, 2007.

Angela C. Arrington,

IC Clearance Official Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Extension.

Title: Impact Evaluation of the DC Opportunity Scholarship Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 8,377.

Burden Hours: 8,279.

Abstract: The DC Opportunity Scholarship Program is a five-year school choice program that provides scholarships for children in low-income families in Washington, DC. This evaluation uses a randomized control trial to compare the outcomes of eligible applicants who received scholarships to eligible applicants who did not receive a scholarship.

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 3509. 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. E7–24628 Filed 12–18–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Indian Education Formula Grants to Local Educational Agencies; Notice Inviting Applications for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.060A.

DATES:

Part I of the Formula Grant Electronic Application System for Indian Education (EASIE) Applications Available: December 14, 2007.

Deadline for Transmittal of PART I Applications: January 31, 2008.

Part II of Formula Grant (EASIE) Applications Available: February 25, 2008.

Deadline for Transmittal of Part II Applications: April 4, 2008.

Applications not meeting the deadline for Part I will not be considered for funding in the initial allocation of awards. Applications or data submissions under Part II will be accepted only from those eligible applicants that meet the Part I deadline.

Deadline for Intergovernmental Review: July 3, 2008.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The Indian Education Formula Grants to Local Educational Agencies program provides grants to support local educational agencies (LEAs) and other eligible entities described in this notice in their efforts to reform and improve elementary and secondary school programs that serve Indian students. The Department funds programs designed to help Indian students meet the same challenging State academic content and student academic achievement standards used for all students. In addition, under section 7116 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), the Secretary will, upon receipt of an acceptable plan for the integration of education and related services, authorize the entity receiving the funds under this program to consolidate, in accordance with the entity's plan, the funds for any Federal program exclusively serving Indian children, or the funds reserved under any Federal program to exclusively serve Indian children, that are awarded under a statutory or administrative formula to the entity, for the purpose of providing education and related services to Indian students. Instructions for submitting an integration of education and related services plan are included in the EASIE described elsewhere in this notice under *Application Process and Submission Information.*

Eligible Applicants: LEAs, including charter schools authorized as LEAs under State law, certain schools funded by the Bureau of Indian Education of the Department of the Interior, and Indian tribes under certain conditions, as prescribed by section 7112(c) of the ESEA.

Application Process and Submission Information: The application process for the Indian Education Formula Grants to Local Educational Agencies program has changed to the Formula Grant EASIE, an easy-to-use, electronic application system. Formula Grant EASIE provides special features that will progressively enhance data availability and performance reporting for applicants, including the use of data from State submissions to ED*Facts*, the Department's data collection system which contains performance information from State educational agencies about schools and Federal education programs. To the extent that your State has provided the necessary ED*Facts* data files, Formula Grant EASIE will be able to interface with ED*Facts* and pull those LEA-specific data into the application. Additionally, this new system allows the Department to review applications and interact online with applicants during the application review and approval process.

Although you may download and print sample forms from the system, the application must be submitted electronically through the Formula Grant EASIE unless you do not have Internet access and have made prior arrangements with the Department. For approval to submit a paper application, you must contact the ED*Facts* Partner Support Center (see the contact information listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**) prior to the deadline for transmittal of Part I or Part II applications. If you are approved to submit a paper application, you must meet the submission deadlines included in this notice.

Registration for Formula Grant EASIE is required. For information on how to register, contact the ED*Facts* Partner Support Center listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**.

The Formula Grant EASIE application is divided into two parts—Part I and Part II.

Part I, Student Count, provides the appropriate data entry screens to submit your Indian student count totals.

Part II, Program and Budget Information, provides your award amount based on the Indian student count total submitted under Part I. Part II also enables you to enter student performance data, identify your project's services and activities, and build a realistic program budget based on a known grant amount. Based on student assessment data, you will select your program objectives and services from a variety of menu options that were designed with grantee input.

Estimated Available Funds: The Administration has requested $95,331,000 for this program for FY 2008. The actual level of funding, if any, depends on final Congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $4,000–$2,000,000.

Estimated Average Size of Awards: $75,660.

Estimated Number of Awards: 1,260.

Note: The Department is not bound by any estimates in this notice and funding levels may change based on final appropriations for the program.

Project Period: 12 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Performance Measures: The Secretary has established the following key performance measures for assessing the effectiveness and efficiency of the Indian Education Formula Grants to Local Educational Agencies program: (1) The percentage of American Indian and Alaska Native students in grades four and eight who score at or above the basic level in reading on the National Assessment of Educational Progress (NAEP); (2) the percentage of American Indian and Alaska Native students in grades four and eight who score at or above the basic level in mathematics on NAEP; (3) the percentage of American Indian and Alaska Native students in grades three through eight meeting State performance standards by scoring at the proficient or the advanced levels in reading and mathematics on State assessments; (4) the difference between the percentages of American Indian and Alaska Native students in grades three through eight at the proficient or advanced levels in reading and mathematics on State assessments and the percentage of all students scoring at those levels; (5) the percentage of American Indian and Alaska Native students who graduate from high school; and (6) the percentage of funds used by grantees prior to award close-out.

FOR FURTHER INFORMATION CONTACT: Contact the ED*Facts* Partner Support Center, *telephone:* 877–457–3336 (877–HLP–EDEN) or by *e-mail* at: *eden_OIE@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the ED*Facts* Partner Support Center, toll free, at 1–888–403–3336 (888–403–EDEN).

Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the ED*Facts* Partner Support Center.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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

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

Program Authority: 20 U.S.C. 7421 *et seq.*

Dated: December 14, 2007.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E7–24630 Filed 12–18–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ08–5–000]

United States Department of Energy; Bonneville Power Administration, Transmission Service Terms and Conditions; Notice of Filing

December 12, 2007.

Take notice that on December 7, 2007, Bonneville Power Administration tendered for filing a Petition for Declaratory Order accepting proposed amendments to their Open Access Transmission Tariff and request for exemption from filing fee.

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

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

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

Comment Date: 5 p.m. Eastern Time on January 7, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24552 Filed 12–18–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR08–9–000]

Jefferson Island Storage & Hub, L.L.C.; Notice of Petition for Rate Approval

December 12, 2007.

Take notice that on December 5, 2007, Jefferson Island Storage & Hub, L.L.C. (Jefferson Island) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations. Jefferson Island requests that the Commission approve market-based rates, including negotiated fuel, for its Interruptible Wheeling Service. The proposed Interruptible Wheeling Service will replace Jefferson Island's Interruptible Transportation Service. Jefferson Island also requests waiver of the triennial rate review filing required by the Commission's June 20, 2005 Letter Order in Docket Nos. PR05–9–000 and PR05–9–001.

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 December 28, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24550 Filed 12–18–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–4348–001]

Lochner, Jr., Philip R.; Notice of Filing

December 12, 2007.

Take notice that on November 30, 2007, Philip R. Lochner, Jr. filed an Application for Authority to Hold Interlocking Positions, pursuant to Part 45 of Chapter 1 of Title 18 of the Code of Federal Regulations, 18 CFR 45 and section 305(b) of the Federal Power Act.

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

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

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

Comment Date: 5 p.m. Eastern Time on December 21, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24551 Filed 12–18–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF08–67–000]

Red River Environmental Products, LLC; Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

December 13, 2007.

Take notice that on November 15, 2007, Red River Environmental Products, LLC, 8100 Southpark Way, Unit B, Littleton, CO 80120, filed with the Federal Energy Regulatory Commission a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(a) of the Commission's regulations.

Red River Environmental Products, LLC proposes to certify a new bottoming cycle cogeneration facility near the town of Armistead, Louisiana in Red River Parish (Facility). The powdered activated carbon (PAC) manufactured at the Facility will be marketed for injection into the flue gas stream of coal-fired power plants as an effective means of removing mercury emissions. The process will produce PAC primarily from coal (lignite) through a thermal process. A small quantity of natural gas will also be used to help control the process temperature and emissions. Waste heat from this process will be captured and used to generate approximately 19,500 kW of gross electric power and 18,380 kW of net electric power from each of two production lines, for a total generating capacity of approximately 39,000 kW gross and 36,760 kW net. The electric power in each production line will be generated by two steam turbines: one sized to generate 15,500 kW and another sized to generate 4,000 kW of gross power, resulting in total net power of 18,380 kW per production line. Generators will be connected to a step-up transformer (GSU), which will step up 13.8 kV to 115 kV. The electric power generated by the Facility will be used on site to power the PAC manufacturing plant, and sold into the wholesale market.

Cleco Power, LLC is the electric utility with which the Facility expects to interconnect, transmit or sell electric energy to, or purchase supplementary, standby, back-up and maintenance power.

A notice of self-certification does not institute a proceeding regarding qualifying facility status; a notice of self-certification provides notice that the entity making filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(1)(iii), with the appropriate filing fee.[1]

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24666 Filed 12–18–07; 8:45 am]

BILLING CODE 6717–01–P

[1] *See Hydro Investors, Inc.* v. *Trafalgar Power Inc.*, 94 FERC ¶ 61,207, *reh'g denied*, 95 FERC ¶ 61,120 (2001).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–29–000]

Vector Pipeline L.P.; Notice of Application

December 12, 2007.

Take notice that on November 30, 2007, Vector Pipeline L.P. (Vector), 38705 Seven Mile Road, Suite 490, Livonia, Michigan 48152, filed in Docket No. CP08–29–000, an application, pursuant to section 7 of the Natural Gas Act (NGA), to construct, own, and operate compressor facilities associated with an expansion of its mainline capacity. This project is known as the Athens Compressor Expansion, or ACE Project, and entails the construction of a new compressor station located in Calhoun County, Michigan, along with minor changes to existing compressor facilities at Vector's Highland and Springville stations. The ACE Project will increase Vector's mainline capacity by approximately 105,000 Dth per day, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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 (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Mr. Robert Smith, Manager, Regulatory and Administration, 38705 Seven Mile Road, Suite 490, Livonia, Michigan 48152, at (734) 462–0234 or by e-mail at *bob.smith@vector-pipeline.com.*

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

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

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

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

The Commission strongly encourages electronic filings of comments, protests and interventions 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: January 2, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24554 Filed 12–18–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 11, 2007.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–32–002.
Applicants: Entergy Services Inc.
Description: Entergy Operating Companies informs the Commission that it has complied with Order 890's requirement concerning the elevation of pre-confirmed transmission service request.
Filed Date: 11/30/2007.
Accession Number: 20071206–0120.
Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: OA08–18–000.
Applicants: Aquila, Inc.
Description: Aquila, Inc.'s Order No. 890 Attachment K (Planning) Compliance Filing.
Filed Date: 12/06/2007.
Accession Number: 20071206–5092.
Comment Date: 5 p.m. Eastern Time on Thursday, December 27, 2007.

Docket Numbers: OA08–19–000.
Applicants: Ohio Valley Electric Corporation.

Description: Attachment K Compliance Filing Order No. 890 OATT of Ohio Valley Electric Corporation.
Filed Date: 12/07/2007.
Accession Number: 20071207–5011.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–20–000.
Applicants: Tampa Electric Company.
Description: Attachment K Compliance Filing of Tampa Electric Company.
Filed Date: 12/07/2007.
Accession Number: 20071207–5016.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–21–000.
Applicants: Maine Public Service Company.
Description: Order No. 890 OATT Compliance Filing—Transmission Planning Attachment—of Maine Public Service Company.
Filed Date: 12/07/2007.
Accession Number: 20071207–5020.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–22–000.
Applicants: Florida Power Corporation.
Description: Order No. 890 compliance filing of Florida Power Corporation d/b/a Progress Energy Florida, Inc.
Filed Date: 12/07/2007.
Accession Number: 20071207–5038.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–23–000.
Applicants: Idaho Power Company.
Description: Order No. 890 OATT Attachment K Compliance Filing of Idaho Power Company.
Filed Date: 12/07/2007.
Accession Number: 20071207–5041.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–24–000.
Applicants: Alcoa Power Generating Inc.—Yadkin.
Description: Order No. 890 Compliance Filing of Alcoa Power Generating Inc. Yadkin Division.
Filed Date: 12/07/2007.
Accession Number: 20071207–5052.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–25–000.
Applicants: Avista Corporation.
Description: Avista Corporation Order 890 Compliance filing of Attachment K.
Filed Date: 12/07/2007.
Accession Number: 20071207–5056.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–26–000.
Applicants: Puget Sound Energy, Inc.
Description: Attachment K Compliance Filing of Puget Sound Energy, Inc.
Filed Date: 12/07/2007.
Accession Number: 20071207–5057.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–27–000.
Applicants: Kentucky Utilities Company, E.ON U.S. LLC, Louisville Gas & Electric Company.
Description: Order No. 890 Attachment K of E.ON U.S. LLC, *et al.*
Filed Date: 12/07/2007.
Accession Number: 20071207–5059.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–28–000.
Applicants: Deseret Generation & Transmission Co-op.
Description: Order No. 890 OATT—Attachment K of Deseret Generation & Transmission Co-operative, Inc.
Filed Date: 12/07/2007.
Accession Number: 20071207–5061.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–29–000.
Applicants: Florida Power & Light Company.
Description: Attachment K Compliance Filing of Florida Power & Light Company.
Filed Date: 12/07/2007.
Accession Number: 20071207–5063.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–30–000.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company's Attachment K Compliance Filing.
Filed Date: 12/07/2007.
Accession Number: 20071207–5067.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–31–000.
Applicants: NorthWestern Energy, a division.
Description: Order No. 890 OATT, NorthWestern Energy, a division of NorthWestern Corporation, Attachment K Compliance Filing.
Filed Date: 12/07/2007.
Accession Number: 20071207–5096.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–32–000.
Applicants: PJM Interconnection, L.L.C.
Description: Order No. 890 OATT of PJM Interconnection, L.L.C.
Filed Date: 12/07/2007.
Accession Number: 20071207–5066.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–33–000.
Applicants: Arizona Public Service Company.
Description: Attachment K Compliance Filing APS Transmission Planning Process.
Filed Date: 12/07/2007.
Accession Number: 20071207–5110.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–34–000.
Applicants: Public Service Company of New Mexico.
Description: Order No. 890 OATT Attachment K Compliance Filing of Public Service Company of New Mexico.
Filed Date: 12/07/2007.
Accession Number: 20071207–5070.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–35–000.
Applicants: Xcel Energy Services Inc.
Description: Order No. 890 OATT of Xcel Energy Services Inc.
Filed Date: 12/07/2007.
Accession Number: 20071207–5084.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–36–000.
Applicants: Cleco Power LLC.
Description: Attachment K Compliance Filing of Cleco Power LLC.
Filed Date: 12/07/2007.
Accession Number: 20071207–5085.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–37–000.
Applicants: Southern Company.
Description: Southern Company submits Attachment K to its OATT in compliance with Order No. 890.
Filed Date: 12/07/2007.
Accession Number: 20071207–5086.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–38–000.
Applicants: Sierra Pacific Resources Operating Companies
Description: Order No. 890 OATT Attachment K-Transmission Planning Process of Sierra Pacific Resources Operating Companies.
Filed Date: 12/07/2007.
Accession Number: 20071207–5089.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–39–000.
Applicants: American Electric Power Service Corp.
Description: Order No. 890 OATT Transmission Planning Principles Compliance Filing of American Electric Power Service Corp.
Filed Date: 12/07/2007.
Accession Number: 20071207–5090.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–40–000.
Applicants: PacifiCorp.
Description: Order No. 890 OATT Revised Attachment K Compliance Filing of PacifiCorp.
Filed Date: 12/07/2007.
Accession Number: 20071207–5107.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–41–000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company FPA section 206 Compliance Filing Transmission Planning Process.
Filed Date: 12/07/2007.
Accession Number: 20071207–5109.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–43–000.
Applicants: Powder River Energy Corp; Black Hills Power, Inc.; Basin Electric Power Cooperative, Inc.
Description: Black Hills Power, Inc., Basin Electric Power Cooperative, and Powder River Energy Corporation Order No. 890 Attachment K Compliance Filing.
Filed Date: 12/07/2007.
Accession Number: 20071207–5116.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–44–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Order No. 890 Attachment K Compliance Filing of Oklahoma Gas and Electric Co.
Filed Date: 12/07/2007.
Accession Number: 20071207–5117.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–45–000.
Applicants: Portland General Electric Company.
Description: Order No. 890 OATT of Portland General Electric Company.
Filed Date: 12/07/2007.
Accession Number: 20071207–5122.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–46–000.
Applicants: South Carolina Electric & Gas Company.
Description: Attachment K filing to Order No. 890 OATT of South Carolina Electric & Gas Company.
Filed Date: 12/07/2007.
Accession Number: 20071207–5127.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–47–000; OA08–48–000.
Applicants: Tucson Electric Power Company; UNS Electric, Inc.
Description: Order No. 890 OATT of Tucson Electric Power Company and UNS Electric, Inc.
Filed Date: 12/07/2007.
Accession Number: 20071207–5126.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

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

Nathaniel J. Davis Sr.,
Deputy Secretary.

[FR Doc. E7–24592 Filed 12–18–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 2

December 11, 2007.

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

Docket Numbers: EC08–20–000.
Applicants: RockGen Energy LLC; RockGen OL–1, LLC; RockGen OL–2, LLC; RockGen OL–3, LLC; RockGen OL–4, LLC.
Description: RockGen Energy, LLC et al submits a joint application for acquisition of ownership from the Interest Holders of an electric generation facility in Dane County, Wisconsin.
Filed Date: 12/06/2007.
Accession Number: 20071210–0047.
Comment Date: 5 p.m. Eastern Time on Thursday, December 27, 2007.

Docket Numbers: EC08–21–000.
Applicants: Northern Indiana Public Service Company; Broadway Gen Funding, LLC; Sugar Creek Power Company, LLC.
Description: Northern Indiana Public Service Co and Broadway Gen Funding, LLC et al submits an application and related exhibits requesting authorization for a transaction to transfer a generating facility.
Filed Date: 12/06/2007.
Accession Number: 20071210–0043.
Comment Date: 5 p.m. Eastern Time on Thursday, December 27, 2007.

Docket Numbers: EC08–22–000.
Applicants: Bicent (California) Power LLC; Bicent (California) Malburg LLC.
Description: Bicent (California) Power LLC et al requests authorization for its acquisition of the Malburg Generating Station pursuant to Amended and Restated Purchase and Sale Agreement to be entered with the City of Vernon, CA.
Filed Date: 12/07/2007.
Accession Number: 20071211–0058.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–19–000.
Applicants: Sweetwater Wind 5 LLC.
Description: Sweetwater Wind 5 LLC submits a notice of self-certification of its status as an exempt wholesale generator.
Filed Date: 12/06/2007.
Accession Number: 20071207–0099.
Comment Date: 5 p.m. Eastern Time on Thursday, December 27, 2007.

Docket Numbers: EG08–20–000.

Applicants: South Trent Wind LLC.
Description: South Trent Wind LLC submits a notice of self-certification of its status as an exempt wholesale generator.
Filed Date: 12/06/2007.
Accession Number: 20071207–0098.
Comment Date: 5 p.m. Eastern Time on Thursday, December 27, 2007.

Docket Numbers: EG08–21–000.
Applicants: Forward Windpower, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 12/07/2007.
Accession Number: 20071207–5025.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: EG08–22–000.
Applicants: Lookout Windpower, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 12/07/2007.
Accession Number: 20071207–5026.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

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

Docket Numbers: ER98–830–016 ER03–719–007; ER03–720–007; ER03–721–007.
Applicants: Millennium Power Partners, LLC, New Athens Generating Company, LLC; New Covert Generating Company, LLC; New Harquahala Generating Company, LLC.
Description: New Athens Generating Co, LLC et al submits an amendment to the 10/25/07 et al filing of a non-material Change in Status.
Filed Date: 12/07/2007.
Accession Number: 20071210–0034.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: ER06–1346–002.
Applicants: White Creek Wind I, LLC.
Description: White Creek Wind I LLC submits its revised Third Revised Sheet 1 of its FERC Electric Tariff, Original Volume 1.
Filed Date: 12/04/2007.
Accession Number: 20071206–0228.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: ER07–1103–003.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk Power Corp dba National Grid submits Service Agreement 1151 with an updated effective date pursuant to FERC's 10/31/07 Letter Order under ER07–1103.
Filed Date: 11/30/2007.
Accession Number: 20071204–0074.
Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER07–1199–001.
Applicants: Airtricity Munnsville Wind Farm, LLC.
Description: Airtricity Munnsville Wind Farm, LLC submits notice of non-material change in status related to a change in its upstream ownership under ER07–1199.
Filed Date: 11/30/2007.
Accession Number: 20071204–0067.
Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

Docket Numbers: ER07–1408–001.
Applicants: PacifiCorp.
Description: PacifiCorp re-files the 1968 Operating Agreement in compliance with FERC's 11/21/07 letter order.
Filed Date: 12/06/2007.
Accession Number: 20071207–0096.
Comment Date: 5 p.m. Eastern Time on Thursday, December 27, 2007.

Docket Numbers: ER08–55–001.
Applicants: Midwest Independent Transmission System Operator, Inc
Description: Midwest Independent Transmission System Operator, Inc et al submit proposed revisions to the Congestion Management Process of their Joint Operating Agreement.
Filed Date: 12/07/2007.
Accession Number: 20071210–0036.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: ER08–112–002.
Applicants: Idaho Power Company.
Description: Idaho Power Co submits the corrected Attachment 2 to its 12/4/07 filing of revised sheets to its Open Access Transmission Tariff.
Filed Date: 12/07/2007.
Accession Number: 20071210–0037.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: ER08–274–001.
Applicants: Citadel Energy Strategies, LLC.
Description: Citadel Energy Strategies LLC submits an amendment to its Petition for Acceptance of Initial Rate, Waivers and Blanket Authorization, designated as Rate Schedule FERC 1 and on12/10/07 submit its second amendment to this filing.
Filed Date: 12/07/2007; 12/10/2007.
Accession Number: 20071210–0001; 20071211–0073.
Comment Date: 5 p.m. Eastern Time on Thursday, December 20, 2007.

Docket Numbers: ER08–299–000.
Applicants: Snowflake White Mountain Power, LLC.
Description: Snowflake White Mountain Power, LLC submits an application for market-based authorization, certain waivers and blanket authorizations and request for expedited treatment.
Filed Date: 12/05/2007.
Accession Number: 20071207–0091.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: ER08–300–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co. submits an unexecuted Small Generator Interconnection Agreement etc with County Sanitation Districts of Los Angeles.
Filed Date: 12/05/2007.
Accession Number: 20071207–0092.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: ER08–301–000.
Applicants: Covanta Fairfax, Inc.
Description: Covanta Fairfax, Inc submits the Second Amendment to First Amended and Restatement of Power Purchase and Operating Agreement with Virginia Electric and Power Co dba Dominion Virginia Power.
Filed Date: 12/05/2007.
Accession Number: 20071207–0093.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: ER08–302–000; TS08–1–000.
Applicants: Peetz Logan Interconnect, LLC.
Description: Peetz Logan Interconnect, LLC submits an Amended and Restated Transmission Service Agreement with Peetz Table Wind Energy, LLC, et al, and a request for waivers of certain Standard of Conduct regulations.
Filed Date: 12/05/2007.
Accession Number: 20071207–0090.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: ER08–303–000.
Applicants: Williams Gas Marketing, Inc.
Description: Williams Gas Marketing, Inc submits a Notice of Succession by reason of a change in name to Williams Power Co.
Filed Date: 12/05/2007.
Accession Number: 20071207–0094.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: ER08–304–000.
Applicants: Indiana Michigan Power Company.
Description: Indiana Michigan Power Co submits First Revised Sheet 15 et al to FERC Rate Schedule 110.
Filed Date: 12/06/2007.
Accession Number: 20071207–0095.
Comment Date: 5 p.m. Eastern Time on Thursday, December 27, 2007.

Docket Numbers: ER08–305–000.

Applicants: Phoenix Energy Trading, LLC.

Description: Phoenix Energy Trading LLC submits a notice of cancellation of FERC Electric, Original Volume 1, to become effective 12/15/07.

Filed Date: 12/07/2007.

Accession Number: 20071210–0002.

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

Docket Numbers: ER08–306–000.

Applicants: Appalachian Power Company.

Description: Appalachian Electric Power Company submits First Revised Sheet 13 et al to FERC Electric Rate Schedule 153.

Filed Date: 12/07/2007.

Accession Number: 20071210–0003.

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

Docket Numbers: ER08–307–000.

Applicants: Appalachian Power Company.

Description: Appalachian Power Co submits their First Revised Sheet 13 et al to FERC Electric Rate Schedule 152 et al.

Filed Date: 12/07/2007.

Accession Number: 20071210–0004.

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

Docket Numbers: ER08–308–000.

Applicants: Appalachian Power Company.

Description: Appalachian Power Company submits First Revised Sheet 14 et al to its FERC Rate Schedule 154.

Filed Date: 12/07/2007.

Accession Number: 20071210–0005.

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

Docket Numbers: ER08–309–000.

Applicants: Kentucky Power Company.

Description: Kentucky Power Company submits First Revised Sheet 10 et al to its FERC Rate Schedule 51.

Filed Date: 12/07/2007.

Accession Number: 20071210–0006.

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

Docket Numbers: ER08–310–000.

Applicants: Indiana Michigan Power Company.

Description: Indiana Michigan Power Company submits First Revised Sheet 15 et al to its FERC Electric Rate Schedule 108.

Filed Date: 12/07/2007.

Accession Number: 20071210–0007.

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

Docket Numbers: ER08–311–000.

Applicants: Indiana Michigan Power Company.

Description: Indiana Michigan Power Company submits its First Revised Sheet 15 et al to its FERC Electric Rate Schedule 111.

Filed Date: 12/07/2007.

Accession Number: 20071210–0009.

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

Docket Numbers: ER08–312–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits its compliance filing involving one rate change to its Transmission Owner Tariff, FERC Electric Tariff, Sixth Revised Volume 5.

Filed Date: 12/07/2007.

Accession Number: 20071210–0008.

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

Docket Numbers: ER08–313–000.

Applicants: Xcel Energy Services Inc.

Description: Xcel Energy Services Inc on behalf of Southwestern Public Service Co submits revised tariff sheets.

Filed Date: 12/07/2007.

Accession Number: 20071210–0247.

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

Docket Numbers: ER08–314–000.

Applicants: Bicent (California) Malburg LLC.

Description: Bicent (California) Malburg LLC submits an application for Market-Based Rate Authority and request for waivers etc.

Filed Date: 12/07/2007.

Accession Number: 20071210–0038.

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

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

Docket Numbers: ES08–7–000.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation submits an application requesting authorization to secure the obligation of its wholly-owned indirect subsidary, Colstrip Lease Holdings LLC under a $100,000,000 credit facility etc.

Filed Date: 12/05/2007.

Accession Number: 20071207–0102.

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

Docket Numbers: ES08–8–000.

Applicants: FirstEnergy Service Company.

Description: Form 523—Joint Application for Authorization to Issue Securities of FirstEnergy Service Company, et al.

Filed Date: 12/06/2007.

Accession Number: 20071206–5071.

Comment Date: 5 p.m. Eastern Time on Thursday, December 27, 2007.

Docket Numbers: ES08–10–000.

Applicants: Portland General Electric Company.

Description: Form 523—Request for Permission to Issue Securities of Portland General Electric Company.

Filed Date: 12/07/2007.

Accession Number: 20071207–5123.

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

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E7–24593 Filed 12–18–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13059–000]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

December 12, 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.:* 13059–000.

c. *Date filed:* November 2, 2007.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name and Location of Project:* The proposed Pit 4 Dam Streamflow Incremental Generation Project would be located downstream of the right abutment of the existing Pit 4 Dam, which is a project work under the license for the Pit 3,4,5 Hydroelectric Project No. 233, on the Pit River in Shasta County, California. The project occupies a total of approximately 750 acres of federal lands administered by the U.S. Forest Service (USFS). The Pit 3,4,5 Hydroelectric Project No. 233 is licensed to Pacific Gas and Electric Company (PG&E).

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Randal S. Livingston, Vice President—Power Generation, Pacific Gas and Electric Company, 245 Market Street, MS N11E, P.O. Box 770000, San Francisco, CA 94177–0001, (415) 973–6950.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *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–13059–000) 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.

j. *Description of Existing Facilities and Proposed Project:* The existing Pit 4 Dam is the second dam downstream, of the Pit 3, 4 & 5 Project (FERC No. 233) and it impounds Pit 4 Reservoir. The Pit 4 Dam has a concrete gravity overflow section 213 feet long with a maximum height of 108 feet. The Pit 4 Dam was completed in 1927, and was re-authorized in 2007 for continued operation under terms of the new hydropower license issued for Project No. 233 (120 FERC ¶ 62,001). The existing reservoir at Pit 4 has a surface area of 105 acres and a storage capacity of 1,970 acre-feet at a reservoir elevation of 2,422.5 feet NGVD. No changes are proposed to this reservoir.

The proposed Project is planned to be located entirely within the existing Project boundary for PG&E's Pit 4 Dam site. The features of the proposed Project will be located on federal lands administered by the USFS.

The proposed project would consist of a powerhouse containing one 2.2-megawatt turbine/generator unit to be constructed on the right bank, downstream of the right abutment of the existing Pit 4 Dam. The proposed project will be run-of-river; the required minimum instream flow downstream of Pit 4 Dam will be passed through the proposed powerhouse without change in volume or timing. The existing access road in the downstream spoil pile will be used to access the new powerhouse. The average annual generation at the proposed project would be 13 gigawatt-hours. The proposed project would connect to an existing PG&E 12-kV line located just to the north of the Pit 4 Dam site.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction 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 g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *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 and 4.36.

n. *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 and 4.36.

o. *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.

p. *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.

q. *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.

r. *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'', 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. 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.

s. *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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24553 Filed 12–18–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 13, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP99–301–182.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Co submits Rate Schedules FSS negotiated rate agreement with Chevron USA, Inc.
Filed Date: 12/11/2007.
Accession Number: 20071212–0190.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP99–301–183.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Co submits Rate Schedule FSS negotiated rate service agreement with Chevron USA, Inc (Contract 113355), to be effective 11/1/08.
Filed Date: 12/11/2007.
Accession Number: 20071212–0191.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP99–301–184.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Co submits Rate Schedule FSS negotiated rate service agreement and Rate Schedule FTS–1 negotiated rate service agreement.
Filed Date: 12/11/2007.
Accession Number: 20071212–0192.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP99–301–185.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Co submits Rate Schedule FSS negotiated rate service agreement and Rate Schedule FTS–1 negotiated rate service agreement with Oneok Energy Services Co, LP.
Filed Date: 12/11/2007.
Accession Number: 20071212–0193.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP99–301–186.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Co submits Rate Schedule FSS negotiated rate service agreement with CIMA Energy, LTD.
Filed Date: 12/11/2007.
Accession Number: 20071212–0194.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP99–301–187.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Co submits Rate Schedule FSS negotiated rate service agreement (Contract 113328) with Occidental Energy Marketing, Inc.
Filed Date: 12/11/2007.
Accession Number: 20071212–0195.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP99–301–188.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Co submits Rate Schedule FSS negotiated rate service agreement and Rate Schedule FTS–1 negotiated rate service agreement with ConocoPhillips Co.
Filed Date: 12/11/2007.
Accession Number: 20071212–0196.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP08–114–000.
Applicants: Hardy Storage Company, LLC.
Description: Hardy Storage Company, LLC submits its First revised Sheet 196 to FERC Gas Tariff, Original Volume 1, to be effective 1/10/08 under RP08–114.
Filed Date: 12/11/2007.
Accession Number: 20071212–0186.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP08–115–000.
Applicants: Central Kentucky Transmission Company
Description: Central Kentucky Transmission Co submits its First Revised Sheet 271, to FERC Gas Tariff, Original Volume 1, proposed to be effective 1/10/08 .
Filed Date: 12/11/2007.
Accession Number: 20071212–0187.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP08–116–000.
Applicants: Crossroads Pipeline Company.
Description: Crossroads Pipeline Company submits its First Revised Sheet 484, to FERC Gas Tariff, Original Volume 1, proposed to be effective 1/10/08.
Filed Date: 12/11/2007.
Accession Number: 20071212–0188.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP08–117–000.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Co submits its Second Revised Sheet 287, to FERC Gas Tariff, Second Revised Volume 1, proposed to be effective 1/10/08.
Filed Date: 12/11/2007.
Accession Number: 20071212–0189.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211

and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

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

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E7–24594 Filed 12–18–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0973; FRL–8344–4]

Siduron Risk Assessments; Notice of Availability, and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments, and related documents for the pesticide siduron, and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for siduron through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. This is Phase 3 of a 4-Phase process. Through this program, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before February 19, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0973, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0973. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Dana L. Friedman, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8827; fax number: (703) 305–5290; e-mail address: *friedman.dana@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for siduron and soliciting public comment on risk management ideas or proposals. EPA developed the risk assessments and risk characterization for siduron through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Sidruon is a selective, systemic preemergence herbicide used to control grassy weeds in stands of cool-season grass. It is registered for use on lawns, golf courses, and sod farms. Siduron is not registered for any food uses.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for siduron. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for siduron. Risks of concern associated with the use of siduron are: Dermal exposure risks to residential handlers from loading/applying granular products with a belly-grinder; residential post-application dermal exposure risks for scenarios involving toddlers, youths, and adults; dermal exposure risks to occupational handlers; chronic risks to freshwater and estuarine/marine invertebrates; and risks to freshwater non-vascular plants. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to siduron, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For siduron, a modified, 4–Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its limited use and few complex issues. However, if as a result of comments received during this comment period, EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for sidruon. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 12, 2007.

Steve Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–24607 Filed 12–18–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0284; FRL–8343–7]

Aliphatic Solvents; Revised Reregistration Eligibility Decision for Low-Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Revised Reregistration Eligibility Decision (RED) for the pesticide aliphatic solvents, signed on November 29, 2007, and opens a public comment period on this document, related risk assessments, and other support documents. EPA had reviewed the low-risk pesticide aliphatic solvents through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions, and following the receipt of comments, EPA is now issuing a revised RED. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before February 19, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0284, the same docket as the original RED, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0284. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Bentley C. Gregg, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8178; fax number: (703) 308–8005; e-mail address: *gregg.bentley@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. Using a modified, streamlined version of its public participation process, EPA has completed a RED for the low-risk pesticide, aliphatic solvents under section 4(g)(2)(A) of FIFRA. Aliphatic solvents are the product of petroleum distillation processes, and thus, they are complex mixtures of long-chained aliphatic (paraffinic) compounds. They are formulated for use as insecticides and/or larvicides on crops, animal premises, commercial/industrial premises, medical premises, aquatic areas, and residential premises, as well as occupational and residential uses as acaricides, fungicides, herbicides, and virucides (for plant pathogens). The aquatic area applications are for usage as a mosquito larvicide/pupacide. EPA had determined that the database to support reregistration was substantially complete and that products containing aliphatic solvents would be eligible for reregistration, consistent with the RED signed on July 12, 2006. EPA accepted comments on the RED, and is now announcing the availability of a revised RED.

At the conclusion of the comment period of the July 12, 2006 RED, certain changes were made (the maximum application rate, in California only, were increased from 1,800 gallons of spray mix to 2,000 gallons of spray mix, and there were some changes in the language for the airblast and aerial application spray drift language, as well as some needed clarifications in the text, and minor editorial changes). The revised RED now also includes the labeling changes summary table and the batching memorandum, as appendices. These changes have been identified by EPA in the cover letter to the revised RED, which now appears in the public Docket EPA–HQ–OPP–2006–0284. None of these additions or changes alter the conclusions documented in the July 12, 2006 aliphatic solvents RED. A Product-Specific Data Call-In (PDCI) will be issued, and each registrant is expected to submit data. Upon submission of this required product-specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address any concerns identified in the revised RED or as a result of product-specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing aliphatic solvents.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** of May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like aliphatic solvents, which pose few risk concerns and require little risk mitigation. Once EPA assesses uses and risks for such low risk pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings, such as the aliphatic solvents RED, but for this chemical a revised RED is now being issued.

The reregistration program is being conducted under congressionally mandated timeframes, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Aliphatic solvents posed few risks that required mitigation, however, the Agency made some revisions, and therefore is now issuing the aliphatic solvents revised RED and related support materials simultaneously for public comment. The 60–day comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for aliphatic solvents. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the aliphatic solvents revised RED will be implemented as it is now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 12, 2007.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–24603 Filed 12–18–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1137; FRL–8342–9]

Pesticide Registration Review; New Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review

dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before March 18, 2008.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

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

Docket: All documents in the docket are listed in the docket index available at regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: For information about the pesticides included in this document, contact the specific Chemical Review Managers for these pesticides as identified in the table in Unit III.A.

For general questions on the registration review program, contact Kennan Garvey, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7106; fax number: (703) 308–8090; e-mail address: *garvey.kennan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide

Act (FIFRA) and the Procedural Regulations for Registration Review published in the **Federal Register** of August 9, 2006, and effective on October 10, 2006 (71 FR 45719) (FRL–8080–4). You may also access the Procedural Regulations for Registration Review on the Agency's website at *http://www.epa.gov/fedrgstr/EPA-PEST/2006/August/Day-09/p12904.htm*. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be periodically reviewed. The goal is a review of a pesticide's registration every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is periodically reviewing pesticide registrations to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. The implementing regulations establishing the procedures for registration review appear at 40 CFR part 155. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Pesticide Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Fosetyl-Al (Aliette) Case 0646	EPA–HQ–OPP–2007–0379	John Pates, (703) 308–8195; *pates.john@epa.gov*
Cyanamide Case 7005	EPA–HQ–OPP–2007–1014	Dana L. Friedman, (703) 347–8827; *friedman.dana@epa.gov*
Sodium Tetrathiocarbonate Case 7009	EPA–HQ–OPP–2007–1084	Katherine St. Clair, (703) 347–8778; *stclair.katherine@epa.gov*
Quizalofop Case 7215	EPA–HQ–OPP–2007–1089	Rusty Wasem, (703) 305–6979; *wasem.russell@epa.gov*
Isoxaben Case 7219	EPA–HQ–OPP–2007–1038	Mark Howard, (703) 308–8172; *howard.markt@epa.gov*
Quinchlorac Case 7222	EPA–HQ–OPP–2007–1135	Joy Schnackenbeck, (703) 308–8072; *schnackenbeck.joy@epa.gov*
Sulfluramid Case 7411	EPA–HQ–OPP–2007–1082	Rosanna Louie, (703) 308–0037; *louie.rosanna@epa.gov*

B. Docket Content

1. *Review dockets*. The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information*. More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm*. Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review*.

3. *Information submission requirements*. Anyone may submit data or information in response to this document. To be considered during a

pesticide's registration review, the submitted data or information must meet the following requirements:

• To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.

• The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.

• Submitters must clearly identify the source of any submitted data or information.

• Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

• As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 12, 2007.

Steve Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–24609 Filed 12–18–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1082; FRL–8342–5]

Sulfluramid; Notice of Receipt of Request to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily cancel their registration of products containing the pesticide sulfluramid. The request terminates sulfluramid use on termites, the last remaining use of sulfluramid in the United States. This cancellation terminates the last registered sulfluramid manufacturing-use product (MUP), but would permit an existing MUP stocks provision to allow for formulating into sulfluramid end-use products registered for use in the United States. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws their request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before January 18, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–1082, by one of the following methods:

• *Federal eRulemaking Portal*:*http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–1082. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to*http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rosanna Louie, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0037; fax number: (703) 308–8055; e-mail address: *louie.rosanna@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Cancel Registrations

This notice announces receipt by EPA of a request from the registrant DuPont Crop Protection to cancel EPA number 352–710 sulfluramid product registration. Sulfluramid is a fluorinated sulfonamide chemical registered for use as an insecticide, specifically, to manage termites. In a letter dated October 24, 2007, DuPont requested that EPA cancel the affected pesticide product registration identified in Table 1 of this notice. This request fulfills DuPont's obligations under the 2001 Phase-out agreement for sulfluramid between EPA and the affected registrants. DuPont's voluntary cancellation request for sulfluramid MUP registrations were conditioned upon the exhaustion of their sulfluramid supply. This request for voluntary cancellation of the remaining sulfluramid MUP registration will terminate the last sulfluramid MUP product registered in the U.S.; however, this request does not cancel the remaining end-use sulfluramid products currently registered in the U.S.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from the registrant to cancel sulfluramid product registrations. The affected products and the registrants making the requests are identified in Tables 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The sulfluramid registrant has requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling the affected registrations.

TABLE 1.—SULFLURAMID PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration Number	Product Name	Company
352–710	Finitron Brand Sulfluramid Termite MUP.	DuPont Crop Protection

Table 2 of this unit includes the name and address of record for the registrant of the product listed in Table 1 of this unit.

TABLE 2.—REGISTRANT REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENT

EPA Company Number	Company Name and Address
352	DuPont Crop Protection P.O. Box 30 Newark, DE 19714–0030

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Sulfluramid

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before January 18, 2008. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products(s) have been subject to a previous

cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 12, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–24605 Filed 12–18–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0005; FRL–8343–9]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by June 16, 2008 or January 18, 2008 for registrations for which the registrant requested a waiver of the 180–day comment period, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than June 16, 2008 or January 18, 2008, whichever is applicable. Comments must be received on or before June 16, 2008 or January 18, 2008, for those registrations where the 180–day comment period has been waived.

ADDRESSES: Submit your comments and your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2007–0005, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Written Withdrawal Request, Attention: John Jamula, Information Technology and Resources Management Division (7502P).

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0005. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: John Jamula, Information Technology and Resource Management Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305-6426; e-mail address: *jamula.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 137 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration no.	Product Name	Chemical Name
000004–00136	Bonide Rabbit-Deer Repellent and Bulb Saver	Thiram
000004–00169	Bonide Lawn Weed Killer W/banvel(r) D & 2,4-D	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
000004–00173	Bonide Lawn Weed Killer contains 2,4-D Plus Banvel "d"	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
000004–00180	Bonide Lawn Disease Control	Thiram
000004–00340	Bonide Tobacco Dust	Nicotine
000004–00465	Bonide Rabbit & Dog Chaser	Dried blood
		Naphthalene
		Nicotine
000056 HI–96–0008	Eaton's Bait Blocks Rodenticide with Molasses/peanut Bu	Diphacinone
000056 HI–97–0007	Eaton's All Weather Bait Blocks Rodenticide with Fish F	Diphacinone
000056 HI–98–0004	Eaton's Bait Blocks Rodenticide with Molasses/peanut Butter Flavor	Diphacinone
000100–00944	Maxim (r) Mz Potato Seed Protectant	Mancozeb
		Fludioxonil
000100 WA–03–0039	Dual Magnum Herbicide	S-Metolachlor
000228–00141	Riverdale Butoxy 2,4-D Low Volatile Ester	2,4-D, butoxyethyl ester
000228–00208	Riverdale Team 1.15 Lawn Weed and Feed	Trifluralin Benfluralin
000228–00310	Riverdale Tri-Power G.T. Lawn Weed Killer	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		MCPA, dimethylamine salt
		Propanoic acid, 2-(4-chloro-2-methylphenoxy)-, (R)-, compd. with N-methylmethanamine (1:1)
000241 KY–99–0003	Acrobat MZ Fungicide	Mancozeb
		Dimethomorph

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000241 LA–01–0020	Acrobat MZ Fungicide	Mancozeb
		Dimethomorph
000241 MA–99–0001	Acrobat MZ Fungicide	Mancozeb
		Dimethomorph
000241 NC–99–0006	Acrobat MZ Fungicide	Mancozeb
		Dimethomorph
000241 OR–06–0005	Prowl H2O Herbicide	Pendimethalin
000241 TN–99–0003	Acrobat MZ Fungicide	Mancozeb
		Dimethomorph
000241 WI–02–0013	Acrobat Mz Fungicide	Mancozeb
		Dimethomorph
000264–00322	Temik Brand 10g Aldicarb Pesticide	Aldicarb
000264–00331	Temik 10% Granular Aldicarb Pesticide for Agric. Use	Aldicarb
000264–00972	MZ-Curzate Potato Seed-Piece Treatment	Mancozeb
		Cymoxanil
000270–00305	Equicare Flysect Repellent Face Lotion	2,5-Pyridinedicarboxylic acid, dipropyl ester
		MGK 264
		Piperonyl butoxide
		Pyrethrins
000270–00306	Equicare Flysect Repellent Spray	2,5-Pyridinedicarboxylic acid, dipropyl ester
		MGK 264
		Piperonyl butoxide
		Pyrethrins
000270–00346	Adams 14 Day Residual Flea and Tick Mist	2,5-Pyridinedicarboxylic acid, dipropyl ester
		MGK 264
		Piperonyl butoxide
		Pyrethrins
000279 WA–04–0004	Z-Cype 0.8 EC Insecticide	Zeta-Cypermethrin
000352–00607	Dupont Glyphosate Herbicide	Glyphosate-isopropylammonium
000352–00609	Dupont Glyphosate Vmf Herbicide	Glyphosate-isopropylammonium
000400–00092	Vitavax - T Fungicide (vitavax with Thiram)	Thiram
		Carboxin
000400–00116	Vitavax-R Flowable Fungicide	Thiram

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
		Carboxin
000400–00156	Vitavax Pour-On Flowable Fungicide	Thiram
		Carboxin
000400–00278	De-Fend E-267 Dimethoate Systemic Insecticide	Dimethoate
000400–00531	Rival Pak	Pentachloronitrobenzene
		Thiabendazole
		Captan
		Metalaxyl
000400–00556	Triple-Noctin L	Thiram
000432–01293	Bayleton 25% Wettable Powder	Triadimefon
000432–01295	Bayleton 1% Granular Turf Fungicide	Triadimefon
000432–01296	Bayleton 0.5% Granular Turf Insecticide	Triadimefon
000432–01297	Bayleton 009 EC Turf and Ornamental Fungicide	Triadimefon
000432–01309	Bayleton 25 Turf and Orn.fungicide In Water Soluble Pac	Triadimefon
000432–01316	Bayleton 25 Wettable Powder Nursery and Greenhouse Syst	Triadimefon
000432–01317	Bayleton 25 Nursery and Greenhouse Systemic Fungicide III WS Packets	Triadimefon
000464–00671	Amical 50	Diiodomethyl p-tolyl sulfone
000464–00683	Giv-Gard BNS 25%-AF	beta-Bromo-beta-nitrostyrene
000464–00684	Bioban(r) BNS 25%-BA Industrial Preservative	beta-Bromo-beta-nitrostyrene
000464–00686	Canguard 777	beta-Bromo-beta-nitrostyrene
000554–00140	DB-Green L	Lindane
		Maneb
000554–00141	Agsco Dustret "A"	Streptomycin sulfate
		Maneb
000554–00148	Agsco Dustret MZ 16	Mancozeb
000554–00149	Agsco DB-Red L	Maneb
000655–00466	Prentox Dursban 2E Insecticide	Chlorpyrifos
000655–00499	Prentox (r) Dursban 4E Insecticide	Chlorpyrifos
000769–00875	Pratt NA Weed Killer Non Selective	2,4-D, 2-ethylhexyl ester
		Prometon
000961–00284	Greenview Spring Crabicide Crabgrass Preventer	Benfluralin
000961–00288	Greenfield Crabicide Green	Benfluralin
000961–00321	Lebanon Country Club 18-5-9 Fertilizer with Herbicide	Benfluralin
001001–00060	Spotrete 75 WDG	Thiram
001381–00166	Agrisolutions Delta-Coat AD	Chloroneb

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
		Metalaxyl
001381–00183	Delta-Coat II	Chloroneb
		D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
001448–00352	Bulab 6050	Endothall, mono(N,N,-dimethyl alkyl amine) salt
002724–00566	Speer E-Z Way Automatic Fogger	Tetramethrin
		Fenvalerate
002724–00573	World Class Crawling Insect Spray	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		MGK 264
		Piperonyl butoxide
		Fenvalerate
002724–00577	No More Varmints Residual Contact Spray	MGK 264
		Pyrethrins
		Fenvalerate
002724–00578	Speer-It Fogger I Total Release Fogger	MGK 264
		Piperonyl butoxide
		Pyrethrins
		Fenvalerate
002724–00579	Speer E-Z I Residual Spray	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		MGK 264
		Fenvalerate
002724–00684	Chaperone Rabbit & Deer Repellent	Thiram
002724–00743	Heartland Multiuse Insect Fogger	Tetramethrin
		Fenvalerate
002724–00757	Holiday Indoor Fogger II	MGK 264
		Piperonyl butoxide
		Fenvalerate
002724–00765	F-Q-S Crack & Crevice Spray	MGK 264
		Piperonyl butoxide
		Fenvalerate
002724–00767	Holiday Yard Spray	MGK 264
		Piperonyl butoxide
		Fenvalerate
002781–00025	Happy Jack Flea-Tick Powder II	Carbaryl
005481–00213	Alco Simazine 4G	Simazine
005481–00232	Amine 4D Weed Killer	2,4-D, dimethylamine salt

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
005481–00285	101 Brand Simazine 4g Granular Herbicide	Simazine
005887–00121	Black Leaf Edging Liquid	Prometon
005887–00167	Non-Selective Weed Killer	Prometon
005905–00072	2,4-D Amine	2,4-D, dimethylamine salt
005905–00093	Helena 2,4-D LV Ester 6	2,4-D, 2-ethylhexyl ester
005905–00498	Brush-Rhap Low Volatile 4-D Herbicide	2,4-D, 2-ethylhexyl ester
005905–00502	Weed-Rhap A4-MCPA Herbicide	MCPA, dimethylamine salt
005905–00504	Barrage	2,4-D, 2-ethylhexyl ester
005905–00505	Weed RHAP LV-4D	2,4-D, 2-ethylhexyl ester
005905–00507	Weed-RHAP Low Volatile Granular D Herbicide	2,4-D, 2-ethylhexyl ester
005905–00533	4 Lb Methyl Parathion	Methyl parathion
005905–00534	Malathion-Methyl Parathion Emulsifiable Liquid	Methyl parathion
		Malathion
007401–00043	Ferti Lome Insect Killer (granular) contains Carbaryl	Carbaryl
007401–00265	Ferti-Lome Home Garden Bug Bait	Metaldehyde
		Carbaryl
007501 OR–02–0023	Gustafson Vitavax Captan 20-20 Seed Proctectant	Captan
		Carboxin
007969–00193	2,4-D DMA 600	2,4-D, dimethylamine salt
008660–00067	Liquid Lime-Sulphur 32 Degrees Baume	Calcium polysulfide
		Calcium thiosulfate
010163–00135	Gowan Sulfur 6F	Sulfur
010350–00022	Mec Chlorpyrifos Livestock Premise Spray Concentrate	Chlorpyrifos
010404–00060	Lesco Twosome Flowable Fungicide	Chlorothalonil
		Fenarimol
010807–00148	Misty-C-Lex Concentrate	2,4-D, dimethylamine salt
010807–00209	Misty Tri-Kill	2,4-D, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
010900–00035	864 Spot Weeder	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt
019713–00127	Drexel Croak	MSMA (and salts)
		Fluometuron
019713–00309	Pearson's Moly-Stand	Thiram
019713–00574	Drexel Chlorpyrifos 98.5% Technical	Chlorpyrifos

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
019713–00582	Drexel Propanil 4L	Propanil
019713–00598	Master Fume AG	Sulfuryl fluoride
034704–00101	Clean Crop Benefin 2.5 G	Benfluralin
051036–00226	Lime-Sulfur	Calcium polysulfide
051036–00258	Chloraxyl Seed Treater	Chloroneb
		Metalaxyl
059144–00033	Penngreen Weed & Feed with Triamine	2,4-D, dimethylamine salt
		Dimethylamine 2-(2,4-dichlorophenoxy)propionate
		Mecoprop, dimethylamine salt
059639 CO–98–0004	Orthene 75 S Soluble Powder	Acephate
059639 UT–98–0002	Orthene 75 S Soluble Powder	Acephate
059639 WA–06–0008	Danitol 2.4 EC Spray	Fenpropathrin
062719–00398	Dithane M-45 Flowable M Agricultural Fungicide	Mancozeb
062719–00401	Dithane DF/70 Agricultural Fungicide	Mancozeb
062719–00422	Fore WSP Turf and Ornamental Fungicide	Mancozeb
062719–00423	Dithane Wsp Agricultural Fungicide	Mancozeb
062719 AR–93–0005	Dithane F-45 Ag. Fungicide	Mancozeb
062719 CT–02–0004	Dithane DF Rainshield	Mancozeb
062719 CT–97–0001	Dithane DF Agricultural Fungicide	Mancozeb
062719 MA–97–0002	Dithane DF Agricultural Fungicide	Mancozeb
062719 MS–93–0002	Dithane F-45, Df Ag. Fungicide	Mancozeb
062719 OH–95–0003	Diathane DF Agricultural Fungicide	Mancozeb
062719 SC–95–0009	Diathane DF Agricultural Fungicide	Mancozeb
062719 WA–02–0010	Dithane DF Rainshield	Mancozeb
062719 WA–95–0047	Treflan H.F.P.	Trifluralin
062719 WA–99–0027	Starane	Fluroxypyr
066330–00221	Ametryn 4FL	Ametryn
070506–00049	Turf and Ornamental Fertilizer contains Balan 0.575% +	Benfluralin
		Oryzalin
070506–00102	Agvalue Metribuzin Technical	Metribuzin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
071085–00004	Propanil WDG	Propanil
071368 WA–01–0025	Weedar 64 Broadleaf Herbicide	2,4-D, dimethylamine salt
072155–00046	Bayleton 1 Granular Fungicide	Triadimefon
072155–00047	Bayleton Granular Fungicide	Triadimefon
072155–00048	Bayleton Liquid Concentrate Fungicide	Triadimefon
073049–00261	Tetramethrin 40% Concentrate Insecticide	Tetramethrin
073049–00285	Tetralate 2.5-2.5 Mag	Tetramethrin
		Resmethrin
074655–00005	Spectrum Rx-41	Methylene bis(thiocyanate)
		beta-Bromo-beta-nitrostyrene
074655–00008	Spectrum Rx-45	beta-Bromo-beta-nitrostyrene
074655–00013	Spectrum Rx-52	Bis(trichloromethyl) sulfone
		beta-Bromo-beta-nitrostyrene
083424–00002	Moth-Be-Gone Moth Balls 2	Naphthalene

A request to waive the 180–day comment period has been received for the following registrations: 000769-00875; 002724-00684; 005887-00121; 007401-00043; 007401-00265; 008660-00067; 019713-00598; 073049-00261; 073049-00285.

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company no.	Company Name and Address
000004	Bonide Products, Inc., 6301 Sutliff Rd., Oriskany, NY 13424.
000056	Eaton JT & Co., Inc., 1393 E. Highland Rd., Twinsburg, OH 44087.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
000100	Syngenta Crop Protection, Inc., Attn: Regulatory Affairs, PO Box 18300, Greensboro, NC 274198300.
000228	Nufarm Americas Inc., 150 Harvester Drive, Suite 200, Burr Ridge, IL 60527.
000241	BASF Corp., PO Box 13528, Research Triangle Park, NC 277093528.
000264	Bayer Cropscience LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
000270	Farnam Companies Inc., PO Box 34820, Phoenix, AZ 85067.
000279	FMC Corp. Agricultural Products Group, 1735 Market St., Philadelphia, PA 19103.
000352	E. I. Du Pont De Nemours & amp;o., Inc., Dupont Crop Protection (S300/427), PO Box 30, Newark, DE 197140030.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
000400	Chemtura Corp., Attn: Crop Registration, 199 Benson Rd. (2-5), Middlebury, CT 06749.
000432	Bayer Environmental Science, A Business Group of Bayer Cropscience LP, PO Box 12014, Research Triangle Park, NC 27709.
000464	The Dow Chemical Co., Agent For: Dow Chemical Co., 1500 E. Lake Cook Rd., Buffalo Grove, IL 60089.
000554	Agsco Inc., PO Box 13458, Grand Forks, ND 582083458.
000655	Prentiss Inc., C.B. 2000, Floral Park, NY 110012000.
000769	Value Gardens Supply, Llc, d/b/a Value Garden Supply, PO Box 585, Saint Joseph, MO 64502.
000961	Lebanon Seaboard Corp., 1600 E. Cumberland Street, Lebanon, PA 17042.
001001	Cleary Chemical Corp., 178 Ridge Rd., Suite A, Dayton, NJ 088100010.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
001381	Winfield Solutions, LIC, PO Box 64589, St. Paul, MN 551640589.
001448	Buckman Laboratories Inc., 1256 North Mclean Blvd., Memphis, TN 38108.
002724	Wellmark International, 1501 E. Woodfield Rd., Suite 200 W., Schaumburg, IL 60173.
002781	Happy Jack Inc., PO Box 475, Snow Hill, NC 28580.
005481	Amvac Chemical Corp., d/b/a Amvac, 4695 Macarthur Ct., Suite 1250, Newport Beach, CA 926601706.
005887	Value Gardens Supply, LIC, d/b/a Value Garden Supply, PO Box 585, Saint Joseph, MO 64502.
005905	Helena Chemical Co., 225 Schilling Blvd., Suite 300, Collierville, TN 38017.
007401	Voluntary Purchasing Groups, Inc., PO Box 460, 230 FM 87, Bonham, TX 75418.
007501	Gustafson LIC, PO Box 660065, Dallas, TX 75266.
007969	BASF Corp., Agricultural Products, PO Box 13528, Research Triangle Park, NC 277093528.
008660	United Industries Corp., d/b/a Sylorr Plant Corp., PO Box 142642, St. Louis, MO 631140642.
010163	Gowan Co, PO Box 5569, Yuma, AZ 853665569.
010350	3M, Attn: Susan M. Price, 3M Center, Bldg 220-6E-03, St. Paul, MN 551441000.
010404	Lesco Inc., 1301 E. 9th Street, Suite 1300, Cleveland, OH 441141849.
010807	Amrep, Inc., 990 Industrial Park Drive, Marietta, GA 30062.
010900	Sherwin-Williams Diversified Brands, 101 Prospect Ave., Cleveland, OH 44115.
019713	Drexel Chemical Co., 1700 Channel Ave., Memphis, TN 38106.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
034704	Loveland Products, Inc., PO Box 1286, Greeley, CO 806321286.
051036	BASF Sparks LIC, PO Box 13528, Research Triangle Park, NC 27709.
059144	Regwest Co., Agent For: Gro Tec Inc., 30856 Rocky Rd., Greeley, CO 806319375.
059639	Valent U.S.A. Corp., Agent For: Valent U.S.A. Corp., 1101 14th Street, NW, Suite 1050, Washington, DC 20005.
062719	Dow Agrosciences LIC, 9330 Zionsville Rd 308/2E, Indianapolis, IN 462681054.
066330	Arysta Lifescience North America Corp., 15401 Weston Parkway, Suite 150, Cary, NC 27513.
070506	United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King Of Prussia, PA 19406.
071085	Riceco LLC, 5100 Poplar Ave - Ste 2428, Memphis, TN 38137.
071368	Nufarm, Inc., 150 Harvester Drive Suite 200, Burr Ridge, IL 60527.
072155	Bayer Advanced, A Business Unit of Bayer Cropscience LP, PO Box 12014, Research Triangle Park, NC 27709.
073049	Valent Biosciences Corp., 870 Technology Way, Suite 100, Libertyville, IL 600486316.
074655	Hercules Inc., Agent For: Hercules Inc., 7910 Baymeadows Way, Jacksonville, FL 32256.
083424	Technology Sciences Group, Inc., Agent For: Oxford & Hill Home Products, LLC, 1150 18th St, N.W., Suite 1000, Washington, DC 20036.

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before June 16, 2008. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has identified significant potential risk

concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 11, 2007.

Kathryn Bouvé,

Acting Director, Information Technology and Resource Management Division, Office of Pesticide Programs.

[FR Doc. E7–24604 Filed 12–18–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1047; FRL–8343–4]

Experimental Use Permit; Receipt of Application; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 524–EUP–97 from Monsanto Company requesting an amendment to the experimental use permit (EUP) for *Bacillus thuringiensis* Cry1A.105 protein and the genetic material necessary for its production (vector PV–ZMIR245) in event MON 89034 corn, *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production (vector PV–ZMIR245) in event MON 89034 corn, and *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material (vector PV–ZMIR39) necessary for its production in event MON 88017 corn. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before January 18, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–1047, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–1047. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8077; e-mail address: *cerrelli.susanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

On June 29, 2006, EPA approved Monsanto's application for an EUP for the testing of MON 89034 x MON 88017 combined insecticidal trait corn as well as MON 89034 and MON 88017 individually (524–EUP–97). This permit allows planting through June 20, 2008. MON 89034 contains the lepidopteran protecting *Bacillus thuringiensis* Cry1A.105 protein and the genetic material necessary (vector PV–ZMIR245) for its production in MON 89034 corn and *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary (vector PV–ZMIR245) for its production in MON 89034 corn. MON 88017 contains the corn rootworm protecting *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary (vector PV–ZMIR39) for its production in MON 88017 corn.

Monsanto proposes amending the EUP to allow the treatment of 11,952 acres in total. This includes a maximum of 4,421 acres for MON 89034 x MON 88017, 3,687 acres of MON 89034, 1,742 acres of MON 88017, 415 acres of corn containing registered plant-incorporated protectants (PIPS) and 1,687 acres of non-PIP and border rows. The proposed period of use of this amended EUP is February 15, 2008–June 15, 2009.

Eight trial protocols are proposed to be conducted including:

- Breeding and observation nursery.
- Inbred seed increase and sample hybrid production.
- Line *per se* hybrid yield and herbicide tolerance trials.
- Insect efficacy trials.
- Product characterization and performance trials.
- Insect resistance management trials.
- Benefit trials.
- Seed treatment trials.

States and Commonwealth involved include: Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Washington, and Wisconsin.

III. What Action is the Agency Taking?

Following the review of the Monsanto Company application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: December 10, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7–24601 Filed 12–18–07; 8:45 am]

BILLING CODE 6560–50–S

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

Dates and Place: January 8, 2008, Washington, DC. The meeting will be held in Room 100 at the Keck Center of the National Academies at 500 5th St. NW., Washington DC.

Type of Meeting: Open. Further details on the meeting agenda will be posted on the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html*.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on Tuesday January 8, 2008, at approximately 9 a.m. The co-chairs of the PCAST subcommittee on nanotechnology are tentatively scheduled to lead a discussion on the findings of the PCAST review of the National Nanotechnology Initiative (NNI). The PCAST also is tentatively scheduled to convene two panels. The first panel will address approaches and barriers to research partnerships among universities and the private sector. The second panel will address policy issues associated with realizing the benefits of personalized medicine. This session will end at approximately 4 p.m. Additional information and the final agenda will be posted at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html*.

Public Comments: There will be time allocated for the public to speak on the above agenda items. *This public comment time is designed for substantive commentary on PCAST's work topics, not for business marketing purposes*. Please submit a request for the opportunity to make a public comment five (5) days in advance of the meeting. The time for public comments will be limited to no more than 5 minutes per person. Written comments are also welcome at any time following the meeting. Please notify Dr. Celia Merzbacher, PCAST Executive Director, at (202) 456–7116, or fax your request/comments to (202) 456–6021.

FOR FURTHER INFORMATION CONTACT: Information regarding agenda, time, and location is available at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html*. Questions about the meeting should be directed to PCAST Executive Director Dr. Celia Merzbacher at (202) 456–7116 prior to 3 p.m. on Friday, January 4, 2008. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III,

the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

Celia Merzbacher,

PCAST Executive Director, Office of Science and Technology Policy.

[FR Doc. E7–24568 Filed 12–18–07; 8:45 am]

BILLING CODE 3170–W4–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals to Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: KZLZ, LLC, Station KZLZ, Facility ID 36022, BPH–20070118AEX, From KEARNY, AZ, To CASAS ADOBES, AZ; GEORGIA EAGLE BROADCASTING, INC., Station NEW, Facility ID 170973, BNPH–20070502ABS, From PINEVIEW, GA, To ROCHELLE, GA; ELECTRONIC APPLICATIONS RADIO SERVICE, Station WRFM, Facility ID 1724, BP–20070521ABD, From MUNCIE, IN, To KNIGHTSTOWN, IN; WSJD, INC., Station WSJD, Facility ID 55111, BPH–20070801AAB, From PRINCETON, IN, To HAUBSTADT, IN; DELTA RADIO LLC, Station WKXY, Facility ID 77755, BMPH–20071024AAC, From CLARKSDALE, MS, To MERIGOLD, MS; EDUCATIONAL COMMUNICATIONS OF COLORADO SPRINGS, INC., Station KTSG, Facility ID 88717, BPED–20071024ABK, From SIDNEY, CO, To STEAMBOAT SPRINGS, CO; EDUCATIONAL COMMUNICATIONS OF COLORADO SPRINGS, INC., Station KTAW, Facility ID 89073, BPED–20071024ABM, From WESTCLIFFE, CO, To WALSENBURG, CO; EDUCATIONAL COMMUNICATIONS OF COLORADO SPRINGS, INC., Station KTMH, Facility ID 89574, BPED–20071024ABN, From COLONA, CO, To MONTROSE, CO; EDUCATIONAL COMMUNICATIONS OF COLORADO SPRINGS, INC., Station KTDU, Facility ID 88486, BPED–20071024ABO, From TRIMBLE, CO, To DURANGO, CO; MESIC, MICHAEL J, Station WLGE, Facility ID 170981, BMPH–20071030ACI, From EPHRAIM, WI, To BAILEYS HARBOR, WI; BIRACH BROADCASTING CORPORATION, Station WGOP, Facility ID 5347, BP–20071102ARL, From POCOMOKE CITY, MD, To DAMASCUS, MD; HANSON BROADCASTING CO. OF CALIFORNIA, Station KGBA, Facility ID 8174, BP–20071106AAO, From CALEXICO, CA, To HEBER, CA; RICHARD A. & JOANN R. PETERSON, JOINT TENANTS, Station KBSZ, Facility ID 11217, BP–20071107ACH, From WICKENBURG, AZ, To APACHE JUNCTION, AZ; SHAMROCK COMMUNICATIONS, INC., Station NEW, Facility ID 166018, BMPH–20071108ACY, From ALTURAS, CA, To FERNLEY, NV; SEWARD MEDIA PARTNERS, LLC, Station KSWD–FM, Facility ID 72677, BPH–20071108AET, From SEWARD, AK, To STERLING, AK; LAKESHORE MEDIA, LLC, Station KHIL, Facility ID 72656, BP–20071113AFN, From WILLCOX, AZ, To KEARNY, AZ; MICHIGAN COMMUNITY RADIO, Station WKKM, Facility ID 121959, BPED–20071114AGT, From RUST TOWNSHIP, MI, To HARRISVILLE, MI; NORTHLAND COMMUNITY BROADCASTERS, Station WJOJ, Facility ID 88667, BPED–20071115AAA, From HARRISVILLE, MI, To RUST TOWNSHIP, MI; NEW AGE COMMUNICATIONS, INC., Station WKIX, Facility ID 57610, BPH–20071115ABS, From KINSTON, NC, To WALNUT CREEK, NC; UNIVISION RADIO LICENSE CORPORATION, Station WVIX, Facility ID 48449, BPH–20071119AIH, From JOLIET, IL, To LEMONT, IL; EDUCATIONAL MEDIA FOUNDATION, Station KLVP–FM, Facility ID 79245, BPED–20071119AKN, From CHERRYVILLE, OR, To SANDY, OR; EDUCATIONAL MEDIA FOUNDATION, Station KLVP–FM, Facility ID 79245, BPED–20071119AKN, From CHERRYVILLE, OR, To SANDY, OR; CAPSTAR TX LIMITED PARTNERSHIP, Station WDXB, Facility ID 2114, BPH–20071126AJI, From JASPER, AL, To PELHAM, AL; R & R RADIO CORPORATION, Station KDES–FM, Facility ID 67354, BPH–20071128ACX, From PALM SPRINGS, CA, To REDLANDS, CA; RADIOACTIVE, LLC, Station WPNS, Facility ID 164241, BMPH–20071129AGC, From BRODHEAD, KY, To NORTH CORBIN, KY.

DATES: Comments may be filed through February 19, 2008.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm*. A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. E7–24624 Filed 12–18–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 008493–026.

Title: Trans-Pacific American Flag Berth Operators Agreement.

Parties: American President Lines, Ltd., and Maersk Line Limited.

Filing Party: Howard A. Levy, Esq.; 80 Wall Street, Suite 1117; New York, NY 10005–3602.

Synopsis: The amendment substitutes Maersk Line Limited for A.P. Moller Maersk A/S in the agreement.

Agreement No.: 010714–042.

Title: Trans-Atlantic American Flag Liner Operators Agreement.

Parties: American President Lines, Ltd.; American Roll-On Roll-Off Carrier, LLC; Maersk Line Limited; and Hapag-Lloyd USA, LLC.

Filing Party: Howard A. Levy, Esq.; 80 Wall Street, Suite 1117; New York, NY 10005.

Synopsis: The amendment substitutes Maersk Line Limited for A.P. Moller Maersk A/S in the agreement.

Agreement No.: 012021.

Title: COSCON/SINOLINES Slot Charter Agreement.

Parties: COSCO Container Lines Company Ltd. and Sinotrans Container Lines Co. Ltd.

Filing Party: Robert B. Yoshitomi; Nixon Peabody, LLP; 555 West Fifth Street, 46th Floor; Los Angeles, CA 90013.

Synopsis: Agreement authorizes COSCO Container Lines Company Ltd. to charter slots to Sinotrans Container Lines Co., Ltd. between U.S. West Coast ports and ports in China and Japan.

By Order of the Federal Maritime Commission.

Dated: December 14, 2007.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E7–24597 Filed 12–18–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Agape Shipping, Inc., 9040 Telstar Ave. Suite 123, El Monte, CA 91731. *Officer:* Esther Lu Haio Lee, President(Qualifying Individual).

Gallop Fargo Logistics, Inc. dba Logistics, Worldwide (USA) Inc., 18601 S. Susana Road, A, East Rancho Dominguez, CA 90221. *Officer:* George H. Liu, CEO (Qualifying Individual).

CT Telecom, Inc. dba JK Logis, 154–09 146th Ave., 3rd FL, Jamaica, NY 11434. *Officers:* Kyu Seok Lim, Director(Qualifying Individual), Gyu Wan Kim, President.

Global Cargo Express, Inc., 114 N. New Ave., Suite E, Monterey Park, CA 91755. *Officer:* Yufu Xing, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Topstar International Logistics, Inc., 20529 East Walnut Dr. North, B–7, Walnut, CA 91789. *Officers:* Derrick Saoyee Long, Sen. Director (Qualifying Individual), Ke Xu, President.

SDS Global Logistics, Inc., 62–03 31st Place, Long Island, NY 11101. *Officers:* Elvia N. Bacares, Vice President (Qualifying Individual), Tony Ricioppo, President.

Front Cargo Freight Services, Inc., 4729 NW 72 Ave., Miami, FL 33166. *Officer:* Martha K. Calderon, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Quisqueya Cargo Express, 421 W Tilghman St., Allentown, PA 18102.*Officer:* Fraiser A. Polanco, Owner (Qualifying Individual).

Southern Cross Shipping Co., Inc., 4524 Senac Drive, Metairie, LA 70003. *Officers:* Brian Leslie Scheele, President(Qualifying Individual), Michael L. Saltzman, Vice President.

Dated: December 14, 2007.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E7–24596 Filed 12–18–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary license has been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 003798F.

Name: S.J. Stile Associates, Ltd.

Address: 181 South Franklin Ave., Ste. 402, Valley Stream, NY 11581.

Date Revoked: October 24, 2007.

Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E7–24595 Filed 12–18–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 15, 2008.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. SunTrust Banks, Inc., Atlanta Georgia; to merge with GB and T Bancshares, Inc., Gainesville, Georgia, and thereby indirectly acquire Gainesville Bank and Trust, Gainesville, Georgia; Mountain State Bank, Dawsonville, Georgia; First National Bank of Gwinnett, Duluth, Georgia; First National Bank of the South, Milledgeville, Georgia; Home Town Bank of Villa Rica, Villa Rica, Georgia; Community Trust Bank, Hiram, Georgia; and United Bank and Trust Company, Rockmart, Georgia.

Board of Governors of the Federal Reserve System, December 14, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–24576 Filed 12–18–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comments on its proposal to extend through December 31, 2010, the current OMB clearance for information collection requirements contained in its Used Motor Vehicle Trade Regulation Rule (''Used Car Rule'' or ''Rule''). That clearance expires on December 31, 2007.

DATES: Comments must be filed by January 18, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Used Car Rule: FTC Matter No. P067609,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Room H-135 (Annex J), 600 Pennsylvania Ave., N.W., Washington, D.C. 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.''[1]

Comments filed in electronic form should be submitted by following the instructions on the web-based form at *https://secure.commentworks.com/ftc-UsedCarRule*. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/ftc-UsedCarRule* weblink. If this notice appears at *www.regulations.gov*, you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

Comments also should be submitted to: Office of Management and Budget, ATTN: Desk Officer for the Federal Trade Commission. Comments should be submitted by facsimile to (202) 395-6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to John C. Hallerud, Attorney, Midwest Region, Federal Trade Commission, 55 West Monroe, Suite 1825, Chicago, Illinois 60603, (312) 960-5634.

SUPPLEMENTARY INFORMATION: On August 20, 2007, the FTC sought comment on the information collection requirements associated with the Used Car Rule. 16 CFR Part 455. See 72 FR 46487. No comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501-3521, the FTC is providing this second opportunity to comment while seeking OMB approval to extend the existing paperwork clearance for the Rule. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before January 18, 2008.

The Used Car Rule facilitates informed purchasing decisions by requiring used car dealers to disclose information about warranty coverage, if any, and the mechanical condition of used cars that they offer for sale. The Rule requires that used car dealers display a form called a ''Buyers Guide'' on each used car offered for sale that, among other things, discloses information about warranty coverage.

Burden statement:

Estimated total annual hours burden: 2,250,000 hours

The Rule has no recordkeeping requirements. The estimated burden relating solely to disclosure requirements is 2,250,000 hours. As explained in more detail below, this estimate is based on the number of used car dealers (approximately 63,000[2]), the number of used cars sold by dealers annually (approximately 28,029,000[3]), and the time needed to fulfill the information collection tasks required by the rule.[4]

The Rule requires that used car dealers display a one-page, double-sided Buyers Guide on each used car that they offer for sale. The component tasks associated with the Rule's required display of Buyers Guides include: (1) ordering and stocking Buyers Guides; (2) entering data on Buyers Guides; (3) displaying the Buyers Guides on vehicles; (4) revising Buyers Guides as necessary; and (5) complying with the Rule's requirements for sales conducted in Spanish.

1. Ordering and Stocking Buyers Guides: Dealers should need no more than an average of two hours per year to obtain Buyers Guides,[5] which are readily available from many commercial printers or can be produced by an office word-processing or desk-top publishing system.[6] Based on a population of 63,000 dealers, the annual hours burden for producing or obtaining and stocking Buyers Guides is 126,000 hours.

2. Entering Data on Buyers Guides: The amount of time required to enter applicable data on Buyers Guides may vary substantially, depending on

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] CNW Marketing Research, Inc. CNW lists franchised outlets with used car operations as 19,017 and independent used car outlets as 43,521 in June 2007, for a total of 62,538 outlets. Staff rounded that figure to 63,000.

[3] *Id.*

[4] Some dealers opt to contract with outside contractors to perform the various tasks associated with complying with the Rule. Staff assumes that outside contractors would require about the same amount of time and incur similar cost as dealers to perform these tasks. Accordingly, the hour and cost burden totals shown, while referring to ''dealers,'' incorporate the time and cost borne by outside companies in performing the tasks associated with the Rule.

[5] In the FTC's 2004 PRA notice staff estimated the time needed to purchase Buyers Guides as one hour per year. 69 FR 63535, 63536 (Nov. 2, 2004) (addressing comments). Based on industry input, staff believes that more time may be spent purchasing Buyers Guides than previously estimated because dealers periodically may change the warranty coverage that they offer and the corresponding preprinted Buyers Guides that they purchase.

[6] Buyers Guides are also available online from the FTC's Web site, *www.ftc.gov,* as links to A Dealer's Guide to the Used Car Rule at *http://www.ftc.gov/bcp/conline/pubs/buspubs/usedcarc.shtm.*

whether a dealer has automated the process. For used cars sold ''as is,'' copying vehicle-specific data from dealer inventories to Buyers Guides and checking the ''No Warranty'' box may take two to three minutes per vehicle if done by hand, and only seconds for those dealers who have automated the process or use pre-printed forms. Staff estimates that this task will require an average of two minutes per Buyers Guide.[7] Similarly, for used cars sold under warranty, the time required to check the ''Warranty'' box and to add warranty information, such as the additional information required in the Percentage of Labor/Parts and the Systems Covered/Duration sections of the Buyers Guide will depend on whether the dealer uses a manual or automated process or Buyers Guides that are pre-printed with the dealer's standard warranty terms. Staff estimates that these tasks will take an average of one additional minute, *i.e.*, cumulatively, an average total time of three minutes for each used car sold under warranty.

Staff estimates that approximately fifty percent of used cars sold by dealers are sold ''as is,'' with the other one half sold under warranty.[8] Therefore, staff estimates that the overall time required to enter data on Buyers Guides consists of 467,000 hours for used cars sold without a warranty (28,029,000 vehicles x 50% x 2 minutes per vehicle) and 701,000 hours for used cars sold under warranty (28,029,000 vehicles x 50% x 3 minutes per vehicle) for a cumulative estimated total of 1,168,000 hours.

3. Displaying Buyers Guides on Vehicles: Although the time required to display the Buyers Guides on each used car may vary substantially, FTC staff estimates that dealers will spend an average of 1.75 minutes per vehicle to match the correct Buyers Guide to the vehicle and to display it on the vehicle.[9] The estimated burden associated with this task is approximately 818,000 hours for the 28,029,000 vehicles sold in 2006 (28,029,000 vehicles x 1.75 minutes per vehicle).

4. Revising Buyers Guides as Necessary: If negotiations between the buyer and seller over warranty coverage produce a sale on terms other than those originally entered on the Buyers Guide, the dealer must revise the Buyers Guide to reflect the actual terms of sale. According to the original rulemaking record, bargaining over warranty coverage rarely occurs. Staff notes that consumers often do not need to negotiate over warranty coverage because they can find vehicles that are offered with the desired warranty coverage online or in other ways before ever contacting a dealer. Accordingly, staff assumes that the Buyers Guide will be revised in no more than two percent of sales, with an average time of two minutes per revision. Therefore, staff estimates that dealers annually will spend approximately 19,000 hours revising Buyers Guides (28,029,000 vehicles x 2% x 2 minutes per vehicle).

5. Spanish Language Sales: The Rule requires that contract disclosures be made in Spanish if a sale is conducted in Spanish.[10] The Rule permits displaying both an English and a Spanish language Buyers Guide to comply with this requirement.[11] Many dealers with large numbers of Spanish-speaking customers likely will post both English and Spanish Buyers Guides to avoid potential compliance violations.

Calculations from United States Census Bureau surveys indicate that approximately six percent of the United States population speaks Spanish at home, without also speaking fluent English.[12] Staff therefore projects that approximately six percent of used car sales will be conducted in Spanish. Dealers will incur the additional burden of completing and displaying a second Buyers Guide in six percent of sales assuming that dealers choose to comply with the Rule by posting both English and Spanish Buyers Guides. The annual hours burden associated with completing and posting Buyers Guides is 1,986,000 hours (1,168,000 hours for entering data on Buyers Guides + 818,000 hours for displaying Buyers Guides). Therefore, staff estimates that the additional burden caused by the Rule's requirement that dealers display Spanish language Buyers Guides when conducting sales in Spanish is 119,000 hours (6% x 1,986,000 hours). The other components of the annual hours burden, *i.e.*, purchasing Buyers Guides and revising them for changes in warranty coverage, remain unchanged.

Estimated annual cost burden: $32,876,000, consisting of $27,270,000 in labor costs and $5,606,000 in non-labor costs.

1. Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Staff has determined that all of the tasks associated with ordering forms, entering data on Buyers Guides, posting Buyers Guides on vehicles, and revising them as needed, including the corresponding tasks associated with Spanish Buyers Guides, are typically done by clerical or low-level administrative personnel. Using a clerical cost rate of $12.12 per hour[13] and an estimated burden of 2,250,000 hours for disclosure requirements, the total labor cost burden would be approximately $27,270,000.

2. Capital or other non-labor costs: Although the cost of Buyers Guides can vary considerably, based on industry input staff estimates that the average cost of each Buyers Guide is 20 cents. The estimated cost of Buyers Guides for the 28,029,000 used cars sold by dealers in 2006 is approximately $5,606,000. In making this estimate, staff conservatively assumes that all dealers will purchase preprinted forms instead of producing them internally, although dealers may produce them at minimal expense using current office automation technology. Capital and start-up costs associated with the Rule are minimal.

William Blumenthal

General Counsel

[FR Doc. E7–24671 Filed 12–18–07: 8:45 am]

[BILLING CODE 6750–01–S]

[7] The 2004 PRA notice estimated the average time spent for this task as one-and-one half minutes. 69 FR at 63536. Based upon comments received at that time and additional industry input in preparing this notice, staff has revised its estimate upward to 2 minutes.

[8] The 2004 PRA notice estimated that sixty percent of sales were ''as is.'' 69 FR at 63536. Industry input suggests that more used cars are now sold with warranties because of an increase in the availability of manufacturers' certified used car programs and a longer duration of manufacturers' original new car warranties. *See also* Manheim Market Report, at 35 (citing Autodata Corporation (Table noting that 1.6 million certified pre-owned used cars were sold in 2006, which constitutes a two percent increase in certified used car sales from 2004 and approximately six percent of the used cars sold by dealers in 2006)). Staff therefore has decreased its estimate of the number of ''as is'' sales from the prior PRA notice.

[9] The 2004 PRA notice also stated this estimate. See 69 FR at 63536. Absent specific industry estimates to the contrary, staff continues to believe this estimate is reasonable.

[10] 16 CFR 455.5.

[11] *Id.*

[12] U.S. Census Bureau, Table S1601. Language Spoken at Home. 2005 American Community Survey, available at: *http://factfinder.census.gov/servlet/STTable?_bm=y&-geo_id=01000US&-qr_name=ACS_2005_EST_G00_S1601&-ds_name=ACS_2005_EST_G00_&-_lang=en&-redoLog=false&-CONTEXT=st.* The table indicates that 19.4% of the U.S. population do not speak English at home, 62% of this group speaks Spanish at home, and 47.8% of those home Spanish speakers speak English less than ''very well.''

[13] The hourly rate is based on Bureau of Labor Statistics estimate of the mean hourly wage for office clerks, general, No. 43-9061. National Occupational Employment and Wage Estimates, May 2006 available at: *http://www.bls.gov/oes/current/oes439061.htm.*

FEDERAL TRADE COMMISSION

Charges for Certain Disclosures

AGENCY: Federal Trade Commission.

ACTION: Notice Regarding Charges for Certain Disclosures.

SUMMARY: The Federal Trade Commission announces that the ceiling on allowable charges under Section 612(f) of the Fair Credit Reporting Act (''FCRA'') will increase from $10.00 to $10.50 effective January 1, 2008. Under 1996 amendments to the FCRA, the Federal Trade Commission is required to increase the $8.00 amount referred to in paragraph (1)(A)(i) of Section 612(f) on January 1 of each year, based proportionally on changes in the Consumer Price Index (''CPI''), with fractional changes rounded to the nearest fifty cents. The CPI increased 29.34 percent between September 1997, the date the FCRA amendments took effect, and September 2007. This increase in the CPI and the requirement that any increase be rounded to the nearest fifty cents results in an increase in the maximum allowable charge to $10.50 effective January 1, 2008.

EFFECTIVE DATE: January 1, 2008.

ADDRESSES: Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Keith B. Anderson, Bureau of Economics, Federal Trade Commission, Washington, DC 20580, 202–326–3428.

SUPPLEMENTARY INFORMATION: Section 612(f)(1)(A) of the Fair Credit Reporting Act, which became effective in 1997, provides that a consumer reporting agency may charge a consumer a reasonable amount for making a disclosure to the consumer pursuant to Section 609 of the Act.[1] The law states that, where a consumer reporting agency is permitted to impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to Section 609, the charge shall not exceed $8 and shall be indicated to the consumer before making the disclosure. Section 612(f)(2) states that the Federal Trade Commission (''the Commission'') shall increase the $8.00 maximum amount on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.

Section 211(a)(2) of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'') added a new Section 612(a) to the FCRA that gives consumers the right to request free annual disclosures once every 12 months. The maximum allowable charge established by this Notice does not apply to requests made under that provision. The charge does apply when a consumer who orders a file disclosure has already received a free annual disclosure and does not otherwise qualify for an additional free disclosure.

The Commission considers the $8 amount referred to in paragraph (1)(A)(i) of Section 612(f) to be the baseline for the effective ceiling on reasonable charges dating from the effective date of the amended FCRA, i.e., September 30, 1997. Each year the Commission calculates the proportional increase in the Consumer Price Index (using the most general CPI, which is for all urban consumers, all items) from September 1997 to September of the current year. The Commission then determines what modification, if any, from the original base of $8 should be made effective on January 1 of the subsequent year, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2007, the Consumer Price Index for all urban consumers and all items increased by 29.34 percent—from an index value of 161.2 in September 1997 to a value of 208.490 in September 2007. An increase of 29.34 percent in the $8.00 base figure would lead to a new figure of $10.35. However, because the statute directs that the resulting figure be rounded to the nearest $0.50, the maximum allowable charge should be $10.50.

The Commission therefore determines that the maximum allowable charge for the year 2008 will be $10.50.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E7–24672 Filed 12–18–07: 8:45 am]

BILLLING CODE 6750–01–S

[1] This provision, originally Section 612*(a)*, was added to the FCRA in September 1996 and became effective in September 1997. It was relabelled Section 612*(f)* by Section 211(a)(1) of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act''), Public Law 108-159, which was signed into law on December 4, 2003.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Centers for Disease Control and Prevention (CDC) Grants for Public Health Research Dissertation, Program Announcement (PA) PAR07–231, Panel D

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: 1 p.m.–3 p.m., January 29, 2008 (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 ''CDC Grants for Public Health Research Dissertation,'' PAR07–231, Panel D.

Contact Person for More Information: Maurine Goodman, M.A., M.P.H., Scientific Review Administrator, Office of the Chief Science Officer, CDC, 1600 Clifton Road NE., Mailstop D 72, Atlanta, GA 30333, Telephone 404–639–4737.

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: December 12, 2007.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–24641 Filed 12–18–07; 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): Field Trails To Evaluate Efficacy of Natural Products for the Control of the Tick Vectors of Lyme Disease Spirochetes, Funding Opportunity Announcement (FOA) CK08–001; Evaluation of Reservoir-Targeted Vaccine Formulations To Prevent Enzootic Transmission of Borrelia Burgdorferi (Lyme Borreliosis), FOA CK08–002

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: 8 a.m.–5 p.m., February 8, 2008 (Closed).

Place: Sheraton Gateway Atlanta Airport Hotel, 1900 Sullivan Road,

Atlanta, Georgia 30337, Telephone (770) 997–1100.

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 ''Field Trails to Evaluate Efficacy of Natural Products for the Control of the Tick Vectors of Lyme Disease Spirochetes, FOA Number CK08–001; Evaluation of Reservoir-Targeted Vaccine Formulations to Prevent Enzootic Transmission of Borrelia Burgdorferi (Lyme Borreliosis), FOA Number CK08–002.''

Contact Person for More Information: Shoukat Qari, D.V.M., Ph.D., Scientific Review Administrator, Strategic Science and Program Unit, Office of the Director, Coordinating Center for Infectious Diseases, CDC, 1600 Clifton Road, Mailstop C–19, Atlanta, GA, Telephone (404) 639–8942.

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: December 12, 2007.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–24643 Filed 12–18–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH), and Subcommittee for Dose Reconstruction Reviews (SDRR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC announces the following meeting of the aforementioned committee and subcommittee:

Subcommittee Meeting Time and Date

10 a.m.–12:30 p.m., January 8, 2008

Advisory Board Meeting Times and Dates

1 p.m.–4:30 p.m., January 8, 2008
9:30 a.m.–5 p.m., January 9, 2008
8:30 a.m.–2:30 p.m., January 10, 2008

Public Comment Times and Dates

5 p.m.–6 p.m., January 8, 2008
7:30 p.m.–8:30 p.m., January 9, 2008

Place: Suncoast Hotel and Casino, 9090 Alta Drive, Las Vegas, NV 89145. Phone 702.636.7111, Fax 702.636.7050.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 75 to 100 people.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program (EEOICP) Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2009.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: The topics for the Subcommittee meeting will include a Review of Individual Dose Reconstructions and future Subcommittee Plans and Actions. The agenda for the Advisory Board meeting includes: NIOSH Program Status Report; Redaction of Board Transcripts and SEC Petition for Texas City Chemicals, Inc.; SEC Petition for Nevada Test Site; SEC Petition for Mound; SEC Petition for Combustion Engineering; SEC Petition for Lawrence Livermore National Laboratory; SEC Petition Updates: Bethlehem Steel, Blockson, Chapman Valve, Dow Chemical, Fernald, and Sandia; Science Issues Update; Department of Labor Update; Department of Energy Update; FY08 Tasks for Sanford Cohen & Associates; Update on selection of board support contractor; NIOSH Program Update; Board Future Plans and Schedules; Working Group Reports; and a Subcommittee for Dose Reconstruction Reviews Report. The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted according the policy provided below. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Policy on Redaction of Board Meeting Transcripts (Public Comment)

(1) If a person making a comment gives his or her name, no attempt will be made to redact that name. (2) NIOSH will take reasonable steps to ensure that individuals making public comment are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public website. Such reasonable steps include: (a) A statement read at the start of each public comment period stating that transcripts will be posted and names of speakers will not be redacted; (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comment; (c) A statement such as outlined in (a) above will also appear with the agenda for a Board Meeting when it is posted on the NIOSH Web site; (d) A statement such as in (a) above will appear in the **Federal Register** Notice that announces Board and Subcommittee meetings. (3) If an individual in making a statement reveals personal information (e.g., medical information) about themselves that information will not usually be redacted. The NIOSH FOIA coordinator will, however, review such revelations in accordance with the Freedom of Information Act and the Federal

Advisory Committee Act and if deemed appropriate, will redact such information. (4) All disclosures of information concerning third parties will be redacted. (5) If it comes to the attention of the DFO that an individual wishes to share information with the Board but objects to doing so in a public forum, the DFO will work with that individual, in accordance with the Federal Advisory Committee Act, to find a way that the Board can hear such comments.

Contact Person for More Information: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Phone 513.533.6825, Fax 513.533.6826.

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: December 12, 2007.

Elaine L. Baker,

Director, Management Analysis and Services Office,Centers for Disease Control and Prevention.

[FR Doc. E7–24644 Filed 12–18–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics (NCHS)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC announces the following meeting of the aforementioned committee:

Times and Dates: 11 a.m.–5:30 p.m., January 23, 2008. 8:30 a.m.–2 p.m., January 24, 2008.

Place: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: This meeting is open to the public; however, visitors must be processed in accordance with established federal policies and procedures. For foreign nationals or non-US citizens, pre-approval is required (please contact Althelia Harris, 301–458–4261, *adw1@cdc.gov* or Virginia Cain, *vcain@cdc.gov* at least 10 days in advance for requirements). All visitors are required to present a valid form of picture identification issued by a state, federal or international government. As required by the Federal Property Management Regulations, Title 41, Code of Federal Regulations, subpart 101–20.301, all persons entering in or on Federal controlled property and their packages, briefcases, and other containers in their immediate possession are subject to being x-rayed and inspected. Federal law prohibits the knowing possession or the causing to be present of firearms, explosives and other dangerous weapons and illegal substances. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters To Be Discussed: The agenda will include welcome remarks by the Director, NCHS; review of the State and Local Area Integrated Telephone Survey program; presentation of the National Health Interview Survey program; discussion of upcoming program reviews and an open session for comments from the public.

Requests to make oral presentations should be submitted in writing to the contact person listed below. All requests must contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and must be received by January 9, 2008.

The agenda items are subject to change as priorities dictate.

Contact Person for More Information: Virginia S. Cain, Ph.D., Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7211, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4020.

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: December 12, 2007.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–24642 Filed 12–18–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2273–N]

RIN 0938–AO99

State Children's Health Insurance Program (SCHIP); Additional Allotments To Eliminate FY 2007 Funding Shortfalls

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

ACTION: Notice.

SUMMARY: This notice describes the methodology and process we are using for determining the amounts of certain States' remaining SCHIP funding shortfalls in Federal fiscal year (FY) 2007, in accordance with the provisions of the U.S. Troop Readiness, Veteran's Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007. This notice also contains the amounts of the additional allotments to be provided to such States to eliminate such FY 2007 funding shortfalls, determined in accordance with this methodology.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Background

A. Availability and Redistribution of SCHIP Fiscal Year Allotments

Title XXI of the Social Security Act (the Act) sets forth the State Children's Health Insurance Program (SCHIP) to enable States, the District of Columbia, and specified Commonwealths and Territories to initiate and expand health insurance coverage to uninsured, low-income children. The 50 States, the District of Columbia, and the Commonwealths and Territories may implement the SCHIP through a separate child health program under title XXI of the Act, an expanded program under title XIX of the Act, or a combination of both.

Section 2104(e) of the Act specifies that the SCHIP allotments for a Federal fiscal year are available for payment to States for their expenditures under an approved State child health plan for an initial 3-fiscal year period of availability, including the fiscal year for which the allotment was provided. Section 2104(f) of the Act specifies that the amounts of States' allotments which are not expended during the initial 3-year period of availability are to be redistributed to those States that have

fully spent these fiscal year allotments during this period of availability in accordance with an appropriate procedure determined by the Secretary. Furthermore, section 2104(e) of the Act specifies that the amounts of the redistributed allotments continue to be available for expenditure by the States receiving these redistributions to the end of the fiscal year in which these funds are redistributed.

B. Enactment of NIHRA, UTRA, and Special Rules for Addressing FY 2007 SCHIP Funding Shortfalls

In general, under section 2104(e) and (f) of the Act, any unexpended SCHIP allotments remaining following the end of the initial 3-year period of availability would otherwise be redistributed in accordance with an appropriate procedure determined by the Secretary. However, section 201(a) of the National Institutes of Health Reform Act of 2006 (NIHRA) (Pub. L. 109–482, enacted on January 15, 2007) amended the SCHIP statute to add a new section 2104(h) of the Act. This new subsection provided for special rules to address States' FY 2007 SCHIP funding shortfalls. Specifically, in order to address States' FY 2007 SCHIP funding shortfalls, section 2104(h)(*1*) of the Act provided for the redistribution in FY 2007 of the unexpended FY 2004 allotments remaining at the end of FY 2006. Furthermore, section 2104(h)(*2*) of the Act provided for the redistribution of certain amounts of unexpended FY 2005 allotments which became available for redistribution in months after March 31, 2007. On May 29, 2007, we published a notice in the **Federal Register** (72 FR 29502) describing the implementation of section 201(a) of the NIHRA and containing the amounts of the States' redistributed FY 2004 and FY 2005 allotments, determined in accordance with the NIHRA.

In accordance with the methodology established under NIHRA, the amounts of the States' projected FY 2007 shortfalls, and the associated FY 2004 and FY 2005 redistributed allotments, were determined on a monthly basis to address the FY 2007 shortfalls. In that regard, and since the total amounts of the FY 2004 and FY 2005 allotments available for redistribution were limited (to about $146.9 million and $137.4 million, respectively), the total FY 2007 shortfalls for the 6 States receiving the redistributions were not addressed. That is, the total amounts of the FY 2004 and FY 2005 redistributed allotments that were provided to the 6 recipient States were only sufficient to address the States' FY 2007 shortfalls experienced through May 2007; these amounts were not sufficient to cover the 6 States' remaining FY 2007 shortfalls occurring in months after May 2007, nor were these amounts sufficient to address other States' FY 2007 projected shortfalls occurring after May 2007.

On May 29, 2007, the U.S. Troop Readiness, Veteran's Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (UTRA, Pub L. 110–28) was enacted; in particular, title VII of this law amended section 2104(h) of the Act (as amended by NIHRA), to provide for additional allotment amounts to fund States' remaining SCHIP funding shortfalls in FY 2007.

Note, under paragraph 2104(h)(7) of the Act as amended by the NIHRA, the special rules for the redistribution of the unexpended FY 2004 and FY 2005 allotments in FY 2007 to address FY 2007 SCHIP funding shortfalls apply only to a State that receives an allotment for FY 2007 under subsection 2104(*b*) of the Act. In that regard, under subsection 2104(b) of the Act, a State refers only to the 50 States and the District of Columbia. Therefore, subsection 2104(h) of the Act, as amended by NIHRA and as further amended by UTRA, does not apply to the Commonwealths and Territories, which received SCHIP allotments for FY 2007 under the authority of subsection 2104(*c*) of the Act. Accordingly, unless otherwise indicated in this notice, in referring to the redistribution of the FY 2004 and FY 2005 allotments or the additional allotments for eliminating FY 2007 shortfalls, the term ''State'' means only the 50 States and the District of Columbia, as applicable.

II. Provisions of This Notice

The purpose of this notice is to set forth the methodology and process we are using to implement the UTRA provision for eliminating States' SCHIP funding Shortfalls in FY 2007.

A. Methodology for Determining the Amounts of Additional Allotments To Eliminate States' SCHIP Funding Shortfalls in FY 2007

Section 2104(h)(1) and (2) of the Act, as amended by NIHRA contained the methodology for determining the amounts of States' redistributions of the unexpended FY 2004 allotments remaining at the end of FY 2006 and certain amounts of unexpended FY 2005 allotments, respectively. The methodology for determining these redistributed allotment amounts, and the actual amounts of the redistributed allotments determined in accordance with such methodology, was described in the **Federal Register** published on May 29, 2007.

Subsequent to the enactment of NIHRA, section 7001(a) of UTRA amended section 2104(h)(4) of the Act (as amended by NIHRA) to provide for additional allotment amounts to eliminate the FY 2007 SCHIP funding shortfalls remaining after the redistributions of the unexpended FY 2004 and FY 2005 allotments in FY 2007, both for States that received the FY 2004 and FY 2005 redistributions, as well as for other States that did not receive such redistributions, but which also have projected FY 2007 shortfalls. Under the amended section 2104(h)(4) of the Act, a ''remaining shortfall State'' is defined as a State for which the Secretary estimates on the basis of the most recent data available to the Secretary as of the date of enactment (of UTRA) that the projected FY 2007 Federal SCHIP expenditures will exceed the sum of:

- The amounts of the State's allotments for FY 2005 and FY 2006 that were not expended by the end of FY 2006.
- The amount of the State's allotment for FY 2007.
- The amounts, if any, of the FY 2004 and FY 2005 allotments that were redistributed to the State in FY 2007, in accordance with section 2104(h)(1) and (2) of the Act, respectively.

Section 2104(h)(7) of the Act as amended by the NIHRA indicates that the provisions of subsection 2104(h) of the Act apply only to the 50 States and the District of Columbia; that is, these provisions do not apply to the Commonwealths and Territories. Therefore, the FY 2004 and FY 2005 shortfall redistributions, and the FY 2007 shortfall allotments, are only available for the 50 States and the District of Columbia. Accordingly, unless otherwise indicated in this notice, the term ''State'' means only the 50 States and the District of Columbia, as applicable.

Before enactment of UTRA, section 2104(h)(4) of the Act (as amended by NIHRA) required that the FY 2004 and FY 2005 redistributed allotments could only be used to make payments by States with respect to their expenditures for (1) providing child health assistance or other health benefits coverage for populations eligible under the State child health plan (including under a waiver of this plan) on October 1, 2006; and (2) providing child health assistance or other health benefits coverage to an individual who is not a child or a pregnant woman at the regular Federal medical assistance percentage (FMAP, referenced in section

1905(b) of the Act) only (not the enhanced FMAP, referenced in section 2105(b) of the Act). Under the NIHRA, the FY 2004 and FY 2005 redistributed allotments were available for States' expenditures for a child or a pregnant woman only, at the enhanced FMAP rate. However, the UTRA amended section 2104(h)(4) of the Act to remove both of these limitations. Under the revised section 2104(h)(4) of the Act, the Federal matching rate for expenditures related to all the populations indicated is the enhanced FMAP rate.

As indicated above, under section 2104(h)(4) of the Act, as amended by UTRA, the amount of a State's remaining FY 2007 shortfall, if any, is determined by comparing each State's allotment funds available in FY 2007 (including FY 2004 and FY 2005 redistributed allotments, if any) to its projected FY 2007 expenditures, based on the State's most recent estimates available as of May 25, 2007, the date of enactment of UTRA. In this regard, we determined the amounts of States' projected FY 2007 expenditures, by using their estimated expenditures as reported and certified by the State to CMS on their quarterly budget submissions of Forms CMS–37 and CMS–21B. By May 25, 2007, most States had submitted their certified estimates of their FY 2007 expenditures on their May 2007 Forms CMS–37 and CMS–21B. However, there were 3 States that had not submitted and certified their May 2007 submissions of these reports by May 25, 2007; for those 3 States, we are using the projected FY 2007 expenditures as provided in their February 2007 submissions of such reports, as those represented the most recent certified estimates of their FY 2007 expenditures available as of May 25, 2007.

As described in the notice published in the **Federal Register** on May 29, 2007, the amounts of the States' FY 2004 and FY 2005 redistributed allotments were determined in accordance with the provisions of section 2104(h)(1) and (2) of the Act respectively, based on the States' other available allotments in FY 2007 (that is, the unexpended FY 2005 and FY 2006 allotments carried into FY 2007 and the FY 2007 allotments) and the States' projected FY 2007 allotments using the States' February FY 2007 estimates. This determination did not include any additional FY 2007 shortfall allotments as provided under the recently enacted UTRA, since as provided in section 2104(h)(2) of the Act, we used the information available as of March 31, 2007, and UTRA was not enacted until May 25, 2007.

In accordance with section 2104(h)(4) of the Act, as amended by UTRA, the amounts of the FY 2007 shortfall allotments were determined based on the amounts of each State's other available allotments in FY 2007 (that is, the unexpended FY 2005 and FY 2006 allotments carried into FY 2007 and the FY 2007 allotments), the previously determined FY 2004 and FY 2005 redistributed allotments, and the States' projected FY 2007 expenditures available as of the date of enactment of UTRA. Because the UTRA provided for an additional $650 million to address the shortfalls in FY 2007 remaining after the provision of such FY 2004 and FY 2005 redistributed allotments, and furthermore, since such redistributed allotments were required to be based on the FY 2007 shortfalls determined with the data available at the times indicated above and in the May 29, 2007 **Federal Register** notice (that is, using the February 2007 estimates), we are not recalculating the amounts of the States' FY 2004 and FY 2005 redistributed allotments in order to determine the amounts of the addition FY 2007 shortfall allotments. Rather, since the $650 million is available and intended to cover the States' full remaining FY 2007 shortfalls, we determined the amounts of the FY 2007 shortfall allotments by subtracting each shortfall State's allotments available in FY 2007 (including the FY 2004 and FY 2005 redistributed allotments, if any) from its projected FY 2007 expenditures; the difference (for the shortfall States with projected FY 2007 expenditures greater than their available allotments) represents the amount of the State's FY 2007 shortfall allotment.

B. Retrospective Adjustment

Section 2104(h)(5) of the Act provides that the Secretary may adjust the estimates and determinations of the amounts of the FY 2004 redistributed allotments (section 2104(h)(1) of the Act), the FY 2005 redistributed allotments (section 2104(h)(2) of the Act), the amounts available for the FY 2005 redistribution (section 2104(h)(3) of the Act), and the additional FY 2007 shortfall allotments (section 2104(h)(4) of the Act) on the basis of the amounts reported by States not later than November 30, 2007 on Forms CMS–64 and CMS–21. However, in no case may the amounts of the FY 2005 allotments redistributed from States (as determined under section 2104(h)(3) of the Act) exceed the amounts that were determined based on the most recent data available as of March 31, 2007. As described in the May 29, 2007 **Federal Register**, these amounts were determined based on the States' submissions of the February 2007 quarterly estimate reports of their FY 2007 expenditures, and using those estimates would not exceed the lesser of 50 percent of the States' available FY 2005 allotments as were determined available as of March 31, 2007 or $20 million. Furthermore, under section 2104(h)(5)(B) of the Act, in providing for any additional FY 2005 redistributed allotments under any retrospective adjustment, only the actual unexpended FY 2005 allotments remaining at the end of FY 2007 (as determined following the submission of States' fourth quarter FY 2007 expenditure reports submitted by November 30, 2007) may be used. The additional funds made available under UTRA to eliminate FY 2007 shortfalls may be available for any retrospective adjustments. Finally, under section 2104(h)(5)(C) of the Act, any retrospective adjustment may not provide for the reduction of any States' FY 2006 or FY 2007 allotments.

C. Ordering of Expenditures

In applying State's expenditures against their available SCHIP allotments, expenditures are ordered as provided under section 2105(a)(1)(A) through (D) and 2105(a)(2) of the Act as follows:

- Title XIX SCHIP-related expenditures for which payment is made at the enhanced FMAP (section 2105(a)(1)(A) of the Act);
- Title XIX expenditures for medical assistance provided during a presumptive eligibility period under section 1920A of the Act (section 2105(a)(1)(B) of the Act);
- Child health assistance for targeted low-income children in the form of providing health benefits coverage that meets the requirements of section 2103 (per section 2105(a)(1)(C) of the Act);
- Expenditures listed in section 2105(a)(1)(D)(i) through (iv) of the Act, respectively: Other child health assistance for targeted low-income children; health services initiatives under the plan for improving the health of children (including targeted low-income children and other low-income children); expenditures for outreach activities; and administration expenditures.

In accordance with the ordering of allotments and expenditures provisions described above, the expenditures of States will be applied against the FY 2004 and FY 2005 redistributed allotments, the additional FY 2007 shortfall allotments, and any other allotments available to the States in FY

2007 (that is, the FY 2005, FY 2006 and FY 2007 allotments).

D. No Ordering Election for Amounts of States' FY 2004 Redistributed Allotments, FY 2005 Redistributed Allotments, and FY 2007 Shortfall Allotments

In the past, for purposes of applying States' expenditures against the redistributed allotments, States receiving redistributed allotment amounts were given flexibility to decide the ordering of the redistributed allotments with respect to the States' other available allotments. This allowed the redistribution States to optimize the use of these redistributed funds. However, because of the statutory provisions made by the NIHRA and UTRA on the identification of shortfall States and the determination of the amount of the funding shortfalls on a monthly basis, and the requirement that these redistributed allotments and additional allotments be available only after the States' other SCHIP allotment funds have been exhausted, we believe that the FY 2004 and FY 2005 redistributed allotments and the FY 2007 shortfall allotments must be ordered after the States' other available allotments are exhausted. Therefore, shortfall States must spend their available FY 2005, FY 2006, and FY 2007 allotments first, before any amounts of redistributed FY 2004 allotments, redistributed FY 2005 allotments, and FY 2007 shortfall allotments. Furthermore, since the unexpended FY 2004 allotments must be redistributed before any redistribution of the FY 2005 allotments, and the FY 2007 shortfall allotments are available for any remaining shortfalls, the amounts of any FY 2004 redistributed allotment must be ordered prior to any FY 2005 redistributed allotments, and the FY 2005 redistributed allotments must be ordered prior to any FY 2007 shortfall allotments.

As specified in section 2104(h)(6) of the Act, as added by section 201(a) of the NIHRA, and as amended by UTRA, the amounts of the unexpended FY 2004 and FY 2005 allotments redistributed to a State in FY 2007, and the amounts of the FY 2007 shortfall allotments, are only available for expenditure by the State through September 30, 2007; and any amounts of these redistributed allotments or additional allotments remaining at the end of FY 2007, shall not be subject to redistribution under section 2104(f) of the Act. This provision does not limit the authority of the Secretary to make any retrospective adjustments under section 2104(h)(5) of the Act, as discussed above.

The amounts of the FY 2004 and FY 2005 redistributed allotment amounts, the reduction of the FY 2005 allotments, and the amounts of the additional FY 2007 shortfall allotments, will be incorporated into the Form CMS–21C (Allocation of Title XIX and Title XXI Expenditures to the SCHIP Fiscal Year Allotment). Form CMS–21C is used for tracking States' expenditures against their available SCHIP allotments. The Medicaid and SCHIP expenditure system will then automatically apply expenditures reported on the quarterly expenditure reports for FY 2007 against the revised FY 2005 allotments, the other SCHIP allotments available in FY 2007, the FY 2004 and FY 2005 redistributed amounts, and the additional FY 2007 shortfall allotments available in FY 2007.

E. Repeal of Special Rule for Coverage for Populations Eligible on October 1, 2006

Section 2104(h)(4)(A) of the Act, was added by the NIHRA and under which States could only use amounts of FY 2004 allotments or FY 2005 allotments, redistributed under section 2104(h) of the Act, only for expenditures for providing child health assistance or other health benefits coverage for populations eligible for assistance or benefits under its approved State child health assistance plan (including a waiver of this plan) as in effect on October 1, 2006, has been repealed by UTRA.

F. Table for Determination of the Additional FY 2007 Shortfall Allotments

In the table included in this notice we set forth the determination of the additional FY 2007 shortfall allotments. In the **Federal Register** notice published on May 29, 2007, we provided the amounts of the States' FY 2004 and FY 2005 redistributed allotments; those amounts are incorporated into the calculation of the additional FY 2007 shortfall allotments to eliminate States remaining FY 2007 shortfalls.

The following describes the table for determining the FY 2007 shortfall allotments to eliminate the remaining FY 2007 shortfalls. Based on the States' most recent estimates of their FY 2007 expenditures available as of May 25, 2007, the date of enactment for UTRA, there are 12 States with projected shortfalls in SCHIP funds in FY 2007.

Key to Table—Additional FY 2007 Allotments to Eliminate the Remaining FY 2007 Shortfalls

This Table presents the determination of the amounts of the additional FY 2007 shortfall allotments to eliminate the shortfalls remaining in FY 2007 for the 50 States and DC based on the most recent expenditure projections for FY 2007, after the provision of the FY 2004 and FY 2005 redistributed allotments.

Column/Description

Column A = State. Name of State, District of Columbia, the Commonwealth or Territory.

Column B = FY 2007 Expends. MAY 2007 Estimates. Column B contains the projected FY 2007 Federal expenditures based on the most recent data available submitted as of May 25, 2007, the date of enactment for UTRA. For most States this data was obtained from the certified May 2007 submissions of the Forms CMS–37 and CMS–21B. For 3 States, the certified May 2007 submission was not available as of May 25, 2007; for those States, the certified February 2007 submission of these forms was used.

Column C = Tot. Allotments in FY 2007 NOT Including FY 04/05 Redists. Column C contains the total allotments available to each State in FY 2007, not including any FY 2004 or FY 2005 redistributed allotments. These allotments include: the unexpended FY 2005 allotments remaining at the end of FY 2006 and carried into FY 2007 (and further reduced, as applicable, by the provisions of section 2104(h)(3) of the Act, as amended by NIHRA); the unexpended FY 2006 allotments remaining at the end of FY 2006 and carried into FY 2007; and the FY 2007 allotments.

Column D = Tot. FY 07 SF Before Redist. or Addtl Allots. Column D contains the amounts of the States' FY 2007 shortfalls, if any, determined before the provision of any redistributed FY 2004 or FY 2005 allotments, and is equal to the difference between the amounts in Column B and Column C. For States whose available allotments in FY 2007 in Column C is greater than or equal to the projected FY 2007 expenditures in Column B, the entry in Column D is $0.

Column E = For SF States FY 2004 Redistributions u/NIHRA. Column E contains the total FY 2004 redistributed allotments as published in the May 29, 2007 **Federal Register** in Table 3 (72 FR 29513). With respect to States for which there is no redistribution of FY 2004 allotments, the entry in Column E is $0.

Column F = For SF States FY 2005 Redistributions u/NIHRA. Column F

contains the total FY 2005 redistributed allotments as published in the May 29, 2007 **Federal Register** in Table 3 (72 FR 29513). With respect to States for which there is no redistribution of FY 2005 allotments, the entry in Column F is $0.

Column G = Tot. FY 04/05 Redist. Amounts. Column G contains the total FY 2004 and FY 2005 redistributed allotments, if any, determined as the sum of the entries is Column E and Column F.

Column H = Tot. FY 07 SF AFTER FY 04/05 Redist. Column H contains the amount of the States' FY 2007 shortfalls, if any, remaining after the provision of any FY 2004 or FY 2005 redistributed allotments, and is determined as the difference between the amounts in Column D and Column G. The amount in Column H represents the amount of the States' additional FY 2007 shortfall allotment, provided to eliminate the States' remaining projected FY 2007 shortfall after the provision of the FY 2004 and FY 2005 redistributed allotments. With respect to States for which there is no additional FY 2007 shortfall allotment, the entry in Column H is $0.

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TABLE - ADDITIONAL FY 2007 ALLOTMENTS TO ELIMINATE THE REMAINING FY 2007 SHORTFALLS

STATE	FY 2007 Expends. MAY 2007 Estimates	Tot. Allotments in FY 2007 NOT Including FY 04/05 Redists	Tot. FY 07 SF Before Redist. or Addtl Allots. B - C	For SF States FY 2004 Redistributions u/NIHRA	For SF States FY 2005 Redistributions u/NIHRA	Tot. FY 04/05 Redist. Amounts E + F	Tot. FY 07 SF AFTER FY 04/05 Redist. D - G
A	B	C	D	E	F	G	H
Alabama	$95,969,000	$141,039,112	$0	$0	$0	$0	$0
Alaska*	$20,969,000	$16,805,054	$4,163,946	$0	$0	$0	$4,163,946
Arizona	$112,910,000	$150,766,464	$0	$0	$0	$0	$0
Arkansas	$69,646,000	$125,275,689	$0	$0	$0	$0	$0
California	$1,165,089,000	$1,276,822,586	$0	$0	$0	$0	$0
Colorado	$62,832,000	$165,607,030	$0	$0	$0	$0	$0
Connecticut*	$26,530,000	$98,877,966	$0	$0	$0	$0	$0
Delaware	$8,802,000	$26,566,133	$0	$0	$0	$0	$0
District of Columbia	$7,427,000	$27,596,651	$0	$0	$0	$0	$0
Florida	$258,931,000	$714,807,804	$0	$0	$0	$0	$0
Georgia	$340,657,000	$183,665,565	$156,991,435	$7,033,401	$28,653,319	$35,686,720	$121,304,715
Hawaii	$18,861,000	$32,682,482	$0	$0	$0	$0	$0
Idaho	$28,211,000	$64,124,159	$0	$0	$0	$0	$0
Illinois	$449,186,000	$213,025,189	$236,160,811	$18,116,576	$37,071,617	$55,188,193	$180,972,618
Indiana	$69,467,000	$207,347,908	$0	$0	$0	$0	$0
Iowa	$55,701,000	$41,699,950	$14,001,050	$0	$0	$0	$14,001,050
Kansas	$46,099,000	$64,554,292	$0	$0	$0	$0	$0
Kentucky	$78,824,000	$144,083,358	$0	$0	$0	$0	$0
Louisiana	$113,298,000	$156,828,239	$0	$0	$0	$0	$0
Maine	$26,489,000	$24,499,802	$1,989,198	$0	$0	$0	$1,989,198
Maryland	$142,536,000	$71,673,127	$70,862,873	$10,784,498	$15,638,268	$26,422,766	$44,440,107
Massachusetts*	$215,893,000	$73,335,132	$142,557,868	$40,642,921	$21,616,185	$62,259,106	$80,298,762
Michigan	$179,073,000	$215,279,053	$0	$0	$0	$0	$0
Minnesota	$67,127,000	$62,920,824	$4,206,176	$0	$0	$0	$4,206,176
Mississippi	$120,460,000	$96,926,889	$23,533,111	$0	$0	$0	$23,533,111
Missouri	$92,086,000	$95,388,416	$0	$0	$0	$0	$0
Montana	$18,672,000	$32,247,788	$0	$0	$0	$0	$0
Nebraska	$32,983,000	$33,598,136	$0	$0	$0	$0	$0
Nevada	$30,844,000	$120,726,161	$0	$0	$0	$0	$0
New Hampshire	$9,945,000	$25,875,630	$0	$0	$0	$0	$0
New Jersey	$290,921,000	$107,884,569	$183,036,431	$50,484,114	$27,708,720	$78,192,834	$104,843,597
New Mexico	$47,188,000	$124,457,074	$0	$0	$0	$0	$0
New York	$340,770,000	$771,328,011	$0	$0	$0	$0	$0
North Carolina	$168,650,000	$182,381,005	$0	$0	$0	$0	$0
North Dakota	$11,528,000	$12,393,167	$0	$0	$0	$0	$0
Ohio	$190,587,000	$249,327,292	$0	$0	$0	$0	$0
Oklahoma	$100,166,000	$130,156,434	$0	$0	$0	$0	$0
Oregon	$70,627,000	$130,485,202	$0	$0	$0	$0	$0
Pennsylvania	$196,795,000	$339,146,938	$0	$0	$0	$0	$0
Rhode Island	$74,130,000	$20,211,483	$53,918,517	$19,818,422	$7,144,187	$26,962,609	$26,955,908
South Carolina	$41,571,000	$153,892,749	$0	$0	$0	$0	$0
South Dakota	$13,615,000	$15,645,484	$0	$0	$0	$0	$0
Tennessee	$25,526,000	$236,771,054	$0	$0	$0	$0	$0
Texas	$388,016,000	$1,442,693,933	$0	$0	$0	$0	$0
Utah	$45,177,000	$79,238,025	$0	$0	$0	$0	$0
Vermont	$3,611,000	$13,414,065	$0	$0	$0	$0	$0
Virginia	$109,980,000	$176,094,475	$0	$0	$0	$0	$0
Washington	$27,385,000	$189,294,266	$0	$0	$0	$0	$0
West Virginia	$35,187,000	$58,719,242	$0	$0	$0	$0	$0
Wisconsin	$96,387,000	$96,235,163	$151,837	$0	$0	$0	$151,837
Wyoming	$7,725,000	$17,529,923	$0	$0	$0	$0	$0
TOTAL STATES ONLY	$6,251,059,000	$9,251,946,143	$891,573,253	$146,879,932	$137,832,296	$284,712,228	$606,861,025

* February 2007 Estimate

BILLING CODE 4120–01–C

III. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). We have determined that with respect to the additional FY 2007 shortfall allotments totaling about $606.9 million, this notice is economically significant. However, because this notice only announces the provision of additional allotment funds determined based on the formula specified in statute and does not put forward any administrative policies, we have not performed an analysis beyond that which is presented in section II. above.

Because State participation in the SCHIP program is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the Federal Government are made voluntarily.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This notice will not create an unfunded mandate on States, tribal, or local governments. Therefore, we are not required to perform an assessment of the costs and benefits of this notice.

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

Low-income children will benefit from payments under this program through increased opportunities for health insurance coverage. We believe this notice will have an overall positive impact by informing States, the District of Columbia, and Commonwealths and Territories of the extent to which they are permitted to expend funds under their child health plans using the additional FY 2007 shortfall allotment amounts.

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

IV. Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a proposed notice in the **Federal Register** to provide a period of public comment before the provisions of a notice, such as this, are effective in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice of proposed rulemaking and the 30-day delay in effective date if the Secretary finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons in the notice.

We find there is good cause to waive notice of proposed rulemaking and the delay in the effective date of this issuance of the additional FY 2007 allotments and the methodology for the additional allotments to eliminate the FY 2007 funding shortfalls in SCHIP because the delay required for a notice of proposed rulemaking and the delay in the effective date would be contrary to the public interest in light of the pressing financial needs faced by some States that could result in disruption of program operations.

We determined the amounts of the additional FY 2007 allotments to eliminate the FY 2007 SCHIP funding shortfall as expeditiously as possible in order to make them available to the States as soon as possible. In determining the amounts of the additional FY 2007 allotments we used State FY 2007 projected Federal expenditures as contained in the most recent available States' quarterly budget report submissions as certified by the States as of May 25, 2007, the date of enactment of UTRA . The additional FY 2007 shortfall allotments make available Federal funds to the recipient shortfall States, which is especially important for those shortfall States that may need these funds.

We are waiving notice of proposed rulemaking and the 30-day delay in effective date, and are publishing this issuance of the **Federal Register** as a notice.

In accordance with the provisions of this notice, we have determined the amounts of the additional FY 2007 shortfall allotments to eliminate the FY 2007 shortfalls in SCHIP funding available to shortfall States are effective immediately upon publication of this notice.

Authority: (Section 1102 of the Social Security Act (42 U.S.C. 1302) (Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program))

Dated: July 6, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: July 12, 2007.

Michael O. Leavitt,

Secretary.

(**Editorial Note:** This document was received at the **Federal Register** on December 14, 2007.)

[FR Doc. 07–6092 Filed 12–14–07; 12:13 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2007M–0285, 2007M–0286, 2007M–0287, 2007M–0288, 2007M–0289, 2007M–0298, 2007M–0303, 2007M–0344]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Samie Allen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4013.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the agency now posts this information on the Internet on FDA's home page at *http://www.fda.gov*. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from July 1, 2007, through September 30, 2007. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JULY 1, 2007, THROUGH SEPTEMBER 30, 2007

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P040044(S1)/2007M–0285	Access Closure, Inc.	MYNX VASCULAR CLOSURE DEVICE	May 16, 2007
P050016/2007M–0286	Corin, USA	CORMET HIP RESURFACING SYSTEM	July 3, 2007
P050039/2007M–0287	Exactech, Inc.	NOVATION CERAMIC ARTICULATION HIP SYSTEM	July 5, 2007
P930016(S25)/2007M–0288	VISX, Inc.	STAR S4 IR EXCIMER LASER SYSTEM & WAVESCAN SYSTEM	July 11, 2007
P060018/2007M–0289	Medtronic Sofamor Danek, Inc.	PRESTIGE CERVICAL DISC SYSTEM	July 16, 2007
P060002/2007M–0298	C.R. Bard, Inc.	FLAIR ENDOVASCULAR STENT GRAFT	July 23, 2007
P050024/2007M–0303	Cryocor, Inc.	CRYOCOR CRYOABLATION SYSTEM	August 1, 2007
P050043/2007M–0344	Morris Innovative Research, Inc.	FEMORAL INTRODUCER SHEATH & HEMOSTASIS (FISH) DEVICE 5, 6, & 8 FRENCH	August 20, 2007

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html*.

Dated: December 13, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–24620 Filed 12–18–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0471]

Cellular, Tissue and Gene Therapies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cellular, Tissue and Gene Therapies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 10, 2008, from 9 a.m. to approximately 6 p.m. and on April 11, 2008, from 8 a.m. to approximately 12 noon.

Addresses: Electronic comments should be submitted to *http://www.fda.gov/dockets/ecomments*. Select ''2007N–0471—Scientific Considerations for Safety Testing for Cellular Therapy Products Derived From Human Embryonic Stem Cell'' and follow prompts to submit your statement. Written comments should be submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, by close of business on March 26, 2008. All comments received will be posted without change, including any personal information provided. Comments received on or before March 26, 2008, will be provided to the committee before or at the meeting.

Location: Hilton DC North/Gaithersburg, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Gail Dapolito or Danielle Cubbage, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512389. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On April 10, 2008, the committee will meet to discuss scientific considerations for safety testing for cellular therapy products derived from human embryonic stem cells. On April 11, 2008, the committee will meet to discuss updates on the following topics: (1) Research management related to the September 29, 2005, review of research programs of the Office of Cellular, Tissue and Gene Therapies, Center for Biologics Evaluation and Research; (2) FDA's Somatic Cell Therapy Letter; and (3) recently released FDA guidance documents.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 3, 2008. Oral presentations from the public will be scheduled on April 10, 2008, between approximately 1:45 p.m. and 2:15 p.m. and on April 11, 2008, between approximately 10:15 a.m. and 10:45 a.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 26, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 27, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gail Dapolito at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 12, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–24629 Filed 12–18–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 6, 2008, from 8 a.m. to 5 p.m.

Location: Crowne Plaza Silver Spring, Kennedy Ballroom, 8777 Georgia Ave., Silver Spring, MD. The hotel phone number is 301–587–4791.

Contact Person: Diem-Kieu Ngo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *diemkieu.ngo@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512544. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 22–173, ZYPREXA ADHERA (olanzapine pamoate depot) long acting

intramuscular injection (210 milligrams (mg), 300 mg, and 405 mg per/vial), Eli Lilly and Co., for the treatment of schizophrenia. A particular safety concern for discussion is the occurrence of severe somnolence in some patients who are administered this depot formulation of olanzapine.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 18, 2008. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 10, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 11, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Diem-Kieu Ngo at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 12, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–24627 Filed 12–18–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0226]

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 019

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA recognized consensus standards). This publication, entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 019'' (Recognition List Number: 019), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit written or electronic comments concerning this document at any time. See section VII of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies of ''Modifications to the List of Recognized Standards, Recognition List Number: 019'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. Submit written comments concerning this document, or recommendations for additional standards for recognition, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). Submit electronic comments by e-mail: *standards@cdrh.fda.gov*. This document may also be accessed on FDA's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfTopic/cdrhnew.cfm*. See section VI of this document for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 019 modifications and other standards related information.

FOR FURTHER INFORMATION CONTACT: Carol L. Herman, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0533.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled ''Recognition and Use of Consensus Standards.'' The notice described how FDA would implement its standard recognition program and provided the initial list of recognized standards. Modifications to the initial list of recognized standards, as published in the **Federal Register**, are identified in table 1 of this document.

TABLE 1

Federal Register Cite
October 16, 1998 (63 FR 55617)
July 12, 1999 (64 FR 37546)
November 15, 2000 (65 FR 69022)
May 7, 2001 (66 FR 23032)
January 14, 2002 (67 FR 1774)
October 2, 2002 (67 FR 61893)
April 28, 2003 (68 FR 22391)
March 8, 2004 (69 FR 10712)
June 18, 2004 (69 FR 34176)
October 4, 2004 (69 FR 59240)
May 27, 2005 (70 FR 30756)
November 8, 2005 (70 FR 67713)
March 31, 2006 (71 FR 16313)
June 23, 2006 (71 FR 36121)
November 3, 2006 (71 FR 64718)
May 21, 2007 (72 FR 28500)
September 12, 2007 (72 FR 52142)

These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The agency maintains ''hypertext markup

language (HTML)'' and ''portable document format (PDF)'' versions of the list of ''FDA Recognized Consensus Standards.'' Both versions are publicly accessible at the agency's Internet site. See section VI of this document for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

II. Modifications to the List of Recognized Standards, Recognition List Number: 019

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the agency will recognize for use in satisfying premarket reviews and other requirements for devices. FDA will incorporate these modifications in the list of FDA Recognized Consensus Standards in the agency's searchable database. FDA will use the term ''Recognition List Number: 019 to identify these current modifications.

In table 2 of this document, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others; (2) the correction of errors made by FDA in listing previously recognized standards; and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III of this document, FDA lists modifications the agency is making that involve the initial addition of standards not previously recognized by FDA.

TABLE 2.

Old Item No.	Standard	Change	Replacement Item No.
A. Anesthesia			
11	IEC 60601–3–1:1996–08 Medical Electrical Equipment - Part 3–1: Essential Performance Requirement for Transcutaneous Oxygen and Carbon Dioxide Partial Pressure Monitoring Equipment	Title Change Contact person	
18	ISO 8359:1996 Oxygen Concentrators for Medical Use - Safety Requirements	Contact person	
51	ASTM F1100–90(1997) Standard Specification for Ventilators Intended for Use in Critical Care	Contact person Relevant guidance	
57	ASTM F1101–90(2003)e1 Standard Specification for Ventilators Intended for Use During Anesthesia	Contact person	
59	ASTM F1456-01 Standard Specification for Minimum Performance and Safety Requirements for Capnometers	Relevant guidance	
60	IEC 60601–2–12:(2001–10) Medical Electrical Equipment - Part 2–12: Particular Requirements for the Safety of Lung Ventilators - Critical Care Ventilators	Contact person Relevant guidance	
61	IEC 60601-2-13(2003-05):, Medical electrical equipment - Part 2-13: Particular requirements for the safety and essential performance of anaesthetic systems	Relevant guidance	
65	ISO 21647: 2004 Medical Electrical Equipment - Particular Requirements for the Basic Safety and Essential Performance of Respiratory Gas Monitors	Title Change Relevant guidance	
69	ASTM F1464–93(2005) Standard Specification for Oxygen Concentrators for Domiciliary Use	Contact person	
70	ASTM F 1246–91 (2005) Standard Specification for Electrically Powered Home Care Ventilators, Part 1 - Positive-Pressure Ventilators and Ventilator Circuits	Contact person Relevant guidance	
71	ISO 10651–5:2006 Lung Ventilators for Medical Use - Particular Requirements for Basic Safety and Essential Performance - Part 5: Gas-powered Emergency Resuscitators	Contact person	
B. General			
20	ASTM F1140:1988: Standard Test Method for Failure Resistance of Unrestrained and Nonrigid Packages for Medical Applications	Withdrawn	
C. General Hospital/General Plastic Surgery			
21	ISO 10555–3: 1996 Sterile, Single-use Intravascular Catheters - Part 3: Central Venous Catheters	Withdrawn duplicate	171
81	ASTM E1061–01(2007) Standard Specification for Direct-Reading Liquid Crystal Forehead Thermometers	Withdrawn and replaced with newer version	200

TABLE 2.—Continued

Old Item No.	Standard	Change	Replacement Item No.
111	IEC 60601–2–38: 1996 Medical Electrical Equipment - Part 2: Particular Requirements for the Safety of Electrically Operated Hospital Beds	Withdrawn duplicate	182
117	ASTM F2172–02:, Standard Specification for Blood/Intravenous Fluid/Irrigation Fluid Warmers	Contact person	
121	ISO 8536–2–2001 Infusion Equipment for Medical Use - Part 2: Closures for Infusion Bottles	Withdrawn duplicate	173
126	ISO 8536–4:2007 Infusion Equipment for Medical Use -- Part 4: Infusion Sets for Single-use, Gravity Feed	Withdrawn and replaced with newer version	201
162	ISO 8536–1:2000/Amendment 1:2004 Infusion Equipment for Medical Use - Part 1: Infusion Glass Bottles	Withdrawn duplicate	172
D. In Vitro Diagnostics			
31	CLSI H20–A2 Reference Leukocyte (WBC) Differential Count (Proportional) and Evaluation of Instrumental Methods; Approved Standard—Second Edition	Withdrawn and replaced with newer version	130
E. Materials			
3	ASTM F90–07 Standard Specification for Wrought Cobalt–20 Chromium–15 Tungsten–10 Nickel Alloy for Surgical Implant Applications (UNS R30605)	Withdrawn and replaced with newer version	145
30	ASTM F1537–07 Standard Specification for Wrought Cobalt–28Chromium–6Molybdenum Alloys for Surgical Implants (UNS R31537, UNS R31538, and UNS R31539)	Withdrawn and replaced with newer version	152
41	ASTM F2066–07 Standard Specification for Wrought Titanium–15 Molybdenum Alloy for Surgical Implant Applications (UNS R58150)	Withdrawn and replaced with newer version	146
42	ASTM F2119–07 Standard Test Method for Evaluation of MR Image Artifacts from Passive Implants	Withdrawn and replaced with newer version	153
45	ASTM F562–07 Standard Specification for Wrought 35Cobalt–35Nickel–20Chromium–10Molybdenum Alloy for Surgical Implant Applications (UNS R30035)	Withdrawn and replaced with newer version	147
48	ASTM F899–07 Standard Specification for Stainless Steel for Surgical Instruments	Withdrawn and replaced with newer version	148
56	ISO 5832–1:2007 Implants for Surgery -- Metallic Materials -- Part 1: Wrought Stainless Steel	Withdrawn and replaced with newer version	149
62	ISO 5832–9:2007 Implants for Surgery - Metallic Materials - Part 9: Wrought High Nitrogen Stainless Steel	Withdrawn and replaced with newer version	150
64	ISO 5832–12:2007 Implants for surgery -- Metallic materials -- Part 12: Wrought cobalt-chromium-molybdenum alloy	Withdrawn and replaced with newer version	151
F. OB-GYN/Gastroenterology			
5	IEC 60601–2–18 (1996) Medical Electrical Equipment - Part 2: Particular Requirements for the Safety of Endoscopic Equipment	Withdrawn duplicate	42
G. Ophthalmic			
35	ISO 10939:2007 Ophthalmic Instruments -- Slit-lamp Microscopes	Contact person	
37	ISO 10942:2006 Ophthalmic Instruments -- Direct ophthalmoscopes	Contact person	
38	ISO 10943:2006 Ophthalmic Instruments -- Indirect ophthalmoscopes	Contact person	
39	ISO 12865:2006 Ophthalmic Instruments -- Retinoscopes	Contact person	
51	ISO 15004–2:2007 Ophthalmic Instruments—Fundamental Requirements and Test Methods Part 2: Light Hazard Protection	Contact person	
H. Radiology			

TABLE 2.—Continued

Old Item No.	Standard	Change	Replacement Item No.
7	IEC / ISO 10918–1:1994 Information Technology--Digital Compression and Coding of Continuous-tone Still Images - Part 1: Requirements and Guidelines	Withdrawn duplicate	150
76	NU 2–2007 Performance Measurements of Positron Emission Tomographs	Withdrawn and replaced with newer version	167
84	IEC 60825–1 Ed. 2.0 (2007) Safety of Laser Products - Part 1: Equipment Classification and Requirements	Withdrawn and replaced with newer version	168
85	IEC 60601–2–22 Ed. 3.0 (2007) Medical Electrical Equipment - Part 2–22: Particular Requirements for Basic Safety and Essential Performance of Surgical, Cosmetic, Therapeutic and Diagnostic Laser Equipment	Withdrawn and replaced with newer version	169
90	IEC 60601–2–1 (1998–06) Medical Electrical Equipment - Part 2–1: Particular Requirements for the Safety of Electron Accelerators in the Range 1 MeV to 50 MeV	Withdrawn duplicate	152
102	ANSI / IESNA RP–27.2–2000 Recommended Practice for Photobiological Safety for Lamps and Lamp Systems - Measurement Techniques	Contact person	
103	ANSI / IESNA RP–27.3–1996 Recommended Practice for Photobiological Safety for Lamps - Risk Group Classification and Labeling	Contact person	
112	ISO 11670:2003 Lasers and Laser-related Equipment - Test Methods for Laser Beam Parameters - Beam Positional Stability	Withdrawn duplicate	156
114	ISO 13694:2000 Optics and Optical Instruments - Lasers and Laser-related Equipment - Test Methods for Laser Beam Power (energy) Density Distribution	Withdrawn duplicate	157
119	NEMA PS 3.1 - 3.18 (2007) Digital Imaging and Communications in Medicine (DICOM) Set	Withdrawn and replaced with newer version	170
153	ANSI / IESNA RP–27.1–2005 Recommended Practice for Photobiological Safety for Lamps and Lamp Systems - General Requirements	Contact person	
I. Software/Informatics			
4	ANSI/UL 1998 Software in Programmable Components	Relevant guidance	
5	IEC 60601-3-1:1996-08 Medical electrical equipment - Part 3-1: Essential performance requirement for transcutaneous oxygen and carbon dioxide partial pressure monitoring equipment	Relevant guidance	
8	IEC 62304 Ed. 1.0 Medical device software - Software life cycle processes	Relevant guidance	
J. Sterility			
25	ANSI/AAMI/ISO 11135–1:2007 Sterilization of Health Care Products - Ethylene oxide - Part 1: Requirements for the Development, Validation and Routine Control of a Sterilization Process for Medical Devices	Withdrawn and replaced with newer version	228
63	ASTM F1886: 1998 (2004) Standard Test Method for Determining Integrity of Seals for Medical Packaging by Visual Inspection	Relevant guidance	
64	ASTM F1929:1998 (2004) Standard Test Method for Detecting Seal Leaks in Porous Medical Packaging by Dye Penetration	Relevant guidance	
86	ASTM F1980–07 Standard Guide for Accelerated Aging of Sterile Barrier Systems for Medical Devices	Withdrawn and replaced with newer version	229
120	ASTM D3078:2002 Standard Test Method for Determination of Leaks in Flexible Packaging by Bubble Emission	Relevant guidance	
136	AAMI/ANSI ST67:2003 Sterilization of Health Care Products - Requirements for Products Labeled 'Sterile' 1st edition	Relevant guidance	
144	ASTM F2203–02(2007) Standard Test Method for Linear Measurement Using Precision Steel Rule	Withdrawn and replaced with newer version	230

TABLE 2.—Continued

Old Item No.	Standard	Change	Replacement Item No.
145	ASTM F2217–02(2007) Standard Practice for Coating/Adhesive Weight Determination	Withdrawn and replaced with newer version	231
146	ASTM F2227–02(2007) Standard Test Method for Non-Destructive Detection of Leaks in Non-sealed and Empty Medical Packaging Trays by CO_2 Tracer Gas Method	Withdrawn and replaced with newer version	232
147	ASTM F2228–02(2007) Standard Test Method for Non-Destructive Detection of Leaks in Medical Packaging Which Incorporates Porous Barrier Material by CO_2 Tracer Gas Method	Withdrawn and replaced with newer version	233
167	ASTM F2097–07 Standard Guide for Design and Evaluation of Primary Flexible Packaging for Medical Products	Withdrawn and replaced with newer version	234
168	ASTM F2338–05 Standard Test Method for Nondestructive Detection of Leaks in Packages by Vacuum Decay Method	Relevant guidance	
169	ASTM F2391–05 Standard Test Method for Measuring Package and Seal Integrity Using Helium as Tracer Gas	Relevant guidance	
170	ASTM F2475–05 Standard Guide for Biocompatibility Evaluation of Medical Device Packaging Materials	Relevant guidance	
193	AAMI/ANSI/ISO 11607–1:2006 Packaging for Terminally Sterilized Medical Devices - Part 1: Requirements for Materials, Sterile Barrier Systems and Packaging Systems, 3ed.	Relevant guidance	
194	AAMI/ANSI/ISO 11607–2:2006 Packaging for Terminally Sterilized Medical Devices - Part 2: Validation Requirements for Forming, Sealing and Assembly Processes, 1ed.	Relevant guidance	
196	ASTM F1140–07 Standard Test Methods for Internal Pressurization Failure Resistance of Unrestrained Packages	Withdrawn and replaced with newer version	235
197	ASTM F1608:00(2004) Standard Test Method for Microbial Ranking of Porous Packaging Materials (Exposure Chamber Method)	Relevant guidance	
198	ASTM F2054–07 Standard Test Method for Burst Testing of Flexible Package Seals Using Internal Air Pressurization Within Restraining Plates	Withdrawn and replaced with newer version	236
199	ASTM D4169–05 Standard Practice for Performance Testing of Shipping Containers and Systems	Relevant guidance	
200	ASTM F88–07 Standard Test Method for Seal Strength of Flexible Barrier Materials	Withdrawn and replaced with newer version	237
K. Tissue Engineering			
2	ASTM F2103–01(2007)e1 Standard Guide for Characterization and Testing of Chitosan Salts as Starting Materials Intended for Use in Biomedical and Tissue-Engineered Medical Product Applications	Withdrawn and replaced with newer version	12

III. Listing of New Entries

In table 3 of this document, FDA provides the listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 019.

TABLE 3.

Item No.	Title of Standard	Reference No. & Date
A. Anesthesia		
76	Anaesthetic and Respiratory Equipment—User-applied Labels for Syringes Containing Drugs Used During Anaesthesia—Colours, Design and Performance	ISO 26825:2007
B. Dental/ ENT		

TABLE 3.—Continued

Item No.	Title of Standard	Reference No. & Date
145	Dentistry—Membrane Materials for Guided Tissue Regeneration in Oral and Maxillofacial Surgery—Contents of a Technical File	ISO 22803:2004
146	Dentistry—Metallic Materials for Fixed and Removable Restorations and Appliances	ISO 22674: 2006
C. General Hospital/ General Plastic Surgery		
202	Lasers and Laser-related Equipment -- Test Method and Classification for the Laser-resistance of Surgical Drapes and/or Patient-protective Covers -- Part 2: Secondary Ignition	ISO 11810–2:2007
D. Ophthalmic		
53	Ophthalmic optics—Contact Lenses -- Part 1: Vocabulary, Classification System and Recommendations for Labeling Specifications	ISO 18369–1:2006
54	Ophthalmic Optics- Contact Lenses- Part 4: Physicochemical Properties of Contact Lens Materials	ISO 18369–4:2006
55	Ophthalmic implants -- Intraocular Lenses -- Part 6: Shelf-life and Transport Stability	ISO 11979–6:2007
E. Radiology		
171	Optics and Photonics -- Microlens Arrays -- Part 2: Test Methods for Wavefront Aberrations	ISO 14880–2:2006
172	Optics and Photonics -- Microlens Arrays -- Part 3: Test Methods for Optical Properties Other than Wavefront Aberrations	ISO 14880–3:2006
173	Optics and Photonics -- Microlens Arrays -- Part 4: Test Methods for Geometrical Properties	ISO 14880–4:2006
174	Optics and Photonics -- Lasers and Laser-related Equipment -- Test Methods for Specular Reflectance and Regular Transmittance of Optical Laser Components	ISO 13697:2006
175	Optics and Photonics -- Lasers and Laser-related Equipment -- Measurement of Phase Retardation of Optical Components for Polarized Laser Radiation	ISO 24013:2006
176	Evaluation and Routine Testing in Medical Imaging Departments - Part 3–2: Acceptance Tests - Imaging Performance of Mammographic X-ray Equipment	IEC 61223–3–2 Ed. 2.0 (2007)
F. Sterility		
238	Sterilization of Health Care Products - Chemical Indicators - Part 5: Class 2 Indicators for Bowie and Dick-type Air Removal Tests	ANSI/AAMI/ISO11140–5:2007
239	Aseptic Processing of Health Care Products—Part 3: Lyophilization	ISO 13408–3:2006
240	Aseptic Processing of Health Care Products—Part 5: Sterilization-in-place	ISO 13408–5:2006
241	Aseptic Processing of Health Care Products—Part 6: Isolator Systems	ISO 13408–6:2005
242	Cleanrooms and Associated Controlled Environments—Part 3: Test Methods	ISO 14644–3:2005
243	Cleanrooms and Associated Controlled Environments—Part 6: Vocabulary	ISO 14644–6:2007
244	Cleanrooms and Associated Controlled Environments - Part 8: Classification of Airborne Molecular Contamination	ISO 14644–8:2006

IV. List of Recognized Standards

FDA maintains the agency's current list of FDA recognized consensus standards in a searchable database that may be accessed directly at FDA's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm*. FDA will incorporate the modifications and minor revisions described in this notice into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and minor revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (See **FOR FURTHER INFORMATION CONTACT**). To be properly considered such recommendations should contain, at a minimum, the following information: (1) Title of the standard; (2) any reference number and date; (3) name and address of the national or international standards development organization; (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply; and (5) a brief identification of the testing or performance or other characteristics of

the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

You may obtain a copy of ''Guidance on the Recognition and Use of Consensus Standards'' by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the guidance as well as the current list of recognized standards and other standards related documents. After publication in the **Federal Register**, this notice announcing ''Modification to the List of Recognized Standards, Recognition List Number: 019'' will be available on the CDRH home page. You may access the CDRH home page at *http://www.fda.gov/cdrh*.

You may access ''Guidance on the Recognition and Use of Consensus Standards,'' and the searchable database for ''FDA Recognized Consensus Standards'' through the hyperlink at *http://www.fda.gov/cdrh/stdsprog.html*.

This **Federal Register** document on modifications in FDA's recognition of consensus standards is available at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfTopic/cdrhnew.cfm*.

VII. Submission of Comments and Effective Date

Interested persons may submit to the contact person (see **FOR FURTHER INFORMATION CONTACT**) written or electronic comments regarding this document. Two copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 019. These modifications to the list or recognized standards are effective upon publication of this notice in the **Federal Register**.

Dated: December 13, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–24580 Filed 12–18–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Aquaporin 2 Polyclonal Antibodies

Description of Technology: Aquaporins, also known as water channels, form pores in cell membranes and selectively transport water in and out of the cell. Aquaporins are involved in regulation of water balance and blood pressure, and thirteen different isoforms have been found in mammals. Aquaporin 2 (AQP2) is located in the collecting duct of the kidney, and is regulated by the peptide hormone vasopressin. AQP2 expression is increased in conditions where there is water retention, such as pregnancy and congestive heart failure, and mutations of AQP2 are associated with nephrogenic diabetes insipidus. Also, lithium treatment, often administered for bipolar disorder, can cause acquired diabetes insipidus by decreasing AQP2 expression.

The inventors have developed rabbit polyclonal antibodies directed against a peptide sequence in the C-terminal region of AQP2 (LKGLEPDTDWEEREVRRRQ). The sequence is upstream of phosphorylation sites in this region, and consequently the antibodies recognize both unphosphorylated and phosphorylated AQP2. The sequence is identical in human, rat, mouse, cow, and sheep.

Applications: Western blotting, immunohistochemistry, and immunoprecipitation.

Inventor: Mark A. Knepper (NHLBI).

Related Publication: SR DiGiovanni, S Nielsen, EI Christensen, MA Knepper. Regulation of collecting duct water channel expression by vasopressin in Brattleboro rat. Proc Natl Acad Sci U S A. 1994 Sep 13;91(19):8984–8988.

Patent Status: HHS Reference No. E–045–2008/0—Research Tool. Patent prosecution is not being pursued for this technology.

Licensing Status: This technology is available as a research tool under a Biological Materials License.

Licensing Contact: Tara L. Kirby, PhD; 301/435–4426; *tarak@mail.nih.gov*.

Treatment for Chronic Inflammatory Disease and Cancer by Inhibition of MMP–1

Description of Technology: The breakdown of connective tissue is a feature of many pathological diseases, including tumors as well as inflammatory diseases such as atherosclerosis, rheumatoid arthritis, and periodontitis. Proteases involved in connective tissue turnover, such as matrix metalloproteinases (MMPs) and the plasminogen activation system, have been shown to play a pivotal role in inflammatory disease and in tumor cell invasion, growth and metastasis. Matrix metalloproteinase-1 (MMP–1), a collagenase, is expressed in areas of rapid remodeling of the extracellular matrix in both normal and pathological conditions.

The inventors have determined that the serine protease plasmin stimulates MMP–1 production in monocytes through binding to the annexin A2 heterotetramer. The inventors have also determined that inactive plasmin is an inhibitor of plasmin induction of MMP–1. The invention discloses new methods of suppressing inflammation and tumors through inhibition of plasmin activity, for example by using agents, including inactive plasmin, to inhibit plasmin-stimulated MMP–1 production.

Applications: Therapeutics for inflammatory disease and tumor suppression.

Market: In the United States, approximately two percent of the population have atherosclerosis, more than five percent have an autoimmune inflammatory disease, and approximately fifty percent of all adults over thirty have periodontitis.

Development Status: Early stage.

Inventors: Yahong Zhang and Larry M. Wahl (NIDCR).

Related Publication: Y Zhang, ZH Zhou, TH Bugge, LM Wahl. Urokinase-type plasminogen activator stimulation of monocyte matrix metalloproteinase-1 production is mediated by plasmin-dependent signaling through annexin A2 and inhibited by inactive plasmin. J Immunol. 2007 Sep 1;179(5):3297–3304.

Patent Status: U.S. Provisional Application No. 60/980,009 filed 15 Oct 2007 (HHS Reference No. E–168–2007/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Tara Kirby, PhD; 301/435–4426; *tarak@mail.nih.gov*.

Establishment of Two Cell Lines That Stably Express Luciferase for In Vivo Tracking

Description of Technology: Available for licensing are two renal carcinoma cell lines, 786-O(luc) and 786-O/VHL/(luc) which both stably express luciferase. 786-O(luc) lacks von Hippel-Landau (VHL) protein expression and it has constitutively high expression of hypoxia-inducible transcription factor-2alpha (HIF–2alpha). The second stably expresses VHL, a tumor suppressor, and has minimal HIF–2alpha expression. These cell lines can be tracked in vivo and can be used to study VHL-dependent and HIF–2alpha-dependent events such as tumorigenesis. VHL mutations lead to the clinical manifestations of von Hippel-Lindau disease, a rare autosomal dominant syndrome characterized by abnormal growth of blood vessels in multiple organs, including the brain and kidneys.

Applications: Model to study VHL pathology.

Advantages: Cell lines that stably express luciferase for in vivo tracking.

Benefits: Easy, ready to use positive and negative VHL and HIF–2alpha cells that stably express luciferase for in vivo tests.

Market: Incidence of VHL syndrome is 1 in 38,951; HCC is the third leading cause of cancer death worldwide; HCC is the fifth most common cancer in the world; Post-operative five year survival rate of HCC patients is 30–40%.

Inventor: Leonard M. Neckers, Marston Linehan (NCI).

Patent Status: HHS Reference No. E–005–2007/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute (Urologic Oncology Branch) is seeking statements of capability or interest from parties interested in collaborative research to develop further uses for these two cell lines that stably express luciferase for in vivo tracking. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

HIV gp41-Membrane Proximal Region Arrayed on Hepatitis B Surface Antigen Particles for HIV Diagnostic and Vaccine Applications

Description of Invention: This technology describes vectors encoding the membrane proximal region (MPR) and select variants from HIV–1 gp41 linked to the hepatitis B surface antigen (HBsAg) and the resulting expressed particles for use in HIV diagnostic and vaccine applications. HIV–1 gp41 membrane proximal region contains two epitopes recognized by broadly neutralizing human monoclonal antibodies 2F5 and 4E10. However, immunization with gp41 MPR or the 2F5 or 4E10 epitopes have failed to raise neutralizing antibodies. In the subject technology, the particles were shown to bind antibodies from broadly neutralizing human sera and to the two known broadly neutralizing antibodies 2F5 and 4E10 with high relative affinities, demonstrating that the relevant epitopes are accessible for antibody binding and the potential utility of the particles in diagnostic applications. Additionally, these particles could be used to screen phage-display libraries for novel broadly cross-reactive neutralizing antibodies, of which only five are currently known. These particles could also be used for selection of MPR specific B cells. Lastly, these particles have been shown to be immunogenic and raise antibodies that recognize HIV–1 Env gp160 expressed on the cell surface. These immunogens can elicit neutralizing antibodies specific for HIV gp41 MPR, the MPR of gp41 is highly conserved across various HIV clades and therefore is likely to generate broadly neutralizing antibodies when administered in a proper presentation in a lipid context as is the case in HBsAg particles. Multiple copies of the MPR of HIV–1 gp41 arrayed on the particles could significantly increase the immunogenic potential compared to monomeric molecules. An increase of this nature has been observed with HBsAg and HPV virus-like particles in hepatitis B and cervical cancer vaccines, respectively, suggesting that particulate array may improve the presentation of selected epitopes to the immune system.

Applications: HIV vaccines; HIV diagnostics.

Advantages: These immunogens can elicit neutralizing antibodies specific for HIV gp41 MPR, which is highly conserved across various HIV clades and therefore is likely to generate broadly neutralizing antibodies when administered in a proper presentation in a lipid context as is the case in HBsAg particles. Multiple copies of the MPR of HIV–1 gp41 arrayed on the particles could significantly increase the immunogenic potential compared to monomeric molecules.

Inventors: Richard T. Wyatt (NIAID), Sanjay K. Phogat (NIAID), Ira Berkower (FDA).

Patent Status: U.S. Provisional Application No. 60/653,930 filed 18 Feb 2005 (HHS Reference No. E–123–2005/0–US–01); PCT Application No. PCT/US2006/005613 filed 17 Feb 2006, which published as WO 2006/112929 on 30 Nov 2006 (HHS Reference No. E–123–2005/1–PCT–01); U.S. Patent Application No. 11/816,069 filed 10 Aug 2007 (HHS Reference No. E–123–2005/1–US–02).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Susan Ano, Ph.D.; 301/435–5515; *anos@mail.nih.gov*.

Collaborative Research Opportunity: The NIAID Vaccine Research Center Structural Virology Section is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize HIV–1 MPR regions coupled with the hepatitis B surface antigen particles. Please contact Richard Wyatt, Ph.D. at *richardwyatt@nih.gov* for more information.

Dated: December 11, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–24529 Filed 12–18–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent

applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Micropatterning of Extracellular Matrix Proteins Using Microphotoablation of Poly Vinyl Alcohol (PVA) Monolayers

Description of Technology: Available for licensure and commercial development is a microphotoablation (μPA) method used as a micropatterning technique to attach ECM proteins or other biological molecules to specified locations. Advantages of this photolytic technique are that it: (a) Is stampless, (b) allows for flexible pattern generation to the submicron level, (c) allows for live cell fluorescence imaging, retains cell viability, and (d) allows the use of multiple proteins. The technique has demonstrated experimentally that micropatterning with live cell fluorescence imaging can be used to precisely visualize studying distinct cell-ECM interactions.

Applications of microlithography techniques into the study of cell biology aid in resolving cellular function as regulated by the interaction of cells with the extracellular matrix. Currently many techniques have used micro-contact patterning (μCP) to apply ECM proteins in distinct localized patterns. These techniques require the fabrication of silicone-based stamps to either ''ink'' proteins directly or indirectly onto a gold coated surface, limiting the user to a specified stamp shape and size. To bypass the necessity of a physical stamp the current technique provides submicron-sized spots using a tunable multiphoton laser coupled to a confocal microscope to photoablate hydrophilic poly vinyl alcohol (PVA) macro-molecular thin films. Through controlled photoablation, PVA layers are locally removed allowing deposition of ECM proteins into distinct patterns. The use of ROI's produces a ''virtual mask'' that can be created in any shape or pattern and is easily modified. Unlike μCP techniques, microphotoablation (μPA) allows live cell imaging of multiple fluorophores and is possible even with total internal reflection fluorescence (TIRF) microscopy. Therefore, microphotoablation (μPA) allows kinetic quantification of ECM-cell interactions. This technique that uses a macro-molecular thin film together with localized photoablation allows the versatility to create protein spots of any size or shape easily on the same cover slip. Furthermore, this process can be repeated multiple times to directly conjugate different proteins to the same local region allowing the investigation of how single cells probe their surroundings to discern different ECM proteins.

Applications: Cellular interactions; Protein visualization; Diagnostics.

Inventors: Andrew Doyle (NIDCR), Kenneth Yamada (NIDCR), *et al.*

Relevant Publications

1. CM Cheng, PR LeDuc. Micropatterning polyvinyl alcohol as a biomimetic material through soft lithography with cell culture. Mol Biosyst. 2006 Jun;2(6–7):299–303.
2. T Matsuda, T Sugawara. Development of surface photochemical modification method for micropatterning of cultured cells. J Biomed Mater Res. 1995 Jun;29(6):749–756.

Patent Status: U.S. Provisional Application No. 60/979,045 filed 10 Oct 2007 (HHS Reference No. E–001–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Michael A. Shmilovich, Esq.; 301/435–5019; *shmilovm@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Dental and Craniofacial Research is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Microphotoablation of Poly Vinyl Alcohol (PVA) Monolayers. Please contact David W. Bradley, Ph.D. at *bradleyda@nidcr.nih.gov* for more information.

Chimeric SHIV Gag Proteins Optimize T-Cell Response Against HIV Gag

Description of Technology: HIV Gag has been included in nearly all HIV vaccines entering clinical trials because of its importance in SIV models and its correlation with protection in HIV-infected long-term non-progressors. However, HIV Gag has proven less immunogenic than Env in phase I clinical trial studies. Through sequence comparison, two regions in HIV Gag have been identified as contributing to the decreased immunogenicity observed for HIV Gag. Replacement of these regions with corresponding SIV sequences significantly increased the resulting T-cell response to HIV Gag in mice. Utilization of these chimera in an HIV vaccine could significantly enhance the overall immunogenicity of the vaccine.

Applications: HIV vaccine.

Inventors: Gary J. Nabel *et al.* (NIAID).

Patent Status

U.S. Provisional Application No. 60/965,268 filed 17 Aug 2007 (HHS Reference No. E–304–2007/0–US–01).

U.S. Patent No. 7,094,598 issued 22 Aug 2006 (CMV/R expression vector) and pending foreign applications (HHS Reference No. E–241–2001/1–US–01).

Development Status: Animal (mouse) data available.

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Susan Ano, Ph.D.; 301/435–5515; *anos@mail.nih.gov.*

Dated: December 11, 2007.

Steven M. Ferguson,

Director,Division of Technology Development and Transfer,Office of Technology Transfer,National Institutes of Health.

[FR Doc. E7–24530 Filed 12–18–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Evaluation of the Addiction Technology Transfer Centers (ATTC)—NEW

In recognition that systematic evaluation of this and other government programs are part of good management and accountability and will inform program improvement efforts, the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Treatment (CSAT) will conduct an independent evaluation of the ATTC Program. The purpose of the ATTC Program is to develop and strengthen the workforce that provides addictions treatment services to 23 million Americans age 12 and older who need treatment for alcohol or illicit drug problems. In partnership with Single State Authorities (SSAs), treatment provider associations, addictions counselors, multidisciplinary professionals, faith and recovery community leaders, addiction educators, and other stakeholders, the ATTCs assess the training and development needs of the substance use disorders workforce, and develop and conduct training and technology transfer activities to meet these needs. Particular emphasis is on raising awareness of and improving skills in using evidence-based and promising treatment/recovery practices in recovery-oriented systems of care.

The goals of the evaluation are to: (1) Identify the successes of technology transfer efforts and build upon them in the future; (2) share lessons learned across ATTC regions for the enhancement of all regions' activities; and (3) identify region-specific and cross-regional processes and outcomes. The evaluation will consist of three studies. The Planning and Partnering Study will collect data on the processes and procedures related to the planning, partnering, and provision of ATTC services/activities. The Customer Satisfaction and Benefit Study will collect data on the extent to which ATTC services/activities are satisfactory and to meet the needs of identified partners and other program stakeholders. The Change in Practice Study will collect data to determine the extent to which ATTCs have enhanced the competencies, including cultural competencies, of specialty addictions treatment practitioners, paraprofessionals, and multidisciplinary professionals to strengthen the workforce and whether the ATTCs have provided these individuals with new skills that have led to changes in treatment practice.

This will be the first independent, national evaluation of the ATTC Program since the program was first funded by SAMHSA in 1993. The evaluation approach will be formative and participatory, and the national evaluation team will collaborate with the ATTCs, CSAT, and other program stakeholders to implement the planned data collection activities. Surveys, interviews, and focus groups will be conducted over a three-year period with eight (8) main stakeholder groups who use or are among the target audiences for the ATTCs' services or are otherwise associated with the ATTC program (e.g., as ATTC partners): ATTC directors and staff; customers/recipients of ATTC services/activities; ATTC Advisory Board members; partners who collaborate with ATTCs in planning and delivering ATTC services/activities; directors of state substance abuse agencies; directors of treatment provider and recovery organizations and directors of provider associations; addiction educators; and cultural leaders involved in addictions treatment. The data collection instruments have been constructed to include information related to each stakeholder group, as identified above, and are expected to yield diverse perspectives related to the processes and outcomes of the ATTC Program. As a condition of their grant, each ATTC was required to budget .25 FTE to participate in data collection for the national evaluation.

The evaluation will collect new data that is necessary for the evaluation and will also use data and information collected under existing program requirements. (Each ATTC is required to submit GPRA data at the end of each ATTC training and technical assistance event and meeting/conference and 30 days after each event; each ATTC will conduct a workforce survey; and each ATTC also submits an annual report. None of the new data collection activities will be redundant with these existing reporting requirements.) CSAT plans the following new data collection activities:

(1) Semi-structured interviews with ATTC directors and other ATTC staff (e.g., co-directors, ATTC technology transfer specialists, ATTC evaluator) that are conducted during site visits to each ATTC. The purpose of the interviews will be to collect information on:

a. Goals and objectives of the ATTC
b. Regional priorities and needs for technology transfer services
c. Processes used to plan ATTC programs and services
d. Collaborative relationships with organizations within and outside the ATTC region
e. Organizational structure and staffing of the ATTC
f. ATTC funding and leveraging of resources
g. Efforts to coordinate services with other providers of training, technical assistance, or technology transfer services within the region
h. Technology transfer strategies and services implemented by the ATTC to promote adoption of culturally appropriate, evidence-based, and promising practices
i. Implementation and use of workforce surveys
j. Participation in cross-regional and Network-wide activities
k. Background characteristics of the respondent

(2) Focus groups with ATTC staff (including field staff who are assigned to work with specific states and may work in different locations throughout the ATTC region), to include information on:

a. Regional priorities and needs for technology transfer services
b. Processes used to plan ATTC programs and services
c. Efforts to coordinate services with other providers of technology transfer services within the region
d. Technology transfer strategies and services implemented by the ATTC to promote adoption of culturally appropriate, evidence-based and promising practices
e. Background characteristics of focus group participants

(3) Telephone interviews with a sample of stakeholders of the ATTC program, including state substance abuse directors (SSAs), ATTC Advisory Board members, addiction educators, directors of treatment provider associations, cultural leaders, and leaders of recovery associations. The purpose of the interviews will be to collect information on:

a. Collaboration with ATTCs for program planning and service delivery
b. Awareness of ATTC activities and services
c. Utilization of ATTC services
d. Quality of ATTC services
e. Changes in awareness, skills, practices, or systems as a result of ATTC services
f. Gaps in ATTC service delivery
g. Background characteristics of the respondent

(4) Survey of ATTC Regional Advisory Board members to include questions related to:

a. Composition of the Advisory Board
b. Stakeholder representation and representation of the diversity within the region on the Advisory Board
c. Role of the ATTC Advisory Board
d. Frequency of meetings and other communications (e.g., conference calls)
e. Characteristics of communications and interactions between the ATTC and Advisory Board members
f. Processes to assess regional needs and priorities
g. Consideration/utilization of Advisory Board recommendations by the ATTC
h. Satisfaction with ATTC planning and priority setting processes
i. Background characteristics of the respondent

(5) Collection of information about ATTC activities, events, and products, as well as research dissemination and communications with partners and other ATTCs, in an electronic (web-based) ATTC Activity Log, for the purpose of understanding the full scope of ATTC activities, collaboration with partners, cross-ATTC activities and coordination. Each ATTC will be asked to enter the following data into the Log:

a. General activity descriptors (Date, Event Code (if GPRA event), activity/event type, activity/event title, mode of delivery)
b. Related events (pull down menu populated with previous entries), if applicable
c. How the activity or event or product was initiated (self-initiated; client-initiated; initiated by partner; Federally-initiated)
d. Key Federal, state, and local partners (populated with prior entries; including ATTCs), if applicable
e. Funding source (ATTC funds; external funds)
f. Client/recipient information
g. Description of need (community; regional, state, Federal)
h. ATTC objective type (e.g., awareness raising; skill building; change in practice)
i. Trainer/consultant used (if applicable)
j. Materials used (populated with prior entries) (if applicable)

(6) Survey of ATTC customers (Customer Satisfaction and Benefit Survey) to include questions related to:

a. Background characteristics of ATTC customers/respondents
b. Participation in different types of ATTC activities (e.g., training, technical assistance, meetings/conferences, product development, etc.)
c. Participation in ATTC activities focusing on specific topics (e.g., evidence-based practices, clinical supervision, workforce development)
d. Perceived objective of each ATTC activity (awareness raising, skill building, change in practice)
e. Satisfaction with and knowledge gained from ATTC activities
f. Changes in awareness, skills, or practices as a result of participation in ATTC activities

(7) Evidence-Based Practices Critical Action Surveys of a sample of individuals who participated in ATTC initiatives related to Clinical Supervision, Motivational Interviewing, and Treatment Planning MATRS. The web-based surveys will collect information on:

a. Prior training related to the evidence-based practice
b. Prior experience using the evidence-based practice
c. Implementation experience/changes in practice
d. Level of proficiency related to the evidence-based practice
e. Factors impacting ability to change practice

(8) Telephone interviews (Success Case Interviews) with participants in the Evidence-Based Critical Action Surveys who report the greatest and least amount of success in implementing the new evidence-based practice. The interviews will collect information on:

a. Application of what was learned in clinical or organizational practice
b. Illustrative examples of what occurred as a result of changes in practice
c. Characteristics of the training that made it useful
d. Barriers to application of what was learned

(9) A Clinician Self-Assessment of the extent to which the clinician has incorporated the skills associated with Motivational Interviewing into their clinical practice, to include information on:

a. Motivational Interviewing style
b. Extent to which the clinician has implemented Motivational Interviewing skills
c. Background characteristics of the respondent

(10) Survey of directors of addictions treatment provider organizations (Survey of Organizational Readiness) who participated in the Evidence-Based Critical Action Survey related to the Treatment Planning MATRS initiative, to collect information on:

a. Characteristics of the treatment provider unit or organization
b. Issues for which the organization needs external technical assistance or guidance
c. Issues for which the staff needs external technical assistance or guidance
d. Source of current pressures for making organizational change
e. Background characteristics of the respondent

The burden estimate for conducting the data collection activities for the national evaluation of the ATTC Program is as follows:

Name of instrument/respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Site Visit Interview Protocol:					
ATTC Directors	15	1	15	2	30
ATTC Staff	38	1	38	1	38
Focus Group Protocol:					
ATTC Field Staff	35	1	35	2	70
Key Informant Interview Protocol:					
SSA Directors	55	1	55	1	55
ATTC Advisory Board Members	45	1	45	1	45
Provider Association Directors	43	1	43	1	43
Addiction Educators	70	1	70	1	70
Treatment Agency Directors	42	1	42	1	42
Other Key Advisors	42	1	42	1	42
Collaborative Functioning Survey:					
ATTC Advisory Board Members	450	2	900	½	450
ATTC Activity Log:					
ATTC Staff	15	240	3,600	1	3,600
Customer Satisfaction and Benefit Survey:					
SSA Directors	55	1	55	½	28

Name of instrument/respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Provider Association Directors	43	1	43	½	22
Addiction Educators	158	1	158	½	79
Treatment Agency Directors	700	1	700	½	350
ATTC Activity Participants	3,000	1	3,000	½	1,500
Other Unique Regional Partners	168	1	168	½	84
Evidence-Based Critical Action Surveys:					
ATTC Clinical Supervision Training Participants	240	1	240	½	120
ATTC Motivational Interviewing Training Participants	360	1	360	½	180
ATTC Treatment Planning MATRS Treatment Participants (Treatment Agency Directors)	240	1	240	½	120
Success Case Interview Protocols:					
ATTC Clinical Supervision Training Participants	48	1	48	1	48
ATTC Motivational Interviewing Training Participants	72	1	72	1	72
ATTC Treatment Planning MATRS Training Participants (Treatment Directors)	48	1	48	1	48
Clinician Self-Assessment Form on Motivational Interviewing	72	12	864	½	432
Survey of Organizational Readiness:					
Treatment Agency Directors	240	1	240	½	120
TOTAL	6,294		11,121		7,688

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857*AND* e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: December 12, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–24569 Filed 12–18–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: SAMHSA/CMHS Initiative to Evaluate Mental Health Transformation: 9 State Incentive Grants—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), has funded an Initiative to help grantees transform their mental health and related service systems. Mental Health Transformation State Incentive Grants (MHT SIG) awards were made to 9 States: Connecticut, Hawaii, Maryland, Missouri, New Mexico, Ohio, Oklahoma, Texas and Washington. Associated with this project is an OMB-required independent evaluation of the program.

With input from CMHS staff, MHT SIG State representatives and consumer and family member consultants, a set of data collection instruments has been identified or created for the cross-site evaluation project. The following survey instruments will be used: (1) A recovery measure for adults, (2) a resilience measure for youth, (3) a system measure on orientation towards recovery, (4) a leadership survey, (5) mental health provider interview guide, (6) GPRA data collection, and (7) consumer/family member focus group facilitation guide/interview guide. Grantees will be allowed to use recovery, resilience and system orientation instruments of their choice as long as it meets identified CMHS criteria. Discretionary grant NOMs questions which have already received OMB approval (No. 0930–0285) will be used along with the recovery and resilience instruments selected by the States. In addition, during site visits, one each of the following State staff will be interviewed using a uniquely developed discussion guide: MHT SIG Project Director; MHT SIG Transformation Working Group Chair; director or senior staff of the mental health, Medicaid, criminal/juvenile justice, education, employment, housing agencies. Phone interviews will also be conducted using uniquely developed discussion guides with Project Directors to determine the cost impact of the MHT SIG grant in their State.

GPRA data will be submitted annually by the grantees into a database hosted on a password-protected Web extranet site. The recovery, resilience and system recovery orientation data for non-impacted and impacted consumer groups will be collected by the grantees at two points: baseline and twelve months. During grant years 3 and 5, consumer/family member focus groups/interviews, leadership surveys, and State agency staff interviews will be done. During grant years 3 through 5, mental health provider interviews will be done.

The resulting data will help the cross site evaluation: (1) Determine the extent to which mental health systems have become recovery-oriented, (2) determine the extent to which transformation results in consumer recovery, (3) identify the factors contributing to successful transformation, (4) assist the MHT SIG program in satisfying GPRA requirements, (5) determine changes in client outcomes as measured by NOMs, and (6) demonstrate the cost efficiency of the MHT SIG program. The estimated annual response burden to collect this information is as follows:

ESTIMATE OF ANNUAL RESPONSE BURDEN

Instrument	Number of states	Number of respondents/ state	Total number of respondents	Responses/ respondent	Average burden/ response (hours)	Annual burden (hours)
YEAR 1 (2008):						
Recovery (non-impacted)	7	75	525	1	0.5	262.5
Resilience (non-impacted)	7	75	525	1	0.6	315
Leadership survey	7	15	105	1	0.33	34.7
Provider interviews	7	26	182	1	0.5	91
GPRA measures	7	1	7	1	12	84
Consumer/family involvement	7	15	105	1	2	210
State agency staff interviews	7	8	56	1	1.13	63.3
Cost impact	7	1	7	1	1.5	10.5
Subtotal (year 1)			1512			1070.9
YEAR 2 (2009):						
Recovery (impacted)	7	75	525	1	0.5	262.5
Recovery (non-impacted)	2	75	150	1	0.5	75
Recovery & system recovery orientation (non-impacted)	7	75	525	1	1	525
Resilience (impacted)	7	75	525	1	0.6	315
Resilience (non-impacted)	9	75	675	1	0.6	405
Leadership survey	2	15	30	1	0.33	9.9
Provider interviews	9	26	234	1	0.5	117
GPRA Measures	9	1	9	1	12	108
Consumer/family involvement	2	15	30	1	2	60
State agency staff interviews	2	8	16	1	1.13	18.1
Cost impact	2	1	2	1	1.5	3
Subtotal (year 2)			2721			1898.5
YEAR 3 (2010):						
Recovery (impacted)	2	75	150	1	0.5	75
Recovery & system recovery orientation (impacted)	7	75	525	1	1	525
Recovery & system recovery orientation (non-impacted)	2	75	150	1	1	150
Resilience (impacted)	9	75	675	1	0.6	405
Resilience (non-impacted)	2	75	150	1	0.6	90
Leadership survey	7	15	105	1	0.33	34.7
Provider interviews	9	26	234	1	0.5	117
GPRA measures	9	1	9	1	12	108
Consumer/family involvement	7	15	105	1	2	210
State agency staff interviews	7	8	56	1	1.13	63.3
Cost impact	7	1	7	1	1.5	10.5
Subtotal (year 3)			2166			1788.4
AVERAGE			2133			1586

Written comments and recommendations concerning the proposed information collection should be sent by January 18, 2008 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: December 12, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–24574 Filed 12–18–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2006–0079]

The Critical Infrastructure Partnership Advisory Council (CIPAC)

AGENCY: Directorate for National Protection and Programs, DHS.

ACTION: Update of CIPAC council membership.

SUMMARY: The Department of Homeland Security (DHS) announced the establishment of the Critical Infrastructure Partnership Advisory Council (CIPAC) by notice published in the **Federal Register** on March 24, 2006. That notice identified the purpose of CIPAC as well as its membership. This notice provides (i) the quarterly CIPAC membership update, (ii) instructions on how the public can obtain the CIPAC membership roster and other information on the Council, and (iii) information on the State, Local, Tribal, and Territorial Government Coordinating Council (SLTTGCC) and their membership within CIPAC.

FOR FURTHER INFORMATION CONTACT: Brett Lambo, Partnership and Outreach Division, Office of Infrastructure Protection, National Protection and Programs Directorate, United States Department of Homeland Security, Washington, DC 20528, telephone (703) 235–3643 or via e-mail at *brett.lambo@dhs.gov.*

Responsible DHS Official: Nancy J. Wong, Director Partnership Programs and Information Sharing Office, Partnership and Outreach Division,

Office of Infrastructure Protection, National Protection and Programs Directorate, United States Department of Homeland Security, Washington, DC 20528, telephone (703) 235–3667.

SUPPLEMENTARY INFORMATION: CIPAC facilitates interaction between government officials and representatives of the community of owners and operators for each of the critical infrastructure/key resource (CI/KR) sectors identified in the National Infrastructure Protection Plan. The scope of CIPAC's activities includes planning; coordinating among government and CI/KR owner/operator security partners; implementing security program initiatives; conducting operational activities related to critical infrastructure protection security measures, incident response, recovery, infrastructure resilience, reconstituting CI/KR assets and systems for both man-made as well as naturally occurring events; and sharing threat, vulnerability, risk mitigation, and infrastructure continuity information and best practices.

CIPAC Sub-Councils: Each critical infrastructure sector maintains a Sector Coordinating Council (SCC). SCC infrastructure owner and/or operator membership includes critical infrastructure owners and/or operators as well as owner and/or operator's representative trade associations deemed by each SCC as necessary participants to accommodate the above scope of activities. Each critical infrastructure sector also maintains a Government Coordinating Council (GCC) whose membership is formed and recognized by the Department of Homeland Security in conjunction with the sector's Sector Specific Agency (SSA). A sector's GCC membership includes the SSA and all relevant Federal, State, local, Tribal, and/or Territorial government agencies (or their representative bodies) whose mission interests also involve the scope of the CIPAC activities identified above for that particular sector.

The SLTTGCC: As defined above; relevant Federal, State, local, Tribal, and Territorial government entities within each Sector have always been included as CIPAC members. DHS has recently established the State, Local, Tribal, and Territorial Government Coordinating Council (SLTTGCC) in order to enhance coordination between CI/KR experts from the private sector and all levels of government. The SLTTGCC functions as a forum for State, local, tribal, and territorial (SLTT) government leaders to engage the Federal government and CI/KR owners and/or operators within the National CI/KR sector partnership framework. SLTTGCC members assume a central role in promoting National communication and coordination on critical infrastructure protection policies, strategies, and programs. The SLTTGCC enhances National efforts to secure, protect, sustain, and support the resilience of the Nation's CI/KR. DHS policy requires and the SLTTGCC strives to achieve National geographic diversity as well as broad cross-disciplinary representation among the SLTTGCC membership. The SLTTGCC includes SLTT homeland security directors or equivalents who have programmatic policy, planning and operational responsibilities related to CI/KR protection. SLTTGCC members are recognized leaders who are accountable for the development, improvement, and maintenance of SLTT critical infrastructure protection policies or programs in their day-to-day governmental mission activities. DHS encourages any such officials who are committed to serve as national representatives to seek SLTTGCC membership by submitting a resume or CV accompanied by an email or letter detailing their interest to *SLTTGCC@dhs.gov.* Additional information on the SLTTGCC is available at *http://www.dhs.gov/slttgcc.*

CIPAC Membership: CIPAC Membership includes (i) CI/KR owner and/or operator entities; (ii) trade associations representing the interests of CI/KR owners and/or operators that own and invest in infrastructure assets or in the systems and processes to secure them, or representing CI/KR owners and/or operators whom are held responsible by the public for CI/KR operations and the response and recovery when their CI/KR assets and systems are disrupted; and (iii) each sector's GCC; and, based upon DHS' recent establishment of this council, (iv) State, local, Tribal, and Territorial governmental officials comprising the DHS SLTTGCC.

CIPAC Membership Roster and Council Information: The current roster of CIPAC membership is published on the CIPAC Web site (*http://www.dhs.gov/cipac*) and is updated as the CIPAC membership changes. Members of the public may visit the CIPAC Web site at any time to obtain current CIPAC membership as well as the current and historic list of CIPAC meetings and agendas.

Dated: December 20, 2007.

Nancy Wong,

Designated Federal Officer for the CIPAC.

[FR Doc. E7–24632 Filed 12–18–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

South Bay Salt Pond Restoration Project, San Francisco Bay, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: final environmental impact statement/environmental impact report.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), and the California Department of Fish and Game (CDFG) announce that the final environmental impact statement/environmental impact report (EIS/EIR) for the South Bay Salt Pond (SBSP) Restoration Project is available for distribution. The final EIS/EIR, which we prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), describes the restoration plan (plan) for 15,100 acres (ac) (6,111 hectares (ha)) of former commercial salt ponds in south San Francisco Bay. The SBSP Restoration Project would use a combination of restored tidal marsh, managed ponds, flood control measures and public access features to meet the three goals of the plan: to restore wildlife habitat, to provide flood protection, and to provide wildlife-oriented public access. The ponds are located at the Don Edwards San Francisco Bay National Wildlife Refuge and at the Eden Landing State Ecological Reserve.

The FEIS/EIR includes program-level evaluation of the SBSP long-term alternatives as well as project-level analysis of the first phase of restoration (the Phase 1 actions).

We and the CDFG jointly have prepared the final EIS/EIR to analyze the impacts of the SBSP. The final EIS/EIR presents a limited evaluation of the potential impacts associated with the list of possible South San Francisco Bay Shoreline Study (Shoreline Study) actions. In the draft EIS/EIR, the U.S. Army Corps of Engineers (Corps) was identified as the co-lead agency for NEPA compliance. However, this caused confusion as to the exact nature of the relationship of the Shoreline Study to the EIS/EIR for the SPSP Restoration Project. To eliminate this confusion, the Corps is no longer a co-lead agency on the SBSP Restoration project EIS/EIR. The Corps will remain a cooperating agency because they will use the final EIS/EIR to issue Clean Water Act 404 permits for the SBSP Restoration Project. The Corps will separately complete the Shoreline Study. The Shoreline Study area

includes the SBSP Restoration Project area as well as shoreline and floodplain areas in the counties of Alameda, San Mateo, and Santa Clara.

ADDRESSES: You may obtain a copy of the Final EIS/EIR for the SBSP Restoration Project by writing to Mendel Stewart, Project Leader, San Francisco Bay National Wildlife Refuge, 9500 Thornton Avenue, Newark, CA 94560, or you may request one through the South Bay Salt Pond Restoration Project Web site, at *http://www.southbayrestoration.org.*

FOR FURTHER INFORMATION CONTACT: Mendel Stewart, Project Leader, San Francisco Bay National Wildlife Refuge Complex, at the above address; telephone (510) 792–4275, or John Krause, California Department of Fish and Game, Region 3 Headquarters, P.O. Box 47, Yountville, CA 94599; telephone (707) 944–5500.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 2003, the State of California and the Service acquired 15,100 ac of commercial salt ponds from Cargill, in South San Francisco Bay. The purpose of the acquisition was to protect, restore and enhance the property for fish and wildlife, as well as to provide opportunities for wildlife-oriented recreation and education. Of the acquired lands, CDFG owns and manages the 5,500-ac Eden Landing pond complex and we own the 8,000-ac Alviso pond complex and the 1,600-ac Ravenswood pond complex.

We planned the SBSP Restoration Project in close coordination with a related but separate project, the Shoreline Study. The Congressionally authorized Shoreline Study, which the Corps will conduct, will identify and recommend for Federal funding one or more projects for flood damage reduction, ecosystem restoration, and related purposes, such as public access. Planning for the Shoreline Study will be conducted through several stages referred to as Interim Feasibility Studies, and the Corps is currently developing alternatives for the first stage of the Shoreline Study (the Alviso Ponds and Santa Clara County Interim Feasibility Study) in partnership with the Study's non-Federal sponsors, the Santa Clara Valley Water District and the California Coastal Conservancy, and in cooperation with the Service. Potential Shoreline Study actions include flood protection improvements, ecosystem restoration, and recreation and public access features, which may overlap considerably with proposed SBSP Restoration Project actions.

The Initial Stewardship Plan (ISP) is an interim plan now in operation to maintain and enhance the biological and physical conditions within the SBSP area in the interim period between the cessation of salt production and the implementation of the long-term restoration plan that will emerge from the SBSP Restoration Project planning process. Because the SBSP Restoration Project will be implemented in phases over time, some ponds may be managed under the ISP for many years. The ISP actions include construction and operation of water control structures to circulate bay waters through a series of pond clusters to maintain low salinity, provide wildlife habitat, and maintain at least the current level of flood protection. Three of the ponds' levees were breached to allow full tidal wetland restoration. Additionally, some ponds are managed as seasonal wetlands that are allowed to fill with rain water in the winter and dry through evaporation during the summer months, while other ponds are operated as high salinity ponds to provide habitat for wildlife requiring those conditions. Certain ponds are still being managed by Cargill, while the company reduces the salinity levels by moving the saltiest brines to its plant site in Newark, California.

The actual long-term restoration of the salt ponds is the subject of the SBSP Restoration Project. Implementation of the long-term restoration plan is expected to be conducted in phases, with some phases extending beyond 20 years. The Final EIS/EIR is programmatic, covering the long-term plan for the entire SBSP planning area, and is project-specific for the Phase 1 projects that will be implemented in the near term.

The Draft EIS/EIR was available for a 55-day public review and comment period, which we announced via several methods, including press releases and public notices, including in the **Federal Register** (69 FR 64965, November 9, 2004). The Draft EIS/EIR identified and evaluated three programmatic alternatives for the SBSP Restoration Project: A No Action Alternative (Alternative A), a Managed Pond Emphasis Alternative (Alternative B), and a Tidal Emphasis Alternative (Alternative C).

Under the No Action alternative (Alternative A), the expected scenario at Year 50 is evaluated as if no long-term restoration plan is implemented. CDFG and the Service would continue to operate and maintain the ponds in a manner similar to the ISP, although it is assumed that CDFG and the Service would not have the funding to maintain full ISP operations over the 50-year planning horizon. No new public access or recreational facilities are proposed under this alternative.

Under the Managed Pond Emphasis Alternative (50 percent tidal habitat: 50 percent managed ponds by area) (Alternative B), the expected scenario at Year 50 would contain approximately 7,500 ac of tidal habitat and 7,500 ac of managed pond habitat. Approximately 20 percent of the managed ponds would be reconfigured to improve foraging, roosting, and nesting opportunities for shorebirds, waterfowl, and other waterbirds. In addition, Alternative B would provide a cohesive line of flood protection along the perimeter of the project area. This alternative would also provide public access and recreation features in the form of trails and viewing platforms, interpretive stations, waterfowl hunting, access to and interpretation of cultural resource features, opportunities for education and interpretation, non-motorized boat launching points, and associated staging and parking areas.

Under the Tidal Emphasis Alternative (90 percent tidal habitat: 10 percent managed ponds by area), the expected scenario at Year 50 would contain approximately 13,400 ac of tidal habitat and 1,600 ac of managed pond habitat. All managed ponds in Alternative C would be reconfigured to substantially enhance foraging, roosting, and nesting opportunities for shorebirds, waterfowl, and other waterbirds. Flood protection under Alternative C would be similar to Alternative B, with the exception that more of the existing slough levees would be abandoned in Alternative C. Alternative C would also provide public access and recreation features similar to those described for Alternative B. Alternative C is the preferred alternative.

Alternatives B and C are ''bookends'' that represent possible outcomes ranging from a 50:50 tidal to managed pond scenario to a 90:10 tidal to managed pond scenario. The optimal configuration of tidal habitat and managed ponds that achieves the SBSP objectives while avoiding significant impacts to environmental resources would fall somewhere between these bookends and would be guided by the Adaptive Management Plan, the cornerstone of the SBSP.

The Draft EIS/EIR also addressed, at the project level, Phase 1 of the SBSP. The Phase 1 actions are common elements of the long-term Alternatives B and C. Phase 1 actions would include a range of habitat types and early experiments that will be used to inform the Adaptive Management Plan. These

include creating tidal, muted tidal, and managed pond habitats, as well as a variety of public-access features.

We incorporated comments we received during the review period on the draft EIS/EIR into our final EIS/EIR, as appropriate. Appendix O of the final EIS/EIR contains a list of the comments we received and our responses to comments.

We will make a decision no sooner than 30 days after the publication of the final EIS/EIR. It is anticipated that a Record of Decision will be issued by the Service in the spring of 2008.

We provide this notice under regulations for implementing NEPA (40 CFR 1506.6).

Dated: December 11, 2007.

Ken McDermond,

Deputy Regional Director, Region 8.

[FR Doc. E7–24640 Filed 12–18–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AT72

Draft Mosquito and Mosquito-Borne Disease Management Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: We are reopening the comment period on the **Federal Register** notice published on October 15, 2007, that invited the public to comment on the Draft Mosquito and Mosquito-Borne Disease Management Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997.

DATES: Submit comments on or before February 19, 2008.

ADDRESSES: You may submit comments on this draft policy by mail to: Michael J. Higgins, Biologist, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 670, Arlington, Virginia 22203; by fax to 703–358–2248; or by e-mail to *refugesystempolicycomments@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Michael J. Higgins, U.S. Fish and Wildlife Service, 177 Admiral Cochrane Drive, Annapolis, MD 21401. Telephone: 410–573–4520; FAX: 410–269–0832.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice dated October 15, 2007 (72 FR 58321), we published a draft policy for Mosquito and Mosquito-Borne Disease Management Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997. This draft policy outlines the procedures refuge managers will follow in planning and implementing mosquito and mosquito-borne disease management within the Refuge System.

We received several requests to extend the public comment period beyond the November 29, 2007, due date. In order to ensure that the public has an adequate opportunity to review and comment on our draft policy, we are reopening the comment period for an additional 60 days.

Dated: December 11, 2007.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E7–24675 Filed 12–18–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Deemed Approved Amended Tribal-State Class III Gaming Compact.

SUMMARY: This notice publishes the Deemed Approved Amended Tribal-State Compact between the State of California and the Agua Caliente Band of Cahuilla Indians.

DATES: *Effective Date:* December 19, 2007.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal—State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The compact allows for an increase in gaming devices and any devices or games authorized under State law to the State lottery. Finally, the term of the compact is until December 31, 2030. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Amendment between the State of California and the Agua Caliente Band of Cahuilla Indians is now in effect.

Dated: December 13, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–24563 Filed 12–18–07; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Deemed Approved Amended Tribal–State Class III Gaming Compact

SUMMARY: This notice publishes the Deemed Approved Amended Tribal–State Compact between the State of California and the Morongo Band of Mission Indians.

DATES: *Effective Date:* December 19, 2007.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal–State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The compact allows for an increase in gaming devices and any devices or games authorized under State law to the State lottery. Finally, the term of the compact is until December 31, 2030. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Amendment between the State of California and the Morongo Band of Mission Indians is now in effect.

Dated: December 13, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–24566 Filed 12–18–07; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Deemed Approved Amended Tribal–State Class III Gaming Compact

SUMMARY: This notice publishes the Deemed Approved Amended Tribal–State Compact between the State of California and the Pechanga Band of Luiseno Indians.

DATES: *Effective Date:* December 19, 2007.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal–State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The compact allows for an increase in gaming devices and any devices or games authorized under State law to the State lottery. Finally, the term of the compact is until December 31, 2030. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Amendment between the State of California and the Pechanga Band of Luiseno Indians is now in effect.

Dated: December 13, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–24565 Filed 12–18–07; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Deemed Approved Amended Tribal-State Class III Gaming Compact.

SUMMARY: This notice publishes the Deemed Approved Amended Tribal-State Compact between the State of California and the Sycuan Band of Kumeyaay Nation.

DATES: *Effective Date:* December 19, 2007.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal—State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The compact allows for an increase in gaming devices and any devices or games authorized under State law to the State lottery. Finally, the term of the compact is until December 31, 2030. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Amendment between the State of California and the Sycuan Band of Kumeyaay Nation is now in effect.

Dated: December 13, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–24564 Filed 12–18–07; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XZ–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, 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) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held January 29, 2008 from 9:15 a.m. to 4 p.m.

ADDRESSES: Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: John Dow, (719) 269–8500.

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 the Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics include: Manager updates on current land management issues including; presentations and discussions on the Colorado BLM Noxious Weed Program, Greater Arkansas Cooperative Weed Management Program and the South Park Land Tenure Adjustment Plan Amendment.

All meetings are open to the public. The public is encouraged to make oral comments to the Council at 9:30 a.m. or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes and agenda (10 days prior to each meeting) are also available at: *http://www.blm.gov/rac/co/frrac/co_fr.htm.*

Dated: December 11, 2007.

Linda McGlothlen,

Acting Royal Gorge Field Manager.

[FR Doc. E7–24570 Filed 12–18–07; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–963–1410–FQ; F–025943]

Public Land Order No. 7682; Partial Revocation of Public Land Order No. 3708, as modified by Public Land Order No. 6709; AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Public Land Order, as modified, insofar as it affects approximately 63 acres of land withdrawn from all forms of appropriation under the public land laws, including the mining laws for the protection of the Gilmore Satellite Tracking Station at Gilmore Creek northeast of Fairbanks, Alaska. The land is no longer needed for the purpose for which it was withdrawn.

DATES: *Effective Date:* December 19, 2007.

FOR FURTHER INFORMATION CONTACT: Terrie D. Evarts, Bureau of Land Management, Alaska State Office, 222 W. Seventh Avenue, # 13, Anchorage, Alaska 99513–7504, 907–271–5630.

SUPPLEMENTARY INFORMATION: The National Oceanic and Atmospheric Administration has determined that a 63-acre parcel on the east boundary of the withdrawal is excess to their needs.

Upon revocation the State of Alaska application for selection made under the Alaska Statehood Act and the Alaska National Interest Lands Conservation Act becomes effective without further action by the State, if such land is otherwise available. Otherwise the land in the revocation will be subject to the terms and conditions of Public Land Order No. 5186, as amended, and any other withdrawal, applications, or segregation of record.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 3708, as modified by Public Land Order No. 6709, which withdrew public land from all forms of appropriation under the public land laws, including the mining laws, but not from leasing under the mineral leasing laws, is hereby revoked only insofar as it affects the following described land:

Fairbanks Meridian

T. 2 N., R. 2 E.,

sec. 20, commencing at the closing Corner marked by a 2½″ aluminum cap on an aluminum pipe stamped E–ES–MS2008 and being on the south boundary of sec. 20, T. 2 N., R. 2 E., and common to the north boundary of Mineral Survey No. 2008; proceed N 0° 10′ 01″ W along the west boundary of Tract C–3 as depicted on the Alaska State Cadastral Survey Plat filed May 24, 1994 as Instrument Number 94–72 in Fairbanks Recording District a distance of 1,455 feet to the True Point of Beginning; then continue N 0° 10′ 01″ W along the west boundary of Tract C–3 approximately 588 feet to an additional closing corner of Sec. 20 marked by an aluminum cap on an aluminum pipe stamped CC S 20, 4473–S 1993, Corner #1; then proceed N 0°10′46″ W along the aforementioned Tract C–3 a distance of about 2,950 feet to the E 1/16 corner common to secs. 17 and 20 marked by BLM with a brass cap in 1966 and 1987, Corner #2; then proceed along the section line common to secs. 17 and 20 approximately 660 feet to a point marked by an aluminum cap on an aluminum pipe stamped 17/20 E W Property Corner 1/64 NOAA 705–S; then continue west along the section line approximately 155 feet to a point that has been flagged and is located approximately 144 feet east of an existing power line at approximate latitude 64° 59.610′, longitude 147° 23.151′, Corner #3; then proceed S 03° 21′ 32″ W approximately 2,362 feet to a point, Corner #4; then proceed S 40° 06′ 01″ E approximately 1,540 feet to the True Point of Beginning. The area described contains approximately 63 acres.

2. The State of Alaska application for selection made under Section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (2000), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (2000), becomes effective without further action by the State upon publication of this Public Land Order in the **Federal Register**, if such land is otherwise available. Land selected by, but not conveyed to, the State will be subject to Public Land Order No. 5186, as amended, and any other withdrawal or segregation of record.

Dated: December 10, 2007.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E7–24560 Filed 12–18–07; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–220–1430–ET; NMNM 66022]

Public Land Order No. 7686; Extension of Public Land Order No. 6675; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order No. 6675 for an additional 20-year period. This extension is necessary to continue the protection of the Bureau of Land Management's Quartzite and County Line Recreational Sites along the Rio Grande in Taos and Rio Arriba Counties.

DATES: *Effective Date:* May 6, 2008.

FOR FURTHER INFORMATION CONTACT: Lora Yonemoto, BLM Taos Field Office, 226 Cruz Alta Road, Taos, New Mexico 87571, 505–751–4709.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 6675 (53 FR 16269), which withdrew 264.39 acres of public lands from settlement, sale, location or entry under the general land laws including the mining laws to protect the recreational values and Federal investment in improvements at the Fishing Hole Recreational Site (now named Quartzite) and County Line Recreational Sites, is hereby extended for an additional 20-year period.

2. Public Land Order No. 6675 will expire on May 5, 2028, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: November 13, 2007.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E7–24558 Filed 12–18–07; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–5870–EU; N–66141; 8–08807; TAS: 14X5260]

Notice of Realty ACTION: Direct (Non-Competitive) Sale of Public Land and Opening Order in Humboldt County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: One parcel of public land (Parcel N–66141), located southwest of Winnemucca, Nevada and approximately 177.31 acres, has been examined and found suitable for disposal utilizing direct sale procedures. The authority for the sale is found under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), (43 U.S.C. 1713 and 1719).

A prior Notice of Realty Action (Notice) was published in the **Federal Register** on July 13, 2007, Volume 72, Number 134, Page 38612. That Notice contained an error in the legal description of the lands proposed for sale. This Notice serves to correct that error in the appropriate legal description to be offered for sale under N–66141.

DATES: Interested parties may submit comments to the Bureau of Land Management (BLM) regarding the proposed sale of the land until February 4, 2008.

ADDRESSES: Mail written comments to the BLM Field Manager, Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, NV 89445.

FOR FURTHER INFORMATION CONTACT: Lewis Trout, (775) 623–1500.

SUPPLEMENTARY INFORMATION: Parcel N–66141 is located approximately six miles west of the city of Winnemucca, Nevada, west of Airport Road, south of and adjacent to the Union Pacific

Railroad tracks, and is described as follows:

Mount Diablo Meridian, Nevada.

T. 35 N., R. 37 E.,
sec. 16, lots 3, 12, 15, 16, 17, 18, 19, 22, and 23.
The area described contains 177.31 acres, more or less.

This parcel of public land is proposed for sale to the City of Winnemucca, Nevada, at no less than the appraised fair market value (FMV) of $180,000, as determined by the authorized officer. An appraisal report has been prepared by a State-certified appraiser for the purposes of establishing FMV.

Consistent with section 203 of FLPMA, a tract of the public land may be sold where, as a result of approved land use planning, the sale of the tract meets the disposal criteria of that section. The lands described above are identified as suitable for disposal in the BLM Sonoma-Gerlach Management Framework Plan (MFP), signed on July 9, 1982, and in the BLM Paradise-Denio and Sonoma-Gerlach Management Framework Plan Lands Amendment (Amendment), signed on January 15, 1999. The proposed disposal action is consistent with the objectives, goals, and decisions of the MFP and Amendment. MFP objective and decision L2.2 provides that the Winnemucca Field Office should dispose of this property to local governmental entities as identified by a local government, consistent with community plans.

This sale meets the criteria found in 43 CFR 2710.0–3(a)(2) which states: ''Disposal of such tract shall serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on lands other than public lands and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.'' The City of Winnemucca needs these lands to provide rail transportation to the city-developed industrial park and for proposed airport expansion.

The disposal (sale) of Parcel N–66141 also meets the criteria found under 43 CFR 2710.0–3(a)(3), which authorizes disposal where, ''Such tract, because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency.'' The lands are isolated, surrounded by private lands, or are intermingled with private lands as to make them difficult to manage for any Federal purpose. Parcel N–66141 is bordered on the north by the Union Pacific Railroad, on the east and south by city-owned property, and on the west by private property. There is no existing legal access to the subject lands.

Regulation 43 CFR 2711.3–3(a) provides that, ''Direct sales (without competition) may be utilized, when in the opinion of the authorized officer, a competitive sale is not appropriate and the public interest would best be served by a direct sale. Examples include, but are not limited to: (1) A tract identified for transfer to State or local government * * * '' As noted above, these lands were identified in the MFP as to be disposed of to only a local governmental entity.

The Winnemucca Field Office prepared a preliminary Environmental Assessment (EA). All comments received have been considered and incorporated into the EA and Decision Record. As previously stated the Notice regarding this proposed sale was published in the **Federal Register** on July 13, 2007. The BLM received no comments from the public regarding this Realty Action. The EA Number NV–020–06–EA–08, Decision Record, Environmental Site Assessment, maps, and approved appraisal report covering the proposed sale, are available for review at the BLM, Winnemucca Field Office, in Winnemucca, Nevada, at the address listed above.

Termination of Exchange Segregation

Lands described in this Notice were previously segregated under Exchange file N–80983, but a decision has been made not to proceed with this exchange. This Notice officially terminates that Exchange Segregation of the described lands. Pursuant to 43 CFR 2201.1–2(c)(2), this Notice will also serve as an opening order to restore the above described lands to operation of the sale provisions of Sections 203 and 209 of the FLPMA, (43 U.S.C. 1713 and 1719), and not the general mining laws, as of 7:30 a.m. Pacific Standard Time (PST) on December 19, 2007.

Sales Segregation

Publication of this Notice in the **Federal Register** segregates the subject land from all forms of appropriations under the public land laws, including the general mining and mineral leasing laws, except sale under Sections 203 and 209 of FLPMA. The segregation will terminate upon issuance of the patent, upon publication in the **Federal Register** of a termination of the segregation, or on December 21, 2009, whichever occurs first.

Terms and Conditions of Sale

The patent issued would contain the following numbered reservations, covenants, terms, and conditions:

1. A right-of-way thereon for ditches or canals constructed by authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);
2. Oil, gas, and geothermal resources are reserved from the land sold. Permittees, licensees, and lessees retain the right to prospect for, mine, and remove the oil, gas, and geothermal resources owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights;
3. All valid existing rights;
4. Right-of-way Nev–042767 for aerial transmission line purposes authorized granted to Sierra Pacific Power Company, its successors or assigns, pursuant to the Act of March 4, 1911, (43 U.S.C. 961);
5. Right-of-way N–41642 for aerial transmission line purposes authorized granted to Sierra Pacific Power Company, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);
6. The patentee, by accepting patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind arising from the past, present, or future acts or omissions of the patentee, its employees, agents, contractors, lessees, or any third-party arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property resulting in: (1) Violations of Federal, State, and local laws and regulations that are now, or in the future become, applicable to the real property; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), pollutant(s) or contaminants(s), and/or petroleum product(s) or derivative(s) of a petroleum product, as defined by Federal and State environmental laws, off, on, into, or under land, property, and other interests of the United States; (5) Other activities by which solid or hazardous substance(s), pollutant(s) or contaminants(s), and/or petroleum product(s) or derivative(s) of a petroleum product, or waste(s), as defined by Federal and State environmental laws, are generated,

released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substance(s) or waste(s), pollutant(s) or contaminants(s), and/or petroleum product(s) or derivative(s) of a petroleum product; or (6) natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction; and,

7. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (43 U.S.C. 9620(h)), as amended by the Superfund Amendments and Reauthorization Act of 1988 (100 Stat. 1670), notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor have any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, expressed or implied, is given by the United States as to the title, physical condition, or potential uses of the parcel of land proposed for sale, and the conveyance of any such parcel will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable Federal, State, and local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

In the event of a sale, the unreserved mineral interests will be conveyed simultaneously with the sale of the land. These unreserved mineral interests have been determined to have no known mineral value pursuant to 43 CFR 2720.0–6, 43 CFR 2720.2(a), and 43 CFR 2720.2(b). Acceptance of the sale offer will constitute an application for conveyance of those unreserved mineral interests. The purchaser will be required to pay a $50 non-refundable filing fee for conveyance of mineral interests. The purchaser will have 30 days from the date of receiving the sale offer to accept the offer and to submit a deposit of 20 percent of the purchase price, and the $50 filing fee for conveyance of mineral interests. The purchaser must remit the remainder of the purchase price within 180 days from the date of the sale. Payments must be by certified check, postal money order, bank draft, or cashier's check payable to the U.S. Department of the Interior—BLM. Failure to meet conditions established for this sale will void the sale and any monies received will be forfeited.

Public Comments

The subject parcel of land will not be offered for sale prior to the 60-day publication of this Notice of Realty Action. For a period until February 4, 2008, interested persons may submit written comments to the BLM Winnemucca Field Office at the address listed above. Facsimiles, telephone calls, and electronic mail are unacceptable means of notification. Only written comments received by postal service or overnight mail to the Field Manager, BLM Winnemucca Field Office will be considered properly filed.

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 may 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.

Any adverse comments will be reviewed by the Nevada State Director, who may sustain, vacate, or modify this realty action and issue a final determination.

(Authority: 43 CFR 2711.1–2(a))

Dated: December 12, 2007.

Gail G. Givens,

Field Manager, Winnemucca.

[FR Doc. E7–24524 Filed 12–18–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–ES; NMNM 118224]

Notice of Realty Action

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable approximately 80.24 acres of public land in Dona Ana County, New Mexico for classification for lease or subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (44 Stat. 741, as amended; 43 U.S. C. 869 *et seq.*) and Section 212 of the Federal Land Policy and Management Act (FLPMA of 1976, as amended). Las Cruces Public Schools propose to use the land for a K–5 elementary school and a 6–8 grade middle school and playgrounds.

DATES: Interested parties may submit written comments regarding the proposed lease/conveyance or classification of the lands until February 4, 2008.

ADDRESSES: Send written comments to the District Manager, BLM, Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Al Chavez, Realty Specialist at the above address or on (575) 525–4376.

SUPPLEMENTARY INFORMATION: In accordance with Section 7 of the Taylor Grazing Act, as amended, 43 U.S.C. 315f, the following described land has been examined and found suitable for classification for a non-profit, public purpose—specifically a site for a K–5 elementary school and a 6–8 grade middle school and playgrounds owned, operated and organized by Las Cruces Public Schools. The land is hereby classified accordingly. The parcel of public land, located north of Las Cruces, is described as follows:

New Mexico Principal Meridian

T. 22 S., R. 2 E., Section 10, NE1/4SE1/4, SW1/4SW1/4

The area described contains 80.24 acres, more or less, in Dona Ana County.

Las Cruces Public Schools propose to develop the land to construct an elementary school and middle school and playgrounds for the purpose of meeting educational needs in a rapidly growing community. The site would be leased for a period of 5 years with the option to purchase after the sites are developed according to the Las Cruces District's 5-Year Master Plan. Conveying title to the affected public land is consistent with current BLM land use planning. The lease or conveyance, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

3. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

4. All minerals shall be reserved to the United States, together with the

right to prospect for, mine, and remove the minerals.

5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal land and interests therein.

Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9620 (h)) CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988 (100 Stat. 1670), notice is hereby given that the above-described land has been examined and no evidence was found to indicate that any hazardous substances had been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property. Detailed information concerning this project, including, but not limited to documentation relating to compliance with applicable environmental and cultural resource laws, is available for review at the address above.

On December 19, 2007, the land described will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

Classification Comments: Interested parties may submit comments involving the suitability of the land for the K–5 elementary school and the 6–8 grade middle school. Comments on the classification are restricted to whether the land is physically suited for the proposal, where the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Additional Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for school sites. 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. Any adverse comments will be reviewed by the BLM State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective on February 19, 2008.

Dated: December 13, 2007.

E. Dwight Fielder,

Acting District Manager.

[FR Doc. E7–24577 Filed 12–18–07; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–100–07–1610–DQ]

Notice of Intent to Prepare Additional Air Quality Analysis Information for the Little Snake Draft Resource Management Plan and Environmental Impact Statement (Draft EIS)

AGENCY: Little Snake Field Office, Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA, 42 U.S.C. 4321 *et seq.*), the Bureau of Land Management (BLM), Little Snake Field Office, Colorado, announces its intent to prepare additional air quality information. On February 9, 2007, the BLM published a Notice of Availability in the **Federal Register** (Vol. 72, No. 27, pages 6284–6285) announcing the release of the Draft EIS for public review and comment. The 90-day comment period closed May 16, 2007. During the public comment period, the Environmental Protection Agency, in consultation with BLM, identified areas where additional air quality information would improve the existing analysis in the Draft EIS. As a result, the BLM is preparing an additional air quality analysis. When the additional air quality analysis has been completed, the BLM will present the information for public review and comment. At that time, BLM will only accept comments from the public pertaining to the new air quality information.

DATES: The BLM anticipates making the additional air quality analysis information available to the public for a 45-day comment period around May 2008. The BLM will publish a Notice of Availability in the **Federal Register** when the additional air quality analysis is ready for release for public comment. Announcements will also be made through local media by news releases and posted information on the Little Snake Resource Management Plan Revision Web site: *http://www.blm.gov/co/st/en/fo/lsfo/plans/rmp_revision.html*.

FOR FURTHER INFORMATION CONTACT: Jeremy Casterson, Project Manager, Little Snake Field Office, 455 Emerson St., Craig, Colorado 81625, or by telephone at (970) 826–5071.

SUPPLEMENTARY INFORMATION: Public comments submitted on the additional air quality analysis for the Draft EIS, including names, e-mail addresses, and street addresses of the respondents, will be available for public review and disclosure at the above address during regular office business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 12, 2007.

Sally Wisely,

State Director.

[FR Doc. E7–24532 Filed 12–18–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–83979; 8–08807; TAS: 14X1109]

Notice of Public Meetings for Proposed Withdrawal in Nye and Clark Counties, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: The Secretary of the Interior proposes to withdraw on behalf of the Bureau of Land Management (BLM) approximately 944,343 acres of public lands from settlement, sale, location, entry, or patent under the United States mining laws for a period of 20 years for the protection of desert tortoise habitat, archaeological and cultural resources, and special wildlife and riparian values on 24 Areas of Critical Environmental Concern (ACEC) in accordance with Sec. 204 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1714 (2000). In accordance with 43 CFR 2310.3–1(b), (2)(v), this notice

announces public meetings on the proposed withdrawal.

DATES AND TIMES: Public meetings will be held on Tuesday, January 22, and Thursday, January 24, 2008. Times for both meetings will be 6 p.m. to 8 p.m.

ADDRESSES: The January 22 meeting will be held at the BLM Las Vegas Field Office (Conference Room A), 4701 N. Torrey Pines Drive, Las Vegas, Nevada. The January 24 meeting will be held at the Bob Ruud Community Center (Room B), 150 N. Highway 160, Pahrump, Nevada. For those unable to attend the meetings, comments may be mailed to the Field Manager, BLM Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130. The 90-day comment period ends January 30, 2008.

FOR FURTHER INFORMATION CONTACT: Patrick Putnam, BLM Las Vegas Field Office, (702) 515–5042.

SUPPLEMENTARY INFORMATION: The purpose of the public meetings is to allow the public the opportunity to comment on the proposed withdrawal, disclose the mineral potential within the ACECs, and to describe how the proposed withdrawal would continue the protection and preservation of wildlife habitat and historic properties located within ACEC boundaries. Furthermore, as stated in 43 CFR 2310.3–1(c)(iii), these meetings will help the BLM develop information which would otherwise be difficult or costly to accumulate.

A Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada, was published in the **Federal Register** on November 1, 2007. That notice established a 90-day public comment period that will end on January 30, 2008.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views at the scheduled meetings or may do so in writing to the BLM Las Vegas Field Office. Facsimiles, telephone calls, and e-mails are unacceptable means of notification. All comments will be collected and minutes recorded throughout the course of the meetings. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM prior to the meeting.

Comments, including names and street addresses of respondents, will be available for public review at the BLM Las Vegas Field Office, at the address noted above during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comments be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

(Authority: 43 CFR 2310.3–1)

Dated: December 12, 2007.

Patrick Putnam,

Acting Assistant Field Manager, Renewable Resources, Las Vegas Field Office.

[FR Doc. E7–24522 Filed 12–18–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Alutiiq Museum and Archaeological Repository, Kodiak, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Alutiiq Museum and Archaeological Repository, Kodiak, AK. The human remains were removed from Larsen Bay, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Alutiiq Museum and Archaeological Repository professional staff in consultation with representatives of the Native Village of Larsen Bay.

In May of 1991, human remains representing a minimum of one individual were removed from the private property of Chris Knowles in the City of Larsen Bay, AK. The human remains were turned over to the Village Public Safety Office and then shipped to Kodiak, AK, where Alaska State Troopers determined the human remains to be prehistoric (file ı940037897). In 1994, after another investigation was done on the human remains, the human remains were transferred to the Kodiak Area Native Association's Alutiiq Culture Center. In 1995, the human remains were transferred to the Alutiiq Museum and Archaeological Repository (number AM41). No known individual was identified. No associated funerary objects are present.

The 1994 investigation determined that the human remains are Native American, most likely Alutiiq. Based on these findings, officials of the Alutiiq Museum reasonably believe that the human remains are Alutiiq and related to the modern Native population of the Kodiak region. Specifically, the human remains are from an area traditionally used by the Native Village of Larsen Bay.

Officials of the Alutiiq Museum and Archaeological Repository have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Alutiiq Museum and Archaeological Repository also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Native Village of Larsen Bay.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Sven Haakanson, Jr., Executive Director, Alutiiq Museum and Archaeological Repository, 215 Mission Rd. Suite 101, Kodiak, AK 99615, telephone (907) 486–7004, before January 18, 2008. Repatriation of the human remains to the Native Village of Larsen Bay may proceed after that date if no additional claimants come forward.

Alutiiq Museum and Archaeological Repository is responsible for notifying the Native Village of Larsen Bay that this notice has been published.

Dated: November 6, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–24647 Filed 12–18–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Amerind Foundation Museum, Amerind Foundation, Inc., Dragoon, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Amerind Foundation Museum, Amerind Foundation, Inc., Dragoon, AZ, that meet the definition of ''sacred objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 140 objects include 38 painted wooden hoops; 17 painted wooden wands; 17 miscellaneous mask–making raw materials (sticks, feathers, leather); 16 ''bowed crosses;'' 16 ceremonial Gaan masks; 9 painted wooden crosses; 7 plant stem bundles (sage, fir, bear grass); 5 painted wooden staves; 5 wooden drumsticks; 4 painted ''headed'' sticks; 3 wooden bullroars; 1 metal tulapai strainer; 1 metal bread cooker; and 1 eagle feather bundle. The cultural items are from the William Neil Smith Apache Collection. The collection is well documented by photographs and journals, and supplemented by interviews conducted with Mr. Smith by the staff of the Arizona State Museum in Tucson.

In the spring of 1942, the 140 cultural items were removed from caves in the vicinity of Canyon Day on the Fort Apache Reservation in eastern Arizona by William Neil Smith, a collector from Tucson, AZ. In October 1942, the collection was loaned by Mr. Smith to the Arizona State Museum on the condition that it would be returned when Mr. Smith was released from active duty in the military. From 1944 to 1945, letters were exchanged between the director of the Arizona State Museum, superintendent of the Fort Apache Reservation, and Chair of the Fort Apache Tribal Council, and it was determined at that time that the collections were removed illegally. On October 1, 1945, the Fort Apache Tribal Council voted unanimously to donate the entire collection to the Arizona State Museum, to use them as the museum saw fit. Accordingly, the collection was accessioned into the permanent collection of the Arizona State Museum, and there are no further entries on the collection in the Arizona State Museum files until 1959.

In November 1959, in response to a request from Mr. Smith to reclaim his 1942 loan from the Arizona State Museum, museum staff informed Mr. Smith that the Apache ceremonial objects had been donated to the museum by the Apache Tribal Council and, therefore, would not be returned. However, the collection was returned to Mr. Smith. On November 11, 1963, the collection was sold in its entirety to a member of the Amerind Foundation Board of Directors. The member donated the materials to the Amerind Foundation where it was accessioned into the foundation's permanent collection (Accession Nos. 4499–4583). In April 1966, the Arizona State Museum provided the Amerind with copies of photographs, catalog cards, and other records pertaining to the cultural items.

In June 2005, the Amerind Foundation consulted with tribal representatives of the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai–Apache Nation of the Camp Verde Indian Reservation, Arizona.

In August 2005, the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona formally requested the return of all materials in the collection as sacred objects for the practice of traditional Native American religion by their present–day adherents. The cultural items were originally made and used by Western Apache religious leaders during the annual ceremonial cycle. These ceremonial activities remain an important part of White Mountain Apache daily life. According to White Mountain Apache cultural tradition, once the objects were used they were to be curated according to traditional religious practices and never used or seen again by humans. In 2006, the Amerind Foundation Board of Directors voted unanimously to treat the William Neil Smith Collection as stolen property and to return all 140 cultural items to the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.

Officials of the Amerind Foundation Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the 140 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present–day adherents. Officials of the Amerind Foundation Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects should contact Dr. John A. Ware, Executive Director, Amerind Foundation Museum, Amerind Foundation, Inc., P.O. Box 400, 2100 North Amerind Road, Dragoon, AZ 85609, telephone (520) 586–3666, before January 18, 2008. Repatriation of the sacred objects to the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona may proceed after that date if no additional claimants come forward.

The Amerind Foundation is responsible for notifying the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai–Apache Nation of the Camp Verde Indian Reservation, Arizona that this notice has been published.

Dated: November 6, 2007

Sherry Hutt,

Manger, National NAGPRA Program.

[FR Doc. E7–24645 Filed 12–18–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Denver Museum of Nature & Science, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Denver Museum of Nature & Science, Denver, CO, which

meet the definitions of ''sacred object'' and ''object of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The first cultural item is a basketry hat called Yeil Shaada or Raven Hat (AC.11544). The Raven Hat is made of carved spruce root, plain twining, and false embroidery. A carved raven head is on top at the front with marten or mink fur extending along the crown top and tail attached at the back. The sides of the hat have five red lines in stepped design, black lined raven head above, double purple lines below, and orange checkerboard pattern along the lower edge. Leather ties are on each side. It measures approximately 25 cm in height, 36 cm in length, and 14 cm in width. The catalogue records note that the hat was ''used for dancing'' and speculates that it was a ''shaman's basketry hat, late 19th century.'' Records also note that the cultural item was ''purchased from Tlingit family, Haines, Alaska'' by the Michael R. Johnson Gallery, Seattle, WA, in 1976. The cultural item was accessioned by the museum in 1983. The hat was placed in the museum's Northwest Coast Ceremonial Season Exhibit until 1995.

The second cultural item is a ceremonial beaded shirt called Lingit Tlein Kudas' or Big Man's Shirt (AC.11444). The shirt is long sleeved navy wool with straight sides likely dating to the early 1900s. The yoke, collar, cuffs, front opening, and lower ends are beaded in designs of yellow, white, navy, turquoise, and green set against red wool cloth bordered with a black braid edged with white beads. This unique style of beadwork was done by Tlingit artisans in the late 1800s through contact with Athapaskan and Euro–American traders, though drawn from much older styles of tunics. The shirt measures 98 cm in length and 71 cm in width. The catalogue records note that the shirt was ''acquired from Mrs. Mary Klanott, Klukwan, Alaska, 1974'' by Michael R. Johnson Gallery, Seattle, WA, on October 7, 1974. The shirt was accessioned by the museum in 1983. Through the mid 1990s, the shirt was used in the museum's Northwest Coast Ceremonial Season Exhibit.

During consultation, representatives of the Central Council of the Tlingit & Haida Indian Tribes recounted the social and spiritual importance of both cultural items and the rules of Tlingit cultural property law. A member of the Lukaax.adi Clan sang the traditional song that goes with these objects. Documentation was presented of the objects' histories from the early 20th century, their import in ongoing ceremonial practices, and their significance and custodianship by Tlingit families and the Raven House of the Lukaax.adi Clan. A genealogy was also given demonstrating continuous ownership of the objects until their transfer in the 1970s. A photograph from approximately 1950 shows the Raven Hat in ceremonial context. A photograph from approximately 1937 shows the Big Man's Shirt and Raven Hat worn by clan members in ceremonial context. Tlingit of the Lukaax.adi Clan, Raven House, Haines, AK, are members of the Central Council of the Tlingit & Haida Indian Tribes.

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the two cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present–day adherents. Officials of the Denver Museum of Nature & Science have also determined that, pursuant to 25 U.S.C. 3001 (3)(D), the two cultural items have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the sacred objects/objects of cultural patrimony and the Central Council of the Tlingit & Haida Indian Tribes.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects/objects of cultural patrimony should contact Dr. Chip Colwell–Chanthaphonh, Curator of Anthropology, NAGPRA Officer, Department of Anthropology, Denver Museum of Nature & Science, 2001 Colorado Boulevard, Denver, CO 80205, telephone (303) 370–6378, before January 18, 2008. Repatriation of the sacred objects/objects of cultural patrimony to the Central Council of the Tlingit & Haida Indian Tribes on behalf of the Lukaax.adi Clan, Raven House of Haines, AK, may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the Central Council of the Tlingit & Haida Indian Tribes that this notice has been published.

Dated: November 7, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–24611 Filed 12–18–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Field Museum of Natural History, Chicago, IL. The human remains and associated funerary objects were removed from Ontario County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d) (3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Field Museum of Natural History professional staff in consultation with representatives of the Seneca Nation of New York, Seneca–Cayuga Tribe of Oklahoma, and Tonawanda Band of Seneca Indians of New York.

At an unknown date prior to 1960, human remains representing a minimum of two individuals were removed from the McClure Farm in Ontario County, NY, by John G. Voigt. In 1960, the human remains were accessioned into the Field Museum of Natural History collections as a gift from Robert Grafe. No known individuals were identified. The three associated funerary objects are one triangular copper arrow point with hole, one bear tusk, and one metal bullet mold.

The human remains are identified as Native American based on the specific cultural and geographic attribution in Field Museum of Natural History records. The human remains and associated funerary objects are

identified as ''Iroquois'' in Robert Grafe's notes. The McClure Farm is located in Ontario County, NY, (likely in the town of Phelps), which was the traditional territory of the Seneca people of the Iroquoian Confederacy. The human remains are dated to the historic period, based on the date of manufacture for the associated funerary objects. Descendants of the Seneca people are members of the Seneca Nation of New York, Seneca–Cayuga Tribe of Oklahoma, and Tonawanda Band of Seneca Indians of New York.

Officials of the Field Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Field Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the three objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Field Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Seneca Nation of New York, Seneca–Cayuga Tribe of Oklahoma, and Tonawanda Band of Seneca Indians of New York.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Helen Robbins, Repatriation Specialist, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605–2496, telephone (312) 665–7317, before January 18, 2008. Repatriation of the human remains and associated funerary objects to the Seneca Nation of New York, Seneca–Cayuga Tribe of Oklahoma, and Tonawanda Band of Seneca Indians of New York may proceed after that date if no additional claimants come forward.

The Field Museum of Natural History is responsible for notifying the Seneca Nation of New York, Seneca–Cayuga Tribe of Oklahoma, and Tonawanda Band of Seneca Indians of New York that this notice has been published.

Dated: November 6, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–24614 Filed 12–18–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Hastings Museum of Natural and Cultural History, Hastings, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Hastings Museum of Natural and Cultural History (Hastings Museum), Hastings, NE. The human remains were removed from the Cass, Franklin, Nance, Sarpy Counties, NE and Republican County, KS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Hastings Museum professional staff in consultation with representatives of the Pawnee Nation of Oklahoma and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

On September 17, 1922, human remains representing a minimum of one individual were removed from the Milo Hill farm (25FR1) in Franklin County, NE. At an unknown date, human remains representing a minimum of four individuals were removed from the same site. The human remains for all five individuals were donated to the Hastings Museum by Milo Hill and cataloged between 1926 and 1931 (02873, 03259, 03260). No known individuals were identified. No associated funerary objects are present.

Research conducted at the Nebraska State Historical Society identifies the Milo Hill Site (25FR1) as similar to other Central Plains Tradition sites. Museum officials have determined based on museum records, Pawnee oral tradition, and anthropological research that the Central Plains Tradition people are ancestors to the Arikara and Pawnee, and possibly the Wichita.

In September 1913, human remains representing a minimum of three individuals were removed from Plattsmouth Ossuary (25CC9001) in Cass County, NE, by Dr. E.H. Barbour, University of Nebraska, and taken to the University of Nebraska State Museum. The human remains were traded to A.M. Brooking, founder of the Hastings Museum. Mr. Brooking later donated his collection to the Hastings Museum and cataloged the human remains between 1926 and 1931 (01713). No known individuals were identified. No associated funerary objects are present.

University of Nebraska State Museum attributed the Plattsmouth Ossuary site to the Nebraska Culture of the Central Plains Tradition due to the burial location and the manner of group interment. Museum officials have determined, based on museum records, that the human remains are associated with the Plattsmouth Ossuary and therefore are affiliated with the Central Plains Tradition. Museum officials have determined based on Pawnee oral tradition and anthropological research that the Central Plains Tradition people are ancestors to the Arikara and Pawnee, and possibly the Wichita.

On May 8, 1908, human remains representing a minim of two individuals were removed from Wallace Mound (25SY67) in Sarpy County, NE, by J.E. Wallace. The human remains were donated to the museum by Mr. Wallace and cataloged between 1926 and 1931 (01609). No known individuals were identified. No associated funerary objects were present.

The Wallace Mound Site (25SY67) was located near Bellevue's railroad station up a ridge from Coffin Springs. Mr. Wallace began excavations and later contacted the University of Nebraska State Museum. Most of the human remains were donated to University of Nebraska State Museum where the site was identified as a Central Plains Tradition site. Hastings Museum officials agree with this identification of the Wallace Mound site.

On an unknown date, human remains representing a minimum of two individuals were removed from unknown sites near Genoa in Nance County, NE. The human remains were donated to the Hastings Museum by A.M. Brooking between 1926 and 1931 (03268, 04789). No known individuals were identified. No associated funerary objects were present.

On an unknown date, human remains representing a minimum of one individual were removed from a grave on the Frank Lowe farm, 2 miles north of Genoa, Nance County, NE. The human remains were given to the Hastings Museum by Frank Lowe and cataloged in 1934 (12813). No known individual was identified. No associated funerary objects are present.

On an unknown date, human remains representing a minimum of one

individual were removed from a Skidi village near Genoa, Nance County, NE. The human remains were donated to the Hastings Museum by A.M. Brooking and cataloged in 1942 (22316). No known individual was identified. No associated funerary objects were present.

Numerous sites in Nance County are attributed to a number of cultures, including Central Plains Tradition and historic Pawnee. This is also the location of the last land the Pawnee Tribe occupied prior to moving to Oklahoma. Museum officials have determined, based on museum records, that the human remains are likely associated with the Pawnee or Central Plains Tradition. Museum officials have determined based on Pawnee oral tradition and anthropological research that the Central Plains Tradition people are ancestors to the Arikara and Pawnee, and possibly the Wichita.

On an unknown date, human remains representing a minimum of one individual were removed from a site in Republican County, KS. The human remains were donated to the museum by an unknown donor and cataloged in 1936 (14694). No known individual was identified. No associated funerary objects were present.

Republican County has been the home of the Central Plains Tradition and the Kitkehahki (Republican) band of the Pawnee. The human remains may be associated with the large Pawnee village at the Kansas Monument site. Museum officials have determined, based on museum records, that the human remains are likely associated with the Pawnee or Central Plains Tradition.

The Central Plains Tradition was a culture that lived on the plains of Nebraska and Kansas. The culture abruptly enters the archeological records about A.D. 1,000. By about A.D. 1,400, the people leave the area and head north. Their move brought them into land occupied by the Middle Missouri Culture (in what is now the Dakotas), which, to some extent, merged with other groups over time. The new culture that emerged from this contact is probably the people who are ancestors to the Arikara and Pawnee, and possibly the Wichita. Museum officials have determined based on museum records, Pawnee oral tradition, and anthropological research that the Central Plains Tradition people are ancestors to the Arikara and Pawnee, and possibly the Wichita. The Arikara people eventually settled with the Mandan and Hidatsa and are now members of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. Descendants of the Pawnee are members of the Pawnee Nation of Oklahoma. The descendants of the Wichita are members of the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

The Pawnee Nation of Oklahoma; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma have entered into an agreement that human remains and funerary objects located between the Missouri River and the Smokey Hill River shall be claimed by the Pawnee Nation of Oklahoma.

Officials of the Hastings Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 15 individuals of Native American ancestry. Officials of the Hastings Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Pawnee Nation of Oklahoma; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Teresa Kreutzer–Hodson, Hastings Museum of Natural and Cultural History, 1330 N Burlington, PO Box 1286, Hastings, NE 68902, (402) 461–2399, before January 18, 2008. Repatriation of the human remains to the Pawnee Nation of Oklahoma may proceed after that date if no additional claimants come forward.

The Hastings Museum of Natural and Cultural History is responsible for notifying the Pawnee Nation of Oklahoma; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma that this notice has been published.

Dated: October 1, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–24613 Filed 12–18–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Hastings Museum of Natural and Cultural History, Hastings, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Hastings Museum of Natural and Cultural History (Hastings Museum), Hastings, NE that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

At an unknown time, cultural items were removed from an ossuary, known locally as the Alma Ossuary, in the area of Alma, Harlan County, NE. The 43 unassociated funerary objects are 1 antler implement, 1 unfinished pipe blank made of stone or clay, 1 stone drill, 8 stone scrapers, 2 stone flakes, 1 stone arrow point, 24 stone scrapers, 1 stone projectile point, 1 point or scraper, and 3 stone scrapers.

The antler implement was acquired by the Hastings Museum in an exchange with the John Bear Estate for Service's rendered and cataloged in 1939 (18406). The other 42 unassociated funerary objects were acquired by the museum from Robert Stevenson and cataloged in 1935 (14414, 14415, 14417, 14418, 14421).

At an unknown time, cultural items were removed from an ossuary from Orleans, Harlan County, NE, and acquired from the H.P. Honnold collection and cataloged in 1942. The unassociated funerary objects are 2,887 white shell beads of various sizes (22786).

In 1936, cultural items were removed from an ossuary on the Hunt farm near Orleans, Harlan County, NE, and donated to the museum by A.M. Brooking, museum founder, and cataloged in 1937. The 60 unassociated funerary objects are 33 round shell beads and 27 tubular bone beads of various sizes and strung on a wire (17423).

Research conducted at the Nebraska State Historical Society identifies a number of known archeological sites in Harlan County. Some sites are ossuaries and can be found in the area of Orleans and Alma. The cultural items are similar to other known ossuary material. The cultural items are also similar to known Plains Woodland and Central Plains

Tradition funerary objects and are likely from one of these cultures. Although the funerary objects can not be linked to a specific site, based on museum records, museum officials have determined that the cultural items were intentionally placed with human remains at burial.

At an unknown time, cultural items were removed from the Marshal Ossuary (25HN1) near Republican City in Harlan County, NE. The 1,065 unassociated funerary objects are 79 ground squirrel teeth, 1 partial animal bone, and 985 shell beads.

The ground squirrel teeth were donated to the Hastings Museum by A.M. Brooking and cataloged between 1926 and 1931 (03840). The one partial animal bone was purchased by the Hastings Museum from J.W. Markim and cataloged in 1933 (12348). The shell beads were possibly collected by A.M. Brooking and documented as being part of the museum collection in 1943 (22898). The Nebraska State Historical Society has culturally affiliated the Marshall Ossuary with either the Plains Woodland or Central Plains Tradition. Museum officials have determined, based on museum records, that the items were intentionally placed with human remains at burial. The cultural items are similar to other known funerary objects removed from this site.

At an unknown time, cultural items were removed from Skidi sites in the area of Palmer, Howard County, NE. The 24 unassociated funerary objects are 2 metal hinge pieces, 2 catlinite pipe bowls, 1 metal ring, 3 paint stones, 2 catlinite beads, 1clay bead, 1 bone tool, 1 copper bracelet, 1 metal bell, 1 glass bottle, 1 piece of copper, 1 piece of cedar, 2 bear teeth pendants, and 5 metal buttons.

The funerary objects were donated to the Hastings Museum by A.M. Brooking and cataloged between 1926 and 1931 (02445, 02462, 03406, 00494, 03297, 08061).

At an unknown time, cultural items were removed from ''Indian'' graves from the area near Palmer, Merrick County, NE. The 14 unassociated funerary objects are 2 pieces of galena, 3 metal fire steels, 5 meal rings, 3 bone paint applicators, and 1 piece of copper attached to wood.

The pieces of galena, metal fire steels, and metal rings were donated to the Hastings Museum by A.M. Brooking and cataloged between 1926 and 1931 (03409, 03230, 09899). The bone paint applicators and the copper piece were acquired by the Hastings Museum from George Debord and cataloged between 1926 and 1931 (09696).

Research conducted at the Nebraska State Historical Society identifies at least 15 sites in the area of Palmer. This area of the state is known to have been historically occupied by the Skidi band of the Pawnee, as well as older cultures. Although the funerary objects can not be linked to a specific site, museum officials have determined based on museum records, that the items were intentionally placed with human remains at burial. In addition, because the museum can document A.M. Brooking's work at the Palmer Site (25HW1), a known Skidi village, and that the funerary objects removed from this site are similar to those described above, the funerary objects from the Palmer area are likely associated with the Skidi band of the Pawnee.

At an unknown time, cultural items were removed from graves on the Greek Farm (25NC6/20), also known as Genoa Village, located near Genoa in Nance County, NE. The 47 unassociated funerary objects are 4 pipe bowls, 1 glass bottle, 2 fire steels, 1 catlinite pipe, 1 pair of scissors, 6 metal bells, 13 copper bracelets, 15 musket flints, 2 partially worked pieces of catlinite, 1 abrading stone, and 1 stone mallet.

Three pipe bowls and one glass bottle were purchased by the Hastings Museum from an unknown source and cataloged in 1934 (12814, 12818). The remaining unassociated funerary objects were purchased by the Hastings Museum from Mrs. Phil Cuba and cataloged in 1944 (24713 – 24715, 24717, 24719, 24722, 24724 – 24726). The Greek farm was the site of the last Pawnee villages. All four bands of the Pawnee lived at this site from A.D. 1859 – A.D. 1874, prior to the Pawnee relocation to Oklahoma. Based on museum records, museum officials have determined that the cultural items were intentionally placed with human remains at burial. The unassociated funerary objects are consistent with a historic burial site and have been determined to be affiliated with the Pawnee.

At an unknown time, cultural items were removed from graves at the Phil Cuba Site (25NC4) in Nance County, NE. The 128 unassociated funerary objects are 5 buttons, 2 wire coil arm bands, 16 earbobs, 3 hawk bells, 1 wood framed mirror, 1 fire steel, 1 pair of scissors, 7 copper bracelets, 75 faceted glass beads, 1 wooden bowl, 1 silver concho, 1 trigger guard for a firearm, 1 glass oil lamp base, 9 stone projectile points, 1 headdress, 1 metal ring, and 2 metal pieces from a shoe.

One button, one wire coil armband, one portion of an earbob, and two hawk bells were purchased by the Hastings Museum from Phil Cuba and cataloged in 1933 (11226). The wood framed mirror, fire steel, pair of scissors, three broken bracelets, faceted glass beads, and wooden bowl were purchased by the Hastings Museum from Phil Cuba and cataloged in 1934 (12617, 12618, 12621, 12622, 12635, 12815). The other metal coiled armband was purchased by the Hastings Museum from Phil Cuba and cataloged in 1937 (17361). Two copper bracelets, silver concho, trigger guard for firearm, parts of four earbobs, and glass oil lamp base were purchased by the Hastings Museum from Mrs. Phil Cuba and cataloged in 1940 (19842, 19483, 19484, 19485, 19486). The stone projectile points were purchased by the Hastings Museum from Mrs. Phil Cuba and cataloged in 1944 (24730). The headdress made of textiles, feathers, leather, and fur was donated to the Hastings Museum by Phil Cuba and cataloged in 1934 (13159). The 11 pieces of earbobs, 1 metal ring, 2 partial bracelets, 2 complete and 2 partial buttons, 1 hawk bell, and 2 metal pieces from a shoe were donated to the Hastings Museum by A.M. Brooking and cataloged in 1934 (13187, 13188).

Museum officials have determined, based on museum records, that the cultural items were intentionally placed with human remains at burial. Based on museum records, the unassociated funerary objects from the Phil Cuba site have been designated as similar to funerary objects from the Lower Loup Phase and historic Pawnee by the Nebraska State Historical Society. Furthermore, museum officials have determined that the unassociated funerary objects are similar to other cultural items from the site and are therefore culturally affiliated with the Pawnee.

At an unknown time, cultural items were removed from ''Indian'' graves near Genoa, Nance County, NE. The six unassociated funerary objects area two copper rings, three glass beads, and one clay pipe.

The copper rings were donated to the Hastings Museum by A.M. Brooking and cataloged between 1926 and 1931 (03466). The glass beads were donated to the Hastings Museum by A.M. Brooking and cataloged in 1941 (19978, 20512). The clay pipe bowl was donated to the Hastings Museum from an unknown source and cataloged in 1941 (20500).

The Genoa area is the location of the Pawnee reservation prior to the people relocating to Oklahoma. Museum officials have determined, based on museum records, that the cultural items were intentionally placed with human remains at burial. Furthermore, museum officials have determined that the unassociated funerary objects are

similar with other cultural items removed from Pawnee sites in the area of Genoa and are therefore culturally affiliated with the Pawnee.

At an unknown time, cultural items were removed from the A.T. Hill site (25WT1), also known as the Pawnee Pike Village, located in Webster County, NE. The 3 unassociated funerary objects are 1 metal button, 1 metal coin or medal, and 1 glass bottle.

The metal button is an 1800 U.S.C. metal button, which was donated by A.M. Brooking and cataloged in 1937 (17662). The metal coin or medal was acquired from W.M. Robb and cataloged in 1936 (16058). The glass essence of peppermint bottle was donated by an unknown donor and cataloged in 1931 (10363). The A.T. Hill site was sporadically occupied by the Kitkehahki (Republican) band of the Pawnee from A.D. 1700 – A.D. 1830. Based on museum records, museum officials have determined that the cultural items were intentionally placed with human remains at burial and are similar to other funerary objects removed from this site. Therefore, museum officials have culturally affiliated the unassociated funerary objects with the Pawnee. Descendants of the Pawnee are members of the Pawnee Nation of Oklahoma.

Officials of the Hastings Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 4,277 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Hastings Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Pawnee Nation of Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Teresa Kreutzer–Hodson, Hastings Museum of Natural and Cultural History, PO Box 1286, Hastings, NE 68902, telephone (402) 461–2399, before January 18, 2008. Repatriation of the unassociated funerary objects to the Pawnee Nation of Oklahoma may proceed after that date if no additional claimants come forward.

Hastings Museum is responsible for notifying the Omaha Tribe of Nebraska; Otoe–Missouria Tribe of Indians, Oklahoma; Pawnee Nation of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Sac & Fox Nation of Missouri in Kansas and Nebraska; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota that this notice has been published.

Dated: October 1, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–24622 Filed 12–18–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Horner Collection, Oregon State University, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Horner Collection, Oregon State University, Corvallis, OR that meet the definition of ''sacred objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The six cultural items are two basket caps, three baskets, and one pipe.

The Museum of Oregon Country, Oregon Agricultural College was renamed the John B. Horner Museum of the Oregon Country in 1936, and became commonly known as the Horner Museum. The Oregon Agricultural College was renamed the Oregon State College in 1937, and became Oregon State University in 1962. The Horner Museum closed in 1995. Currently, cultural items from the Horner Museum are referred to as the Horner Collection, which is owned by, and in the possession of, Oregon State University.

Horner Collection, Oregon State University professional staff consulted with representatives of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; Cow Creek Band of Umpqua Indians of Oregon; Hoopa Valley Tribe, California; Klamath Tribes, Oregon (formerly the Klamath Indian Tribe of Oregon); Pit River Tribe, California (includes XL Ranch, Big Ben, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias); Redding Rancheria, California; Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California; Smith River Rancheria, California; Yurok Tribe of the Yurok Reservation, California; and Kumeyaay Cultural Repatriation Commission, a non–federally recognized Indian group.

On November 30, 1972, Mrs. J. E. Barrett donated one basket cap and one tobacco basket. The two cultural items were originally part of a loaned collection of Indian baskets dated February 28, 1927. Basket caps are used in ceremonial dances that are placed on young female dancers and women singers as part of the Tolowa Dee–ni' regalia, and continue to be used during ceremonial dances such as Nee–dash ''Feather Dance'' or Wealth–display dance. Tobacco baskets store tobacco for the use of transmitting prayers up to the Creator during everyday prayer, as well as during ceremonial occasions.

On March 25, 1985, one storage basket and one basket cap from the collection of Thomas and Ann Stephens, Ashland, OR, were donated to the Horner Museum by Eileen Waring Dew (Mrs. Lawrence). Museum records state that the cultural items were made by northwestern California Indians between 1880 and 1900. A storage basket is a sacred item that is used to store many different herbs and sacred plants used in traditional healing practices. Current ceremonial practices include use of specific herbs and plants as healing remedies, purification, and are often burned during the dance while prayers are offered and transmitted to the Creator.

On July 14, 1986, Charles A. and Audrey L. Boice donated a collection of Indian baskets from the collection of Olivia and C.N. Edman of Marshfield, OR, to the Horner Collection. Museum records indicate the baskets are from southern Oregon and northern California. Representatives of the Smith River Rancheria, California have identified one basket as Tolowa Dee–ni' in affiliation and that it is used for the cooking of food, such as acorns for ceremonies and other important community events. Acorns are highly revered and during certain ceremonies the acorn is the only food allowable for dancers and shaman to consume.

At an unknown time and date, pipes were donated to the Horner Collection. Museum records show one pipe is tubular in design and the tag indicates

that it is from California. The pipe is identified as a sacred item traditionally and contemporarily used to smoke tobacco during prayer and/or for purification. Representatives of the Smith River Rancheria, California have identified the tubular shape of the pipe as typical of Tolowa Dee–ni' culture and as a sacred object.

Tribal representatives of the Smith River Rancheria, California have identified the six cultural items as Tolowa in cultural affiliation and as sacred items. Descendants of the Tolowa Dee–ni' people are members of the Smith River Rancheria, California.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the six cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of Horner Collection, Oregon State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and the Smith River Rancheria, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects should contact Sabah Randhawa, Executive Vice President and Provost, President's Office, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737–8260, before January 18, 2008. Repatriation of the sacred objects to Smith River Rancheria, California may proceed after that date if no additional claimants come forward.

The Horner Collection, Oregon State University is responsible for notifying the Bear River Band of the Rohnerville Rancheria, California; Big Lagoon Rancheria, California; Blue Lake Rancheria, California; Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Cher–Ae Heights Indian Community of the Trinidad Rancheria, California; Elk Valley Rancheria, California; Hoopa Valley Tribe, California; Karuk Tribe of California; Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias); Quartz Valley Indian Community of the Quartz Valley Reservation of California; Redding Rancheria, California; Resighini Rancheria, California; Yurok Tribe of the Yurok Reservation, California; and Kumeyaay Cultural Repatriation Commission, a non–federally recognized Indian group that this notice has been published.

Dated: November 28, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–24618 Filed 12–18–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: The University Museum, University of Arkansas, Fayetteville, AR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of The University Museum, University of Arkansas, Fayetteville, AR. The human remains and associated funerary objects were removed from Clark, Dallas, Garland, Hot Springs, Howard, Lafayette, Little River, Miller, Ouachita, Scott, and Yell Counties, AR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains and associated funerary objects was made by The University Museum, University of Arkansas professional staff in consultation with representatives of the Caddo Nation of Oklahoma.

In 1933, human remains representing a minimum of eight individuals were removed from the Strickland Island Farm (3SC7), Scott County, AR, during museum sponsored excavations. No known individuals were identified. The 106 associated funerary objects are 84 ceramic sherds, 1 group of ceramic sherds, 5 arrow points, 2 bone daggers, 4 bone needles, 1 bone knife or scarper, 3 bone awls, 1 bone flaker, 1 terrapin shell, 1 group of dog bones, 1 antler tool, 1 group of shells, and 1 ''skiver.''

In 1934, human remains representing a minimum of one individual were removed from the Nick T. Wheatley Place (3CL8), Clark County, AR, during museum sponsored excavations. No known individual was identified. The four associated funerary objects are two arrow points and two stone celts.

In 1970, human remains representing a minimum of three individuals were removed from the Poe site (3SC28), Scott County, AR, during museum sponsored excavations. No known individuals were identified. The six associated funerary objects are four ceramic sherds, one group of lithic fragments, and one animal bone.

Artifacts found at the Strickland Island Farm, Nick T. Wheatley Place, and Poe sites indicate that they were occupied during the Fourche Maline period (A.D. 500–800).

In 1929, human remains representing a minimum of three individuals were removed from Lester Place (3LA48), Lafayette County, AR, by unknown persons. The human remains were donated to the museum that same year. No known individuals were identified. No associated funerary objects are present.

In 1929, human remains representing a minimum of one individual were removed from the Clyde Hodges site in Garland County, AR, by unknown persons. The human remains were donated to the museum that same year. No known individual was identified. No associated funerary objects are present.

In 1930, human remains representing a minimum of one individual were removed from the Murphy Place, Garland County, AR, by unknown persons. The human remains were donated to the museum that same year. No known individual was identified. The one associated funerary object is an incised effigy bowl.

In 1933, human remains representing a minimum of six individuals were removed from the Aikman Farm (3YE15), Yell County, AR, during museum sponsored excavations. No known individuals were identified. The 29 associated funerary objects are 1 ceramic water bottle in the form of a human, 1 undecorated ceramic water bottle, 2 ceramic bowls, 8 ceramic sherds, 2 ceramic pipes, 1 clay ball, 7 arrow points, 1 quartz crystal, 1 polished stone, 1 group of animal bone fragments, 3 metal buttons, and 1 group of nail fragments.

In 1940, human remains representing a minimum of six individuals were removed from the Adair site (3GA1), Garland County, AR, during museum sponsored excavations. No known individuals were identified. The one associated funerary object is one group of rocks.

In 1940, human remains representing a minimum of 28 individuals were removed from the Cooper Place (3HS1),

Hot Springs County, AR, during museum sponsored excavations. No known individuals were identified. The one associated funerary object is an incised ceramic water bottle.

In 1940, human remains representing a minimum of nine individuals were removed from the Means/Watermelon Island site (3HS3), Hot Springs County, AR, during museum sponsored excavations. No known individuals were identified. No associated funerary objects are present.

In 1948, human remains representing a minimum of one individual were removed from the Battle Place site (3LA1), Lafeyette County, AR, during museum sponsored excavations. No known individual was identified. No associated funerary objects are present.

In 1951, human remains representing a minimum of one individual were removed from the Bacon Roadside Mound (3DA403), Dallas County, AR, during museum sponsored excavations. No known individual was identified. The 23 associated funerary objects are 1 incised ceramic water bottle and 22 ceramic sherds.

In 1951, human remains representing a minimum of one individual were removed from the Bee Ranch (3OU005), Ouachita County, AR, during museum sponsored excavations. No known individual was identified. The 82 associated funerary objects are 1 ceramic pipe, 52 ceramic sherds, 25 lithic flakes, and 4 animal bone fragments.

In 1953, human remains representing a minimum of three individuals were removed from the Mineral Springs (3HO1), Howard County, AR, during museum sponsored excavations. No known individuals were identified. The two associated funerary objects are one chipped flint and one stone.

In 1962, human remains representing a minimum of nine individuals were removed from the Crenshaw site (3MI6), Miller County, AR, during museum sponsored excavations. On an unknown date, human remains representing a minimum of four individuals were removed by unknown persons from the Crenshaw site (3MI6). The thirteen individuals were donated to the museum in 1986. No known individuals were identified. The 43 associated funerary objects are 1 ceramic bowl, 10 ceramic sherds, 1 ceramic pipe, 24 arrow points, 1 chert blade, 1 water-worn pebble, and 5 copper ornaments.

On an unknown date, human remains representing a minimum of two individuals were removed from the Wallace site (3LR46), Little River County, AR, by unknown persons. The human remains and associated funerary objects were purchased by the museum in 1955. No known individuals were identified. The 13 associated funerary objects are 1 engraved ceramic bowl, 1 incised ceramic bowl, 2 ceramic bowls, 1 incised ceramic jar, 1 engraved ceramic water bottle, 1 ceramic water bottle, 2 ceramic vessels, 2 arrow points, 1 stone celt, and 1 fragmentary vessel.

On an unknown date, human remains representing a minimum of one individual were removed from the Old Salt Works (Bayou Sel) site (3CL27), Clark County, AR, by unknown persons. The human remains were donated to the museum in 1966. No known individual was identified. No associated funerary objects are present.

On an unknown date, human remains representing a minimum of two individuals were removed from the Haley site (3MI1), Miller County, AR, by unknown persons. The human remains were donated to the museum in 1967. No known individuals were identified. No associated funerary objects are present.

On an unknown date, human remains representing a minimum of one individual were removed from the Jones Farm site in Miller County, AR, by unknown persons. The human remains were donated to the museum in 1967. No known individual was identified. The 13 associated funerary objects are 10 animal bone fragments, 1 group of ceramic bowl fragments, 1 stone, and 1 soil sample.

On an unknown date, human remains representing a minimum of three individuals were removed from the Bowman/Wallace site (3LRvar), Little River County, AR, by unknown persons. The human remains were donated to the museum in 1986. No known individuals were identified. No associated funerary objects are present.

Artifacts found at Lester Place, Clyde Hodges, Murphy Place, Aikman Farm, Adair, Cooper Place, Means/Watermelon Island, Battle Place, Bacon Roadside Mound, Bee Ranch, Mineral Springs, Crenshaw, Wallace, Old Salt Works (Bayou Sel), Haley, Jones Farm, and Bowman/Wallace sites indicate that they were occupied during the Caddoan period (A.D. 800–1600)

In 1933, human remains representing a minimum of 32 individuals were removed from the Fuller and Judy Place (3SC4), Scott County, AR, during museum sponsored excavations. No known individuals were identified. The 62 associated funerary objects are 2 engraved ceramic water bottles, 1 incised ceramic jar, 1 corrugated rim ceramic bowl, 1 appliqued ceramic jar, 1 ceramic bowl, 15 ceramic sherds, 1 ceramic pipe, 7 arrow points, 1 knife, 1 axe, 3 ''boatstones,'' 1 unidentified stone, 1 piece of red ochre, 1 beaver tooth, 2 groups of deer bones, 2 antler fragments, 1 antler tool, 1 unidentified bone, 1 group of terrapin shells, 16 mussel shells, 1 shell ornament, and 1 group of undifferentiated sherds, shell, and bone.

Artifacts found at the Fuller and Judy Place site indicate that it was occupied during the Fourche Maline period (A.D. 500–800) and Caddoan period (A.D. 800–1600).

Based on artifacts, site organization, and methods of interment, the human remains and associated funerary objects removed from burials at the 21 sites described above date to either the Fourche Maline period (A.D. 500–800) and/or Caddoan period (A.D. 800–1600). Archeological evidence suggests a cultural continuity through these periods. Archeological and historical evidence indicates that the Caddo occupied the Ouachita Mountains and the area along the Red River in southwestern Arkansas during both time periods. Descendants of the Caddo are members of the Caddo Nation of Oklahoma.

Officials of The University Museum, University of Arkansas have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 126 individuals of Native American ancestry. Officials of The University Museum, University of Arkansas also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 386 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony. Lastly, officials of The University Museum, University of Arkansas have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Caddo Nation of Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Mary Suter, Curator of Collections, The University Museum, University of Arkansas, Biomass Research Center, Fayetteville, AR 72701, telephone (479) 575–3456, before January 18, 2008. Repatriation of the human remains and associated funerary objects to the Caddo Nation of Oklahoma may proceed after that date if no additional claimants come forward.

The University Museum, University of Arkansas is responsible for notifying

the Caddo Nation of Oklahoma that this notice has been published.

Dated: November 14, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–24619 Filed 12–18–07; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–596]

In the Matter of Certain GPS Chips, Associated Software and Systems, and Products Containing Same; Notice of Commission Determination not to Review ALJ Order; No. 22 Granting Complainant's Motion to Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 22) of the presiding administrative law judge (''ALJ'') granting complainant's motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On March 13, 2007, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by SiRF Technology, Inc. of San Jose, California (''SiRF''), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain GPS chips, associated software and systems, and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 6,304,216; 7,043,363; 7,091,904 (''the '904 patent''); and 7,132,980. 72 FR 11378 (Mar. 13, 2007). The complainant named Global Locate, Inc. of San Jose, California as respondent. The complaint and notice of investigation were later amended to include one additional claim of the '904 patent. Subsequently, the investigation was terminated with respect to the '904 patent and certain claims of the other patents.

On November 7, 2007, complainant SiRF moved for leave to amend the complaint and notice of investigation to add Broadcom, Inc. as a respondent to the investigation.

On November 16, 2007, the ALJ issued Order No. 22 granting complainant's motion. No party petitioned for review of Order No. 22. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

Issued: December 13, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–24585 Filed 12–18–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–909 (Review)]

Low Enriched Uranium From France

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on low enriched uranium from France would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on January 3, 2007 (72 FR 144) and determined on April 9, 2007 that it would conduct a full review (72 FR 27151, May 14, 2007). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on May 31, 2007 (72 FR 30393). The hearing was held in Washington, DC, on October 11, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review investigation to the Secretary of Commerce on December 13, 2007. The views of the Commission are contained in USITC Publication 3967 (December 2007), entitled *Low Enriched Uranium from France: Investigation No. 731–TA–909 (Review).*

Issued: December 13, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–24587 Filed 12–18–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–621]

In the Matter of Certain Probe Card Assemblies, Components Thereof and Certain Tested Dram and Nand Flash Memory Devices and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 13, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of FormFactor, Inc. of Livermore, California. An amended complaint was filed on December 7, 2007. The complaint, as amended, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain probe card assemblies, components thereof and certain tested DRAM and NAND flash

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Deana Tanner Okun did not participate in this review.

memory devices and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 5,994,152, 6,509,751, 6,615,485, 6,624,648, 7,168,162, and 7,225,538. The complaint, as amended, further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, as amended, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Benjamin Levi, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2781.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

Scope of Investigation: Having considered the complaint, as amended, the U.S. International Trade Commission, on December 13, 2007, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain probe card assemblies, components thereof, or certain tested DRAM or NAND flash memory devices or products containing same by reason of infringement of one or more of claims 1, 2, 4, 7–12, 15, 21–23, 27–30, 33–35, 51–54, and 59 of U.S. Patent No. 5,994,152; claims 1–3, 5–7, 12, 13, 24, and 25 of U.S. Patent No. 6,509,751; claims 1–11, 18, 19, 23–25, 29, 32, 33, 36–38, and 41 of U.S. Patent No. 6,615,485; claims 1–15, 18–22, 34, and 36 of U.S. Patent No. 6,624,648; claims 1–4, 13, and 14 of U.S. Patent No. 7,168,162; and claims 1–9, 13–22, 27–33, 37–41, 44, 45, and 47–49 of U.S. Patent No. 7,225,538, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

FormFactor, Inc., 7005 SouthFront Street, Livermore, California 94551.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Micronics Japan Co., Ltd., 2–6–8 Kichijoiji Hon-cho, Musashino-shi, Tokyo 180–8508,Japan.
MJC Electronics Corp., 2621 Ridgepoint Drive, Suite 110, Austin, Texas 78754.
Phicom Corporation, 60–29 Gasandong, Kumcheon-gu, Seoul, South Korea.
Phiam Corporation, 3003 North First Street #309, San Jose, California 95134.

(c) The Commission investigative attorney, party to this investigation, is Benjamin Levi, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Theodore R. Essex is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a permanent exclusion order or cease and desist order or both directed against the respondent.

Issued: December 13, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–24586 Filed 12–18–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 06–44]

Richard Carino, M.D.; Revocation of Registration

On December 23, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Richard Carino, M.D. (Respondent), of Port Richey, Florida. The Show Cause Order proposed the revocation of Respondent's DEA Certificates of Registration, BC5048043 and BC7752024, as a practitioner, on the ground that he had committed acts which rendered his registration ''inconsistent with the public interest.'' Show Cause Order at 1 (citing 21 U.S.C. 823(f) and 824(a)(4)).

More specifically, the Show Cause Order alleged that between September 2003 and July 2004, Respondent, ''while working for iPharmacy.MD,'' had issued between ''100 to 2000 prescriptions per month over the internet, most'' of which were for controlled substances. *Id.* at 5. The Show Cause Order alleged that Respondent ''never saw the customers and * * * had no prior doctor-patient relationship with them,'' that he did not ''conduct physical examinations of the customers and [that he] did not create or maintain patient records.'' *Id.* The Show Cause Order further alleged that ''[t]he only information [Respondent] reviewed prior to issuing a prescription was a questionnaire completed by the customer, and [that he] never consulted with the customer's primary care physician or obtained prior medical records.'' *Id.* at 5–6. The Show Cause Order thus alleged that ''[t]he controlled substance prescriptions issued by [Respondent] over the internet were not

issued in the usual course of [his] professional practice, or for a legitimate medical purpose, in violation of 21 CFR 1306.04 and 21 U.S.C. 841(a).'' *Id.* at 5.

Respondent timely requested a hearing on the allegations. The matter was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner, who conducted a hearing on March 27, 2007, in Tampa, Florida.

On July 16, 2007, while the ALJ's decision was still pending, the Government moved for summary disposition. The basis of the motion was that on April 17, 2007, the Florida Board of Medicine had issued a final order which indefinitely suspended Respondent's state medical license and that because Respondent was no longer authorized to handle controlled substances under state law, he was not entitled to hold a DEA registration. Gov. Mot. for Summ. Disp. at 2. The Government supported its motion with a copy of the Florida Board's order. *See id.* at Attachment.

In his response to the motion, Respondent stated that he ''does not, and cannot, dispute [the] assertion'' that he ''is no longer licensed to practice medicine in the State of Florida.'' Respondent's Resp. at 1. Respondent also acknowledged that ''the Government's motion * * * is well taken.'' *Id.*

On August 7, 2007, the ALJ issued her recommended decision. Finding that Respondent had ''concede[d] that he is without state authority * * * to handle controlled substances * * * in Florida,'' the ALJ concluded that there were no material facts in dispute. ALJ Dec. at 3. Noting that this Agency has consistently held that a practitioner ''must be currently authorized to dispense controlled substances 'in the course of professional practice,' '' in order to hold a DEA registration, the ALJ granted the Government's motion and recommended that Respondent's registration be revoked. ALJ at 2–3 (quoting 21 U.S.C. 802(21)). The ALJ then forwarded the record to me for final agency action.

Having considered the record in this matter, I adopt the ALJ's recommended decision in its entirety. I find that although Respondent's registrations expired on August 31, 2005, Respondent submitted timely renewal applications for each registration and therefore, his registrations remain in effect pending the issuance of this Final Order. *See* 5 U.S.C. 558(c); GX 1. I also find that effective on April 17, 2007, the Florida Board of Medicine issued a final order which indefinitely suspended Respondent's medical license. *See* Gov. Mot. for Summ. Disp., Attachment at 1–3. I therefore further find that Respondent is without authority under Florida law to dispense or otherwise handle controlled substances in the course of medical practice.

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in ''the jurisdiction in which he practices'' in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) (''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice''). *See also id.* § 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). As these provisions make plain, possessing authority to dispense a controlled substance under the laws of the State in which a physician practices medicine is an essential condition for holding a DEA registration.

Accordingly, DEA has repeatedly held that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked. *See Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). *See also* 21 U.S.C. 824(a)(3)(authorizing the revocation of a registration ''upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances''). Because Respondent's Florida medical license has been indefinitely suspended, he is not entitled to maintain his DEA registrations.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificates of Registration, BC5048043 and BC7752024, issued to Richard Carino, M.D., be, and they hereby are, revoked. I further order that the pending applications of Richard Carino, M.D., for renewal or modification of each registration be, and they hereby are, denied. This order is effective January 18, 2008.

Dated: December 7, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–24606 Filed 12–18–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

MB Wholesale, Inc.; Denial of Application

On August 7, 2006, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to MB Wholesale, Inc. (Respondent), of Detroit, Michigan. The Show Cause Order proposed the denial of Respondent's pending application to distribute the list I chemicals ephedrine and pseudoephedrine, on the ground that ''its registration would be inconsistent with the public interest.'' Show Cause Order at 1 (citing 21 U.S.C. 823(h)).

The Show Cause Order specifically alleged that ''on or about February 16, 2006, [Respondent], by Mohamed Mehanna, submitted an application for registration as a distributor of the list I chemicals ephedrine and pseudoephedrine,'' and that the fees for incorporating Respondent ''were paid by a check drawn'' on the account of Mehanna Brothers Export Import, Inc. (Mehanna Brothers). *Id.* at 2. The Show Cause Order alleged that Mehanna Brothers was managed by Abed, Mohammed and Jack Mehanna, and that it held a DEA registration to distribute list I chemicals at the registered location of 14442 Michigan Avenue, Dearborn, Michigan.'' *Id.*

The Show Cause Order alleged that in January 2005, Mehanna Brothers had moved its business to 6711 Greenfield Road, Detroit, Michigan, and distributed list I chemicals from this location without a registration authorizing it to do so. *Id.* The Show Cause Order further alleged that on July 10, 2006, DEA issued an Order to Show Cause proposing the revocation of Mehanna Brothers' registration based on this activity. *Id.*

The Show Cause Order next alleged that on April 16, 2006, DEA investigators went to Respondent's proposed registered location to conduct a pre-registration inspection and discovered that the facility was the same one that was used by Mehanna Brothers. *Id.* The Show Cause Order further alleged that on May 18, 2006, Abed Mehanna told DEA investigators that he was a co-owner of Respondent, that

Respondent was operated by himself as well as his brothers Mohammed and Bilal, and that it ''had the same convenience store customers as Mehanna Brothers.'' *Id.* at 3.

The Show Cause Order also alleged that a ''review of [the] invoices provided by Mehanna Brothers indicated that the bulk of the product sold in dollar terms consisted of various forms of ephedrine products,'' and that ''[m]any of these records did not properly identify the strength, packaging, and quantity of the listed chemical.'' *Id.* The Show Cause Order thus alleged that ''Mehanna Brothers and its management did not properly carry out the recordkeeping responsibilities of a registrant.'' *Id.*

Finally, the Show Cause Order alleged that the ''bulk of precursor products destined for illegal methamphetamine laboratories are diverted through non-traditional markets such as convenience stores, gas stations, and other small retail outlets.'' *Id.* The Show Cause Order thus alleged that ''[t]he ownership and management of MB intend to parallel Mehanna Brothers'' practice of supplying inordinate amounts of listed chemical products to outlets which have no expectation of legitimate sales in the amounts that they are receiving, leading to the diversion of such products.'' *Id.*

On August 14, 2006, the Show Cause Order was served on Respondent by certified mail as evidenced by the signed return-receipt card. Thereafter, on September 7, 2006, Respondent requested a hearing. The matter was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner, who ordered Respondent to file its pre-hearing statement no later than November 13, 2006. Order Terminating Proceedings at 1.

Respondent did not, however, comply with the ALJ's order. Accordingly, on November 27, 2006, the ALJ found that Respondent had waived its right to a hearing and ordered that the proceeding be terminated. On June 11, 2007, the case file was forwarded to this office for final agency action.

Having considered the entire record in this matter, I adopt the ALJ's finding that Respondent has waived its right to a hearing. *See* 21 CFR 1309.53(c). I therefore enter this Final Order without a hearing based on relevant material contained in the investigative file, *see id.* 1309.53(d), and make the following findings of fact.

Findings

Respondent is a Michigan corporation which was formed in July 2004 with offices located at 6711 Greenfield Road, Detroit, Michigan. Respondent is co-owned by Abed Mehanna, who serves as its Vice-President, and his brother, Mohamed Mehanna, who serves as its President. Respondent has a total of three employees which include Abed, Mohamed, and a third brother, Bilal Mehanna. Abed and Mohamed Mehanna are also co-owners with a third brother, Hussein (a.k.a. Jack), of another corporation, Mehanna Brothers Export/Import, Inc. (hereinafter, Mehanna Brothers).

According to the investigative file, Mehanna Brothers holds a DEA registration which authorizes it to distribute list I chemicals. However, in April 2005, Mehanna Brothers submitted a request to change the address of its registered location to a new facility at 6711 Greenfield Road in Detroit. Accordingly, in June 2005, DEA investigators went to the premises to inspect the facility. During the inspection, the investigators found that Mehanna Brothers was distributing list I chemicals from the building.

During the visit, a DEA Investigator informed Hussein (Jack) Mehanna that Mehanna Brothers could not sell list I chemicals out of the Greenfield Road facility because it was not a registered location. The DI then sought the surrender of Mehanna Brothers' registration. However, Hussein Mehanna refused to do so.

Thereafter, on February 16, 2006, Mohamed Mehanna submitted an application for a registration to distribute ephedrine and pseudoephedrine on behalf of MB Wholesale, Inc (Respondent). The application gave as Respondent's proposed registered location the same Greenfield Road facility that Mehanna Brothers used.

On April 13, 2006, two DEA Investigators went to Respondent's Greenfield Road facility to conduct a pre-registration investigation. Upon their arrival, the DIs recognized that the facility was the same one from which Mehanna Brothers had distributed list I chemicals without a registration.

During a subsequent telephone conversation, Abed Mehanna told a DI that Respondent had essentially the same management team as Mehanna Brothers, but that Hussein (Jack) was no longer involved in the business. Abed Mehanna also told the DI that Respondent had the same customers as Mehanna Brothers and had added some additional customers.

The investigative file contains dozens of invoices which were provided by Abed Mehanna to a DEA Investigator. The invoices, which are dated from January 5 through May 20, 2005, document the sale of various list I products (which contained either pseudoephedrine or ephedrine) including Advil Cold & Sinus, Tylenol Cold, Mini Two-Way, Mini-Thins, and Ephedrine. Most significantly, each of the invoices bears the caption ''MB Wholesale,'' and give as its address, ''6711 Greenfield Rd. Detroit, Mi.'' The invoices also confirm that Respondent was supplying these products to non-traditional retailers such as gas stations and convenience stores.

Discussion

Section 303(h) of the Controlled Substances Act (CSA) provides that ''[t]he Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest.'' 21 U.S.C. 823(h). In making this determination, Congress directed that I consider the following factors:

(1) maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) compliance by the applicant with applicable Federal, State, and local law;

(3) any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) such other factors as are relevant to and consistent with the public health and safety.

Id.

''These factors are considered in the disjunctive.'' *Joy's Ideas,* 70 FR 33195, 33197 (2005). I may rely on any one or a combination of factors, and may give each factor the weight I deem appropriate in determining whether an application for a registration should be denied. *See, e.g., David M. Starr,* 71 FR 39367, 39368 (2006); *Energy Outlet,* 64 FR 14269 (1999). Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005).

Having considered all of the factors, I conclude that factors two, four, and five establish that granting Respondent's application would be ''inconsistent with the public interest.'' 21 U.S.C. 823(h). While Respondent is nominally a separate legal entity from Mehanna Brothers, the record establishes that the firms are substantially identical and thus, the illegal conduct of the latter in distributing listed chemicals from an unregistered location is properly considered in evaluating Respondent's application. Moreover, the record contains substantial evidence which establishes that Respondent also violated federal law by distributing

listed chemicals from an unregistered location.

Factors Two and Four—The Applicant's Compliance With Applicable Law and Its Experience in Distributing Listed Chemicals

On a date which is not established in the record, Mehanna Brothers moved its business to a facility located at 6711 Greenfield Road, Detroit, Michigan. In April 2005, Mehanna Brothers submitted an application for a modification of its registration to change its registered location to its Greenfield Road facility.

Under DEA regulations, a ''request for modification [is] handled in the same manner as an application for registration.'' 21 CFR 1309.61. Accordingly, in June 2005, DEA investigators went to Respondent's new facility to conduct an inspection to determine whether to approve its application. During the inspection, the investigators found that Respondent was already distributing listed chemicals from the Greenfield Road facility.

Under the CSA, ''[a] separate registration [is] required at each principal place of business * * * where the applicant * * * distributes * * * list I chemicals.'' 21 U.S.C. 822(e). Moreover, under DEA regulations, ''[n]o person required to be registered shall engage in any activity for which registration is required until the application for registration is approved and a Certificate of Registration is issued by the Administrator to such person.'' 21 CFR 1309.31(a). Mehanna Brothers was thus in violation of federal law by distributing listed chemicals from an unregistered location. 21 U.S.C. 843(a)(9).

The question remains, however, as to whether Mehanna Brothers' violations are properly considered in evaluating Respondent's application. Notwithstanding that Mehanna Brothers and Respondent are organized as separate corporations, I conclude the firms are only ''nominally separate business entities.'' *Cf. Roofers Local 149 Security Trust Fund* v. *Duane Smelser Roofing Co.,* 285 F. Supp.2d 936, 940 (E.D. Mich. 2003). Because the firms ''have substantially identical management, business, purpose, operation, equipment, customers, supervision and ownership,'' Mehanna Brothers' misconduct is also chargeable to Respondent. *Cf. Wilson* v. *International Bhd. of Teamsters,* 83 F.3d 747, 759 (6th Cir. 1996).

As the record establishes, Respondent's co-owners, Abed and Mohammed Mehanna, were also co-owners with their brother Jack, of Mehanna Brothers. Abed Mehanna, Respondent's co-owner and Vice-President, serves as a corporate officer of Mehanna Brothers. Indeed, as Abed Mehanna told a DI, Respondent had the same management team (except for Hussein) as Mehanna Brothers.

Moreover, Respondent and Mehanna Brothers are engaged in the same business of wholesale distribution of general merchandise, and Respondent services the same customers as Mehanna Brothers. Respondent and Mehanna Brothers also use the same Greenfield Road facility. Finally, when in October 2005, DEA investigators asked Mehanna Brothers to provide its sales invoices, the invoices bore Respondent's name and address.

Accordingly, based on all of the above, I find that Respondent and Mehanna Brothers are only nominally separate entities. Mehanna Brothers' violations of federal law in distributing listed chemicals from an unregistered location are thus properly considered in determining whether granting Respondent's application would be ''inconsistent with the public interest.'' 21 U.S.C. 823(h).[1]

As noted in other cases, distributing listed chemicals out of an unregistered location provides ample reason to deny an application. *See Sato Pharmaceutical, Inc.,* 71 FR 52165, 52166 (2006); *Archer's Trading Co.,* 72 FR 42114, 421116–17 (2007) (revoking registration in part for distributing listed chemicals out of unregistered location); *John J. Fotinopolous* 72 FR 24602, 24606 (2007) (same). Respondent's misconduct does not inspire confidence that it will faithfully comply with applicable laws and diligently protect against the diversion of listed chemical products. I thus conclude that Respondent's record of non-compliance with federal law and its experience in dispensing listed chemicals supports the conclusion that its registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(h).

Factor Five—Other Factors Relevant To and Consistent With Public Health and Safety

The illicit manufacture and abuse of methamphetamine have had pernicious effects on families and communities throughout the nation. Cutting off the supply source of methamphetamine traffickers is of critical importance in protecting the American people from the devastation wreaked by this drug.

While listed chemical products containing pseudoephedrine and ephedrine are currently recognized as having legitimate medical uses,[2] DEA orders establish that convenience stores and gas-stations constitute the non-traditional retail market for legitimate consumers of products containing these chemicals. *See, e.g., Tri-County Bait Distributors,* 71 FR 52160, 52161–62 (2006); *D & S Sales,* 71 FR 37607, 37609 (2006); *Branex, Inc.,* 69 FR 8682, 8690–92 (2004). DEA has further found that there is a substantial risk of diversion of list I chemicals into the illicit manufacture of methamphetamine when these products are sold by non-traditional retailers. *See, e.g., Joy's Ideas,* 70 FR 33195, 33199 (2005) (finding that the risk of diversion was ''real'' and ''substantial''); *Jay Enterprises, Inc.,* 70 FR 24620, 24621 (2005) (noting ''heightened risk of diversion'' if application to distribute to non-traditional retailers was granted).

Accordingly, ''[w]hile there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to [gas stations and convenience stores], DEA has nevertheless found that [these entities] constitute sources for the diversion of listed chemical products.'' *Joey Enterprises, Inc.,* 70 FR 76866, 76867 (2005). *See also TNT Distributors,* 70 FR 12729, 12730 (2005) (special agent testified that ''80 to 90 percent of ephedrine and pseudoephedrine being used [in Tennessee] to manufacture methamphetamine was being obtained from convenience stores'').[3]

Here, the record establishes that Respondent seeks a registration to distribute listed chemical products to non-traditional retailers of these products such as gas stations and convenience stores. Moreover, Respondent proposes to sell several combination ephedrine products such as Mini Two-Way, a product rarely found in traditional markets, but one which is highly ''popular with

[1] The invoices also support a finding that Respondent itself distributed list I chemicals without a registration in violation of federal law. *See* 21 U.S.C. §§ 822(a)(1) & 843(a)(9).

[2] The FDA is, however, currently proposing to remove combination ephedrine-guaifenesin products from its over-the-counter (OTC) drug monograph and to declare them not safe and effective for OTC use. *See* 70 FR 40232 (2005).

[3] *See OTC Distribution Co.,* 68 FR 70538, 70541 (2003) (noting ''over 20 different seizures of [gray market distributor's] pseudoephedrine product at clandestine sites,'' and in that eight-month period distributor's product ''was seized at clandestine laboratories in eight states, with over 2 million dosage units seized in Oklahoma alone.''); *MDI Pharmaceuticals,* 68 FR 4233, 4236 (2003) (finding that ''pseudoephedrine products distributed by [gray market distributor] have been uncovered at numerous clandestine methamphetamine settings throughout the United States and/or discovered in the possession of individuals apparently involved in the illicit manufacture of methamphetamine'').

methamphetamine traffickers,'' and which has ''been disproportionately represented in clandestine lab seizures around the United States.'' *T. Young Associates, Inc.,* 71 FR 60567, 60568 (2006) (int. quotations and citation omitted). *See also H & R Corp.,* 71 FR 30168, 30169 (2006); *Joy's Ideas,* 70 FR at 33197. Moreover, a substantial number of the invoices suggest that Respondent's customers purchased quantities of these products that far exceeded legitimate demand. This factor thus further supports the conclusion that Respondent's registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(h).

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(h), as well as 28 CFR 0.100(b) and 0.104, I order that the application of MB Wholesale, Inc., for a DEA Certificate of Registration to distribute list I chemicals, be, and it hereby is, denied. This order is effective January 18, 2008.

Dated: December 7, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–24610 Filed 12–18–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Patrick K. Riggs, M.D.; Denial of Application

On June 19, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Patrick K. Riggs (Respondent), of Fort Worth, Texas. The Show Cause Order proposed the denial of Respondent's pending application for a DEA Certificate of Registration as a practitioner, on the ground that his registration would be ''inconsistent with the public interest.'' Show Cause Order at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)).

The Show Cause Order specifically alleged that ''from May 2005 through August 2006 [Respondent], ordered 22,500 dosage units of hydrocodone from Henry Schein, Inc.,'' and that notwithstanding his ''assertions to Henry Schein, Inc., that [he was] practicing medicine during that period [Respondent], subsequently admitted to DEA Diversion Investigators that [he] had not practiced medicine since 1997 and had no current patients.'' *Id.* The Show Cause Order alleged that on August 31, 2006, Respondent had met with DEA Diversion Investigators at his home and admitted to them that he had consumed all of the hydrocodone drugs that he had obtained from Henry Schein, Inc. *Id.*

The Show Cause Order further alleged that Respondent did not maintain the purchasing and dispensing records required under federal law for the controlled substances he had obtained from Henry Schein, Inc. *Id.* Finally, the Show Cause Order alleged that during the aforementioned meeting with DEA investigators, Respondent had upon the advice of counsel, voluntarily surrendered his DEA Registration and agreed not to apply for a new registration for a two-year period. *Id.* at 2.

On June 25, 2007, the Show Cause Order, which also notified Respondent of his right to request a hearing on the allegations, was served on him by a Federal Express delivery to his residence, which is also the address of his proposed registered location. Because: (1) More than thirty days have passed since service of the Show Cause Order, and (2) neither Respondent, nor anyone purporting to represent him, has requested a hearing, I conclude that Respondent has waived his right to a hearing. *See* 21 CFR 1301.43(d). I therefore enter this Final Order without a hearing based on relevant material contained in the investigative file, *see id.* 1301.43(e), and make the following findings.

Findings

Respondent previously held a DEA Registration as a practitioner, which authorized him to dispense controlled substances in schedules II through V. On various dates between May 2005 and August 2006, DEA received several reports from Henry Schein, Inc., regarding Respondent's excessive purchases of controlled substances. These reports showed that during the above period, Respondent purchased 22,500 dosage units of combination hydrocodone/acetaminophen (all in 10/325 mg. strength), 1400 dosage units of clonazepam (in both 1 mg. and 2 mg. strength), 1200 dosage units of aspirin with codeine (60 mg.), 500 dosage units of acetaminophen with codeine (60 mg.), and hydrocodone with ibuprofen (7.5/200 mg.).[1]

Sometime around September 2005, a Schein employee apparently questioned Respondent regarding his purchases. Accordingly, on September 24, 2005, Respondent faxed a letter which stated that he had served as ''a consultant to the TXSBME''[2] from 1995 through 1998 ''in the area of disciplinary action,'' and had ''earned * * * a great many enemies (because of my testimony in med[ical] malpractice cases for the state.'' Respondent further wrote that he was engaged in the practice of ''general medicine,'' and that his ''patient base is select. The concentration is chronic pain secondary to terminal illness[,] i.e., cancer.''

On August 31, 2006, DEA investigators went to Respondent's residence (and registered location) and met with Respondent and his attorney regarding his excessive purchases. During the interview, Respondent was asked what medications he took. Respondent went to another room and retrieved approximately twenty-five containers of non-controlled prescription drugs. Upon further questioning, Respondent admitted that he had been on methadone and pulled an empty container of methadone from his pocket.

During the interview, Respondent also admitted that he had not practiced medicine since 1997 and did not have any patients. One of the investigators then presented to Respondent's attorney a spreadsheet listing his controlled substance purchases from Schein. After Respondent and his lawyer were allowed to privately discuss the matter, Respondent admitted that he had used all of the controlled substances which he had purchased from Schein. Respondent also stated that to prevent damaging his liver, he had ground up the hydrocodone tablets to separate out the acetaminophen. Respondent also admitted that he had failed to maintain purchasing and dispensing records as required by Federal law.

Based on this information, the investigators advised Respondent's counsel that they would seek an Order to Show Cause to revoke his registration unless he voluntarily surrendered it. After consulting with his attorney, Respondent voluntarily surrendered his registration and signed the applicable form.[3]

Two months later, on October 30, 2006, Respondent submitted an application for a new registration. On the form, Respondent acknowledged that he had surrendered his registration and explained that ''[t]he surrender[] could be classified as a misunderstanding secondary to misinformation. I view it[] as an unusual set of unnecessary and

[1] The reports also showed that Respondent had purchased two anabolic steroids, nandrolone and testosterone cypionate.

[2] Presumably, the Texas State Board of Medical Examiners.

[3] On the form, Respondent also ''agree[d] not to re apply for a period of two years.''

humiliating circumstances brought together by a malicious third party.''

Discussion

Section 303(f) of the Controlled Substances Act provides that ''[t]he Attorney General shall register practitioners * * * to dispense * * * controlled substances in schedule II, III, IV, or V, if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Section 303(f) further provides that ''[t]he Attorney General may deny an application for such registration if he determines that the issuance of such registration would be inconsistent with the public interest.'' *Id.* In making the public interest determination, the Act requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
(2) The applicant's experience in dispensing * * * controlled substances.
(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
(5) Such other conduct which may threaten the public health and safety.

Id.

[T]hese factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' *Id.* Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). In this case, I conclude that factors two and four are dispositive.[4]

As the record demonstrates, Respondent acquired large quantities of controlled substances including 22,500 tablets of combination hydrocodone/acetaminophen (a schedule III controlled substance, 21 CFR 1308.13(e)), 1400 dosage units of clonazepam (a schedule IV controlled substance, 21 CFR 1308.14(c)), as well as drugs combining codeine with acetaminophen or aspirin. Respondent admitted that he personally used the drugs.

The record also shows that on September 24, 2005, Respondent represented to an employee of Henry Schein, Inc., that he was ''practic[ing] general medicine,'' with a ''concentration in chronic pain secondary to terminal illness, i.e., cancer.'' During the August 31, 2006 interview, however, Respondent admitted that he had not practiced medicine since 1997 and that he had no patients. The record further shows that after he faxed the letter to Schein, Respondent continued to order and received large quantities of controlled substances from it. Based on this evidence, I conclude that on numerous occasions, Respondent violated federal law by ''knowingly or intentionally * * * acquir[ing] or obtain[ing] possession of a controlled substance by misrepresentation, fraud, [or] deception.'' 21 U.S.C. 843(a)(3).

Respondent further admitted that he did not maintain the purchasing and dispensing records as required by federal law. *See id.* § 827(a)(3). Based on the above, I conclude that Respondent's record of non-compliance with federal laws related to controlled substances and his experience of self-dispensing controlled substances, establishes that granting him a registration would be ''inconsistent with the public interest.'' *Id.* § 823(f).

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) & 0.104, I order that the application of Patrick K. Riggs, M.D., for a DEA Certificate of Registration as a practitioner be, and it hereby is, denied. This order is effective January 18, 2008.

Dated: December 7, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–24608 Filed 12–18–07; 8:45 am]

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[4] Having considered all of the factors, I conclude that factors one, three and five are not relevant.

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,418]

Computer Sciences Corporation, Dallas, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 6, 2007 in response to a petition filed by a company official on behalf of workers of Computer Sciences Corporation, Dallas, Texas.

The company official has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of December, 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–24544 Filed 12–18–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,510 and TA–W–62,510A]

Cuno, Inc., Meriden, CT and Enfield, CT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 29, 2007 in response to a petition filed by a State agency representative on behalf of workers of two locations of Cuno, Inc., namely Meriden, Connecticut (TA–W–62,510) and Enfield, Connecticut (TA–W–62,510A).

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 13th day of December 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–24546 Filed 12–18–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,426]

Flextronics Enclosures, Including On-Site Leased Workers of Manpower and Coast Personnel, Youngsville, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 7, 2007, in response to a worker petition filed on behalf of workers at Flextronics Enclosures, Youngsville, North Carolina.

The petitioning group of workers is covered by an active certification, (TA–W–62,486) which expires on November 7, 2009. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 7th day of December 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–24537 Filed 12–18–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,962K and TA–W–61,962L]

Hanesbrands, Inc., National Textiles, LLC, Eden Division, Eden, North Carolina, and Forest City Division, Forest City, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 13, 2007, applicable to workers of Hanesbrands, Inc., Eden, North Carolina and Hanesbrands, Inc., Forest City Division, Forest City, North Carolina. The notice was published in the **Federal Register** on September 27, 2007 (72 FR 54939).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of laminated fabric and fabric components.

New information shows that Hanesbrands, Inc. purchased National Textiles, LLC in June 2006. Workers separated from employment at the Eden Division, Eden, North Carolina and the Forest City Division, Forest City, North Carolina locations of the subject firm had their wages reported under separate unemployment insurance (UI) tax account for National Textiles, LLC.

Findings also show that there was a previous certification, TA–W–55,365, issued on September 13, 2006, for the workers of the Forest City Division, Forest City, North Carolina. That certification expired September 13, 2006. To avoid an overlap in worker group coverage for workers of the Forest City, North Carolina location, the certification is being amended to change the impact date from August 7, 2006 to September 14, 2006.

Accordingly, the Department is amending the certification to properly reflect these matters.

The intent of the Department's certification is to include all workers of Hanesbrands, Inc. who were adversely affected by a shift in production of laminated fabric and fabric components to El Salvador, the Dominican Republic and Honduras.

The amended notice applicable to TA–W–61,962K and TA–W–61,962L are hereby issued as follows:

''All workers of Hanesbrands, Inc., National Textiles, LLC, Eden Division, Eden, North Carolina (TA–W–61,962K), who became totally or partially separated from employment on or after August 7, 2006 through September 13, 2009, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974;'' and

''All workers of Hanesbrands, Inc., National Textiles, LLC, Forest City Division, Forest City, North Carolina (TA–W–61,962L), who became totally or partially separated from employment on or after September 14, 2006, through September 13, 2009, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 11th day of December 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–24542 Filed 12–18–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 31, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 31, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 12th day of December 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 12/3/07 and 12/7/07]

TA–W	Subject Firm (Petitioners)	Location	Date of Institution	Date of Petition
62521	JRL Enterprises (Comp)	Falconer, NY	12/03/07	11/28/07
62522	Alcoa/Tifton Aluminum (State)	Tifton, GA	12/03/07	11/29/07
62523	Wolverine Tube, Inc. (Comp)	Decatur, AL	12/03/07	11/30/07
62524	Kester, Inc. (Wkrs)	Itasca, IL	12/03/07	11/30/07

APPENDIX—Continued

[TAA petitions instituted between 12/3/07 and 12/7/07]

TA–W	Subject Firm (Petitioners)	Location	Date of Institution	Date of Petition
62525	Magna Donnelly Engineered (Comp)	Holland, MI	12/03/07	11/30/07
62526	Bulk Bag Express (State)	Malvern, AR	12/03/07	11/30/07
62527	Dievelopment (Comp)	Kentwood, MI	12/03/07	11/26/07
62528	Holophane/Acuity (Wkrs)	Utica, OH	12/03/07	11/29/07
62529	Leitchfield Plastics (Comp)	Leitchfield, KY	12/03/07	11/29/07
62530	Cooper Standard Automotive (UAW)	New Lexington, OH	12/04/07	11/27/07
62531	Nova Measuring Instruments, Inc. (Wkrs)	State College, PA	12/04/07	11/20/07
62532	Hoover Company (The) by TTI Floor Care North America, Inc. (Comp).	North Canton, OH	12/04/07	12/03/07
62533	Pilot Hosiery Mills, Inc. (Wkrs)	Pilot Mountain, NC	12/04/07	11/29/07
62534	S and Z Tool and Die (UAW)	Cleveland, OH	12/04/07	11/30/07
62535	Panolam/Nevamar Decorative Surfaces Division (Wkrs)	Oshkosh, WI	12/05/07	12/03/07
62536	Tower Auto Operations (State)	Granite City, IL	12/05/07	12/04/07
62537	Rockford Corporation (Comp)	Tempe, AZ	12/05/07	12/05/07
62538	ITW Foils (Wkrs)	Mt. Pleasant, MI	12/05/07	12/04/07
62539	Wolverine Tube (Wkrs)	Booneville, MS	12/05/07	12/04/07
62540	Culp, Inc (Comp)	High Point, NC	12/05/07	11/30/07
62541	General Electric (Wkrs)	West Burlington, IA	12/06/07	11/29/07
62542	Syntax—Brillian (Wkrs)	Tempe, AZ	12/06/07	11/28/07
62543	McNeil Consumer Healthcare (Comp)	Parsippany, NJ	12/06/07	12/05/07
62544	XL Capital/XL Specialty Insurance Company (Wkrs)	Exton, PA	12/06/07	11/30/07
62545	William Wright Company (Comp)	West Warren, MA	12/07/07	12/04/07
62546	RemyReman LLC (Comp)	Raleigh, MS	12/07/07	12/06/07

[FR Doc. E7–24539 Filed 12–18–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,333]

Liberty Fibers Corporation, Lowland, TN; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter dated November 28, 2007, a company official requested administrative reconsideration of the Department's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The negative determination was issued on November 13, 2007, and was published in the **Federal Register** on December 10, 2007 (72 FR 69711).

The negative determination was based on the Department's finding that, during the relevant period, the subject firm did not produce an article within the meaning of section 222(a)(2) of the Trade Act of 1974. Workers performed maintenance of a facility that ceased production prior to the relevant period.

The request for reconsideration stated that several workers were not separated prior to the expiration of a previous Trade Adjustment Assistance certification (TA–W–58,039) because those workers were required in order for the trustee appointed by the bankruptcy court to carry out its responsibilities (to liquidate the assets and settle the affairs of the corporation).

The request for reconsideration also stated that the TAA certification of TA–W–58,039 was amended on February 28, 2006 and that the amended certification stated that ''[t]he intent of the Department's certification is to include all workers of Liberty Fibers Corporation, a subsidiary of Silva Holdings, Inc., Lowland, Tennessee who was adversely affected by increased customer imports.''

The Department has carefully reviewed the request for reconsideration and has determined that the Department will conduct further investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 11th day of December 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–24543 Filed 12–18–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,802 and TA–W–57,802E]

Sara Lee Branded Apparel, Division Office, Division of Sara Lee Corporation, Formerly Known as National Textiles, LLC, Currently Known as Hanesbrands, Inc., Winston-Salem, NC, Including an Employee Located in Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on September 28, 2005, applicable to workers of Sara Lee Branded Apparel, Division Office, Winston-Salem, North Carolina. The notice was published in the **Federal Register** on October 31, 2005 (70 FR 62347).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New

information shows that a worker separation occurred involving an employee of the Division Office, Winston-Salem, North Carolina facility of the Sara Lee Branded Apparel located in Houston, Texas. Ms. Cynthia Shepherd provided a customer support function services for the activities related to the production of underwear (shorts and T-shirts) produced by the subject company.

Based on these findings, the Department is amending this certification to include an employee of the Division Office, Winston-Salem, North Carolina facility of the Sara Lee Branded Apparel located in Houston, Texas.

The intent of the Department's certification is to include all workers of Sara Lee Branded Apparel, Division Office, Winston-Salem, North Carolina who were adversely affected by increased imports.

The amended notice applicable to TA–W–57,802 is hereby issued as follows:

''All workers of Sara Lee Branded Apparel, Division Office, Division of Sara Lee Corporation, formerly known as National Textiles, LLC, currently known as Hanesbrands, Inc., Winston-Salem, North Carolina (TA–W–57,802), and including an employee of Sara Lee Branded Apparel, Division Office, Division of Sara Lee Corporation, currently known as Hanesbrands, Inc., Winston Salem, North Carolina, located in Houston, Texas (TA–W–57,802E), who became totally or partially separated from employment on or after July 29, 2004, through September 28, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

I further determine that all workers of Sara Lee Branded Apparel, Division Office, Division of Sara Lee Corporation, formerly known as National Textiles, LLC, currently known as Hanesbrands, Inc., Winston-Salem, North Carolina (TA–W–57,802), and including an employee of Sara Lee Branded Apparel, Division Office, Division of Sara Lee Corporation, currently known as Hanesbrands, Inc., Winston Salem, North Carolina, located in Houston, Texas (TA–W–57,802E), Sara Lee Branded Apparel, Division of the Sara Lee Corporation, Division Office, currently known as Hanesbrands, Inc., Winston-Salem, North Carolina, are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of December 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–24541 Filed 12–18–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) number and alternative trade adjustment assistance (ATAA) by (TA-W) number issued during the period of December 3 through December 7, 2007.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–62,482; Specialty Minerals Mississippi, Inc., Brookhaven, MS: November 19, 2006.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,477; Magnetics, A Division of Spang and Company, Booneville, AR: August 12, 2007.

TA–W–62,499; Timber Products Company, Grants Pass Division, Grants Pass, OR: November 26, 2006.

TA–W–62,509; Bekaert Corporation, Dyersburg, TN: December 20, 2007.

TA–W–62,380; Weyerhaeuser Company, Log Sorting Yard, Aberdeen, WA: October 22, 2006.

TA–W–62,381; 3M, Electronic Solutions Division, Eau Claire, WI: October 30, 2006.

TA–W–62,466; B and C Research, Inc., Barberton, OH: November 14, 2006.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,417; Avery Dennison Corporation, Greensboro, NC: November 19, 2006.

TA–W–62,456; Springfield Wire, Inc., Springfield, MA: December 28, 2007.

TA–W–62,486; Flextronics International USA, Inc., On-Site Leased Workers of Manpower and Coast Personnel, Youngsville, NC: November 7, 2006.

TA–W–62,519; American Greetings Corporation, Philadelphia, MS: November 29, 2006.

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,452; ITW Shakeproof Automotive, A Subsidiary of ITW Incorporated, Darlington, WI: November 9, 2006.

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

TA–W–62,482; Specialty Minerals Mississippi, Inc., Brookhaven, MS.

The Department has determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–62,386; USR Optonix, Inc., MCI Optonix Division, Washington, NJ.

TA–W–62,395; MegTec Systems, Inc., A Subsidiary of Sequa Corporation, Depere, WI.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–62,098; Besser Company, Alpena, MI.

TA–W–62,244; Cummings, Inc., Nashville Sign Division, Nashville, TN.

TA–W–62,359; Custom Inlay, Inc., Caneyville, KY.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–62,356; Wachovia Corporation, Wachovia Securities, Glen Allen, VA.

The investigation revealed that criteria of section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of *December 3 through December 7, 2007*. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 12, 2007.

Ralph Dibattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–24540 Filed 12–18–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,459]

Thermo Pressed Laminates Klamath Falls, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 14, 2007 in response to a petition filed by a company official on behalf of workers of Thermo Pressed Laminates, Klamath Falls, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 12th day of December 2007.

Linda G. Poole.

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–24545 Filed 12–18–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,483]

Vaisala, Inc./Tucson Operations, Tucson, Arizona; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 20, 2007 in response to a worker petition filed a company official on behalf of workers at Vaisala, Inc./Tucson Operations in Tucson, Arizona.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 7th day of December, 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–24538 Filed 12–18–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,539]

Wolverine Tube, Booneville, Mississippi; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 5, 2007 in response to a petition filed by a company official on behalf of workers at Wolverine Tube, Booneville, Mississippi.

The petitioning group of workers is covered by an earlier petition (TA–W–62,523) filed on December 3, 2007, for workers of the firm in Decatur, Alabama and Booneville, Mississippi, that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would serve no purpose. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 13th day of December 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–24536 Filed 12–18–07; 8:45 am]

BILLING CODE 4510–FN–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 07–15]

No FEAR Act Notice

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: This notice fulfills the Millennium Challenge Corporation's ''No FEAR Act Notice'' **Federal Register** publication obligations, as required by the Act and by the Office of Personnel Management implementing regulations at 5 CFR 724.202.

DATES: This notice is effective December 14, 2007.

FOR FURTHER INFORMATION CONTACT: Karen DeLaBarre Chase,Equal Employment Opportunity Staff, Millennium Challenge Corporation, 875 Fifteenth Street, NW., Washington, DC 20005.

Telephone: (202) 521–3600.

SUPPLEMENTARY INFORMATION: On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002'' which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Public Law 107–174.

In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.''

The Act also requires Federal agencies, including the Millennium Challenge Corporation (MCC), to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

The Millennium Challenge Corporation cannot discriminate against an employee or applicant for Federal employment with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. See, e.g., 29 CFR part 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor, as noted above, or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below).

Whistleblower Protection Laws

An MCC employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee

or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

MCC cannot retaliate against an employee or applicant for employment because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections of this notice.

Disciplinary Actions

Under the existing laws, MCC retains the right, where appropriate, to discipline an employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), MCC must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits MCC to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the Equal Employment Opportunity Staff at MCC. Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—*http://www.eeoc.gov* and the OSC Web site—*http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Dated: December 14, 2007.

William G. Anderson, Jr.,

Vice President & General Counsel, Millennium Challenge Corporation.

[FR Doc. E7–24631 Filed 12–18–07; 8:45 am]

BILLING CODE 9211–03–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 07–14]

Notice of Quarterly Report (July 1, 2007–September 30, 2007)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter July 1, 2007 through September 30, 2007 with respect to both assistance provided under Section 605 of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D (the Act)), and transfers of funds to other federal agencies pursuant to Section 619 of that Act. The following report shall be made available to the public by means of publication in the **Federal Register** and on the Internet website of the MCC (*http://www.mcc.gov*) in accordance with Section 612(b) of the Act.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Madagascar Year: 2007 Quarter 4 Total Obligation: $109,773,000 Entity to which the assistance is provided: MCA Madagascar Total Quarterly Disbursement: $4,774,000				
Land Tenure Project	$37,803,000	Increase Land Titling and Security.	$3,983,000	Legislative proposal reflecting the National Land Tenure Program submitted to Parliament and passed. Number of land disputes reported and resolved in the target zones and sites of implementation. Percentage of land documents inventoried, restored, and/or digitized. Average time and cost required to carry out property transactions. Percent of reported land conflicts resolved on titled land in zone 3, 4, 5 during the title regularization operations. Percentage of land in the zones that is demarcated and ready for titling.
Finance Project	35,888,000	Increase Competition in the Financial Sector.	3,507,000	The number of savings accounts and outstanding value of accounts from primary banks. Maximum check clearing delay. Volume of funds in payment system and number of transactions. Increased public awareness of new financial instruments as measured by surveys within intervention zones and large towns. The amount of government debt issued with maturities in excess of 52 weeks. The number of new individual investors buying government debt securities. The number of bank branches of the Central Bank of Madagascar capable of accepting auction tenders. Percentage of all loans included in the central database.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Agricultural Business Investment Project.	17,683,000	Improve Agricultural Projection Technologies and Market Capacity in Rural Areas.	4,488,000	Number of rural producers receiving or soliciting information from Agricultural Business Centers about the opportunities. Intervention zones identified and description of beneficiaries within each zone submitted. Number of visitors receiving information from National Coordinating Center with respect to business opportunities. Change in farm income due to improved production and marketing practices. Change in enterprise income due to improved production and marketing practices. Number of farmers and business employing technical assistance received.
Program Administration* and Control, Monitoring and Evaluation.	18,399,000	.....	11,813,000	
Pending subsequent reports** ..	.....	.....	−1,061,000	
Projects	**Obligated**	**Objectives**	**Cumulative disbursements**	**Measures**
Country: Honduras Year: 2007 Quarter 4 Total Obligation: $215,000,000 Entity to which the assistance is provided: MCA Honduras Total Quarterly Disbursement: $1,688,000				
Rural Development Project	$72,195,000	Increase the productivity and business skills of farmers who operate small and medium-size farms and their employees.	$6,667,000	Increase in farm income resulting from Rural Development Project. Funds lent by MCA-Honduras to financial institutions. Increase in employment income resulting from Rural Development Project. Number of Program farmers harvesting high-value horticulture crops. Number of hectares harvesting high-value horticulture crops.
Transportation Project	125,700,000	Reduce transportation costs between targeted production centers and national, regional and global markets.	927,000	Freight shipment cost from Tegucigalpa to Puerto Cortes. Price of basic food basket. Number of days per year road is passable.
Program Administration* and Control, Monitoring and Evaluation.	17,105,000	.....	1,804,000	
Pending subsequent reports** ..	.....	.....	1,574,000	
Projects	**Obligated**	**Objectives**	**Cumulative disbursements**	**Measures**
Country: Cape Verde Year: 2007 Quarter 4 Total Obligation: $110,078,000 Entity to which the assistance is provided: MCA Cape Verde Total Quarterly Disbursement: $4,327,000				
Watershed and Agricultural Support.	$10,848,000	Increase agricultural production in three targeted watershed areas on three islands.	$417,000	Increase in horticultural productivity. Increase in annual income. Value-added for farms and agribusiness.
Infrastructure Improvement	78,760,000	Increase integration of the internal market and reduce transportation costs.	6,121,000	Volume of goods shipped between Praia and other islands. Mobility Ratio: Percentage of beneficiary population who take at least 5 trips per month. Savings on transport costs from improvements.
Private Sector Development	7,200,000	Spur private sector development on all islands through increased investment in the priority sectors and through financial sector reform.	128,000	Value added in priority sectors above current trends. Volume of private investment in priority sectors above current trends.
Program Administration* and Control, Monitoring and Evaluation.	13,270,000	.....	2,977,000	
Pending subsequent reports** ..	.....	.....	4,288,000	
Projects	**Obligated**	**Objectives**	**Cumulative disbursements**	**Measures**
Country: Nicaragua Year: 2007 Quarter 4 Total Obligation: $175,000,000 Entity to which the assistance is provided: MCA Nicaragua Total Quarterly Disbursement: $2,174,000				
Property Regularization Project	$26,400,000	Increase Investment by strengthening property rights.	$967,000	Value of investment on land. Value of urban land. Value of rural land. Number of days to conduct a land transaction. Total cost to conduct a land transaction.
Transportation Project	92,800,000	Reduce transportation costs between Leon and Chinandega and national, regional and global markets.	973,000	Price of a basket of goods. Travel Time.
Rural Business Development Project.	33,500,000	Increase the value added of farms and enterprises in the region.	2,852,000	Annual percentage increase in value-added of clients of business office. Number of jobs created.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
				Number of program farm plots harvesting higher-value crops or reforesting under improvement of Water Supply Activities.
Program Administration*, Due Diligence, Monitoring and Evaluation.	22,300,000	.....	3,438,000	
Pending subsequent reports** ..	.....	.....	1,445,000	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Georgia Year: 2007 Quarter 3 Total Obligation: $294,693,000 Entity to which the assistance is provided: MCA Georgia Total Quarterly Disbursement: $1,000,000				
Regional Infrastructure Rehabilitation.	$211,700,000	Key Regional Infrastructure Rehabilitated.	$16,376,000	Reduction in Akhalkalaki-Ninotsminda-Teleti journey time. Reduction in vehicle operating costs. Increase in internal regional traffic volumes. Decreased technical losses in gas through the main North-South pipeline Reduction in the production of greenhouse gas emissions measured in tons of CO_2 equivalent. Increased collection rate of the Georgian Gas Company (GOGC). Number of household beneficiaries served by Regional Infrastructure Development projects. Actual operations and maintenance expenditures.
Regional Enterprise Development.	47,500,000	Enterprises in Regions Developed.	3,765,000	Increase in annual revenue in portfolio companies. Increase in number of portfolio company employees and number of local suppliers. Increase in portfolio companies' wages and payments to local suppliers. Jobs created. Increase in aggregate incremental net revenue to project assisted firms. Direct household net income. Direct household net income for market information initiative beneficiaries. Number of beneficiaries.
Program Administration*, Due Diligence, Monitoring and Evaluation.	35,493,000	.....	5,948,000	
Pending subsequent reports** ..	.....	.....	3,948,000	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Vanuatu Year: 2007 Quarter 4 Total Obligation: $65,690,000 Entity to which the assistance is provided: MCA Vanuatu Total Quarterly Disbursement: $286,000				
Transportation Infrastructure Project.	$60,690,000	Facilitate transportation to increase tourism and business development.	$2,000	Number of Tourists. Number of days per year road is closed. Number of S–W Bay, Malekula flights cancelled per year due to flooding. Vessel wait time at wharf.
Program Administration*, Due Diligence, Monitoring and Evaluation.	5,000,000	.....	1,291,000	
Pending subsequent reports** ..	.....	.....	714,000	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Armenia Year: 2007 Quarter 4 Total Obligation: $235,650,000 Entity to which the assistance is provided: MCA Armenia Total Quarterly Disbursement: $2,185,000				
Irrigated Agriculture Project	$145,680,000	Increase agricultural productivity and Improve Quality of Irrigation.	$3,545,000	Increase in hectares covered by high value added horticultural and fruit crops. Percentage of respondents satisfied with irrigation services. Share of Water User Association water charges as percentage of Water User Association annual operations and maintenance costs. Number of farmers using improved on-farm water management practices. Annual increase in irrigated land in Project area. State budget expenditures on maintenance of irrigation system. Value of loans provided under the project.
Rural Road Rehabilitation Project.	67,100,000	Better access to economic and social infrastructure.	914,000	Government budgetary allocations for routine maintenance of the entire road network. Average daily traffic in Project area. Kilometers of Package 1 road sections rehabilitated. Kilometers of Package 2 road sections rehabilitated. Kilometers of Package 3 road sections rehabilitated.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Program Administration*, Due Diligence, Monitoring and Evaluation.	22,870,000	.....	1,987,000	
Pending subsequent reports** ..	.....	.....	1,488,000	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Benin Year: 2007 Quarter 4 Total Obligation: $307,298,000 Entity to which the assistance is provided: MCA Benin Total Quarterly Disbursement: $8,104,000				
Access to Financial Services ...	$19,650,000	Expand Access to Financial Services.	$490,000	Operational self-sufficiency of participating microfinance institutions. Number of microfinance institutions supervised by the microfinance cellule. Total incremental increase in value of new credit extended and savings received by financial institutions participating in the project. Share value of all loans outstanding that have one or more installments of principal over 30 days past due. Total number of loans guaranteed by land titles per year.
Access to Justice	34,270,000	Improved Ability of Justice System to Enforce Contracts and Reconcile Claims.	489,000	Number of cases processed at the arbitration center. Percentage of all cases in the ''Tribunal de Premiere Instance'' courts per year. Percentage of all cases resolved in court of appeals per year. Average distance to reach TPI. Number of enterprises registered through the registration center. Average number of days required to register an enterprise.
Access to Land	36,020,000	Strengthen property rights and increase investment in rural and urban land.	2,188,000	Total value of additional investments in target rural land parcels. Total value of additional investments in target urban land parcels.
Access to Markets	169,447,000	Improve Access to Markets through Improvements to the Port of Cotonou.	1,117,000	Total metric tons of exports and imports passing through Port of Cotonou per year.
Program Administration*, Due Diligence, Monitoring and Evaluation.	47,911,000	.....	3,458,000	
Pending subsequent reports** ..	.....	.....	5,685,000	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Ghana Year: 2007 Quarter 4 Total Obligation: $547,010,000 Entity to which the assistance is provided: MCA Ghana Total Quarterly Disbursement: $6,424,000				
Agriculture Project	$242,352,000	Enhance Profitability of cultivation, services to agriculture and product handling in support of the expansion of commercial agriculture among groups of smallholder farms.	$2,017,000	Number of hectares irrigated. Number of days to conduct a land transaction. Number of land disputes in the pilot registration districts. Registration of land rights in the pilot registration districts. Metric tons of products passing through post-harvest treatment. Portfolio-at-risk of agriculture loan fund. Value of loans disbursed to clients from agricultural loan fund. Number of additional loans. Vehicle operating costs on minor, medium and major rehabilitated roads.
Rural Development	101,288,000	Strengthen the rural institutions that provide services complementary to, and supportive of, agricultural and agriculture business development.	0	Time/quality per procurement. Score card of citizen satisfaction with services. Gross enrollment rates. Gender parity in school enrollment. Distance to collect water. Time to collect water. Distance to sanitation facility. Travel time to sanitation facility. Incidence of guinea worm, diarrhea or bilharzias. Average number of days lost due to guinea worm, diarrhea or bilharzias. Percentage of households, schools, and agricultural processing plants in target districts with electricity. Number of inter-bank transactions. Value of deposit accounts in rural banks.
Transportation	141,736,000	Reduce the transportation costs affecting agriculture commerce at sub-regional levels.	20,000	Volume capacity ratio. Vehicles per hour at peak hour. Travel time at peak hour. International roughness index. Annual average daily vehicle and passenger traffic.
Program Administration*, Due Diligence, Monitoring and Evaluation.	61,634,000	.....	1,725,000	
Pending subsequent reports** ..	.....	.....	5,579,000	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: El Salvador Year: 2007 Quarter 4 Total Obligation: $460,940,000 Entity to which the assistance is provided: MCA El Salvador Total Quarterly Disbursement: $2,224,000				
Human Development Project ...	$91,675,000	Increase human and physical capital of residents of the Northern Zone to take advantage of employment and business opportunities.	$0	Number of students enrolled in the Chalatenango Center functioning as a MEGATEC institute. Graduation rate of students enrolled in the Chalatenango Center functioning as a MEGATEC institute. Number of students enrolled in participating middle technical schools. Graduation rate of students enrolled in participating middle technical schools. Number of students enrolled in non-formal training activites. Graduation rate of students enrolled in non-formal training activites. Number of households with access to water in the Northern Zone. Number of households with access to basic sanitation in the Northern Zone. Number of households with electricity in the Northern Zone. Number of individuals that benefit annually from the strategic infrastructure projects.
Productive Development Project.	84,196,000	Increase production and employment in the Northern Zone.	0	Investment in productive chains by selected beneficiaries.
Connectivity Project	234,963,000	Reduce travel cost and time within the Northern Zone, with the rest of the country, and within the region.	0	Weighted average of the International Roughness Index for the rehabilitation of the Transnational Highway. Weighted average of the International Roughness Index for the rehabilitation of the network of connecting roads.
Program Administration* and Control, Monitoring and Evaluation.	50,106,000	.....	0	
Pending Subsequent Report**	.....	.....	2,224,000	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Mali Year: 2007 Quarter 4 Total Obligation: $460,684,000 Entity to which the assistance is provided: MCA Mali Total Quarterly Disbursement: $2,054,000				
Bamako Sénou Airport Improvement Project.	$91,631,000	Establish an independent and secure link to the regional and global economy.	$151,000	Number of weekly flight arrivals and departures. Average time for passengers to complete departures and arrivals procedures.
Industrial Park Project	97,040,000	Develop a platform for industrial activity to be located within the Airport domain.	295,000	Occupancy level. Average number of days required for operator to connect to Industrial Park water and electricity services.
Alatona Irrigation Project	234,608,000	Increase the agricultural production and productivity in the Alatona zone of the ON.	0	Weighted average of the International Roughness Index for the rehabilitation of the Niono-Goma Coura road. Annual average daily count of vehicles on the Niono-Goma Coura road. Total amount of land irrigated by the Project in the Alatona zone. Average water volume delivered at the farm level in the Alatona zone. Crop water requirements as a percentage share of water supply at the Canal headworks in the Alatona Zone. Number of 5 and 10 hectare farm plots allocated in the Alatona zone. Total market garden parcels allocated in the Alatona zone. Number of titles registered in the land registration office granted to households in the Alatona zone. Number of students enrolled in schools established by the Project. Graduation rate of students enrolled in schools established by the Project. Number of farms adopting at least one new extension technique as a percentage of all farms receiving technical assistance under the Project. Total amount of credit extended in loan portfolios by participating microfinance institutions and banks in the Alatona zone. Number of active clients of microfinance institutions and banks in the Alatona zone.
Program Administration* and Control, Monitoring and Evaluation.	37,405,000	.....	1,608,000	
Pending Subsequent Report**	.....	.....	0	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Mozambique (CIF ONLY) Year: 2007 Quarter 4 Total Obligation: $25,346,000 Entity to which the assistance is provided: MCA Mozambique Total Quarterly Disbursement: $0				
Water and Sanitation Project ...	N/A	Increase access to reliable and quality water and sanitation facilities.	N/A	Value of productive days gained due to less diarrhea, cholera and/or malaria. School attendance days gained due to less diarrhea, cholera and/or malaria. Number (Percent) of businesses with access to improved water source. Reduction in time for rural/urban households to access improved water sources. Number (Percent) of urban households with access to improved water sources. Number (Percent) of rural households with access to improved water sources. Number (Percent) of urban households with access to improved sanitation facilities.
Road Rehabilitation Project	N/A	Increase access to productive resources and markets.	N/A	Increase in agricultural production among communities affected by road rehabilitation works. Increase in the number of new businesses within 5 km of rehabilitated roads. Reduction in vehicle operating costs as a result of rehabilitated roads. Time savings due to a reduction in time to travel a fixed length of rehabilitated road. Weighted average of the International Roughness Index for the rehabilitation roads. Average annual daily traffic volume on rehabilitated roads disaggregated by vehicle type.
Land Tenure Services Project ..	N/A	Establish efficient, secure land access for households and investors.	N/A	Increase (Percent) in value of new investments on land. Number of new businesses. Reduction (Percent) in time to right to land usage. More efficient, free and secure land transfers/transactions. Increase (Percentage) in parcel-holder land value. Reduction (Percent) in costs to right to land usage.
Farmer Income Support Project	N/A	Improve coconut productivity and diversification into cash crop.	N/A	Reduction (Percentage) in loss of coconut production and coconut products' sales. Increased income (Percentage) from sales from intercropping activities to small farm plot holders. Increased number (Percentage) of live coconut trees. Increased productive capacity (Percentage) of coconut trees.
Program Administration* and Control, Monitoring and Evaluation.	N/A	.....	N/A	
Pending Subsequent Report**	.....	.....	$0	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Lesotho (CIF ONLY) Year: 2007 Quarter 4 Total Obligation: $15,668,000 Entity to which the assistance is provided: MCA Lesotho Total Quarterly Disbursement: $0				
Water Project	$4,913,000	Improve the water supply for industrial and domestic needs, and enhance rural livelihoods through improved watershed management.	$0	Increased urban access to potable water supply. Increase in volume of water delivered after treatment at Metolong site. Decrease in percentage of urban water that is not accounted for (non-revenue losses plus physical losses). Number of people covered per year in rural areas with MCC funded rural water supply. Number of new VIP latrines provided to households.
Health Project	4,436,000	Increase access to life-extending ART and essential health services by providing a sustainable delivery platform.	0	Increase in the percentage of health facilities providing full package of standard services for level of center (MoHSW 2007 standard). Increase in TB treatment success rate. Increase in the percentage of health facilities staffed with standard number and type of qualified staff (MoHSW 2007 standard). Increase in the number of patients treated in health centers in Lesotho. Increase in mmunization rate (measles). Number of people receiving ARV treatment (number). Increase in annual enrollment at National Health Training College. Increase in average referred tests performed at the central laboratory per quarter during the past year. Increase in average number of blood units collected per quarter during the past year.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Private Sector Development Project.	710,000	Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy.	0	Increase in the percentage of the adult population listed by a private credit bureau with current information on repayment history, unpaid debts or credit outstanding. Increase in the number of payments associated with salaries and pensions made through EFT per year. Land used as collateral (number of mortgage bonds registered). Land transaction costs (percent of property value). Land transaction times (median number of days necessary to complete a procedure). Increase in the number of pending civil cases in the High Court. Gender equality index (percent change in index of knowledge, attitudes, and practices for supporting gender equality in economic rights).
Program Administration* and Control, Monitoring and Evaluation.	5,609,000	.....	0	
Pending Subsequent Report**	.....	.....	0	
Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Morocco (CIF ONLY) Year: 2007 Quarter 4 Total Obligation: $32,400,000 Entity to which the assistance is provided: MCA Lesotho Total Quarterly Disbursement: $0				
Fruit Tree Productivity	$6,960,000	TBD	$0	TBD.
Small Scale Fisheries	7,006,000	TBD	0	TBD.
Artisan and Fez Medina	6,142,000	TBD	0	TBD.
Financial Services	500,000	TBD	0	TBD.
Enterprise Support	0	TBD	0	TBD.
Program Administration* and Control, Monitoring and Evaluation.	11,792,000	TBD	0	TBD.
Pending Subsequent Report**	0	TBD	0	TBD.

* Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.
** These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s).

619 Transfer Funds U.S. Agency to which funds were transferred	Amount	Description of program or project
USAID	$24,294,350	Threshold Program

Dated: December 14, 2007.

William G. Anderson, Jr.,

Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. E7–24634 Filed 12–18–07; 8:45 am]

BILLING CODE 9210–01–P

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Notice of Proposed Information Collection: Analysis of Trends in Institute of Museum and Library Services Grants to States

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and Humanities.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Service (IMLS) as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95)[44 U.S.C. 3508(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study to assess the impact of access to computers and the Internet and to related services at public libraries on individuals, families, and communities.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 19, 2008. IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

ADDRESSES: Send comments to: Mamie Bittner, Director, Office of Policy, Planning, Research, and Communications, Institute of Museum and Library Services, 1800 M Street, NW., 9th floor, Washington, DC 20036, by telephone: 202–653–4630; fax: 202–653–4625; or by e-mail at *mbittner@imls.gov*.

SUPPLEMENTARY INFORMATION:

1. Background

The Institute of Museum and Library Services is authorized by the Museum and Library Services Act, Public law 108–81, and is the primary source of federal support for the nation's 122,000 libraries and 17,500 museums. The Institute's mission is to create strong libraries and museums that connect people to information and ideas. The Institute works at the national level and in coordination with state and local organizations to sustain heritage, culture, and knowledge; enhance learning and innovation; and support professional development.

II. Current Actions

The purpose of this study is to gather and analyze original data to:

(1) better understand achievements, uses, impacts, and remaining needs for its program of annual formula-based library Grants to States from approximately 2003–2007;

(2) relate services provided through Grants to States to all library services provided by the State Library Administrative Agencies in this period and understand the contribution of Grants to States to stimulating funding for library services;

(3) relate these services to library services and trends in general in this period; and

(4) better understand the function and impact of the program in the national context of library services.

Once completed, the results of the study will be issued as a report that will be made widely available to inform and benefit libraries, the library research field, and the public at large.

Agency: Institute of Museum and Library Services.

Title: Analysis of trends in Institute of Museum and Library Services Grants to States.

OMB Number: To be determined.

Agency Number: 3137.

Frequency: One time.

Affected Public: Libraries, State Library Administrative agencies.

Number of Respondents: To be determined.

Estimated Time per Respondent: To be determined.

Total Annualized Capital/Startup Costs: To be determined.

Total Costs: To be determined.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director, Office of Policy, Planning, Research, and Communications, Institute of Museum and Library Services, 1800 M Street, NW., 9th floor, Washington, DC 20036, by telephone: 202–653–4630; fax: 202–653–4625; or by e-mail at *mbittner@imls.gov*.

Dated: December 13, 2007.

Barbara G. Smith,

E-Projects Officer, Institute of Museum & Library Services.

[FR Doc. E7–24598 Filed 12–18–07; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Task Force on Cost Sharing; Committee on Strategy and Budget; Sunshine Act Meetings; Notice

The National Science Board's Task Force on Cost Sharing of the Committee on Strategy and Budget, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Thursday, December 20, 2007 at 5 p.m.

SUBJECT MATTER: 1. Update on Task Force Activities.

2. Review of Input on Cost Sharing Gathered to Date.

a. NSF ERC 2007 Annual Meeting Summary.

b. 2007 National NSF EPSCoR Meeting Summary.

c. Roundtable Discussion on Cost Sharing Summary.

3. Task Force Survey.

4. Drafting of Report to Congress.

5. Analysis of Additional Data from NSF (EPSCoR and ERC Programs & Other Detectable Impacts of 2004 Board Revision to NSF Cost Sharing Policy).

6. Plans and Topics for Future Task Force Workshops & Other Mechanisms for Gathering Input.

STATUS: Open.

PLACE: This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Room 110 will be available to the public to listen to this teleconference meeting.

Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for information or schedule updates, or contact: Jennifer Richards, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Russell Moy,

Attorney-Advisor.

[FR Doc. E7–24616 Filed 12–18–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power and Light Company; Notice of Availability of the Draft Supplement 33 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, and Public Meeting for the License Renewal of Shearon Harris Nuclear Power Plant, Unit 1

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), NUREG–1437; regarding the renewal of operating license NPF–63 for an additional 20 years of operation for the Shearon Harris Nuclear Power Plant, Unit 1 (HNP). HNP is located in Wake County, North Carolina. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft Supplement 33 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm.* The Accession Number for the draft Supplement 33 to the GEIS is ML073320364. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov*. In addition, the West Regional Library, located at 4000 Louis Stephens Drive, Cary, North Carolina 27519, as well as the Eva H. Perry Library, located at 2100 Shepherd's Vineyard Drive, Apex, North Carolina 27502, have agreed to make the draft supplement available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be considered, comments on the draft supplement to the GEIS and the proposed action must be received by March 5, 2008; the NRC staff is able to assure consideration only for comments received on or before this date. Comments received after the due date will be considered only if it is practical to do so. Written comments on the draft supplement to the GEIS should be sent

to: Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Room T–6D59, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at *ShearonHarrisEIS@nrc.gov.* All comments received by the Commission, including those made by Federal, State, local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and through ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held on January 30, 2008, at the New Horizons Fellowship, 820 East Williams Street, Apex, North Carolina 27502. There will be two identical meetings to accommodate interested parties. The first meeting will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second meeting will convene at 7 p.m. and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each meeting at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Samuel Hernandez, the NRC Environmental Project Manager at 1–800–368–5642, extension 4049, or by e-mail at *ShearonHarrisEIS@nrc.gov* no later than January 23, 2008. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual, oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Hernandez's attention no later than January 23, 2008, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Mr. Hernandez, Reactor Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Mr. Hernandez may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 10th day of December 2007.

For the Nuclear Regulatory Commission.

Louise Lund,

Branch Chief, Reactor Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E7–24648 Filed 12–18–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–36257]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment To Byproduct Materials License No. 06–30667–02, for Termination of the License and Unrestricted Release of Curagen Corporation's Facility In Branford, Connecticut

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania; telephone 610–337–5366; fax number 610–337–5393; or by e-mail: *drl1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I.Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 06–30667–02. This license is held by CuraGen Corporation (the Licensee), for its facility located at 322 East Main Street, in Branford, Connecticut (the Facility). Issuance of the amendment would authorize release of the Facility for unrestricted use and termination of the NRC license. The Licensee requested this action in a letter dated July 31, 2007. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's July 31, 2007, license amendment request, resulting in release of the Facility for unrestricted use and the termination of its NRC materials license. License No. 06–30667–02 was issued on April 8, 2003, pursuant to 10 CFR Part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed byproduct material at the Facility for purposes of conducting research and development activities on laboratory bench tops, incubators, and in hoods.

The Facility is comprised of a 52,000 square foot building on 3.5 acres of land and consists of general office space and laboratories. Use of licensed materials was confined to 300 square feet of the building known as Area 311B. The Facility is located in a mixed residential/commercial area. Within the Facility, the radionuclides of concern were hydrogen-3 and carbon-14 because their half-lives are greater than 120 days.

In October 2004, the Licensee ceased licensed activities at the Facility and initiated survey and decontamination actions there. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release and for license termination.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility, and

seeks the unrestricted use of its Facility and the termination of its NRC materials license. Termination of its license would end the Licensee's obligation to pay annual license fees to the NRC.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: hydrogen-3 and carbon-14. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted final status surveys on July 2–3, 2007. The final status survey report was attached to the Licensee's amendment request letter dated July 31, 2007. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release and for license termination. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to Connecticut Department of Environmental Protection for review on November 6, 2007. On November 30, 2007,the State of Connecticut, Department of Environmental Protection responded by electronic mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''
2. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
3. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;'' and
5. CurGen Corporation's Termination Request dated July 31, 2007 [ML072280511].

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR

reproduction contractor will copy documents for a fee.

Dated at 475 Allendale Road, King of Prussia this 11th day of December.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E7–24600 Filed 12–18–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–14680]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 29–00117–06, for Unrestricted Release of Merck & Co., Inc.'s Facility In Branchburg Township, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania; telephone 610–337–5366; fax number 610–337–5393; or by e-mail: *drl1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 29–00117–06. This license is held by Merck & Co., Inc. (the Licensee), for its Branchburg Farm, located at 203 River Road in Branchburg Township, New Jersey (the Facility). Issuance of the amendment would authorize release of the Facility for unrestricted use. The Licensee requested this action in a letter dated August 24, 2007. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's August 24, 2007, license amendment request, resulting in release of the Facility for unrestricted use. License No. 29–00117–06 was issued on January 22, 1990, pursuant to 10 CFR Part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed byproduct material at the Facility for purposes of conducting research and development activities on laboratory bench tops and in hoods, animal studies and instrument calibration. The proposed action pertains only to the cessation of licensed activities at the Facility. The license authorizes use of licensed material at other locations that will not be affected by this action and the license will thus not be terminated if the proposal is approved.

The Facility is situated on 223 acres, and consists of office, laboratory, and animal areas. Within the Facility, use of licensed materials was confined to Building 71 and Building 91. The area of use totaled 29,000 square feet. The Facility is located in a residential area. Within the Facility, the radionuclides of concern were hydrogen-3 and carbon-14 because the half-life of these isotopes is greater than 120 days.

In January 2007, the Licensee ceased licensed activities at the Facility and initiated survey and decontamination actions there. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: hydrogen-3 and carbon-14. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted final status surveys on April 9–11, May 1, and May 22, 2007. This survey covered 13 laboratories and an incinerator used within Building 71 and 91. The final status survey report was attached to the Licensee's amendment request dated August 24, 2007. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the

residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the State of New Jersey, Department of Environmental Health for review on November 8, 2007. On November 26, 2007, the Department of Environmental Health responded by letter. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''
2. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
3. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;'' and
5. Merck & Co. Inc. Amendment Request Letter dated August 24, 2007. [ML072550100]

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at 475 Allendale Road, King of Prussia this 11th day of December 2007.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E7–24657 Filed 12–18–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56951; File No. SR–CBOE–2007–74]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend CBOE Rule 6.13A To Modify the Simple Auction Liaison Auction Process and Incorporate Specific Provisions for Hybrid 3.0 Classes

December 12, 2007.

I. Introduction

On July 2, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 6.13A to modify the Simple Auction Liason (''SAL'') auction process. On October 16, 2007, CBOE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on November 7, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

CBOE Rule 6.13A governs the operation of the Exchange's SAL system. SAL is a feature on CBOE's Hybrid system that auctions certain marketable orders for price improvement over the National Best Bid and Offer (''NBBO''). The SAL rules provide for an auction, for a period of time not to exceed two seconds as determined by the Exchange on a class-by-class basis, for any qualifying order (''Agency Order'') that is eligible for automatic execution by CBOE's Hybrid System.[4] CBOE Rule 6.13A(b) outlines the procedures regarding how a response shall be submitted during the auction and provides that the response may be submitted in one-cent increments. CBOE proposes to modify this rule to allow the auction response in all option classes in which SAL is activated to be submitted in one-cent increments or standard increments, as determined by

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56730 (November 1, 2007), 72 FR 62883 (November 7, 2007) (the ''Notice'').

[4] *See* CBOE Rule 6.13(b)(C)(i).

the Exchange.[5] CBOE believes that this modification may encourage market makers and other market participants to quote more aggressively overall.

The Exchange believes that applying SAL to Hybrid 3.0 classes will provide a more automated order handling process in those classes. CBOE proposes to modify the operation of SAL, however, with respect to Hybrid 3.0 classes. The existing SAL rules provide that Agency Orders are to be allocated in two rounds.[6] For Hybrid 3.0 Classes, CBOE proposes to conduct only one round of allocations, because the Designated Primary Market Maker or Lead Market Maker (''DPM'' or ''LMM'') is the only ''quoter'' on the Hybrid 3.0 Platform.[7] Specifically, the first round allocation specified in Rule 6.13A(c)(i) will not apply; rather, in Hybrid 3.0 Classes, the single allocation round will be conducted pursuant to the criteria in Rule 6.13A(c)(ii) for Hybrid and Hybrid 2.0 classes, with a few differences.

The current SAL rule allocates the Agency Order pursuant to the matching algorithm that is in effect for the class pursuant to Rule 6.45A or Rule 6.45B.[8] CBOE's proposal will allow the matching algorithm as applied to SAL to be different from the matching algorithm that is currently in effect for the Hybrid 3.0 Class. Therefore, for Hybrid 3.0 Classes, the Exchange proposes to allow the appropriate Exchange Procedure Committee to determine, on a class-by-class basis, which electronic matching algorithm will apply to SAL executions. The matching algorithm applied to SAL in Hybrid 3.0 Classes will continue to be pursuant to Rule 6.45B.

The existing SAL rule also provides for a Market-Maker to receive a participation entitlement only if the applicable matching algorithm (from Rule 6.45A or 6.45B) that is in effect for the class includes a participation entitlement.[9] Currently, Hybrid 3.0 does not permit an LMM or DPM to receive a participation entitlement as it pertains to the allocation of incoming electronic orders.[10] Since the LMM or DPM does not receive a participation entitlement with regard to incoming electronic orders, CBOE proposes to permit the appropriate Exchange Market Performance Committee to establish, on a class-by-class basis, an LMM or DPM participation entitlement applicable only to SAL executions in Hybrid 3.0 Classes. Incorporating SAL on the Hybrid 3.0 Platform will provide Market-Makers with electronic access to the Agency Order since Market-Makers will be able to electronically respond to the Agency Order through SAL. The Exchange stated in its Notice that with Market-Makers having access to electronically respond to the Agency Order, incorporating a LMM/DPM participation entitlement to SAL executions may provide for more aggressive quoting. The participation entitlement, if any, will be in compliance with the provisions of Rule 6.45B(a)(i)(2).

When the SAL system is enabled, the Exchange will conduct a SAL auction in Hybrid 3.0 classes only when the Exchange's quote is represented by the DPM/LMM quote. The Exchange will not conduct a SAL auction when the Exchange's quote is represented by a manual quote.[11] All other aspects of SAL pursuant to CBOE Rule 6.13A will apply to Hybrid 3.0 Classes.

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission notes that SAL is a feature which auctions certain orders for price improvement over the NBBO. The Commission believes that it is reasonable and consistent with the Act to allow the Exchange flexibility to determine the minimum trading increment in which responses in the auction—responses to provide price improvement—can be submitted. The Commission notes that orders that participate in a SAL auction will, at a minimum, receive executions at the NBBO.

Applying the SAL functionality to Hybrid 3.0 classes should serve to further automate the order handling process for certain orders in those classes. Automation may increase efficiency in the marketplace, which would be in the interest of the Exchange, its members, and the investing public. Further, the Commission believes the differences in the application of SAL to Hybrid 3.0 classes are reasonable and consistent with the Act, in part because of the differences in the operation of Hybrid 3.0. The Commission notes, however, that the Exchange has the duty to surveil for compliance with its own rules and Rule 602 of Regulation NMS[14] in all instances, including when an order is received when the Exchange's quote is represented by a manual quote.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CBOE–2007–74), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8011–01–P

[5] *See* proposed changes to CBOE Rule 6.13A(b)(ii).

[6] *See* CBOE Rule 6.13A(c).

[7] Pursuant to CBOE Rule 1.1(aaa), the Hybrid 3.0 Platform is an electronic trading platform on the Hybrid trading system that allows a single quoter to submit an electronic quote which represents the aggregate Market-Maker quoting interest in a series for the trading crowd.

[8] *See* CBOE Rule 6.13A(c)(1).

[9] *See* CBOE Rule 6.13A(c)(3).

[10] In Hybrid 3.0 Classes, pursuant to existing rules, all eligible orders pursuant to Rule 6.13 can receive automatic execution against public customer orders in the electronic book. The remaining balance of the eligible order, if any, may be represented in the electronic book, provided such order is eligible for book entry pursuant to Rule 7.4; if not book eligible, the remaining balance of the eligible order will route to PAR, BART, or the order entry firm's booth printer. *See* CBOE Rule 6.13(b)(i)(A)(2). Orders not eligible for automatic execution will route on a class-by-class basis to PAR, BART, or the order entry firm's booth printer. *See* CBOE Rule 6.13(b)(i)(B).

[11] *See* proposed CBOE Rule 6.13A.04(iii).

[12] 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).

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 242.602.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56955; File No. SR–ISE–2007–101]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to a Corporate Transaction in Which Its Parent, International Securities Exchange Holdings, Inc., Will Become a Wholly-Owned Indirect Subsidiary of Eurex Frankfurt AG

December 13, 2007.

I. Introduction

On November 1, 2007, International Securities Exchange, LLC (''Exchange'' or ''ISE'') 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 regarding a corporate transaction (''Transaction'') in which the ISE's parent, International Securities Exchange Holdings, Inc. (''Holdings''), would become a wholly-owned, indirect subsidiary of Eurex Frankfurt AG (''Eurex Frankfurt''). The proposed rule change was published for comment in the **Federal Register** on November 7, 2007.[3] The Commission has received no comments on the proposal.

On December 11, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, grants accelerated approval to Amendment No. 1, and solicits comments from interested persons on Amendment No. 1.

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with section 6(b) of the Act,[6] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. Section 6(b) of the Act also requires that the rules of the exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

A. Accelerated Approval of Amendment No. 1

The Commission, pursuant to section 19(b)(2) of the Act,[7] finds good cause for approving Amendment No. 1 prior to the thirtieth day after publishing notice of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the ISE proposes to amend the Trust Agreement (as defined below) [8] to provide that, if there is a Material Compliance Event (as described below),[9] Holdings and U.S. Exchange Holdings, Inc. (''U.S. Exchange Holdings'') would be required to promptly transfer to the Trust a majority of capital stock of Holdings that have the right by its terms to vote in the election of the board of directors of Holdings (''Holdings Board'') or on other matters (other than matters affecting the rights, preferences, or privileges of the said capital stock).[10] The Commission finds this change to the Trust Agreement consistent with the Act and that it is designed to facilitate the Exchange's ability to comply with the requirements of the Act.

The Exchange also proposes to amend the Certificate of Incorporation of Holdings (''Holdings Certificate'') to provide that if a person exceeds Ownership Limit or Voting Limit (both as described below),[11] then a majority of capital stock of Holdings that have the right by its terms to vote in the election of the Holdings Board or on other matters (other than matters affecting the rights, preferences, or privileges of the said capital stock) would automatically be transferred to the Trust.[12]

Further, the Exchange proposes to amend the Holdings Certificate with the Certificate of Designation of Series A Preferred Stock (''Certificate of Designation'').[13] Specifically, pursuant to the Certificate of Designation, the Exchange proposes to issue 100,000 shares of Holdings Series A Preferred Stock, par value $.01 per share (''Holdings Preferred''). The Commission notes that the Exchange proposes to issue Holdings Preferred to finance, and thereby facilitate the completion of, the Transaction.

The Exchange represents that Holdings Preferred is not capital stock of Holdings that have the right by its terms to vote in the election of the Holdings Board or on other matters (other than matters affecting the rights, preferences, or privileges of Holdings Preferred).[14] Therefore, the Exchange represents that Holdings Preferred does not affect Ownership Limit or Voting Limit.

The Certificate of Designation amends the Holdings Certificate to provide that, for so long as any shares of Holdings Preferred are outstanding, there shall be a total of three directors on the Holdings Board.[15] If and when Holdings files for a reorganization or relief under bankruptcy law, approves a plan to dissolve or wind up, or fails to pay dividends of Holdings Preferred in any two consecutive calendar years, the holders of Holdings Preferred shall be entitled to appoint two additional directors to the Holdings Board.[16] However, the Certificate of Designation also provides that the number of directors constituting the entire Holdings Board may not be increased until the board of directors of ISE (''ISE Board'') is notified and such change is filed with, or filed with and approved by, the Commission under the Act and rules thereunder.[17] Furthermore, any change to the Certificate of Designation must be submitted to the ISE Board. If such change must be filed with, or filed with and approved by, the Commission under section 19 of the Act [18] and the rules thereunder, then such change shall not be effective until filed with, or filed with and approved by, the Commission.[19]

The Commission believes the changes to the Holdings Certificate are consistent with the Act and therefore finds good

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56733 (November 1, 2007), 72 FR 62885.

[4] The text of Amendment No. 1 and Exhibits 5A through 5I, which set forth certain governing documents and resolutions as proposed to be amended, are available on the Commission's Web site (*http://www.sec.gov/rules/sro/ise.shtml),* at the Commission's Public Reference Room, at the ISE, and on the ISE's Web site (*http://www.ise.com*).

[5] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78s(b)(2).

[8] *See infra* notes 70 to 114 and accompanying text for a discussion of a Trust proposed in context of this filing.

[9] *See infra* notes 73 to 74 and accompanying text for a discussion of Material Compliance Event.

[10] Trust Agreement, Article IV, Section 4.2(g)(ii).

[11] *See infra* note 27 and accompanying text for a discussion of Ownership Limit and Voting Limit.

[12] Proposed Holdings Certificate, Article FOURTH, Sections III(c).

[13] The Certificate of Designation was approved by the unanimous written consent of the Holdings Board on November 19, 2007.

[14] Certificate of Designation, Section 5(a).

[15] Certificate of Designation, Section 7.

[16] Certificate of Designation, Section 5(b).

[17] *Id.*

[18] 15 U.S.C. 78s.

[19] Certificate of Designation, Section 8(c).

cause to accelerate approval of these changes prior to the thirtieth day after publication in the **Federal Register**. The shares of Holdings Preferred do not affect Ownership Limit or Voting Limit. Further, in the event the holders of Holdings Preferred become entitled to appoint directors to the Holdings Board, the ISE must file this appointment right with the Commission pursuant to section 19 of the Act [20] and the rules thereunder.

In addition, the Exchange proposes certain clarifying, conforming, technical, non-material, and non-substantive changes to the Purpose Section of Form 19b–4, the Holdings Certificate, and the Amended and Restated Bylaws of Holdings (''Holdings Bylaws''). Further, the Exchange proposes certain clarifying, conforming, technical, non-material, and non-substantive changes to Form of German Parent Corporate Resolutions (''German Resolutions''), Form of Swiss Parent Corporate Resolutions, and Form of Swiss Parent Association Resolutions (Form of Swiss Parent Corporate Resolutions and Form of Swiss Parent Association Resolutions, together referred to herein as ''Swiss Resolutions,'' and with German Resolutions, ''Resolutions''). Finally, the Exchange also makes certain clarifying, conforming, technical, non-material, and non-substantive changes to the Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings, Inc. (''U.S. Exchange Holdings Certificate''), the Amended and Restated Bylaws of U.S. Exchange, Inc. (''U.S. Exchange Holdings Bylaws''), and the Trust Agreement.

The changes described in the foregoing paragraph are non-substantive and technical in nature and are necessary to clarify the proposal. Therefore, they raise no new or novel issues. The Commission finds that these changes proposed in Amendment No. 1 are consistent with the Act. Further, pursuant to section 19(b)(2) of the Act,[21] the Commission finds good cause to accelerate approval of these changes prior to the thirtieth day after publication in the **Federal Register**, because they clarify the Exchange's rules, which should facilitate the Exchange's compliance, and the Commission's ability to ensure compliance, with such rules and assist members and investors in understanding the application and scope of the rules.

[20] 15 U.S.C. 78s.

[21] 15 U.S.C. 78s(b)(2).

B. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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–2007–101 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–ISE–2007–101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–101 and should be submitted on or before January 9, 2008.

II. Discussion

The ISE submitted the proposed rule change in connection with a proposed Transaction in which Holdings would become a wholly-owned, indirect subsidiary of Eurex Frankfurt. Pursuant to the Agreement and Plan of Merger, dated April 30, 2007 (''Agreement''), Holdings would become a wholly-owned subsidiary of U.S. Exchange Holdings, which is a wholly-owned subsidiary of Eurex Frankfurt. Eurex Frankfurt is a wholly-owned subsidiary of Eurex Zürich AG (''Eurex Zürich''), which in turn is jointly owned by Deutsche Börse AG (''Deutsche Börse'') and SWX Swiss Exchange (''SWX''). SWX is owned by SWX Group, which in turn is owned by Verein SWX Swiss Exchange.

Pursuant to the Agreement, the stockholders of Holdings will receive cash in exchange for their shares in Holdings. The consummation of the Transaction is subject to satisfaction of certain conditions, including the approval by the Holdings' stockholders of the Transaction [22] and the approval of this rule change by the Commission.

A. Corporate Structure

The ISE, a national securities exchange and a self-regulatory organization (''SRO''), is organized as a Delaware limited liability company. The ISE will not make any changes to its governance structure in connection with the Transaction. Therefore, the ISE will continue to have a 15-member board of directors, composed of a chief executive officer, 6 industry directors elected by the members, and 8 non-industry directors elected by Holdings as the sole member of the ISE.[23] Further, the ISE currently intends to have its senior management remain in place, subject to the previously-announced retirement of the ISE's chief executive officer, as of January 1, 2008.

The ISE is not proposing any amendments to its trading or regulatory rules. The ISE members, therefore, will continue to own ''exchange rights'' [24] and have the same trading and voting rights in the ISE.

1. Upstream Owners

Following the Transaction, U.S. Exchange Holdings will directly own all of the common stock of Holdings. U.S. Exchange Holdings is a Delaware corporation and a wholly-owned subsidiary of Eurex Frankfurt. Eurex Frankfurt is a wholly-owned subsidiary of Eurex Zürich, which in turn is jointly

[22] The stockholders of Holdings approved the Transaction at a special meeting of stockholders held on July 27, 2007.

[23] Pursuant to the Agreement, on the closing of the Transaction, all members of the Holdings Board, and all members of the ISE Board who are also on the Holdings Board, will resign. Members of the ISE Board who are elected by the ISE members are not on the Holdings Board and will not resign.

[24] *See* the ISE's Second Amended and Restated Limited Liability Agreement, Article VI.

owned by Deutsche Börse and SWX. SWX is owned by SWX Group, which in turn is owned by Verein SWX Swiss Exchange. Eurex Frankfurt and Deutsche Börse are stock corporations organized under the laws of the Federal Republic of Germany. Eurex Zürich, SWX, and SWX Group are stock corporations and Verein SWX Swiss Exchange is an association, all organized under the laws of the Swiss Confederation (Eurex Frankfurt, Eurex Zürich, Deutsche Börse, SWX, SWX Group, and Verein SWX Swiss Exchange, collectively referred to herein as ''non-U.S. Upstream Owners,'' and together with U.S. Exchange Holdings, ''Upstream Owners''). Therefore, following the Transaction, the non-U.S. Upstream Owners will indirectly own all of the common stock of Holdings, the sole member of the ISE, through an intermediary holding company, U.S. Exchange Holdings. The Transaction represents the first time that a national securities exchange will be controlled by non-U.S. entities.

Section 19(b) of the Act and Rule 19b–4 thereunder require an SRO to file proposed rule changes with the Commission. Although the Upstream Owners are not SROs, the Resolutions,[25] the U.S. Exchange Holdings Certificate, and the U.S. Exchange Holdings Bylaws are rules of an exchange if they are stated policies, practices, or interpretations (as defined in Rule 19b–4 under the Act) of the exchange, and must therefore be filed with the Commission pursuant to section 19(b)(4) of the Act and Rule 19b–4 thereunder.[26] Accordingly, the Exchange filed the Resolutions, the U.S. Exchange Holdings Certificate, and the U.S. Exchange Bylaws with the Commission.

The Holdings Certificate currently provides that no person, either alone or together with its related persons, may own, directly or indirectly, more than 40% (or 20%, if the person is an Exchange member) of Holdings capital stock that has the right by its terms to vote in the election of the Holdings Board or on other matters (other than matters affecting the rights, preferences, or privileges of the said capital stock) (''Ownership Limit''). The Holdings Certificate also provides that no person, either alone or together with its related persons, may, directly or indirectly, vote or cause the voting of more than 20% of the Holdings capital stock that has the right by its terms to vote in the election of the Holdings Board or on other matters (other than matters affecting the rights, preferences, or privileges of the said capital stock) (''Voting Limit'').[27] The ISE is not proposing to change Ownership Limit or Voting Limit.

To facilitate compliance with Ownership Limit and Voting Limit, the Resolutions of the non-U.S. Upstream Owners provide that each non-U.S. Upstream Owner shall take reasonable steps necessary to cause Holdings to be in compliance with Ownership Limit and Voting Limit.[28] Likewise, the U.S. Exchange Holdings Certificate provides that U.S. Exchange Holdings will take reasonable steps necessary to cause Holdings to be in compliance with Ownership Limit and Voting Limit.[29]

Further, the Resolutions of each of the German Upstream Owners (*i.e.*, Eurex Frankfurt and Deutsche Börse) would require these entities to notify the ISE Board and the Trust (as described below) if any person, either alone or together with its related persons, acquires 20%, 25%, 30%, 50%, or 75% or more of the shares of stock in such company.[30] Similarly, the Resolutions of each of the Swiss Upstream Owners (*i.e.*, Eurex Zürich, SWX, SWX Group, and Verein SWX Swiss Exchange) would require these entities to notify the ISE Board and the Trust if any person, either alone or together with its related persons, acquires 20%, 33⅓%, 45%, 50%, or 66⅔% or more of the shares of stock or membership interest, as applicable, in such company.[31] Finally, the U.S. Exchange Holdings Certificate provides that U.S. Exchange Holdings will notify the ISE Board and the Trust if any person, either alone or together with its related persons, acquire 10%, 15%, 20%, 25%, 30%, 35%, or 40% or more of the shares in U.S. Exchange Holdings.[32]

The Commission finds the provisions in the Resolutions and the U.S. Exchange Holdings Certificate, requiring each Upstream Owner to take reasonable steps necessary to cause Holdings to be in compliance with Ownership Limit and Voting Limit, consistent with the Act. These provisions should minimize the potential that a person could improperly interfere with, or restrict the ability of, the Commission or the ISE to effectively carry out their regulatory oversight responsibilities under the Act. Further, the provisions in the Resolutions and the U.S. Exchange Holdings Certificate requiring notification to the ISE Board and the Trust upon acquisition of certain ownership percentage of the Upstream Owners should help facilitate the ability of the ISE to comply with its responsibilities under the Act.

2. Holdings

Holdings will become a wholly-owned subsidiary of U.S. Exchange Holdings. Thus, following the Transaction, Holdings will no longer be publicly traded.[33] The Transaction, however, will not affect Holdings' ownership of the ISE. After the Transaction, Holdings will continue to be the sole member of the ISE.

Section 19(b) of the Act and Rule 19b–4 thereunder require an SRO to file proposed rule changes with the Commission. Although Holdings is not an SRO, certain provisions of the Holdings Certificate and the Holdings Bylaws are rules of an exchange if they are stated policies, practices, or

[25] The enumeration in the Resolutions is identical in all Resolutions. Therefore, unless otherwise specified, reference to certain enumerated resolution referred to herein applies to all Resolutions.

[26] *See* Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27). If each of the Upstream Owners decides to change its Resolutions or governing documents, as applicable, each such Upstream Owner must submit the change to the ISE Board. If the change must be filed with, or filed with and approved by, the Commission under Section 19 of the Act and the rules thereunder, then the change shall not be effective until filed with, or filed with and approved by, the Commission. *See* Resolution 11, U.S. Exchange Holdings Certificate, Article SIXTEENTH, and U.S. Exchange Holdings Bylaws, Article VI, Section 9.

[27] Holdings Certificate, Article FOURTH, Section III. The Commission previously approved Ownership Limit and Voting Limit. *See* Securities Exchange Act Release No. 53705 (April 21, 2006) 71 FR 25260 (April 28, 2006) (SR–ISE–2006–04) (reorganization of International Securities Exchange, Inc. into a holding company structure).

[28] Resolution 4.

[29] U.S. Exchange Holdings Certificate, Article THIRTEENTH.

[30] German Resolution 4. The calculation of the percentage of shares would be as determined under Sections 21 and 22 of the German Securities Trading Act.

[31] Swiss Resolution 4. The calculation of the percentage of shares or membership interest, as applicable, would be as determined under Section 20 of the Swiss Federal Act on Stock Exchanges and Securities Trading and Section 9 of the Swiss Federal Banking Commission's Ordinance on Stock Exchanges and Securities Trading.

[32] U.S. Exchange Holdings Certificate, Article THIRTEENTH.

[33] The ISE proposes to make certain changes to the Holdings Certificate and the Holdings Bylaws. Specifically, the ISE proposes to: (1) *Decrease* the number of authorized shares of Holdings; (2) eliminate classified board structure and remove term limits for directors; (3) eliminate the requirement that there be an executive, finance and audit, corporate governance, and compensation committees; (4) decrease the affirmative vote requirement for the election of chairman and vice chairman; (5) delete the requirement that chief executive officer not engage in any other occupation during incumbency; (6) provide that chief executive officer may be removed by the Holdings Board with or without cause; (7) empower the Holdings Board to change the Holdings Certificate and the Holdings Bylaws without the approval of stockholders; and (8) permit taking of stockholder action without prior notice and by written consent. The Commission finds these changes consistent with the Act.

interpretations (as defined in Rule 19b–4 of the Act) of the exchange, and must be filed with the Commission pursuant to section 19(b)(4) of the Act and Rule 19b–4 thereunder.[34] Accordingly, the ISE filed the proposed changes to the Holdings Certificate and the Holdings Bylaws with the Commission.

a. *Transfer of Capital Stock to Trust.* As stated above, the Holdings Certificate currently provides that no person, either alone or together with its related persons, may exceed Ownership Limit or Voting Limit.[35] The ISE does not propose to change Ownership Limit or Voting Limit, but does propose to add a provision in the Holdings Certificate to provide that, if a person exceeds Ownership Limit or Voting Limit, then a majority of capital stock of Holdings that have the right by its terms to vote in the election of the Holdings Board or on other matters (other than matters affecting the rights, preferences, or privileges of the said capital stock) would automatically be transferred to the Trust,[36] as discussed below.[37]

The Commission finds these changes to the Holdings Certificate consistent with the Act. The proposed changes to the Holdings Certificate should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission and the Exchange to effectively carry out their regulatory oversight responsibilities under the Act.

b. *Ownership of Holdings by Upstream Owners.* Additionally, the ISE proposes to amend the Holdings Bylaws to allow the Upstream Owners to wholly own and vote all of the common stock of Holdings.[38] Currently, the Holdings Certificate provides that the Holdings Board may waive Ownership Limit and Voting Limit pursuant to an amendment to the Holdings Bylaws.[39] In connection with the adoption of such amendment, the Holdings Board must adopt a resolution determining that the amendment will not impair the ability of Holdings and the ISE to discharge the ISE's responsibilities under the Act and the rules and regulations thereunder, is in the best interests of Holdings, its stockholders, and the ISE, and will not impair the Commission's ability to enforce the Act.[40] Further, the Holdings Board must determine that in waiving a person's Ownership Limit or Voting Limit such person and its related persons are not subject to any ''statutory disqualification'' [41] and are not Exchange members.

Pursuant to the Holdings Certificate, the Holdings Board approved an amendment to the Holdings Bylaws to allow ownership and voting of all of the common stock of Holdings by the Upstream Owners. The Holdings Board determined that waiver of Ownership Limit and Voting Limit with respect to the Upstream Owners will not impair the ability of Holdings and the ISE to discharge the ISE's responsibilities under the Act and the rules and regulations thereunder, that such waiver is in the best interests of Holdings, its stockholders, and the ISE, and will not impair the Commission's ability to enforce the Act, and that neither the Upstream Owners nor any of its related persons are subject to any statutory disqualification or is an Exchange member. Therefore, the Exchange proposes that the Upstream Owners wholly own and vote all of the common stock of Holdings upon the consummation of the Transaction.

The Commission believes it is consistent with the Act to allow the Upstream Owners to wholly own and vote all of the common stock of Holdings. The Exchange represents that neither the Upstream Owners nor any of its related persons is subject to any statutory disqualification or is an Exchange member. Moreover, each of the Upstream Owners has provided that it will take reasonable steps necessary to cause Holdings to be in compliance with Ownership Limit and Voting Limit. As discussed below, each of the Upstream Owners will adopt certain provisions designed to maintain the independence of the ISE's self-regulatory functions in its Resolutions or governing documents, as applicable. Accordingly, the Commission believes that the acquisition of ownership and exercise of voting control of Holdings by the Upstream Owners will not impair the ability of the Commission or the ISE to discharge their respective responsibilities under the Act.

B. Relationship of Upstream Owners and the ISE; Jurisdiction Over Upstream Owners

Although the Upstream Owners will not carry out regulatory functions, the activities of each of the Upstream Owners with respect to the operation of the ISE must be consistent with, and not interfere with, the ISE's self-regulatory obligations. The Resolutions, the U.S. Exchange Holdings Certificate, and the U.S. Exchange Holdings Bylaws include certain provisions that are designed to maintain the independence of the ISE's self-regulatory functions, enable the ISE to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of sections 6(b) and 19(g) of the Act,[42] and facilitate the ability of the ISE and the Commission to fulfill their regulatory and oversight obligations under the Act.

For example, the Upstream Owners provide that each such Upstream Owners will comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and the ISE.[43] Also, each board member, officer, and employee of the Upstream Owners, in discharging his or her responsibilities, shall comply with the U.S. federal securities laws and the rules and regulations thereunder, cooperate with the Commission, and cooperate with the ISE.[44] In discharging his or her responsibilities as a board member of the Upstream Owners, each such member must, to the fullest extent permitted by applicable law, take into consideration the effect that the actions of the Upstream Owners would have on the ability of the ISE to carry out its

[34] *See* Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27). As under the current Holdings Certificate and Holdings Bylaws any change to Holdings Certificate or Holdings Bylaws must be submitted to the ISE Board. If the change must be filed with, or filed with and approved by, the Commission under Section 19 of the Act and the rules thereunder, then the change shall not be effective until filed with, or filed with and approved by, the Commission. This requirement to submit changes to the ISE Board continues for so long as Holdings controls, directly or indirectly, the ISE. *See* current Holdings Certificate, Article SIXTEENTH, current Holdings Bylaws, Section 10.1, proposed Holdings Certificate, Article FOURTEENTH, and proposed Holdings Bylaws, Section 10.1.

[35] *See supra* note 27 and accompanying text.

[36] Proposed Holdings Certificate, Article FOURTH, Sections III(c). If a person were to obtain an ownership or voting interest in Holdings in excess of the Ownership Limit or Voting Limit, Holdings capital stock would be transferred to the Trust automatically by operation of law. *See* Section 202(c)(4) of the Delaware General Corporation Law.

[37] *See infra* notes 70 to 114 and accompanying text.

[38] Proposed Holdings Bylaws, Section 11.1.

[39] Holdings Certificate, Article FOURTH, Sections III(a)(i) and III(b)(i). Such amendment to Holdings Bylaws must be filed with and approved by the Commission under Section 19(b) of the Act and become effective thereunder.

[40] Holdings Certificate, Article FOURTH, Sections III(a)(i)(B) and III(b)(i).

[41] *See* Section 3(a)(39) of the Act, 15 U.S.C. 78c(a)(39).

[42] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

[43] Resolution 1 and U.S. Exchange Holdings Certificate, Article ELEVENTH.

[44] Resolutions 7(a) and 8(a) and U.S. Exchange Holdings Certificate, Article TENTH. The Resolutions also provide that each non-U.S. Upstream Owner will take reasonable steps necessary to cause each person who becomes a board member of the non-U.S. Upstream Owner after consummation of the Transaction to agree in writing to certain matters included in the Resolutions. *See* Resolution 7.

responsibilities under the Act.[45] In addition, each of the Upstream Owners, its board members, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the ISE.[46]

Further, the non-U.S. Upstream Owners (along with their respective board members, officers, and employees) and U.S. Exchange Holdings agree to keep confidential, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the ISE, including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices, and audit information, contained in the books and records of the ISE and not use such information for any commercial[47] purposes.[48] In addition, books and records of the non-U.S. Upstream Owners related to the activities of the ISE will at all times be made available for, and books and records of U.S. Exchange Holdings will be subject at all times to, inspection and copying by the Commission and the ISE.[49] Books and records of U.S. Exchange Holdings related to the activities of the ISE will be maintained within the U.S.[50] Moreover, for so long as each of the Upstream Owners directly or indirectly controls the ISE, the books, records, officers, directors (or equivalent), and employees of each of the Upstream Owners shall be deemed to be the books, records, officers, directors, and employees of the ISE.[51] Finally, for so long as U.S. Exchange Holdings directly or indirectly controls the ISE, premises of U.S. Exchange Holdings will be deemed premises of the ISE.[52]

To the extent involved in the activities of the ISE, each of the non-U.S. Upstream Owners, its board members, officers, and employees irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of the ISE.[53] Likewise, U.S. Exchange Holdings, its officers and directors, and employees whose principal place of business and residence is outside of the U.S., to the extent such directors, officers, or employees are involved in the activities of the ISE, irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of the ISE.[54]

Each of the Upstream Owners and Holdings acknowledges that it is responsible for referring possible violations of the Act, the rules and regulations thereunder, and ISE rules to the ISE. In addition, the ISE represents that there will be an explicit agreement among the Upstream Owners, Holdings, and the ISE to provide adequate funding for the ISE's regulatory responsibilities.

Finally, the Resolutions, the U.S. Exchange Holdings Certificate, and the U.S. Exchange Holdings Bylaws require that any change to the Resolutions (including any action by the non-U.S. Upstream Owners that would have the effect of changing the Resolutions), the U.S. Exchange Holdings Certificate, or the U.S. Exchange Holdings Bylaws must be submitted to the ISE Board. If such change must be filed with, or filed with and approved by, the Commission under Section 19 of the Act[55] and the rules thereunder, then such change shall not be effective until filed with, or filed with and approved by, the Commission.[56] This requirement to submit changes to the ISE Board continues for so long as the non-U.S. Upstream Owners or U.S. Exchange Holdings, as applicable, directly or indirectly, control the ISE.

With respect to Swiss Upstream Owners, each Swiss Resolutions provides that, where necessitated by Swiss law, the Swiss Upstream Owner will provide information related to the activities of the ISE, including books and records of such owner related to the activities of the ISE, to the Commission promptly through the Swiss Federal Banking Commission (''SFBC''). Moreover, oral exchanges between each Swiss Upstream Owner and the Commission related to the activities of the ISE will include the participation of the SFBC.[57]

Swiss law designed to protect Swiss sovereignty raises concerns about the ability of the Swiss Upstream Owners to provide the Commission with direct access to information, including books and records, related to the activities of the ISE.[58] In order not to run afoul of Swiss law and to facilitate the Transaction, the Commission and the SFBC have developed a procedure (''Procedure'') under which the SFBC undertakes to serve as a conduit for unfiltered delivery of books and records of the Swiss Upstream Owners related to the activities of the ISE.[59]

Pursuant to the Procedure, where necessitated by Swiss law, if the Commission or the staff makes a request to any of the Swiss Upstream Owners for information related to the activities of the ISE, including books and records related to the activities of the ISE, the SFBC shall deliver to the Commission or the staff, without delay, any responsive information provided to the SFBC by the Swiss Upstream Owners. Written requests for information, including book and records, related to the activities of the ISE shall be made by the Commission or the staff directly to the Swiss Upstream Owners, and the SFBC will be copied on any such requests. Moreover, an SFBC staff member shall participate in any oral exchanges between the Commission or the staff and any of the Swiss Upstream Owners.[60] Notwithstanding this Procedure, the Swiss Upstream Owners would remain fully responsible for meeting all of their obligations as owners of a U.S. securities exchange.

The Commission finds that these provisions of the Resolutions, the U.S. Exchange Holdings Certificate, and the U.S. Exchange Holdings Bylaws are consistent with the Act. These provisions are intended to assist the ISE

[45] Resolution 7(f) and U.S. Exchange Holdings Certificate, Article TENTH.

[46] Resolutions 5, 7(d), and 8(d) and U.S. Exchange Holdings Certificate, Article TWELFTH.

[47] The Commission believes that any non-regulatory use of such information would be for a commercial purpose.

[48] Resolutions 6, 7(e), and 8(e) and U.S. Exchange Holdings Certificate, Article FOURTEENTH.

[49] Resolution 3 and U.S. Exchange Holdings Certificate, Article FIFTEENTH.

[50] U.S. Exchange Holdings Certificate, Article FIFTEENTH.

[51] Resolutions 3 and 8(c) and U.S. Exchange Holdings Certificate, Article FIFTEENTH.

[52] U.S. Exchange Holdings Certificate, Article FIFTEENTH.

[53] Resolutions 2, 7(b), and 8(b).

[54] U.S. Exchange Holdings Bylaws, Section 16.

[55] 15 U.S.C. 78s.

[56] Resolution 11, U.S. Exchange Holdings Certificate, Article SIXTEENTH, and U.S. Exchange Bylaws, Section 9.

57 Swiss Resolutions 1, 3(b), 6, 7(a), 7(e), 8(a), 8(e), and 9.

[58] *See* Art. 271 of Swiss penal code, ''Prohibited acts for a foreign state,'' which states, in part: ''Whoever, without being authorized, performs acts for a foreign state on Swiss territory that are reserved to an authority or an official, whoever performs such acts for a foreign party or another foreign organization, whoever aids and abets such acts, shall be punished with imprisonment and, in serious cases, sentenced to the penitentiary.''

[59] Application of the Procedure would be limited to issues arising in the context of the Transaction and the Commission's oversight of the ISE. Information-sharing and cooperation between the Commission and the SFBC in securities enforcement matters will continue to be governed by the letters of cooperation between the Commission and the SFBC.

[60] The Procedure is designed to ensure that the delivery of books and records to the Commission is not delayed. Therefore, the Commission's requests for books and records would be sent directly to the Swiss Upstream Owners and would not be subject to filtering or substantive review by the SFBC. In addition, the SFBC has agreed to pass to the Commission without delay and without substantive review materials provided by the Swiss Upstream Owners that are responsive to the Commission's requests for information.

in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act.

The Commission notes that while the Resolutions do not provide that books and records of non-U.S. Upstream Owners related to the activities of the ISE will be maintained within the U.S., such books and records are deemed to be the books and records of the ISE, and the non-U.S. Upstream Owners have committed in the Resolutions to make available, at all times, such books and records for inspection and copying by the Commission and the ISE.[61] As discussed below,[62] the failure of a non-U.S. Upstream Owner to adhere to this commitment would be a Material Compliance Event under the Trust, which would require the Trustees to take certain actions, including (after a Cure Period) the exercise of a Call Option for the transfer of a majority of capital stock of Holdings that have the right by its terms to vote in the election of the Holdings Board or on other matters (other than matters affecting the rights, preferences, or privileges of the said capital stock). Because the non-U.S. Upstream Owners lose control over the ISE if one or more of them fails to make its books and records available to the Commission and the ISE, there is a strong incentive for them to do so. Moreover, if a non-U.S. Upstream Owner fails to make its books and records available to the Commission, the Commission could bring an action under, among other provisions, section 17 of the Act[63] and Rule 17a–1(b) thereunder[64] against the ISE pursuant to section 19(h) of the Act.[65] The Commission believes that the non-U.S. Upstream Owners' representations and commitments, together with the Trustees' and the Commission's authority, will allow the ISE to meet its obligations under section 17 of the Act and the rules thereunder.

The Commission also notes that, for the Swiss Upstream Owners, the SFBC will serve as a conduit for the delivery of information related to the activities of the ISE. The Commission's usual practice is to have direct access to books and records related to the activities of a U.S. securities exchange. However, subject to the condition that the Swiss Upstream Owners will promptly deliver such information to the Commission, coupled with the fact that under ISE rules all trading records of the ISE are required to be maintained in the U.S.,[66] the Commission believes that the provisions of the Swiss Resolutions related to the Commission's access to books and records through the SFBC should not result in a level of access materially different from that agreed to by other entities that control U.S. securities exchanges.

Finally, the Commission notes that under section 20(a) of the Act,[67] any person with a controlling interest in the ISE shall be jointly and severally liable with and to the same extent that the ISE is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, section 20(e) of the Act[68] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, section 21C of the Act[69] authorizes the Commission to enter a cease-and-desist order against any person who has been ''a cause of'' a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to the dealings of the Upstream Owners with the ISE.

C. Trust

The ISE proposes to implement a Delaware statutory trust (''Trust''), pursuant to a Trust Agreement (''Trust Agreement'') among Holdings, U.S. Exchange Holdings, trustees (''Trustees''), and a Delaware trustee. The Trust would serve two general purposes.[70] First, as described above,[71] the ISE proposes that the Trust would hold capital stock of Holdings in the event that a person obtains ownership or voting interest in Holdings in excess of Ownership Limit or Voting Limit.[72] Second, the ISE proposes to implement the Trust to hold capital stock of Holdings in the event of a Material Compliance Event.[73] A ''Material Compliance Event'' is defined under the Trust Agreement as any state of facts, development, event, circumstance, condition, occurrence, or effect that results in the failure of any of the non-U.S. Upstream Owners to adhere to its respective commitments under the Resolutions in any material respect.[74] The Trust holds a call option (''Call Option'') over Holdings capital stock, which may be exercised if a Material Compliance Event has occurred and continues to be in effect.

The Trustees shall have exclusive and complete authority to carry out the Trust purpose.[75] The Trustees will be persons who are independent of the Upstream Owners, Holdings, the ISE, and their affiliates,[76] are not subject to any statutory disqualification,[77] are of high repute and have experience and expertise in, or knowledge of, the securities industry, regulation and/or corporate governance, are independent to such a degree that they can be entrusted to resist undue pressures, and are not unacceptable to the Commission staff.[78] The Trustees would be required under the terms of the Trust Agreement to vote any capital stock of Holdings held by the Trust consistent with the public interests of the markets operated by the ISE.[79]

As discussed above, section 19(b) of the Act and Rule 19b–4 thereunder require an SRO to file a proposed rule change with the Commission. Although the Trust is not an SRO, certain provisions of the Trust Agreement are rules of an exchange if they are stated policies, practice, or interpretations, as defined in Rule 19b–4 under the Act,[80] and must therefore be filed with the Commission pursuant to section 19(b)(4) of the Act[81] and Rule 19b–4 thereunder. Accordingly, the Exchange has filed the Trust Agreement with the Commission.

1. Operation of the Trust

The Trust will operate pursuant to the Trust Agreement. The ISE proposes that, pursuant to the Trust Agreement, if a person exceeds Ownership Limit or Voting Limit then a majority of capital stock of Holdings that have the right by its terms to vote in the election of the

[61] *See supra* notes 49 and 51 and accompanying text.

[62] *See infra* notes 73 to 74 and 83 to 94 and accompanying text.

[63] 15 U.S.C. 78q.

[64] 17 CFR 240.17a–1(b).

[65] 15 U.S.C. 78s(h). *See also infra* notes 67 to 69 and accompanying text.

[66] ISE Second Amended and Restated Limited Liability Agreement, Article IV, Section 4.1.

[67] 15 U.S.C. 78t(a).

[68] 15 U.S.C. 78t(e).

[69] 15 U.S.C. 78u–3.

[70] The term of the Trust is perpetual, provided that Holdings controls, directly or indirectly, the ISE. *See* Trust Agreement, Article II, Section 2.6.

[71] *See supra* notes 35 to 37 and accompanying text.

[72] Trust Agreement, Article IV, Section 4.1.

[73] Trust Agreement, Article IV, Section 4.2.

[74] Trust Agreement, Article I, Section 1.1. The Trust Agreement also would provide that the term Material Compliance Event would apply with respect to the Resolutions of any future upstream owner of Holdings. *See* Trust Agreement, Article I, Section 1.1, definition of ''Affected Affiliate.''

[75] Trust Agreement, Article III, Section 3.2(a).

[76] For a more complete list of the independence requirement, *see* Trust Agreement, Article III, Section 3.2(a).

[77] *See supra* note 41.

[78] Trust Agreement, Article III, Section 3.2(a).

[79] Trust Agreement, Article II, Section 2.3(b).

[80] 17 CFR 240.19b–4.

[81] 15 U.S.C. 78s(b).

Holdings Board or on other matters (other than matters affecting the rights, preferences, or privileges of the said capital stock) would automatically be transferred to the Trust.[82]

Further, the Trust Agreement provides that upon becoming aware of facts, developments, events, circumstances, conditions, occurrences, or effects that could reasonably be expected to result in the occurrence of a Material Compliance Event, the Trustees would be required to meet promptly and, within 5 business days of that meeting, make a determination of whether or not a Material Compliance Event has occurred.[83] After making a determination that a Material Compliance Event has occurred, and prior to any exercise of the Call Option, the Trustees would provide written notice to the non-U.S. Upstream Owners and to the Commission of the occurrence of the Material Compliance Event, which notice would provide for 60 calendar days in which to address the Material Compliance Event (''Cure Period'').[84]

The Trust Agreement provides that, during the Cure Period, the Trustees would consult with the boards of directors (or equivalent) of the ISE, Holdings, and the non-U.S. Upstream Owners, and with the Commission to consider alternatives to the exercise of the Call Option.[85] After such consultation, if the Trustees determine that the Material Compliance Event has not been addressed, they would provide written notice to the boards of directors (or equivalent) of the ISE, Holdings, and the non-U.S. Upstream Owners that they have determined to exercise the Call Option.[86]

If the Trust were to exercise the Call Option, it would deliver a written notice to Holdings and U.S. Exchange Holdings, promptly after the end of the Cure Period, that the Trust has determined to exercise the Call Option in accordance with the terms of the Trust Agreement.[87] Subsequently, Holdings and U.S. Exchange Holdings would be required to promptly transfer to the Trust a majority of capital stock of Holdings that have the right by its terms to vote in the election of the Holdings Board or on other matters (other than matters affecting the rights, preferences, or privileges of the said capital stock).[88]

U.S. Exchange Holdings would have the right to reacquire shares of the capital stock of Holdings held by the Trust.[89] If shares were contributed to the Trust because of a violation of Ownership Limit or Voting Limit, U.S. Exchange Holdings would have the right to reacquire such shares if the violation of Ownership Limit or Voting Limit, as applicable, is waived by the Holdings Board and approved by the Commission or if the violation no longer exists.[90] Likewise, if shares were transferred to the Trust because of a Material Compliance Event, U.S. Exchange Holdings would have the right to reacquire such shares if the Material Compliance Event is no longer continuing or, notwithstanding the continuation of a Material Compliance Event, the Trustees determine that the retention of such shares by the Trust could not reasonably be expected to address the continuing Material Compliance Event.[91]

Further, if directed by U.S. Exchange Holdings, the Trust would sell capital stock of Holdings held by the Trust to any person whose ownership or voting would not violate Ownership Limit or Voting Limit and who is not a non-U.S. Upstream Owner with respect to which a Material Compliance Event has occurred and is continuing.[92] Upon a sale of such shares, the net proceeds of the sale would be paid to U.S. Exchange Holdings.[93] Moreover, while any shares of the capital stock of Holdings are held by the Trust, U.S. Exchange Holdings, as the Trust beneficiary, would continue to receive the economic benefit of such shares.[94]

2. Relationship of the Trust and the ISE; Jurisdiction Over the Trust

Although the Trust itself will not carry out regulatory functions, its activities must be consistent with, and not interfere with, the ISE's self-regulatory obligations. The Trust Agreement includes certain provisions that are designed to maintain the independence of the ISE's self-regulatory functions from the Trust, enable the ISE to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of sections 6(b) and 19(g) of the Act, and facilitate the ability of the ISE and the Commission to fulfill their regulatory and oversight obligations under the Act.[95]

For example, under the Trust Agreement, the Trust shall comply with the U.S. federal securities laws and the rules and regulations thereunder, and shall cooperate with the Commission and the ISE.[96] Also, each Trustee, Delaware trustee, officer, and employee of the Trust shall comply with the U.S. federal securities laws and the rules and regulations thereunder, cooperate with the Commission the ISE.[97] In addition, each Trustee, Delaware trustee, officer, and employee of the Trust, to the fullest extent permitted by applicable law, shall take into consideration the effect that the Trust's actions would have on the ability of Holdings and the ISE to discharge their respective responsibilities under the Act.[98] The Trust, Trustees, Delaware trustee, officers, and employees of the Trust shall give due regard to the preservation of the independence of the self-regulatory function of the ISE and shall not take any action that would interfere with the effectuation of any decision by the ISE Board relating to its regulatory responsibilities or that would interfere with the ability of the ISE to carry out its responsibilities under the Act.[99] The Trust, Trustees, Delaware trustee, officers, and employees of the Trust whose principal place of business and residence is outside of the U.S. irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission with respect to activities relating to the ISE.[100]

In addition, the Trust's books and records shall be subject at all times to inspection and copying by the Commission, the ISE (provided that such books and records are related to the operation or administration of the ISE), and Holdings.[101] The Trust's books and records related to the ISE shall be maintained within the U.S.[102] Further, for so long as the Trust directly or

[82] Trust Agreement, Article IV, Section 4.1(c). *See also* proposed Holdings Certificate, Article FOURTH, Sections III(c).

[83] Trust Agreement, Article IV, Section 4.2(b).

[84] Trust Agreement, Article IV, Section 4.2(c).

[85] Trust Agreement, Article IV, Section 4.2(d)(i).

[86] Trust Agreement, Article IV, Section 4.2(d)(ii).

[87] Trust Agreement, Article IV, Section 4.2(g)(i).

[88] Trust Agreement, Article IV, Section 4.2(g)(ii).

[89] Trust Agreement, Article IV, Sections 4.1(f) and 4.2(h).

[90] For example, the violation of Ownership Limit or Voting Limit, as applicable, may no longer exist if the person causing the violation sells his or her interest such that the person no longer exceeds Ownership Limit or Voting Limit.

[91] If the Trustees determine the retention could not reasonably be expected to address any continuing Material Compliance Event, such determination would not be effective unless it is filed with, or filed with and approved by, the Commission under Section 19 of the Act and the rules thereunder. *See* Trust Agreement, Article IV, Section 4.2(h)(ii).

[92] Trust Agreement, Article IV, Section 4.3(a).

[93] *Id.*

[94] Trust Agreement, Article IV, Section 4.3.

[95] Trust Agreement, Articles V, VI, and VIII.

[96] Trust Agreement, Article V, Section 5.3(a).

[97] Trust Agreement, Article V, Section 5.2(a).

[98] Trust Agreement, Article V, Section 5.1(a).

[99] Trust Agreement, Article V, Section 5.1(b).

[100] Trust Agreement, Article V, Section 5.4.

[101] Trust Agreement, Article VI, Section 6.3.

[102] Trust Agreement, Article VI, Section 6.1(b).

indirectly controls the ISE, the books, records, premises, officers, Trustees, Delaware trustee, and employees of the Trust shall be deemed to be the books, records, premises, officers, Trustees, Delaware trustee, and employees of the ISE for purposes of and subject to oversight pursuant to the Act.[103] The Trust agrees to keep confidential, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the ISE (including, without limitation, disciplinary matters, trading data, trading practices, and audit information) contained in the books and records of the ISE and not use such information for any commercial [104] purposes.[105]

The Trust Agreement requires that it may only be amended with prior written approval of the Commission, as and to the extent required under the Act.[106] Further, for so long as Holdings or the Trust shall control, directly or indirectly, the ISE, any changes to the Trust must be submitted to the ISE Board. If the change must be filed with, or filed with and approved by, the Commission under section 19 of the Act [107] and the rules thereunder, then the change shall not be effective until filed with, or filed with and approved by, the Commission.[108]

The Commission finds that the Trust Agreement is designed to enable the ISE to operate in a manner that complies with the federal securities laws, including the objectives and requirements of sections 6(b) and 19(g) of the Act,[109] facilitate the ability of the ISE and the Commission to fulfill their regulatory and oversight obligations under the Act,[110] and are consistent with the provisions other entities that directly or indirectly own or control an SRO have instituted and that have been approved by the Commission.[111] The Commission finds that the Trust's provisions are consistent with the Act and that they are designed to facilitate the Exchange's ability to comply with the requirements of the Act.

Under section 20(a) of the Act,[112] any person with a controlling interest in the ISE shall be jointly and severally liable with and to the same extent that the ISE is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, section 20(e) of the Act [113] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, section 21C of the Act [114] authorizes the Commission to enter a cease-and-desist order against any person who has been ''a cause of'' a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to the Trust and all other entities controlling the ISE.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[115]

It is therefore ordered, pursuant to section 19(b)(2) of the Act [116] that the proposed rule change (SR–ISE–2007–101) is approved, and Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[117]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24500 Filed 12–18–07; 8:45 am]

BILLING CODE 8011–01–P

[103] *Id.*

[104] The Commission believes that any non-regulatory use of such information would be for a commercial purpose.

[105] Trust Agreement, Article VI, Section 6.1(a). The Trust Agreement states that none of its provisions shall be interpreted so as to limit or impede (1) the rights of the Commission or the ISE to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder, or (2) the ability of any Trustees, Delaware trustee, officers, directors, employees, or agents of Holdings or the Trust to disclose such confidential information to the Commission or the ISE. *See* Trust Agreement, Article VI, Section 6.2.

[106] Trust Agreement, Article VIII, Section 8.2.

[107] 15 U.S.C. 78s.

[108] Trust Agreement, Article VIII, Section 8.2.

[109] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

[110] Trust Agreement, Articles V, VI, and VIII.

[111] *See, e.g.,* Securities Exchange Act Release Nos. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120) (merger of NYSE Group, Inc. and Euronext N.V.) and 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (merger of New York Stock Exchange, Inc. and Archipelago Holdings, Inc.).

[112] 15 U.S.C. 78t(a).

[113] 15 U.S.C. 78t(e).

[114] 15 U.S.C. 78u–3.

[115] The Commission's approval of the proposed rule change based on the Exchange's representation that the Resolutions will be signed by the Upstream Owners before or at the closing of the Transaction.

[116] 15 U.S.C. 78s(b)(2).

[117] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56956; File No. SR–ISE–2007–110]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to the $1 Strike Pilot Program

December 13, 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 November 14, 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

ISE proposes to expand the $1 Strike Pilot Program (''Pilot Program'') and requests permanent approval of the Pilot Program. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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 expand the Pilot Program and to request permanent approval of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the Pilot Program.[3] The Pilot Program currently allows ISE to select a total of 5 individual stocks on which an option series may be listed at $1 strike price intervals. In order to be eligible for selection into the Pilot Program, the underlying stock must close below $20 in its primary market on the previous trading day. If selected for the Pilot Program, the Exchange may list strike prices at $1 intervals from $3 to $20, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day. The Exchange also may list $1 strikes on any other option class designated by other securities exchanges that employ a similar Pilot Program under their respective rules. The Exchange may not list long-term option series (LEAPS) at $1 strike price intervals for any class selected for the Pilot Program. The Exchange also is restricted from listing any series that would result in strike prices being $0.50 apart.

The Exchange proposes to expand the Pilot Program to allow ISE to select a total of 10 individual stocks on which an option series may be listed at $1 strike price intervals. Additionally, ISE proposes to expand the price range on which it may list $1 strikes from $3 to $50. The existing restrictions on listing $1 strikes would continue, *i.e.*, no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day, and ISE is restricted from listing any series that would result in strike prices being $0.50 apart.

As stated in the Commission order approving ISE's Pilot Program and in the subsequent extensions of the Pilot Program,[4] ISE believes that $1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower priced stocks by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. The Exchange states that its member firms representing customers have repeatedly requested that ISE seek to expand the Pilot Program, both in terms of the number of classes on which an option series may be listed at $1 strike price intervals and the range in which $1 strikes may be listed.

With regard to the impact on systems capacities, ISE's analysis of the Pilot Program shows that the impact on the automated systems of ISE, the Options Price Reporting Authority (''OPRA''), and market data vendors has been minimal. The Exchange analyzed the quoting activity for all classes selected for the Pilot Program as a percentage of all quoting activity for all classes being quoted during the specified number of months.[5] The Exchange concluded that, prior to the implementation of the Pilot Program in May 2003, the number of Best Bid/Offer (''BBO'') quotes sent to OPRA in the five classes selected for the Pilot Program represented approximately 0.47% of all BBO quotes sent by the Exchange.[6] As of April 2007, the BBO quote share in the five classes selected for the Pilot Program remained below May 2003 levels in all months analyzed by the Exchange, with the exception of one month, February 2005.[7] The Exchange notes that these statistics may overstate the contribution of $1 strike prices because these figures also include quotes for options series listed in intervals higher than $1 (*i.e.*, $2.50 strikes) in the same option classes. Even with the non-$1 strike series quotes included in these figures, ISE believes that the overall impact on capacity is still minimal. ISE represents that is has sufficient capacity to handle an expansion of the Pilot Program, as proposed.

The Exchange believes that the Pilot Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid option series resulting from the narrower strike price intervals. For these reasons, ISE requests that the Pilot Program be approved on a permanent basis.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[9] in that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and 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 Exchange believes that expanding the Pilot Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities and for a more extended period of time than currently permitted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that 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 comments on the proposed rule change and has not received any unsolicited 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 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,

[3] The Commission approved the Pilot Program on June 16, 2003. *See* Securities Exchange Act Release No. 48033 (June 16, 2003), 68 FR 37036 (June 20, 2003) (SR–ISE–2003–17). The Pilot Program has subsequently been extended through June 5, 2008. *See* Securities Exchange Act Release Nos. 49827 (June 8, 2004), 69 FR 33966 (June 17, 2004) (SR–ISE–2004–21) (extending the Pilot Program until August 5, 2004); 50060 (July 22, 2004), 69 FR 45864 (July 30, 2004) (SR–ISE–2004–26) (extending the Pilot Program for 10 months until June 5, 2005); 51769 (May 31, 2005), 70 FR 33232 (June 7, 2005) (SR–ISE–2005–22) (extending the Pilot Program until June 5, 2006); 53806 (May 15, 2006), 71 FR 29694 (May 23, 2006) (SR–ISE–2006–20) (extending the Pilot Program until June 5, 2007); and 55715 (May 7, 2007), 72 FR 26854 (May 11, 2007) (SR–ISE–2007–26) (extending the Pilot Program until June 5, 2008).

[4] *See id.*

[5] *See* Securities Exchange Act Release No. 55715 (May 7, 2007), 72 FR 26854 (May 11, 2007) (SR–ISE–2007–26), Exhibit 3, Pilot Program Report (providing empirical analyses of the impact of the Pilot Program on the capacity of automated systems during years 2003 to 2007).

[6] *Id.*

[7] *Id.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

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–2007–110 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–ISE–2007–110. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–110 and should be submitted on or before January 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24535 Filed 12–18–07; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56957; File No. SR–ISE–2007–115]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Historical ISE Open/Close Trade Profile Fees

December 13, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by ISE. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE proposes to amend its Schedule of Fees to: (1) Clarify the terms on which it offers the ISE Open/Close Trade Profile, a market data product described below; and (2) adopt a subscription fee for the sale of historical ISE Open/Close Trade Profile. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at *http://www.ise.com*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE currently creates volume data for each ISE listed option that consists of opening buys and opening sells and closing buys and closing sells.[5] ISE currently uses a subset of this data, the customer ''opening only'' trade data, for its calculation of investor sentiment, the ISE Sentiment Index®, or ISEE®, and for ISEE Select®. The Commission recently approved a broader market data offering comprised of the entire opening and closing trade data of ISE listed options of both customers and firms, referred to by the Exchange as the ISE Open/Close Trade Profile.[6] The ISE Open/Close Trade Profile offering is subdivided by origin code (*i.e.*, customer or firm) and the customer data is then further subdivided by order size. The volume data is summarized by day and series (*i.e.*, symbol, expiration date, strike price, call or put). ISE Open/Close Trade Profile is a subscription service, available to both members and non-members, and that enables subscribers to create their own proprietary put/call calculations. The data is compiled and formatted by ISE as an end of day file. The Exchange charges both members and non-members $600 per month based on an annual subscription[7] for the ISE Open/Close Trade Profile market data offering.

ISE now proposes to sell historical ISE Open/Close Trade Profile, a market data offering comprised of the entire opening and closing trade data of both customers and firms that dates back to May 2005, to both members and non-members, on an ad-hoc basis or as a complete set that dates back to May 2005. Ad-hoc subscribers will be able to purchase this data for any number of months, beginning from May 2005 through the current month. Alternatively, subscribers will be able to purchase the entire set of this data, beginning from May 2005 through the

[5] An opening buy is a transaction that creates or increases a long position and an opening sell is a transaction that creates or increases a short position. A closing buy is a transaction made to close out an existing position. A closing sell is a transaction to reduce or eliminate a long position.

[6] *See* Securities Exchange Act Release No. 56254 (August 15, 2007), 72 FR 47104 (August 22, 2007) (SR–ISE–2007–70).

[7] The Exchange notes that while historical ISE Open/Close Trade Profile is available on a month to month basis, the non-historical ISE Open/Close Trade Profile offering is available only on an annual subscription basis, which the Exchange proposes to clarify by adding the words ''With an annual subscription'' under the Notes section on its Schedule of Fees.

current month. The data will be compiled and formatted by ISE and sold as a zipped file. ISE proposes to charge ad-hoc subscribers $600 per request for each month of data. For subscribers that want the compete set of the data from May 2005 to the present, ISE proposes to charge a discounted fee of $500.00 for each month of data.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act,[8] which requires that a national securities exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange states that the proposed rule filing will provide members and non-members with valuable market data, and that it has expended considerable resources, *i.e.*, internal development costs, purchase of servers, etc., to bring this offering to market. The Exchange states that it took these costs into account in setting the fees proposed for the historical ISE Open/Close Trade Profile market data offering. This product is identical to one that the Chicago Board Options Exchange (''CBOE'') currently sells to the marketplace called Open/Close Data.[9] Further, ISE states that its proposed fees for this new historical product are cheaper than or identical to the fees that CBOE currently charges for its Open/Close Data offering.[10] Finally, the Exchange notes that the fees proposed by ISE for this product, which is available for purchase on a voluntary basis, are not discriminatory in that the Exchange proposes to charge both members and non-members an identical fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[8] 15 U.S.C. 78(f)(b)(4).

[9] *See* Securities Exchange Act Release No. 55062 (January 8, 2007), 72 FR 2048 (January 17, 2007) (SR–CBOE–2006–88).

[10] *See id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may 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. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow ISE to immediately offer the historical ISE Open/Close Trade Profile data to investors interested in subscribing.[12] This market data product is substantially similar to one offered by CBOE, and it appears that it does not raise any novel regulatory issues. For these reasons, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[11] In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. ISE has satisfied this requirement.

[12] 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. *See* 15 U.S.C. 78c(f).

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–2007–115 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–ISE–2007–115. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–115 and should be submitted on or before January 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24583 Filed 12–18–07; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56953; File No. SR–NYSE–2007–115]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 2 (''Member,'' ''Membership,'' ''Member Firm,'' etc.)

December 12, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2007, the New York Stock Exchange LLC (''NYSE'' 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 NYSE. The NYSE has designated the proposed rule change as one concerned solely with the administration of the Exchange pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to extend to June 30, 2008, the operative date of NYSE Rule 2 requirement that NYSE-only member organizations apply for and be approved as a member of the Financial Industry Regulatory Authority, Inc. (''FINRA'').

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 NYSE 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 NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend to June 30, 2008, the grace period for NYSE-only member organizations to apply for and be approved as a FINRA member, as required by NYSE Rule 2.

In connection with the consolidation of the National Association of Securities Dealers, Inc. and NYSE Regulation, Inc. member firm regulation operations into FINRA which closed on July 30, 2007, the Exchange amended NYSE Rule 2 to require NYSE member organizations to also be FINRA members.[5] In connection with that rule change, the Commission approved a 60-day grace period within which NYSE-only member organizations must apply for and be approved for FINRA membership. In that rule filing, NYSE-only member organizations were defined as those member organizations that were not NASD members as of the date of the closing of the FINRA transaction. This grace period began on October 12, 2007, the date of Commission approval of the Exchange's rule filing. In furtherance of the consolidation, FINRA adopted NASD IM–1013–1 to enable eligible NYSE member organizations to become FINRA members though an expedited process (''FINRA Waive-in application process'').[6]

As of December 12, 2007, all but two of the former NYSE-only member organizations have applied for and been approved as FINRA members. The two remaining member organizations have unique member qualification issues and are ineligible to participate in the FINRA Waive-in application process. Accordingly, the NYSE proposes to extend the grace period to June 30, 2008, to provide time for those issues to be resolved.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] of the Act that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[8] of the Act and Rule 19b–4(f)(3) thereunder[9] because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–115 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–2007–115. This file number should be included on the subject line if e-mail is used. To help the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(3).

[5] *See* Securities Exchange Act Release No. 56654 (October 12, 2007), 72 FR 59129 (October 18, 2007) (SR–NYSE–2007–67).

[6] *See* Securities Exchange Act Release No. 56653 (October 12, 2007), 72 FR 59127 (October 18, 2007) (SR–NASD–2007–56).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(3).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–115 and should be submitted on or before January 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24534 Filed 12–18–07; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6032]

Termination of Statutory Debarment and Reinstatement of Eligibility To Apply for Export/Retransfer Authorizations Pursuant to Section 38(g)(4) of the Arms Export Control Act, for Rotair Industries, Inc. (Rotair)

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has terminated the statutory debarment against Rotair pursuant to section 38(g)(4) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(g)(4)).

DATES: *Effective Date:* December 7, 2007.

FOR FURTHER INFORMATION CONTACT: David C. Trimble, Director Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2807.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA (22 U.S.C. 2778) prohibits the issuance of export licenses to a person, if that person or any party to the export has been convicted of violating section 38 of the AECA and certain other U.S. criminal statutes enumerated at section 38(g)(1)(A) of the AECA. A person convicted of violating the AECA is also subject to statutory debarment under section 127.7 of the ITAR.

In July 2004, Rotair was convicted of violating the AECA and the ITAR (U.S. District Court, District of Connecticut, 3:04CR 149–JBA). Based on this conviction, Rotair was statutorily debarred pursuant to section 127.7 of the ITAR and, thus, prohibited from participating directly or indirectly in exports of defense articles and defense services. Notice of debarment was published in the **Federal Register** (70 FR 57349, September 30, 2005).

In accordance with section 38(g)(4) of the AECA, statutory debarment may be terminated after consultation with the other appropriate U.S. agencies and after a thorough review of the circumstances surrounding the conviction and a finding that appropriate steps have been taken to mitigate any law enforcement concerns. The Department of State, after consultation with other agencies, has determined that Rotair has taken appropriate steps to address the causes of the violations and to mitigate any law enforcement concerns. Therefore, the debarment against Rotair is rescinded, effective December 7, 2007. The effect of this action is that Rotair may participate without prejudice in the export of defense articles and defense services subject to Section 38 of the AECA and the ITAR.

Dated: December 7, 2007.

Frank J. Ruggiero,

Acting Assistant Secretary of State, Bureau of Political-Military Affairs, Department of State.

[FR Doc. E7–24637 Filed 12–18–07; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 6034]

Additional Designation of Entities Pursuant to Executive Order 13382

AGENCY: Department of State.

ACTION: Designation of Iran's Islamic Revolutionary Guard Corps (IRGC) and Ministry of Defense and Armed Forces Logistics (MODAFL) Pursuant to Executive Order 13382.

SUMMARY: Pursuant to the authority in section 1(ii) of Executive Order 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'', the Assistant Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, has determined that two Iranian entities, the Islamic Revolutionary Guard Corp (IRGC) and Ministry of Defense and Armed Forces Logistics (MODAFL), have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery.

DATES: The designation by the Acting Under Secretary of State for Arms Control and International Security of the entities identified in this notice pursuant to Executive Order 13382 is effective on October 25, 2007.

FOR FURTHER INFORMATION CONTACT: Director, Office of Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: 202–647–5193

Background

On June 28, 2005, the President, invoking the authority, inter alia, of International Emergency Economic Powers Act (50 U.S.C. 1705–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery

(including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, and person whose property and interests in property are blocked pursuant to the Order.

On October 25, 2007, the Acting Under Secretary of State for Arms Control and International Security, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, designated two entities whose property and interests in property are blocked pursuant to Executive Order 13382.

Information on the additional designees is as follows:

1. MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS (a.k.a. MODAFL; a.k.a. MINISTRY OF DEFENSE AND SUPPORT FOR ARMED FORCES LOGISTICS; a.k.a. MODSAF), located on the west side Dabestan Street, Abbas Abad District, Tehran, Iran [NPWMD].

2. ISLAMIC REVOLUTIONARY GUARD CORPS (a.k.a. IRGC, a.k.a. THE IRANIAN REVOLUTIONARY GUARDS, a.k.a. IRG, a.k.a. THE ARMY OF THE GUARDIANS OF THE ISLAMIC REVOLUTION, a.k.a. AGIR a.k.a. SEPAH–E PASDARAN–E ENQELAB–E ESLAMI, a.k.a. PASDARAN–E ENGHELAB–E ISLAMI, a.k.a. PASDARAN–E INQILAB, a.k.a. REVOLUTIONARY GUARDS, a.k.a. REVOLUTIONARY GUARD, a.k.a. SEPAH, a.k.a. PASDARAN, a.k.a. SEPAH PASDARAN, a.k.a. ISLAMIC REVOLUTIONARY CORPS, a.k.a. IRANIAN REVOLUTIONARY GUARD CORPS), Tehran, Iran [NPWMD].

John C. Rood,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 07–6138 Filed 12–18–07; 8:45 am]

BILLING CODE 4710–27–M

DEPARTMENT OF STATE

[Public Notice 6015]

Announcement of Meetings of the International Telecommunication Advisory Committee

SUMMARY: This notice announces meetings of the International Telecommunication Advisory Committee (ITAC) to prepare advice on U.S. positions for the February 2008 meeting of the Telecommunication Development Advisory Group (TDAG) of the International Telecommunication Union (ITU–D).

The ITAC will meet as the ITAC–D to prepare advice for the U.S. on positions for the February 2008 meeting of the Telecommunication Development Advisory Group (TDAG) of the International Telecommunication Union (ITU–D) on the Thursdays of January 17, 24, and 31, all 2–4 p.m. at the Harry S. Truman Building (Main State), 2201 C Street, NW., Washington, DC room 5804. Meeting details and detailed agendas will be posted on the mailing list *itac-d@eblist.state.gov*. People desiring to participate on this list may apply to the secretariat at *minardje@state.gov*.

The meetings are open to the public.

Dated: December 13, 2007.

Doreen F. McGirr,

International Communications & Information Policy, Department of State.

[FR Doc. E7–24633 Filed 12–18–07; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Jefferson County, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for proposed improvements to Route MM between Route 21 and Route 30 in Jefferson County, Missouri.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy J. Casey, Environmental Projects Engineer, FHWA Division Office, 3220 West Edgewood, Suite H, Jefferson City, MO 65109, Telephone: (573) 636–7104; or Mr. Kevin Keith, Chief Engineer, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone: (573) 751–2803.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare an EIS to investigate the possible relocation or reconstruction of Route MM between Route 21 and Route 30 in Jefferson County, Missouri. A location study will run concurrently with the preparation of the EIS and will provide definitive alternatives for evaluation in the EIS. The EIS will fully analyze the issues, problems, and potential social and environmental impacts associated with improving or realigning Route MM. The goals of the proposed action are to increase capacity, reduce congestion, and improve safety.

The proposed project is located between Route 21 on the east and Route 30 on the west, entirely within Jefferson County. The project is approximately 4.3 miles in length.

Alternatives under consideration include (1) no build; (2) improvements to the existing alignment; (3) new alignments; (4) safety improvements; and (5) transportation management options.

To date, preliminary information has been issued to local officials and other interested parties. As part of the scoping process, an interagency coordination meeting will be held with federal and state resource agencies. In addition, informational meetings with the public and community representatives will be held to solicit input on the project and a reasonable range of alternatives. A location public hearing will be held to present the findings of the draft EIS (DEIS). Public notice will be given announcing the time and place of all public meetings and the hearing. The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA or MoDOT at the addresses provided above. Concerns in the study area include potential impacts to natural resources, cultural resources, neighborhoods, and the community of House Springs, located at the western end of the study area. Improvements to the existing alignment could impact cultural resources, adjacent residences, and the House Springs business district. Realignment of Route MM could impact a large undeveloped, wooded area with significant topographic relief,

potentially crossing several streams and floodplains.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 12, 2007.

Peggy J. Casey,

Environmental Project Engineer, Jefferson City.

[FR Doc. E7–24572 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Safe Routes to School Task Force to the Secretary of Transportation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of meeting of advisory committee.

SUMMARY: This document announces a meeting of the National Safe Routes to School Task Force to the Secretary of Transportation. This is the fifth meeting of the Task Force. The purpose of the Task Force is to advise the Secretary of Transportation, through the Federal Highway Administration (FHWA) Office of Safety, on strategies to advance Safe Routes to School (SRTS) Programs nationwide and to encourage children, including those with disabilities, to walk and bicycle to school pursuant to section 1404(h) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, Aug. 10, 2005). The meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the Task Force.

DATES: The fifth meeting of the Task Force is scheduled for 8:30 a.m. to 5 p.m., m.t., on January 23, 2008, and for 8:30 a.m. to 12:30 p.m., m.t., on January 24, 2008.

ADDRESSES: The fifth meeting will be held at the Wyndham Phoenix Hotel, 50 East Adams Street, Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Arnade, the Designated Federal Official, Safe Routes to School Program Manager, FHWA Office of Safety Programs, (202) 366–2205, *Tim.Arnade@dot.gov;* Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Section 1404 of SAFETEA–LU required the Secretary of Transportation to establish a Safe Routes to School (SRTS) Program. The purpose of the program is to enable and encourage children, including those with disabilities, to walk and bicycle to school and to make bicycling and walking to school a safer and more appealing transportation alternative. Section 1404(h) requires the establishment of a National SRTS Task Force. This meeting is the fifth meeting of the Task Force. The first two meetings were held in Washington, DC; the first was held on January 11, 2007, and the second was held on April 19, 2007. The third meeting was held in Denver, CO, on September 25–26, 2007. The fourth meeting was held in Washington, DC, on November 15–16, 2007. Complete meeting minutes from the previous meetings are posted on the Web site listed below.

The agenda for the fifth meeting will include discussion of a draft report to the Secretary of Transportation about national strategies to advance SRTS programs nationwide.

Public comments will be taken at approximately 2:45 p.m., m.t., on January 23, 2008. Further information about the Task Force can be found at *http://www.saferoutesinfo.org/task_force/*.

Once a detailed agenda is developed, it will be posted on this Web site. Please note that agenda items are subject to change as priorities dictate.

Conclusion

The fifth meeting of the National Safe Routes to School Task Force will be held at the Wyndham Phoenix Hotel, 50 East Adams Street, Phoenix, AZ 85004, from 8:30 a.m. to 5 p.m., m.t., on January 23, 2008, and from 8:30 a.m. until 12:30 p.m., m.t., on January 24, 2008.

Authority: Section 1404(h), Pub. L. 109–59; 5 U.S.C., App. II section 1.

Issued on: December 7, 2007.

J. Richard Capka,

Federal Highway Administrator.

[FR Doc. E7–24578 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–99–5578, FMCSA–99–6480, FMCSA–00–7363, FMCSA–01–10578, FMCSA–02–11426, FMCSA–05–21711, FMCSA–05–22194]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 26 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective December 27, 2007. Comments must be received on or before January 18, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–99–5578, FMCSA–99–6480, FMCSA–00–7363, FMCSA–01–10578, FMCSA–02–11426, FMCSA–05–21711, FMCSA–05–22194, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78; Apr. 11, 2000). This information is also available at *http://DocketInfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 26 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 26 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Bruce W. Barrett
Anthony Brandano
Stanley E. Elliott
Elmer E. Gockley
Glenn T. Hehner
Edward E. Hooker
Vladimir Kats
Alfred Keehn
Martin D. Keough
Randall B. Laminack
Norman R. Lamy
Robert W. Lantis
James A. Lenhart
Dennis L. Lockhart, Sr.
Jerry J. Lord
Raymond P. Madron
Ronald S. Mallory
Eldon Miles
Jack E. Potts, Jr.
Neal A. Richard
John E. Rogstad
Rene R. Trachsel
John H. Voigts
Kendle F. Waggle, Jr.
DeWayne Washington
Daniel G. Wilson

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 26 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 66 FR 63289; 68 FR 64944; 70 FR 67776; 64 FR 68195; 65 FR 20251; 68 FR 54775; 70 FR 53412; 65 FR 45817; 65 FR 77066; 67 FR 71610; 70 FR 25878; 66 FR 53826; 66 FR 66966; 68 FR 69434; 70 FR 74102; 70 FR 48797; 70 FR 61493; 70 FR 57353; 70 FR 72689; 67 FR 10471; 67 FR 19798; 69 FR 19611). Each of these 26 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 18, 2008.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 26 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would

otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 12, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–24549 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–99–5748, FMCSA–99–6156, FMCSA–01–10578, FMCSA–05–22194]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 12 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective January 3, 2008. Comments must be received on or before January 18, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–99–5748, FMCSA–99–6156, FMCSA–01–10578, FMCSA–05–22194, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78; Apr. 11, 2000). This information is also available at *http://DocketInfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 12 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 12 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Woodrow E. Bohley
Kenneth E. Bross
Russell W. Foster
Kevin Jacoby
Richard L. Loeffelholz
Herman C. Mash
Frank T. Miller
Martin Postma
Robert G. Rascicot
Stephen G. Sniffin
Jon H. Wurtele
Walter M. Yohn, Jr.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In

accordance with 49 U.S.C. 31136(e) and 31315, each of the 12 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 40404; 64 FR 66962; 66 FR 66969; 68 FR 69432; 71 FR 644; 64 FR 54948; 65 FR 159; 66 FR 53826; 68 FR 69434; 71 FR 646; 70 FR 57353; 70 FR 72689). Each of these 12 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 18, 2008.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 12 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315,

FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 12, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–24555 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2007–29035]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt forty-eight individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective December 19, 2007. The exemptions expire on December 21, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, April 11, 2000). This statement is also available at *http://Docketinfo.dot.gov*.

Background

On November 5, 2007, FMCSA published a notice of receipt of Federal diabetes exemption applications from forty-eight individuals, and requested comments from the public (72 FR 62514). The public comment period closed on December 5, 2007 and three comments were received.

FMCSA has evaluated the eligibility of the forty-eight applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The 2003 notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These forty-eight applicants have had ITDM over a range of 1 to 51 years. These applicants report no

hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage their diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the November 5, 2007, **Federal Register** Notice (72 FR 62514). Therefore, they will not be repeated in this notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologist's medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not they are related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received three comments in this proceeding. Two of the comments were recommendations in favor of granting the Federal diabetes exemption to the drivers. The third comment was from an anonymous individual, who stated that he felt it was discriminatory for truck drivers on insulin to have to go through a lengthy process to keep their jobs.

With regard to the length of time required to obtain a Federal exemption, FMCSA is required to publish in the **Federal Register** the name of each eligible individual who applies for a diabetes exemption, and request public comment on the application.

The Agency must then review all the comments received and determine whether granting the exemption would achieve a level of safety equivalent to, or greater than, the level of safety provided by compliance with the current diabetes standard. Depending on the complexity of the health issues discussed in the application, a final decision may take up to 180 days from the date we receive the completed application (49 U.S.C. 31136(e) and 31315). We recognize this potential 6-month waiting period may seem burdensome. However, we must carefully evaluate each applicant's request to assess his or her potential safety performance. FMCSA notifies all applicants in writing once a final decision is made. It is not the intention of FMCSA to impose hardship on commercial drivers. CMV drivers are held to a strict physical standard because of the extensive skill required to operate large trucks and buses and the potential harm these vehicles can cause to other motorists. Our safety regulations have a single goal—to reduce the number of CMV crashes and fatalities on the Nation's highways.

FMCSA's exemption process supports drivers with ITDM who seek to operate in interstate commerce. In addition, the Federal Motor Carrier Safety Regulations (FMCSRs) are not contrary to the Americans with Disabilities Act (ADA) of 1990. The mandates of the ADA do not require that FMCSA alter the driver qualification requirements contained in 49 CFR part 391. The Senate report on the ADA, submitted by its Committee on Labor and Human Resources, included the following explanation:

> With respect to covered entities subject to rules promulgated by the Department of Transportation regarding physical qualifications for drivers of certain classifications of motor vehicles, it is the Committee's intent that a person with a disability applying for or currently holding a job subject to these standards must be able to satisfy these physical qualification standards in order to be considered a qualified individual with a disability under Title I of this legislation. S. Rep. 101–116, at 27 (1989).

FMSCA relies on the expert medical opinion of the endocrinologist and the medical examiner, who are required to analyze individual ability to control and manage the diabetic condition, including the individual ability and willingness of the driver to monitor blood glucose level on an ongoing basis. Until the Agency issues a Final Rule, however, insulin-treated diabetic drivers must continue to apply for exemptions from FMCSA, and request renewals of such exemptions. FMCSA will grant exemptions only to those applicants who meet the specific conditions and comply with all the requirements of the exemption.

Conclusion

After considering the comments to the docket, and based upon its evaluation of the forty-eight exemption applications, FMCSA exempts, Paul N. Abelson, Robin R. Baumgartner, Albert W. Bayne, Joseph K. Beasley, Philip E. Brown, Toni A. Brown, Larry M. Burkett, Jr., Ronald J. Charette, Jr., Charles E. Clark, II, Margaret I. Clevidence, Fred J. Combs, Douglas N. Craven, Rene A. DeLuna, Charles Demesmin, Derek E. Dowling, Donald E. Dupke, Jr., Frederick E. Dyer, Ronald S. Easter, Steven W. Freeman, Sr., Robert R. Gladd, Tim E. Holmberg, Russell D. Jordan, Warren D. Knabe, David J. Kreider, Terry R. Leslie, Dennis L. Lorenz, John N. Love, Ronald T. Lowery, Charles C. Madeira, V., Robert J. Malone, John R. Milberger, Norman J. Millard, Eric R. Nickel, Clayton A. Powers, Charles R. Rafferty, Curtis J. Sato, William B. Schauer, Herschel S. Sejnoha, Adam J. Sharp, Darrol H. Sponberg, Reese L. Sullivan, Kenneth R. Tuggle, Robert M. Walker, William A. Watts, Robert E. Weiss, Robert A. Wild, James G. Wilkerson, and Randy L. Wyant, from the ITDM standard in 49

CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: December 12, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–24556 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–01–10578, FMCSA–03–16241]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 10 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective December 31, 2007. Comments must be received on or before January 18, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–01–10578, FMCSA–03–16241, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78; Apr. 11, 2000). This information is also available at *http://DocketInfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202)–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 10 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 10 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Ronald G. Austin
Rickey C. Dalton
Martiniano L. Espinosa
Derek T. Ford
Paul C. Gruenberg, Jr.
James G. LaBair
Dennis A. Leschke
Lonnie Lomax, Jr.
Eugene C. Murphy
Carl W. Skinner, Jr.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer

than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 10 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (66 FR 53826; 66 FR 66966; 68 FR 69434; 71 FR 646; 68 FR 61857; 68 FR 75715). Each of these 10 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 18, 2008.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 10 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 12, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–24559 Filed 12–18–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–RSPA–1998–4470]

Pipeline Safety: Meetings of the Pipeline Safety Standards Advisory Committees and a Public Workshop

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of advisory committee meetings and workshop.

SUMMARY: This notice announces public meetings of PHMSA's Technical Pipeline Safety Standards Committee (TPSSC) and Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). The Committees will meet in a joint session to discuss PHMSA's regulatory agenda and strategic plan. In conjunction with the advisory committee meetings, PHMSA will hold a public workshop.

PHMSA will hold a half day public workshop to gather comments on the use of the special permit process to allow transmission pipeline operators to vary from the 7-year reassessment interval in integrity management programs. Specifically, special permits would allow operators to tailor their reassessment intervals, based on pipe specific threats. PHMSA will ask for feedback on criteria developed for use in special permits.

DATES: The TPSSC and the THLPSSC will meet on Thursday, January 17, from 1 p.m. to 5 p.m. EST. The public meeting on special permit consideration and criteria discussion for 7-year reassessments will be on Friday, January 18, from 8 a.m. to 12 p.m. EST.

ADDRESSES: The meetings will be at the Hotel Palomar Arlington, 1121 North 19th Street, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT:

- *Technical Advisory Committee Meetings:* Cheryl Whetsel (202) 366–4431, *cheryl.whetsel@dot.gov*;
- *Public Workshop on Special Permit Consideration and Criteria Discussion for 7-Year Reassessments:* Zach Barrett (405) 954–5559, *zach.barrett@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Meeting Details

Members of the public may attend and may make a statement during the advisory committee meetings or during the public workshop. If you plan to make a statement please notify the relevant contact under **FOR FURTHER INFORMATION** by January 9. Please note the meetings' presiding officer may deny a nonscheduled request to make a statement and may also limit the time of any speaker.

Comments should reference Docket ID PHMSA–RSPA–1998–4470 (advisory committee) or Docket ID PHMSA–RSPA–2000–7666 (7-year reassessment workshop). Comments may be submitted in the following ways:

- *E-Gov Web Site: http://www.regulations.gov*. This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590.
- *Hand Delivery:* DOT Docket Management System; Room W12–140, on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket ID, at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov*. Note: Comments will be posted without changes or edits to *http://www.regulations.gov* including any personal information provided. Please see the Privacy Act heading in the Regulatory Analyses and Notices section of the **SUPPLEMENTARY INFORMATION** for additional information.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our

dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477).

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Cheryl Whetsel before January 2.

II. Committee Background

The TPSSC and the THLPSSC are advisory committees mandated by statute to advise PHMSA on proposed safety standards, risk assessments, and safety policies for natural gas and hazardous liquid pipelines. These advisory committees are established under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) and the pipeline safety law (49 U.S.C. chap. 601). Each committee consists of 15 members, five each representing government, industry, and the public. The TPSSC and the THLPSSC determine the reasonableness, cost-effectiveness, and practicability of each proposed safety standard. The committees also evaluate the cost-benefit analysis and risk assessment information on each proposal.

III. Preliminary Meeting Schedules

Joint Meeting of the Technical Advisory Committees

Thursday, January 17 (1 p.m. to 5 p.m.)

The TPSSC and THLPSSC will meet to introduce new members and to discuss their roles and responsibilities. They will also discuss PHMSA's 2008 regulatory agenda and plans to carry out the DOT and PHMSA strategic plans.

Special Permit Consideration and Criteria Discussion for 7-Year Reassessments Friday, January 18 (8 a.m.–12 p.m.)

Integrity management regulations applicable to gas transmission pipelines required all operators to do a baseline assessment of pipelines. PHMSA will hold a public workshop to gather comments on the use of a special permit to allow certain transmission pipeline operators to tailor reassessment intervals, based on pipe specific threats, instead of using the 7-year mandatory reassessment required now. PHMSA will ask for feedback on criteria developed for these special permits.

PHMSA will post more detailed agendas and any additional information or changes on its Web page (*http://phmsa.dot.gov*) approximately 15 days before the meeting date.

Authority: 49 U.S.C. 60102, 60115; 60118.

Issued in Washington, DC on December 14, 2007.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 07–6099 Filed 12–14–07; 2:15 pm]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 385 (Sub-No. 6)]

Waybill Sample

AGENCY: Surface Transportation Board, DOT.

ACTION: Clarification.

SUMMARY: The Surface Transportation Board provides notice that all railroads required to submit a waybill sample under 49 CFR part 1244 shall report fuel surcharge revenues in the waybill field ''Freight Revenue,'' columns 83–91 in the waybill file record layout.

DATES: *Effective Date:* This notice is effective on January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Mac Frampton, (202) 245–0317 or *mac.frampton@stb.dot.gov*. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: A carload waybill, which is a document describing the characteristics of an individual rail shipment, identifies originating and terminating freight stations, the names of all railroads participating in the movement, the points of all railroad interchanges, the number of cars, the car types, movement weight in hundredweight, the commodity, and the freight revenue. Under 49 CFR part 1244, a railroad is required to file carload waybill sample information (Waybill Sample) for all line-haul revenue waybills terminating on its lines if, in any of the three preceding years, it terminated 4500 or more carloads, or it terminated at least 5% of the total revenue carloads that terminate in a particular state.

The Waybill Sample is the Board's primary source of information about freight rail shipments terminated in the United States. Of particular importance, the Board relies on the data in the Freight Revenue field to compute its ''Revenue Shortfall Allocation Method'' (RSAM) benchmarks.

For the most part, carriers are already reporting revenue derived from fuel surcharges within the Freight Revenue field. However, a few carriers are using the ''Miscellaneous Charges'' field to report fuel surcharge revenue. This notice clarifies that all reporting carriers should report their fuel surcharge revenues in the Freight Revenue field. This clarification will provide for uniformity in the reporting of fuel surcharge revenue in the Waybill Sample and therefore improve the accuracy and utility of the Board's RSAM calculations.

To purchase a copy of this decision, write to, e-mail or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net*; telephone (202) 306–4004. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.]

Board decisions, notices, filings, and hearings transcripts are also available on our Web site at *http://www.stb.dot.gov*.

Decided: December 12, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E7–24589 Filed 12–18–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35108]

Permian Basin Railways, Inc.—Acquisition of Control Exemption—Mount Hood Railroad

Permian Basin Railways, Inc. (PBR) has filed a verified notice of exemption to permit PBR to acquire control of the Mount Hood Railroad (MHRR) by purchasing 100% of the outstanding stock of MHRR.[1]

PBR is a noncarrier holding company, and a wholly owned subsidiary of Iowa Pacific Holdings, also a noncarrier. PBR owns the following Class III rail carriers: Texas-New Mexico Railroad, West Texas & Lubbock Railway, Arizona Eastern Railway, San Luis & Rio Grande Railroad, and the Chicago Terminal Railway.

The transaction is scheduled to be consummated on or about December 31, 2007, but consummation can lawfully occur no earlier than January 2, 2008, the effective date of the exemption (30 days after the exemption was filed).

Applicant states that: (i) The rail lines involved in this transaction do not connect with any rail lines now controlled, directly or indirectly, by

[1] A copy of a draft Agreement for Sale of Stock, as required by 49 CFR 1180.6(a)(7)(ii), was filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

PBR; (ii) this transaction is not part of a series of anticipated transactions that would connect any of these rail lines with each other or any railroad in their corporate family; and (iii) this transaction does not involve a Class I carrier. Therefore, this transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

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 effectiveness of the exemption. Petitions for stay must be filed no later than December 26, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35108, 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 John D. Heffner, John D. Heffner, PLLC, 1750 K Street, NW., Suite 350, Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 12, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–24451 Filed 12–18–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Rough Diamonds Reporting Requirement

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control (''OFAC'') within the Department of the Treasury is soliciting comments concerning OFAC's requirement to report information about the shipment of rough diamonds.

DATES: Written comments should be received on or before February 19, 2008.

ADDRESSES: Direct all written comments to Assistant Director, Policy, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Assistant Director, Policy, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: Requirement to report information about the shipment of rough diamonds.

OMB Number: 1505–0198.

Abstract: The ultimate consignee of rough diamond shipments, identified on Customs Form 7501 Entry Summary, is required to report specified information about the shipment of rough diamonds imported into the United States to the foreign exporting authority within 15 calendar days of the date that the shipment arrived at a U.S. port of entry pursuant to § 592.301(a)(3) of the Rough Diamonds Control Regulations, 31 CFR Part 592. This collection of information is needed to monitor the integrity of international rough diamond shipments, and the information collected will be used to further the compliance, enforcement, and civil penalty programs of the Office of Foreign Assets Control of the Department of the Treasury (''OFAC'').

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business organizations and individuals engaged in the international diamond trade.

Estimated Number of Respondents: 250, with an estimated 3,000 total annual responses.

Estimated Time Per Respondent: The estimated average annual burden per respondent is 2 hours, based on an estimated annual frequency of 10 to 15 responses and an estimated time per response of 10 minutes.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (''OMB'') control number. Books or records relating to a collection of information must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 11, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–24547 Filed 12–18–07; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Cuban Remittance Affidavit

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control (''OFAC'') within the Department of the Treasury is soliciting comments concerning OFAC's Cuban Remittance Affidavit information collection.

DATES: Written comments should be received on or before February 19, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Assistant Director, Policy, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Assistant Director, Policy, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: Cuban Remittance Affidavit.

OMB Number: 1505–0167.

Abstract: The information is required of persons subject to the jurisdiction of the United States who make remittances to persons in Cuba pursuant to § 515.570 of the Cuban Assets Controls Regulations, 31 CFR part 515. The information will be used by the Office of Foreign Assets Control of the Department of the Treasury (''OFAC'') to monitor compliance with regulations governing family and emigration remittances.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,100,000 filers: 900,000 filing four times annually and 1,200,000 filing once a year.

Estimated Time Per Respondent: 60 seconds per form, for an estimated four minutes per year with four filings.

Estimated Total Annual Burden Hours: 65,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (''OMB'') control number. Books or records relating to a collection of information must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 11, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–24557 Filed 12–18–07; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of additional persons whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Secretary of the Treasury of the twenty-three individuals and nineteen entities identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on December 12, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

The Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Kingpin Act blocks the property and interests in property, subject to U.S. jurisdiction, of foreign persons designated by the Secretary of Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On December 12, 2007, OFAC designated twenty-three additional individuals and nineteen additional entities whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees follows:

Individuals:

1. CAZARES SALAZAR, Blanca Margarita, (a.k.a. Blanca Margarita CAZAREZ SALAZAR; a.k.a. Blanca CAZARES MESA; a.k.a. Blanca

CAZARES; a.k.a. Blanca CAZAREZ MESA; a.k.a. Chiquis CAZAREZ; a.k.a. Chiquis CAZAREZ SALAZAR; a.k.a. Blanca Margarita CAZAREZ SALAZAR de MEZA; a.k.a. Blanca Margarita GASTELLUM CAZARES; a.k.a. Blanca Margarita CAZARES GASTELLUM; a.k.a. Blanca Margarita GASTELUM CAZAREZ DE MEZA; a.k.a. Blanca Margarita CAZARES de MEZA; a.k.a. Blanca Margarita GASTELLUM; a.k.a. Blanca CAZARES GASTELUM); c/o CHIQUIS CAZAREZ CASA DE CAMBIO, Sepulveda con Juarez y Grandos, Culiacan, Sinaloa, Mexico; Calle G. Robles No. 152, Culiacan, Sinaloa, Mexico; Urban Lot 11, Manzana 35, Zona 2, Culiacan, Sinaloa, Mexico; Calle Mariano Escobedo No. 366, Apt. 102, Colonia Centro, Culiacan, Sinaloa, Mexico; Avenida Rodolfo G. Robles No. 166, Colonia Jorge Almada, Culiacan, Sinaloa, Mexico; Avenida Rodolfo G. Robles No. 153 South, Colonia Jorge Almada, Culiacan, Sinaloa, Mexico; Avenida Ignacio Aldama No. 257 Norte, Culiacan, Sinaloa, Mexico; Calle Mariano Escobedo No. 366, #102, Culiacan, Sinaloa, Mexico; Calle Juan de Dios Batiz No. 139, Culiacan, Sinaloa, Mexico; 9311 Clancey Avenue, Downey, CA 90240; c/o TOYS FACTORY, S.A. DE C.V.; c/o SIN–MEX IMPORTADORA, S.A. DE C.V.; DOB 18 Sep 1954; Alt. DOB 18 Sep 1955; Citizen Mexico; Alt. Citizen United States; Nationality Mexico; POB Guayabito, Pericos, Morocito, Sinaloa, Mexico; CURP # CASB540918MSLZLL00 (Mexico); R.F.C. #CASB540918LVI (Mexico); Voter ID # CZSLBL54091825M200 (Mexico); (INDIVIDUAL) [SDNTK]

2. MEZA GASPAR, Arturo, (a.k.a. Arturo MEZA); Avenida Rodolfo G. Robles No. 153, Sur, Colonia Aldama, Culiacan, Sinaloa, Mexico; Predio de San Rafael, Sindicatura de Costa Rica, Culiacan, Sinaloa, Mexico; Avenida Ignacio Aldama No. 257 Norte, Culiacan, Sinaloa, Mexico; Calle Mariano Escobedo No. 366, #102, Culiacan, Sinaloa, Mexico; Calle Juan de Dios Batiz No. 139, Culiacan, Sinaloa, Mexico; c/o SISTEMA DE RADIO DE SINALOA, S.A. DE C.V.; c/o TOYS FACTORY, S.A. DE C.V.; c/o SIN–MEX IMPORTADORA, S.A. DE C.V.; c/o CONSORCIO INMOBILIARIO DEL VALLE DE CULIACAN, S.A. DE C.V.; c/o OPERADORA INTEGRAL DE COMERCIO, S.A. DE C.V.; DOB 4 Jul 1946; POB Jacola, Culiacan, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; R.F.C. # MEGA460704 (Mexico); Voter ID# MZGSAR46070425H400 (Mexico); (INDIVIDUAL) [SDNTK]

3. MEZA CAZARES, Arturo, (a.k.a. Arturo MEZA GASTELLUM; a.k.a. Arturo MEZA CAZAREZ; a.k.a. Arturo MEZA, JR.); Avenida Rodolfo Robles 153 Sur, Colonia Jorge Almada, Culiacan, Sinaloa, Mexico; Avenida Ignacio Aldama #257, Colonia Centro, Culiacan, Sinaloa, Mexico; Calle G. Robles No. 153, Colonia Almada Sur, Culiacan, Sinaloa, Mexico; Avenida Rodolfo G. Robles No. 153 Sur, Colonia Almada, Culiacan, Sinaloa, Mexico; Calle Benito Juarez No. 636, Oriente, Colonia Centro, Culiacan, Sinaloa, Mexico; Predio de San Rafael, Sindicatura de Costa Rica, Culiacan, Sinaloa, Mexico; Avenida Ignacio Aldama No. 257 Norte, Culiacan, Sinaloa, Mexico; c/o SISTEMA DE RADIO DE SINALOA, S.A. DE C.V.; c/o CONSORCIO INMOBILIARIO DEL VALLE DE CULIACAN, S.A. DE C.V.; c/o COMERICAL DOMELY, S.A. DE C.V.; DOB 6 Mar 1976; Alt. DOB 29 Mar 1976; POB Culiacan, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; R.F.C. # MECA760306V70 (Mexico); Alt. R.F.C. # MECA760329; California identification card number B9457110 (United States); (INDIVIDUAL) [SDNTK]

4. MEZA CAZARES, Gipsy, (a.k.a. Gipsy MEZA GASTELLUM; a.k.a. Gipzy MEZA CAZAREZ; a.k.a. Gipsy MEZA CAZAREZ); Mariano Escobedo No. 366–102, Colonia Centro, Culiacan, Sinaloa, Mexico; Calle G. Robles No. 153, Colonia Almada Sur, Culiacan, Sinaloa, Mexico; No. 626 Calle Benito Juarez, Culiacan, Sinaloa, Mexico; c/o SISTEMA DE RADIO DE SINALOA, S.A. DE C.V.; c/o CONSORCIO INMOBILIARIO DEL VALLE DE CULIACAN, S.A. DE C.V.; c/o COMERCIAL JOANA, S.A. DE C.V.; DOB 24 Sep 1973; Alt. DOB 24 Sep 1972; Citizen Mexico; Nationality Mexico; POB Culiacan, Sinaloa, Mexico; R.F.C. # MECG730924N73 (Mexico); Alt. R.F.C. # MECG720924N75 (Mexico); (INDIVIDUAL) [SDNTK]

5. MEZA CAZARES, Lizbeth, (a.k.a. Lizbeth MEZA GASTELLUM; a.k.a. Lizbeth MEZA CAZAREZ); Avenida Rodolfo Robles 153 Sur, Colonia Jorge Almada, Culiacan, Sinaloa, Mexico; Calle G. Robles No. 153, Colonia Almada Sur, Culiacan, Sinaloa, Mexico; Avenida Rodolfo G. Robles No. 153 Sur, Colonia Almada, Culiacan, Sinaloa, Mexico; No. 154 Avenida Teofilo Noris, Colonia Almada, Culiacan, Sinaloa, Mexico; Calle Juan de Dios Batiz No. 139, Culiacan, Sinaloa, Mexico; Cll Villa Santander 2834, Villas del Rio Culiacan Villas del Rio Villa Vizcaya, Culiacan Rosales, Culiacan, Sinaloa, Mexico; c/o SISTEMA DE RADIO DE SINALOA, S.A. DE C.V.; c/o CONSORCIO INMOBILIARIO DEL VALLE DE CULIACAN, S.A. DE C.V.; DOB 5 Jan 1981; Alt. DOB 15 Jan 1981; Citizen Mexico; Nationality Mexico; POB Culiacan, Sinaloa, Mexico; R.F.C. # MECL810115 (Mexico); (INDIVIDUAL) [SDNTK]

6. PATRACA PONCE, Jorge Normando, Escobedo No. 366 Oriente, Departamento No. 102, Culiacan, Sinaloa, Mexico; Calle Mariano Escobedo No. 366–102, Colonia Centro, Tijuana, Baja California, Mexico; Edo. de Tabasco # 1423, Culiacan, Sinaloa, Mexico; Cll Cerro de San Cayetano 728, Colinas de San Miguel, Culiacan Circuito Ceroo de la Silla, Culiacan Rosales, Culiacan, Mexico; Avenida Jose Maria Morelos 302 Pte, Local 3, Col. Sector Culiacan Centro, Culiacan, Sinaloa, 80000, Mexico; c/o SISTEMA DE RADIO DE SINALOA, S.A. DE C.V.; c/o OPERADORA INTEGRAL DE COMERCIO, S.A. DE C.V.; DOB 23 Apr 1974; POB Culiacan, Sinaloa, Mexico; Alt. POB Tijuana, Baja California, Mexico; Citizen Mexico; Nationality Mexico; Passport 040015561 (Mexico); R.F.C. # PAPJ740423DB8 (Mexico); Voter ID# PTPNJR74042325H500 (Mexico); (INDIVIDUAL) [SDNTK]

7. PEREZ VERDUZCO, Roberto, (a.k.a. Roberto PEREZ VERDUGO); Calle Cerro Agudo No. 3191, Colonia Loma Linda, Culiacan, Sinaloa, Mexico; c/o SEPRIV, S.A. DE C.V. ; DOB 29 Oct 1963; Citizen Mexico; Nationality Mexico; POB Culiacan, Sinaloa, Mexico; Passport 040049618 (Mexico); R.F.C. # PEVR6310292D8 (Mexico); CURP # PEVR631029HSLRRB06 (Mexico); (INDIVIDUAL) [SDNTK]

8. BELTRAN ROMERO, Mireya Denisse, Paseo Estrella de Mar No. 1210, Seccion Coronado, Colonia Playas, Tijuana, Baja California, Mexico; c/o OPERADORA INTEGRAL DE COMERCIO, S.A. DE C.V.; c/o TECNOLOGIA DIGITAL Y SERVICIOS, S.A. DE C.V.; DOB 11 Mar 1981; Citizen Mexico; Nationality Mexico; POB Tijuana, Baja California, Mexico; R.F.C. # BERM810311CF0 (Mexico); Passport 03900215458 (Mexico); (INDIVIDUAL) [SDNTK]

9. BELTRAN SANCHEZ, Hector Manuel, Paseo Estrella Del Mar No. 1210, Playas de Tijuana, Tijuana, Baja California, Mexico; Manuel M. Flores 20 Montebello, Tijuana, Baja California, Mexico; c/o OPERADORA INTEGRAL DE COMERCIO, S.A. DE C.V.; c/o TECNOLOGIA DIGITAL Y SERVICIOS, S.A. DE C.V.; DOB 2 Mar 1952; Citizen Mexico; Nationality Mexico; POB Culiacan, Sinaloa, Mexico; R.F.C. # BESH520302AS4 (Mexico); (INDIVIDUAL) [SDNTK]

10. CAZAREZ PEREZ, Maria Tiburcia, (a.k.a. Maria Tiburcia CAZARES PEREZ); Calle Isla del Oeste No. 103, La Primavera, Culiacan, Sinaloa; Mexico; c/

o CAZPER IMPORTACIONES, S.A. DE C.V.; DOB 14 Oct 1962; POB Campo Tribolet, Perteneciente a la sindicatura de Sataya, Navolato, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; CURP # CAPT621014MSLZRB00 (Mexico); R.F.C. # CAPT6210144PA (Mexico); (INDIVIDUAL) [SDNTK]

11. CAZAREZ PEREZ, Irma, (a.k.a. Irma CAZARES PEREZ); Calle Isla del Oeste No. 103, La Primavera, Culiacan, Sinaloa, Mexico; c/o CAZPER IMPORTACIONES, S.A. DE C.V.; DOB 27 Sep 1956; POB Zapote de los Moya, Mocorito, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; CURP # CAPI560927MSLZRR15 (Mexico); Alt. CURP # CAPI560927MSLZRR07 (Mexico); R.F.C. # CAPI560927RF4 (Mexico); (INDIVIDUAL) [SDNTK]

12. CAZAREZ PEREZ, Efrain, (a.k.a. Efrain CAZARES PEREZ); Calle Torre de Londres No. 7028, Fraccionamiento Las Torres, Culiacan, Sinaloa, Mexico; c/o CAZPER IMPORTACIONES, S.A. DE C.V.; DOB 16 May 1965; Citizen Mexico; Nationality Mexico; POB Campo Loaiza, Sinaloa, Mexico; R.F.C. # CAPE6505164F5 (Mexico); (INDIVIDUAL) [SDNTK]

13. AGUIRRE SANCHEZ, Blanca Armida, Blvd. Agua Caliente No. 148, Tijuana, Baja California, Mexico; Calle Ixtapan de la Sal No. 12137, Fraccionamiento Colinas de Agua Caliente, Tijuana, Baja California, Mexico; C. Cerro Alto No. 7855, Fracc. Lomas de Agua Caliente, Tijuana, Baja California, Mexico; Avenida Central No. 10200, Departamento 401 Guion ''E,'' Colonia Hipodromo Dos, Tijuana, Baja California, Mexico; Diaz Miron, Calle 1903 3 Zona Central, Tijuana, Baja California, Mexico; c/o MULTISERVICIOS AGSA, S.A. DE C.V.; c/o AGBAS CONSULTORES, S.A. DE C.V.; c/o AGBA CONSULTORES CASA DE CAMBIO; c/o MEXGLOBO, S.A. DE C.V.; c/o COCINA DE TIJUANA, S. DE R.L. DE C.V.; c/o HACIENDA CIEN ANOS DE TIJUANA, S. DE R.L. DE C.V.; c/o COCINA ANTIGUA, S. DE R.L. DE C.V.; DOB 7 Mar 1958; Citizen Mexico; Nationality Mexico; POB Tijuana, Baja California, Mexico; Passport 04020067193 (Mexico); Voter ID # AGSNBL58030702M801 (Mexico); R.F.C. # AUSB580307CR4 (Mexico); Alt. R.F.C. # AUSB580307CRA (Mexico); (INDIVIDUAL) [SDNTK]

14. AGUIRRE SANCHEZ, Claudia, Calle Gladiolas No. 28, Fraccionamiento Del Prado, Tijuana, Baja California, Mexico; Calle Garita de Otay No. 1408, Colonia Mesa de Otay, Tijuana, Baja California, Mexico; Priv del Cesar No. 7013, Fracc. Racial Agua Caliente, Tijuana, Baja California, Mexico; Cll Gladiolas 11449, Lomas de Agua Caliente c de Las Torres c de S Fco, Tijuana 22024, Baja California, Mexico; c/o MULTISERVICIOS AGSA, S.A. DE C.V.; c/o MEXGLOBO, S.A. DE C.V.; c/o COCINA DE TIJUANA, S. DE R.L. DE C.V.; c/o HACIENDA CIEN ANOS DE TIJUANA, S. DE R.L. DE C.V.; c/o COCINA ANTIGUA, S. DE R.L. DE C.V.; DOB 4 Jan 1969; Citizen Mexico; Nationality Mexico; POB Tijuana, Baja California, Mexico; Voter ID # AGSNCL69010402M000 (Mexico); Professional Cedula # 1993358 (Mexico); (INDIVIDUAL) [SDNTK]

15. OLIVAS OJEDA, Marco Antonio, Calle Jesus Almada No. 214, Colonia Pueblo Nuevo 1, Navolato, Sinaloa, Mexico; Ave. Naciones Unidas No. 5677–4, Condominio Essex, Jard. de la Parque Regenci., Zapopan, Jalisco, Mexico; c/o TOYS FACTORY, S.A. DE C.V.; c/o SIN–MEX IMPORTADORA, S.A. DE C.V.; c/o COMERCIAL JOANA, S.A. DE C.V.; c/o COMERCIALIZADORA BRIMAR'S, S.A. DE. C.V.; c/o COMERCIAL DOMELY, S.A. DE C.V.; DOB 14 June 1960; Citizen Mexico; Nationality Mexico; POB Navolato, Sinaloa, Mexico; CURP # OIOM600614HSLLJR08 (Mexico); R.F.C # OIOM600614YA5 (Mexico); Voter ID # OIOJMR60061425H900 (Mexico); (INDIVIDUAL) [SDNTK]

16. RUIZ ZAVALA, Aleyda, (a.k.a. Aleida RUIZ ZAVALA); Calle Cerro de la Memoria No. 1976, Fraccionamiento Colinas de San Miguel, Culiacan, Sinaloa, Mexico; c/o TOYS FACTORY, S.A. DE C.V.; c/o SIN–MEX IMPORTADORA, S.A. DE C.V.; c/o COMERCIALIZADORA BRIMAR'S, S.A. DE. C.V.; DOB 10 May 1962; Citizen Mexico; Nationality Mexico; POB Tamazula, Durango, Mexico; CURP # RUZA620510MDGZVL04 (Mexico); R.F.C # RUZA6205108L5 (Mexico); Voter ID # RZZVAL62051010M200 (Mexico); (INDIVIDUAL) [SDNTK]

17. ZAZUETA URREA, Epifanio, V Guerrero 109 Nte. Centro Colon y Escobedo CP 80000, Culiacan, Sinaloa, Mexico; Calle Mariano Escobedo Ote No. 467–4, Col. Centro, Culiacan, Sinaloa, Mexico; c/o SIN–MEX IMPORTADORA, S.A. DE C.V.; c/o CONSORCIO INMOBILIARIO DEL VALLE DE CULIACAN, S.A. DE C.V.; DOB 1 Aug 1947; Citizen Mexico; Nationality Mexico; POB Sinaloa, Mexico; Passport 040032826 (Mexico); R.F.C # ZAUE470801DK6 (Mexico); Voter ID # ZZUREP47080125H900 (Mexico); (INDIVIDUAL) [SDNTK]

18. SARABIA DIAZ, Carlos Cristino, Calle Dalia No. 37, Colonia Aguaruto, Culiacan, Sinaloa, Mexico; c/o TOYS FACTORY, S.A. DE C.V.; c/o COMERCIAL JOANA, S.A. DE C.V.; c/o COMERCIALIZADORA BRIMAR'S, S.A. DE. C.V.; c/o COMERCIAL DOMELY, S.A. DE C.V.; DOB 24 Jul 1971; POB Culiacan, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; CURP # SADC710724HSLRZR03 (Mexico); R.F.C. # SADC710724I71 (Mexico); (INDIVIDUAL) [SDNTK]

19. GOMEZ LLANOS AISPURO, Jose Rolando, Acoxpa Andador 9, Edificio 44, Colonia Villa, Coapa, Distrito Federal, Mexico; Calle Bradley, No. 5, Col. Anzures, Deleg. Miguel Hidalgo, Mexico City, D.F., Mexico; c/o COMERCIAL JOANA, S.A. DE C.V.; c/o COMERCIALIZADORA BRIMAR'S, S.A. DE. C.V.; DOB 08 Feb 1971; Alt. DOB 02 Feb 1971; POB Culiacan, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; R.F.C. # GOAR710208RS0 (Mexico); Passport 340038412 (Mexico); Alt. Passport 340015480 (Mexico); (INDIVIDUAL) [SDNTK]

20. ROBLEDO CORONEL, Baldemar, Prol. Sta. Tecla No. 51, Casa 12. Cond. Viole, Los Reyes, Coyoacan, Mexico; Blvd. FCO I Madero Pte. No. 650, Col. Centro, Culiacan, Sinaloa, Mexico; c/o COMERCIAL JOANA, S.A. DE C.V.; c/o COMERCIALIZADORA BRIMAR'S, S.A. DE. C.V.; DOB 27 Jan 1974; POB Santiago Papasquiaro, Durango, Mexico; Citizen Mexico; Nationality Mexico; Passport 420005453 (Mexico); CURP # ROCB740127HDGBRL07 (Mexico); R.F.C. # ROCB740127KZ0 (Mexico); (INDIVIDUAL) [SDNTK]

21. OLIVAS OJEDA, Juan Carlos, Calle Sierra Madre del Sur No. 1525–A, Infonavit Canadas, Culiacan, Sinaloa, Mexico; c/o COMERCIALIZADORA BRIMAR'S, S.A. DE. C.V.; DOB 14 Mar 1965; POB Navolato, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

22. VELARDE SARABIA, Antonio, Calle Hidalgo No. 537 Oriente, Col. Centro, Culiacan, Sinaloa, Mexico; c/o COMERCIAL JOANA, S.A. DE C.V.; c/o COMERCIALIZADORA TOQUIN, S.A. DE. C.V.; c/o COMERCIAL DOMELY, S.A. DE C.V.; DOB 27 Oct 1977; Citizen Mexico; Nationality Mexico; R.F.C. # VESA771027B50 (Mexico); (INDIVIDUAL) [SDNTK]

23. OLIVAS OJEDA, Jesus Joaquin, Av. Sexecnal No. 3043, Col. Republica Mexicana, Culiacan, Sinaloa, Mexico; c/o COMERCIALIZADORA TOQUIN, S.A. DE. C.V.; DOB 25 Oct 1955; Citizen Mexico; Nationality Mexico; R.F.C. # OIOJ551025S49 (Mexico); (INDIVIDUAL) [SDNTK]

Entities:

1. SISTEMA DE RADIO DE SINALOA, S.A. DE C.V., Calle Francisco Villa No. 331, Col. Centro, Culiacan, Sinaloa, Mexico; Cll Cristobal Colon 275, Culiacan Rosales, Culiacan, Mexico; Centro Culiacan Ramon Corona Jesus

Andrade, Culiacan Rosales, Culiacan, Mexico; Cll Cristobal Colon No. 275, Col. Centro, C.P. 80000, Culiacan, Sinaloa, Mexico; (Clave Catastral CU–37–740–003) Lote 3, Manzana #18, Zona 1, ''El Vallado III,'' Culiacan, Sinaloa, Mexico; R.F.C. # SRS9903153C5 (Mexico); (ENTITY) [SDNTK]

2. TOYS FACTORY, S.A. DE C.V., Blv. Gustavo Diaz Ordaz No. 1, Col. Las Brisas, Tijuana, Baja California, Mexico; Ave. Presidente Carlos Salinas de Gortari No. 5, Col. Infonavit Presidente, Tijuana, Baja California, Mexico; Ave. Poniente Carlos Salinas S/N, Col. Infonavit, Tijuana, Baja California, Mexico; Blv. Gustavo Diaz Ordaz No. 16E–5, Col. Pque Ind. Bajamar Aguila, Tijuana, Baja California, Mexico; R.F.C. # TFA021112AR9 (Mexico); (ENTITY) [SDNTK]

3. CONSORCIO INMOBILIARIO DEL VALLE DE CULIACAN, S.A. DE C.V., Blvd. Emiliano Zapata No. 20, Col. Centro, Culiacan, Sinaloa, Mexico; Ave. Alvaro Obregon No. 1800, 74M, Colinas de San Miguel, Culiacan, Sinaloa, Mexico; Ave. Alvaro Obregon No. 1800, 75M, Colinas de San Miguel, Culiacan, Sinaloa, Mexico; Ave. Alvaro Obregon No. 1800, 76M, Colinas de San Miguel, Culiacan, Sinaloa, Mexico; Ave. Alvaro Obregon No. 1800, 77M, Colinas de San Miguel, Culiacan, Sinaloa, Mexico; Calle Rodolfo G. Robles No. 158, Culiacan, Sinaloa, Mexico; Calle Miguel Hidalgo No. 590, #3, Culiacan, Sinaloa, Mexico; Calle Miguel Hidalgo No. 590, #4, Culiacan, Sinaloa, Mexico; Valle Aldama No. 257, Col. Centro, Culiacan, Sinaloa, Mexico; R.F.C. # CIV0106199MA (Mexico); (ENTITY) [SDNTK]

4. PATRACA S.A. DE C.V., (a.k.a. BOUTIQUE PATRACA; a.k.a. PATRACA MENS STORE); Calle Miguel Hgo No. 302, Col. Centro, Culiacan, Sinaloa, Mexico; Ave. Alvaro Obregon No. 1800, 74, Col. Colinas de San Miguel, Culiacan, Sinaloa, Mexico; Col. Proyecto Urbano Tres Rios, Culiacan, Sinaloa, Mexico; Calle Benito Juarez, No. 302, Col. Centro, Culiacan, Sinaloa, Mexico; Calle Benito Juarez 302 A altos S/N, Col. Centro, Culiacan, Sinaloa, Mexico; Alvaro Obregon y Cerro de Montelargo Local 74M, 75M, 76M, 7 Colinas de San Miguel, CP 80228, Culiacan, Mexico; Ave Alvaro Obregon No. 1800, 74M, Col. Colinas de San Miguel, C.P. 80228, Culiacan, Sinaloa, Mexico; Cll Jose Diego Valadez Rios 16, Plaza Patraca PB–24, Proyecto Urbano Tres Rios, Culiacan Rosales, Culiacan, 80000, Mexico; Cll Jose Diego Valadez Rios 16, Plaza Patraca PB–16, Proyecto Urbano Tres Rios, Culiacan Rosales, Culiacan, 80000, Mexico; Cll Jose Diego Valadez Rios 16, Plaza Patraca PB–39, Proyecto Urbano Tres Rios, Culiacan Rosales, Culiacan, 80000, Mexico; Cll Jose Diego Valadez Rios No. 1676, Col. Proyecto Urbano Tres Rios, C.P. 80000, Culiacan, Sinaloa, Mexico; Cll Jose Diego Valadez Rios No. 1676, 16, Col. Proyecto Urbano Tres Rios, C.P. 80000, Culiacan, Sinaloa, Mexico; Avenida Jose Maria Morelos 302 Pte, Local 3, Col. Sector Culiacan Centro, Culiacan, Sinaloa, 80000, Mexico; R.F.C. # PAT040318GF7 (Mexico); (ENTITY) [SDNTK]

5. SEPRIV, S.A. DE C.V., Calle Donato Guerra No. 649, 1, Col. Centro, Culiacan, Sinaloa, Mexico; R.F.C. # SEP980319668 (Mexico); (ENTITY) [SDNTK]

6. OPERADORA INTEGRAL DE COMERCIO, S.A. DE C.V., Blvd. Bellas Artes, No. 17686, No. Int. 5, Col. Garita de Otay, Tijuana, Baja California, Mexico; R.F.C. # OIC040925SA9 (Mexico); (ENTITY) [SDNTK]

7. TECNOLOGIA DIGITAL Y SERVICIOS, S.A. DE C.V., Blv. Agua Caliente No. 21, Col. Aviacion, Tijuana, Baja California, Mexico; Blv. Agua Caliente No. 221, Col. Centro Zona Este, Tijuana, Baja California, Mexico; R.F.C. # TDS021031UD6 (Mexico); (ENTITY) [SDNTK]

8. CAZPER IMPORTACIONES, S.A. DE C.V., Ave. Manuel Vallarta No. 2144, Col. Centro, Culiacan, Sinaloa, Mexico; Ave. Manuel Vallarta No. 2136, Int. 1, Col. Centro, Culiacan, Sinaloa, Mexico; Ave Manuel Vallarta 2136, Centro Culiacan Fray Servando Teresa de Mier E, Culiacan de Rosales, Culiacan, Mexico 80129; Ave. Manuel Vallarta #2136–1, Col. Centro Sinaloa, Culiacan, Sinaloa, Mexico; R.F.C. # CIM040429UH4 (Mexico); *http://www.cazper.com.mx*; (ENTITY) [SDNTK]

9. MULTISERVICIOS AGSA, S.A. DE C.V., Boulevard Agua Caliente No. 148, Revolucion, Tijuana, Baja California, Mexico; R.F.C. # MAG941123BYA (Mexico); (ENTITY) [SDNTK]

10. MEXGLOBO, S.A. DE C.V., Boulevard Agua Caliente No. 148, Col. Revolucion, C.P. 22015, Tijuana, Baja California, Mexico; R.F.C. # MEX9909034Y0 (Mexico); (ENTITY) [SDNTK]

11. AGBAS CONSULTORES, S.A. DE C.V., (d.b.a. AGBA CONSULTORES CASA DE CAMBIO); Boulevard Agua Caliente Tijuana, Baja California, Mexico; Boulevard Agua Caliente No. 148, Col. Revolucion, Tijuana, Baja California, Mexico; Blv Agua Caliente 148, Col. Revolucion Rio Panuco Rio Yaqui, Tijuana, Baja California, Mexico; R.F.C. # ACO040630893 (Mexico); (ENTITY) [SDNTK]

12. COCINA DE TIJUANA, S. DE R.L. DE C.V., Boulevard Sanchez Taboada No. 10451, Colonia Urbano Rio Tijuana, Tijuana, Baja California, Mexico; R.F.C. # CTI050414A55 (Mexico); (ENTITY) [SDNTK]

13. HACIENDA CIEN ANOS DE TIJUANA, S. DE R.L. DE C.V., (a.k.a. COCINA ANTIGUA, S. DE R.L. DE C.V.; a.k.a. LA HACIENDA DE TIJUANA, S. DE R.L. DE C.V.); Blvd. Sanchez Taboada S/N, No. 10451, Zona Rio, Fte. de Saverios e Arreola y cion accesso, Tijuana Baja California, Mexico; Calle Jose Maria Velazco No. 1407, Colonia Zona Rio, Baja California, Mexico; Sanchez Taboada 10451, Rio Tijuana, Arreola y Cjon de Acceso Frente a Saveri, Tijuana, Baja California, Mexico; R.F.C. # HTI010702GR7 (Mexico); Alt. R.F.C. # CAN010702DF8 (Mexico); (ENTITY) [SDNTK]

14. SIN–MEX IMPORTADORA, S.A. DE C.V., (d.b.a. CHIKA'S ACCESORIOS Y COSMETICOS; d.b.a. CHIKA'S; d.b.a. IMPORTCLUB); Poniente 140 No. 639, Col. Industrial Vallejo, Mexico, Distrito Federal, Mexico; Pedro Loza No. 174, Col. Centro, Guadalajara, Jalisco, Mexico; Av. Juarez No. 496, Col. Centro, Guadalajara, Jalisco, Mexico; Alvaro Obregon No. 614, Col. San Juan de Dios Guadalajara, Jalisco, Mexico; Plaza Centro Sur Local D–11, Guadalajara, Jalisco, Mexico; Magno Centro Joyero Sn. Juan de Dios Local 1038, Guadalajara, Jalisco, Mexico; Av. Javier Mina No. 26, Col. San Juan de Dios, Guadalajara, Jalisco, Mexico; Plaza Centro Sur Local I–9, Guadalajara, Jalisco, Mexico; Reforma 217–A, Col. Centro, Leon, Guanajuato, Mexico; Plaza Coliseo Local 11, Col. Centro, Leon, Guanajuato, Mexico; Riva Palacio No. 675 Sur, Col. Almada, Culiacan, Sinaloa, Mexico; Galerias San Miguel Local 40 K, Culiacan, Sinaloa, Mexico; Centro Joyero Local 31, Culiacan, Sinaloa, Mexico; Rubi No. 366–A, Col. Centro, Culiacan, Sinaloa, Mexico; Plaza Galerias Local 22, Col. Colinas de San Miguel, Culiacan, Sinaloa, Mexico; Plaza Fantasia, Calle del Carmen No. 82 Local 28, Distrito Federal, Mexico; Centro Joyero Local 21 y 25, Andador Allende No. 116 Oriente, Aguascalientes, Ags., Mexico; Centro Joyero de Toluca Local 8, Benito Juarez No. 109, Toluca, Estado Mexico, Mexico; Plaza de la Mujer Local 27, Morelos No. 133 Poniente, Monterrey, Nuevo Leon, Mexico; Parras 1750 Int. C, Col. Alamo Oriente, Tlaquepaque, Jalisco, Mexico; Poniente 140 No. 639, Col. Industrial Vallejo, Delegacion Azcapotzalco, Distrito Federal, Mexico; Ignacio Lopez Rayon No. 9104, Col. 1 de Mayo, Toluca, Mexico; Ignacio Lopez Rayon, Col. 5 de Mayo, Toluca, Mexico; Avenida Rayon 104, Col. Colonia Toluca de Lerdo Centro, Toluca, C.P. 50000,

Estado de Mexico, Mexico; Avenida Rayon 140 D, Col. Colonia Toluca de Lerdo Centro, Toluca, C.P. 50000, Estado de Mexico, Mexico; R.F.C. # SMI010730DH8 (Mexico); (ENTITY) [SDNTK]

15. COMERCIAL JOANA, S.A. DE C.V., General Eulogio Parra No. 1750–C, Col. El Retiro, Guadalajara, Jalisco, Mexico; General Eulogio Parra No. 61, Interior Z, Col. El Retiro, Guadalajara, Jalisco, Mexico; Parras No. 1750, Col. Educación Alamos, Guadalajara, Mexico; Calle General Eulogio Parra Numero 61–Z, Col. El Retiro, C.P. 44280, Guadalajara, Jalisco, Mexico; R.F.C. # CJO010202HQH (Mexico); alt. R.F.C. # CJO010202HQ4 (Mexico); (ENTITY) [SDNTK]

16. COMERCIALIZADORA BRIMAR'S, S.A. DE C.V., Calle Riva Palacio Sur No. 675, Col. Jorge Almada, Culiacan, Sinaloa, Mexico; R.F.C. # CBS9710303N4 (Mexico); (ENTITY) [SDNTK]

17. COMERCIALIZADORA TOQUIN, S.A. DE C.V., (d.b.a. CHIKA'S COSMETICS AND ACCESSORIES); Poniente 140 #639, Col. Industrial Vallejo, Mexico, Distrito Federal, Mexico; Calle Parras, Numero 1750 Int. C, Col. Alamo Oriente, Tlaquepaque, Jalisco, Mexico; Calzada Gonzalez Gallo, numero 3064, Col. Lomas de San Pedro, C.P. 44897, Guadalajara, Jalisco, Mexico; Calle Paseo del Hospisio 22 1038, Col. Colonia La Perla, Guadalajara, Jalisco, Mexico; R.F.C. # CTO010731CH9 (Mexico); (ENTITY) [SDNTK]

18. COMERCIALIZADORA JALSIN, S.A. DE C.V., (a.k.a. COMERCIALIZADORA JALZIN, S.A. DE C.V.; d.b.a. CHIKA'S ACCESORIOS Y COSMETICOS; d.b.a. CHIKA'S); Parras No. 1750, Col. Educacion Alamos, C.P. 44280, Guadalajara, Jalisco, Mexico; Ave. Juarez No. 496, Col. Centro, C.P. 44100, Guadalajara, Jalisco, Mexico; Cll 271 s/n, Col. Centro, C.P. 44280, Guadalajara, Jalisco, Mexico; Cll 614 s/n, Col. San Jan de Dios, C.P. 44360, Guadalajara, Jalisco, Mexico; Calle Pedro Loza 174, Col. Colonia Guadalajara Centro, Guadalajara, Jalisco, Mexico; Calle Alvaro Obregon 614, Col. Barrio San Juan De Dios, Guadalajara, Jalisco, Mexico; Calle Javier Mina 26, Col. Colonia La Perla, Guadalajara, Jalisco, Mexico; Avenida Javier Mina 28, Col. Barrio San Juan De Dios, Guadalajara, Jalisco, Mexico; Calle Juan Manuel 308, Col. Colonia Guadalajara Centro, Guadalajara, Jalisco, Mexico; Privada Periferico Sur 1835, Col. Pueblo Santa Maria Tequepexpan, Tlaquepaque, Jalisco, Mexico; Calle Alvaro Obregon 614, Col. Colonia La Perla, Guadalajara, Jalisco, Mexico; Andador Pedro Loza 174, Col. Barrio Jesus, Guadalajara, Jalisco, Mexico; Avenida Juarez 498, Col. Colonia Guadalajara Centro, Guadalajara, Jalisco, Mexico; Calle Pedro Loza 184, Col. Colonia Guadalajara Centro, Guadalajara, Jalisco, Mexico; Calle Vasco de Quiroga 32, Col. Colonia Morelia Centro, Morelia, Michoacan, Mexico; Avenida Juarez 496, Col. Centro, Guadalajara, Jalisco, Mexico; Calle Reforma 217 A, Col. Colonia Leon de los Aldamas Centro, Leon, Guanajuato CP 37000, Mexico; Calle Reforma, Esquina Comonfort Esquina Loc 11, Col. Colonia Leon de los Aldamas Centro, Leon, Guanajuato 37000, Mexico; Vasco de Quiroga No. 32, Zona Centro, Morelia, Michoacan, Mexico; R.F.C. # CJA980901J13 (Mexico); (ENTITY) [SDNTK]

19. COMERCIAL DOMELY, S.A. DE C.V., Ignacio Ramirez No. 603, Col. Jorge Almada, Culiacan, Sinaloa, Mexico, C.P. 80200; R.F.C. # CDO010522917 (Mexico); (ENTITY) [SDNTK]

Dated: December 12, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–24561 Filed 12–18–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–143453–05]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning temporary regulation, REG–143453–05, Capital Costs Incurred to Comply With EPA Sulfur Regulations.

DATES: Written comments should be received on or before February 19, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6514, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Residence and Source Rules Involving U.S. Possessions and Other Conforming Changes.

OMB Number: 1545–XXXX.

Regulation Project Number: REG–143453–05.

Abstract: This temporary regulation provides rules for claiming the deduction allowable under section 179B of the Internal Revenue Code for qualified capital costs paid or incurred by a small business refiner. The temporary regulations provide the time and manner for (i) a small business refiner to make the election to claim this deduction for the taxable year; and (ii) a cooperative small business refiner to make the election to allocate its deduction allowable under section 179B of the taxable year to the cooperative owners and to provide the written notice, as required by section 179B(e)(3), to the cooperative owners.

Current Actions: New collection.

Type of Review: New collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Total Burden Hours: 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 13, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–24654 Filed 12–18–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1065–B andSchedule K–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1065–B, U.S. Return of Income for Electing Large Partnerships, and Schedule K–1, Partner's Share of Income (Loss) From an Electing Large Partnership.

DATES: Written comments should be received on or before February 19, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Return of Income for Electing Large Partnerships (Form 1065–B), and Partner's Share of Income (Loss) From an Electing Large Partnership (Schedule K–1 (Form 1065–B)).

OMB Number: 1545–1626.

Form Number: Form 1065–B and Schedule K–1 (Form 1065–B).

Abstract: Internal Revenue Code Section 6031 and Regulation section 1.6031–1 requires partnerships to file a return. Internal Revenue Code sections 771–777, enacted by the Taxpayer Relief Act of 1997, allow large partnerships to elect to file a simplified return which requires fewer items to be reported to partners. Form 1065–B is used for this purpose.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 487,225.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 12, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–24655 Filed 12–18–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0116]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 18, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0116'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0116.''

SUPPLEMENTARY INFORMATION: *Title:* Notice to Department of Veterans Affairs of Veteran or Beneficiary Incarcerated in Penal Institution, VA Form 21–4193.

OMB Control Number: 2900–0116.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 21–4193 is used to determine whether a beneficiary's VA compensation or pension rate should be reduced or terminated when he or she is incarcerated in a penal institution in excess of 60 days after conviction.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 1, 2007, at page 55859.

Affected Public: Federal Government, and State, Local or Tribal Government.

Estimated Annual Burden: 416 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,664.

Dated: December 12, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–24582 Filed 12–18–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0216]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 18, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0216'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0216.''

SUPPLEMENTARY INFORMATION:

Title: Application for Accrued Amounts Due a Deceased Beneficiary, VA Form 21–601.

OMB Control Number: 2900–0216.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected on VA Form 21–601 is use to determine a claimant's entitlement to accrued benefits that was due to a deceased veteran but not paid prior to the veteran's death. Each survivor claiming a share of the accrued benefits must complete a separate VA Form 21–601; however if there is no living survivors who are entitled on the basis of relationship, accrued benefits may be payable as reimbursement to the person or persons who bore the expenses of the veteran's last illness and burial expenses.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 1, 2007, at page 55860.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,300 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 4,600.

Dated: December 12, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–24584 Filed 12–18–07; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
December 19, 2007

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Coastal California Gnatcatcher (Polioptila californica californica); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AV38

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Coastal California Gnatcatcher (Polioptila californica californica)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating revised final critical habitat for the coastal California gnatcatcher (*Polioptila californica californica*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 197,303 acres (ac) (79,846 hectares (ha)) of habitat in San Diego, Orange, Riverside, San Bernardino, Los Angeles, and Ventura Counties, California, are being designated as critical habitat for the coastal California gnatcatcher. This revised final designation constitutes a reduction of 298,492 ac (120,795 ha) from the 2003 revised proposed rule. We are continuing our review of whether the current listing of the coastal California gnatcatcher as a subspecies should be retained or changed, as discussed in the 2003 proposed rule to revise critical habitat, and we will publish our determination separately at a later date.

DATES: This final rule is effective January 18, 2008.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours, at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92011 (telephone: 760/431–9440). The final rule, draft economic analysis and associated addendum (dated September 14, 2007), and maps are available on our Web site at *http://www.fws.gov/Carlsbad.*

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone: 760/431–9440; facsimile 760/431–5901). For information about Ventura and northwestern Los Angeles Counties, contact Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone: 805/644–1766; facsimile 805/644–3958). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the revised designation of critical habitat for the coastal California gnatcatcher (*Polioptila californica californica*) in this final rule. For more information on the taxonomy, biology, and ecology of the coastal California gnatcatcher, refer to the final rule listing this species as threatened published in the **Federal Register** on March 30, 1993 (58 FR 16742), the original proposed and final critical habitat rules published in the **Federal Register** on February 7, 2000 (65 FR 5946) and October 24, 2000 (65 FR 63680), respectively, and the revised proposed rule published in the **Federal Register** on April 24, 2003 (68 FR 20228).

Species Distribution

The coastal California gnatcatcher (*Polioptila californica californica*) is a member of the old-world warbler and gnatcatcher family Sylviidae (AOU 1998. p. 3). This species occurs primarily in or near vegetation categorized as sage scrub. Within the United States, this species is restricted to coastal southern California from Ventura and San Bernardino Counties, south to the Mexican border (AOU 1957, p. 451; Atwood 1991, pp. 130–131; Garrett and Dunn 1981, p. 292). An evaluation of the historic range of the coastal California gnatcatcher indicates that about 41 percent of its latitudinal distribution is within the United States and about 59 percent is within Baja California, Mexico (Atwood 1990, p. 6). An analysis based on elevational limits associated with coastal California gnatcatcher locality records found that a significant portion (65 to 70 percent) of the species' historic range may have been located in southern California rather than Baja California, Mexico (Atwood and Bolsinger 1992, p. 159). Please see ''Primary Constituent Elements'' section below for a detailed discussion of the habitat requirements of the coastal California gnatcatcher.

The species was listed as threatened on March 30, 1993, because of habitat loss and fragmentation resulting from urban and agricultural development (58 FR 16742). Aside from habitat loss and fragmentation, other management issues concern fire, nonnative plants, and predation (Mock 2004, pp. 7–8).

Previous Federal Actions

On October 24, 2000, we published a final rule designating approximately 513,650 ac (207,890 ha) of land in portions of Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties as critical habitat for the coastal California gnatcatcher (65 FR 63680). Following the publication of the final rule, several lawsuits were filed against the Service by multiple parties (collectively referred to as Plaintiffs), including the Natural Resources Defense Council (NRDC); Building Industry Association of Southern California; National Association of Home Builders; Foothill/Eastern Transportation Corridor; and Rancho Mission Viejo, L.L.C. (*NRDC* v. *U.S. Dept. of Interior,* CV–99–2496 (C.D.Cal., filed 12/20/00); *Building Industry Association of Southern California et al.* v. *Norton*, CV 01–7028 (D.C.C., filed 1/17/01), and *Rancho Mission Viejo L.L.C.* v. *Babbitt,* CV 01–8412 (D.D.C. filed 12/28/00)), challenging the critical habitat designation for the coastal California gnatcatcher. On June 11, 2002, the U.S. District Court for the Central District of California granted our request for a remand of the coastal California gnatcatcher critical habitat designation so that we could reconsider the economic impact of designating any particular area as critical habitat. The Court ordered us to submit a new proposed rule to the **Federal Register** by April 11, 2003.

We published a proposed rule to revise critical habitat for the coastal California gnatcatcher in the **Federal Register** on April 24, 2003, that included approximately 495,795 ac (200,595 ha) of land in Ventura, Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties (68 FR 20228). As part of the April 24, 2003 proposed rule, we also announced and sought comment on our review of the current listing classification of the coastal California gnatcatcher as a subspecies under the Act and its potential reclassification as a distinct population segment (DPS). We accepted public comments on the proposed revision of critical habitat and the listing classification until June 23, 2003.

On April 8, 2004 (69 FR 18516), we published a notice in the **Federal Register** announcing: (1) The availability of the draft economic analysis (DEA) of the proposed revised designation for public review (dated February 24, 2004); (2) the reopening of the public comment period on the revised proposed rule; and (3) the scheduling of public hearings on the proposed revised critical habitat

designation and DEA for the coastal California gnatcatcher. We held public hearings on April 29, 2004, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. in Carlsbad, California. The second public comment period closed on May 10, 2004. During the reopened comment period and the public hearings announced in the April 8, 2004, **Federal Register**, we requested comments and information applicable only to proposed revised critical habitat designation and the associated DEA. We did not ask for additional public comment on the listing classification notice.

The Service initiated work on the final revised critical habitat rule and listing classification review for the coastal California gnatcatcher, but because of other court-ordered priorities we did not complete these tasks. On February 8, 2007, a motion was filed by the Plaintiffs requesting the Court to direct us to finalize a revised critical habitat designation for the coastal California gnatcatcher. We reached an agreement with the Plaintiffs to complete a final designation on or before November 1, 2007. We sought and were granted an extension from plaintiffs of the November 1, 2007, deadline to December 3, 2007. On April 3, 2007, we published a notice in the **Federal Register** announcing the reopening of the public comment period for the April 24, 2003, proposed rule (68 FR 20228), and we accepted comments and information until May 3, 2007 (72 FR 15857). As with the April 8, 2004, notice, this April 3, 2007, notice specifically requested information only on critical habitat and the associated February 24, 2004, DEA, not the listing classification. We stated in the April 3, 2007, notice our intent to publish a listing classification determination for the coastal California gnatcatcher at a later date, separate from the critical habitat designation.

Summary of Comments and Recommendations

As discussed in the ''Previous Federal Actions'' section above, we have opened three public comment periods associated with the 2003 proposed rule to revise critical habitat for the coastal California gnatcatcher, the second and third comment periods of which also sought public comment on the associated DEA: April 24, to June 23, 2003 (68 FR 20228); April 8 to May 10, 2004 (69 FR 18516); and April 3 to May 3, 2007 (72 FR 15857). During these comment periods, we requested all interested parties to submit comments or information related to the proposed revised critical habitat designation, unit boundaries, species occurrence information and distribution, land use designations that may affect critical habitat, potential economic effects of the revised proposed designation, benefits associated with critical habitat designation, areas considered but not proposed for designation, and the associated rationale for the non-inclusion/exclusion of these areas, and methods used to designate critical habitat.

We informed all appropriate entities of the opening of these comment periods, including State and Federal agencies, County governments, elected officials, and other interested parties through telephone calls, letters, and news releases sent by facsimile, by U.S. mail, and/or by electronic mail. During the April 24 to June 23, 2003, comment period, we also invited public comment through the publication of notices in the following newspapers: Los Angeles Times, Orange County Register, The Press-Enterprise, San Bernardino Sun, and the San Diego Union-Tribune. During the April 8 to May 10, 2004, comment period, we announced the date and times of two public hearings that were to be held on the April 24, 2003, proposed revised critical habitat designation and DEA. Hearings were held on April 29, 2004, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. in Carlsbad, California. Transcripts of these hearings are available for inspection (see **FOR FURTHER INFORMATION CONTACT** section above).

We received a total of 117 comment letters from Federal, State, and local agencies, private organizations, and individuals during the three comment periods. We reviewed all comments for substantive issues and new information regarding critical habitat or the coastal California gnatcatcher. We grouped similar comments into general issue categories relating to the proposed revised critical habitat designation and the associated DEA, and we identify them below. Substantive comments and issues raised in the public comment letters or at the hearings have either been incorporated directly into this final rule or are addressed below.

Peer Review Comments

In accordance with our policy published on July 1, 1994 (59 FR 34270), during the April 24 to June 23, 2003, comment period, we requested scientific review of the proposed revised critical habitat designation and our review of the listing classification of the coastal California gnatcatcher from 16 biologists with knowledge of the species, avian systematics, or conservation genetics. Nine of the 16 reviewers submitted comments on the listing classification review. All of these reviewers restricted their comments to the DPS and related taxonomic issues, except for technical corrections related to the proposed revised critical habitat designation. The technical corrections have been incorporated into this final rule. However, we will address the listing classification and related taxonomic issues in the final DPS determination to be published in the **Federal Register** separately at a later date.

Public Comments and Comments From Other Federal Agencies

Issue 1: Biological Issues

Comment 1: Some commenters suggest that we did not use the ''best available science'' or that the information we used is outdated or flawed. These commenters believe that use of flawed data incorrectly influenced where we identify proposed critical habitat, resulting in either the inclusion of too much land in proposed critical habitat or the omission of areas that we should have included in the proposed critical habitat designation. Other commenters believe that we did not describe the analytical process used to identify critical habitat with enough detail to allow the public to review the rationale for inclusion of specific parcels of land.

Our Response: Section 4(b) of the Act; our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271); and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by us, provide criteria, establish procedures, and provide guidance to ensure that decisions made by us represent the best scientific and commercial data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. As such, we based the proposed revised critical habitat designation for the coastal California gnatcatcher on the best available peer-reviewed published literature, gray literature (non-published or non-peer-reviewed survey or research reports), survey information, and vegetation data. We incorporated site specific survey information and vegetation data into our Geographic Information System (GIS) layers and used that as the basis for the revised

critical habitat proposal. Given the scale of the designation and resource limitations, it was not possible to provide a parcel-by-parcel justification of lands included in the proposed revised designation. However, we have attempted to clarify our justification for and methodology used in the delineation of the critical habitat boundaries in this revised final rule.

Comment 2: Some commenters suggested that we should not identify the entire range of the coastal California gnatcatcher as critical habitat. Other commenters suggested that we did not adequately distinguish between occupied, unoccupied, and linkage areas when delineating critical habitat.

Our Response: Critical habitat is defined in section 3 of the Act as (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. In developing the revised proposed rule, we considered the geographical area occupied by the species at the time of listing, and within that broad geographical area, we identified those areas that, based on the best scientific and commercial data available, contain physical and biological features essential to the species' conservation (primary constituent elements (PCEs)). We did not include all locations within the geographical area occupied by the species where individuals have been observed, nor did we include areas outside of the geographical area occupied by the species at the time of listing as we do not consider such areas to be essential to the conservation of the species. In developing this final rule, we reviewed each critical habitat unit and, where appropriate, further refined the unit boundaries to ensure that we include only the specific areas containing the PCEs for the coastal California gnatcatcher. We identified the essential physical and biological features (PCEs) contained in each critical habitat unit. All critical habitat designated for the coastal California gnatcatcher is within the geographical area occupied by the species and is likely used by them for breeding, feeding, sheltering, or dispersing at some point in time. Please see the ''Criteria Used To Identify Critical Habitat'' section below for a detailed discussion. Thus, under the broad statutory definition of critical habitat quoted above, all critical habitat designated in this final rule is within the geographical area occupied by the species. This differs from the common perception that occupancy means the detectable presence of a species at all times throughout the breeding and non-breeding seasons.

Comment 3: Several commenters suggested that the justification for the inclusion of linkage areas was inadequate.

Our Response: As discussed in greater detail in the ''Background'' section of the April 24, 2003, revised proposed rule and in the ''Primary Constituent Elements'' section of this final rule, available information indicates that dispersal of juvenile coastal California gnatcatchers generally requires a corridor of native vegetation (*i.e.*, linkage) to facilitate the exchange of genetic material and provide a path for recolonization of areas from which the species has been extirpated. Therefore, natal dispersal, through corridors, is an important aspect of the biology of a non-migratory, territorial bird such as the coastal California gnatcatcher. We identified these linkages based on survey information, vegetation maps, and the known dispersal capabilities of juvenile gnatcatchers. We are not designating as critical habitat areas that are suspected to provide a linkage between populations, but for which upon a reevaluation we have determined that we have inadequate information (*e.g.*, some lands in Unit 8 and all lands in Unit 11).

Comment 4: Some commenters questioned how lands in San Bernardino County could be considered essential when, according to the listing rule (58 FR 16742), the species was considered extirpated from that County.

Our Response: As discussed in the ''Criteria Used To Identify Critical Habitat'' section of the April 24, 2003, proposed rule and in the same section below, at the time of listing in 1993, coastal California gnatcatchers were not known to occur in San Bernardino County except from historic museum records. However, subsequent to the publication of the final listing rule, Davis *et al.* (1998, pp. 362–364) summarized survey efforts in San Bernardino County, documenting species occurrences, including some breed pairs, from several different locations in 1990, 1993, 1994, and 1995. Therefore, based on pre-listing occupancy data and museum records, we consider San Bernardino County to have been occupied at the time of listing. As stated in the April 24, 2003, proposed rule, populations of coastal California gnatcatchers in San Bernardino County are at the northern extent of the species' inland distribution, and the elevation and vegetation in which they occur may be unique within the species' range. However, we have reevaluated the importance of lands in San Bernardino in Unit 11 and have determined that lands in Unit 11 are not essential to the conservation of the species. Therefore, we have removed lands in Unit 11 from this final designation (see ''Summary of Changes From the 2003 Proposed Rule To Revise Critical Habitat'' section below for a detailed discussion of the removal of these lands). However, we are designating as critical habitat lands in southern San Bernardino County in Unit 10 (see ''Critical Habitat Designation'' section below).

Comment 5: The U.S. Forest Service (USFS) commented that most areas of the Cleveland National Forest proposed for inclusion in critical habitat are chaparral, and do not support the PCEs of coastal California gnatcatcher habitat according to the model cited on pages 20239 through 20249 of the April 24, 2003, proposed rule. They further commented that most of the National Forest System lands proposed for designation are located at considerable distances from any coastal sage scrub.

Our Response: As discussed in the ''Background'' section of the April 24, 2003, revised proposed rule and in the ''Primary Constituent Elements'' section of this final rule, though the majority of coastal California gnatcatchers are likely restricted to sage scrub vegetation, availability of these non-sage scrub areas (including chaparral) is essential during certain times of the year, particularly during drought conditions, for dispersal, foraging, or nesting. Also, as discussed in the ''Proposed Critical Habitat Designation'' section of the April 24, 2003, revised proposed rule, Cleveland National Forest (identified in Unit 2) is occupied by a core population of the species and contains canyons and corridors that provide linkages to preserve lands adjacent to this unit. Therefore, this area on the Cleveland National Forest is included in this final designation.

Comment 6: One commenter stated that since 2003, development proposals and fires have continued to imperil the coastal California gnatcatcher and its habitat. Projects such as the South Orange County Transportation Infrastructure Improvement Project and wildfires will impact coastal sage scrub that the species depends on for survival. The commenter stated that the occurrence of such events [projects and

wildfires] underscores the necessity of designating sufficient habitat, beyond what is presently proposed, to comply with the mandate of the Act, requiring that the Service conserve and recover the species.

Our Response: Critical habitat is defined in section 3 of the Act as (i) the specific areas within the geographic 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 geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We have identified areas within the geographical area occupied by the species at the time of listing that contain features in sufficient quantity and spatial arrangement we have determined to be essential to the conservation of the species and that may require special management considerations or protection. Based on current knowledge, we do not believe that areas beyond those (1) included in this final designation, (2) exempt from critical habitat designation under section 4(a)(3) of the Act (see ''Application of Section 4(a)(3) of the Act'' section below), or (3) excluded from critical habitat designation under section 4(b)(2) of the Act (see ''Exclusions under Section 4(b)(2) of the Act'' section below), are essential for the conservation of the coastal California gnatcatcher. However, 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.

Comment 7: The County of San Diego commented that based on the observations of local biologists, they believe that coastal sage scrub that burned during the 2003 fires is generally recovering and reiterated that fire is a natural component of sage scrub and chaparral ecosystems. The County further stated that, although the 2003 fires were extensive, they believe that the general distribution of coastal sage scrub and coastal California gnatcatchers will soon return to pre-fire conditions. Based upon this, they do not believe that we should adjust proposed revised critical habitat due to the 2003 fires. Another commenter stated that any lands that we proposed for designation before the wildfires should remain as critical habitat in the final rule, regardless of whether such land is presently occupied or unoccupied since these lands are essential to the conservation of the species and require special management considerations or protection. This commenter further stated that the fires have only increased pressure on the survival of the coastal California gnatcatcher, and lands that were previously occupied are likely to be occupied again.

Our Response: We agree that although the 2003 fires were extensive, the general distribution of coastal sage scrub and coastal California gnatcatchers is likely to return to pre-fire conditions. As discussed below in the ''Primary Constituent Elements'' section of this final rule, fire is a natural component of the southern California landscape and plays an important role in regulating coastal sage scrub distribution, density, and species composition. Our determination of areas containing the PCEs essential for the conservation of the coastal California gnatcatcher takes into account temporal variations in coastal sage scrub habitat resulting from periodic fires, which are a normal component of this dynamic, fire-adapted landscape. Based on this, we did not remove areas from this final designation that were included in the April 24, 2003, proposed revised designation that burned in the 2003 fires or the recent 2007 fires.

Comment 8: One commenter objected to the inclusion of large areas of their property (Newhall Land and Farming Company lands) in the Santa Clarita Valley in proposed critical habitat Unit 13. The objection is based on negative coastal California gnatcatcher survey data over multiple years, the loss of habitat due to wildfires in 2003, and judgment of consultants who say that the Service's contention that Unit 13 serves as a linkage between populations in the San Gabriel and Santa Susana Mountains is incorrect.

Our Response: After a re-evaluation of lands within Unit 13 included in the April 24, 2003, revised proposed rule, we have determined that portions of the Santa Clarita Valley included in the proposed revised designation are not essential to the conservation of the coastal California gnatcatcher. Numerous surveys have been conducted in the Santa Clarita Valley (including Newhall Land and Farming Company lands) but no breeding pairs have been observed. In August 2007, an individual bird was observed on Newhall Land and Farming Company (Crawford 2007, unpaginated). However, breeding on the site has not been confirmed. While the occurrence of this individual may indicate that the use of this area for dispersal, we have determined that this area does not currently have the spatial configuration and quantity of PCEs essential to the conservation of the species. Therefore, we have removed these areas, including the majority of the lands owned by the Newhall Land and Farming Company, from this final designation (see ''Summary of Changes From the 2003 Proposed Rule To Revise Critical Habitat'' section below for a detailed discussion).

However, we still consider the remaining lands in Unit 13 to be within the geographical area occupied by the coastal California gnatcatcher at the time of listing and, as explained in our response to Comment 7 above, to contain physical and biological features in spatial arrangement and quantity (i.e., PCEs) essential for the conservation of the species, although such features have been temporally affected by the 2003 fire. We believe that habitat burned by the 2003 Simi wildfire will support breeding pairs of coastal California gnatcatchers as the area recovers. The commenter stated that this habitat is likely to burn prior to its recovery, which could potentially change the vegetative community type to weedy species, rendering it unsuitable for coastal California gnatcatcher colonization. This comment is based on speculation and not supported by the fire history of the area (the area had not burned for several years prior to 2003 and supported large areas of habitat suitable for the coastal California gnatcatcher). Also, based on currently available data, none of the areas included in the 2003 proposed revised critical habitat designation that burned in the 2003 fires burned in the 2007 fires. However, the full extent of the 2007 fires is still being assessed. Furthermore, the commenter stated that the likelihood of an area being colonized by coastal California gnatcatchers after it has recovered from a burn is probably dependent on the proximity of founder populations that can disperse to the site rather than the structure of its habitat. Habitat in Unit 13 currently contains populations of coastal California gnatcatchers in areas that did not burn in 2003 or 2007, which given the opportunity and time, should colonize recovered habitat (see ''Primary Constituent Elements'' section below for a detailed discussion).

The area within Unit 13 included in this revised final designation that connects the San Gabriel and Santa Susana Mountains contains the physical and biological features in spatial arrangement and quantity (i.e., PCEs)

essential for the conservation of the species and serves as an essential linkage between the two isolated populations: a core population in the Moorpark area in Ventura County and the pairs documented in the foothills of the San Gabriel Mountains in Los Angeles County. Without this linkage, the population located in Ventura County has no other natural area connecting them with populations located east and south of Ventura County. Also, without the natural areas and habitat located on the south-facing slopes of the Santa Susana and San Gabriel Mountains, these two populations of coastal California gnatcatchers (in Moorpark area and in foothills of San Gabriel Mountains) would be completely isolated and prone to extirpation. Therefore, as part of Unit 13, we have designated critical habitat along the south-facing slopes of the Santa Susana and San Gabriel Mountains (see ''Critical Habitat Designation'' section below for more details).

Issue 2: Mapping and Methodology

Comment 9: Several commenters suggested that the proposed rule to revise critical habitat is overly broad and contains significantly more acreage than the acreage estimated as habitat in the original listing rule. Other commenters objected to the fact that the mapping scale of the proposed critical habitat includes areas that do not contain the PCEs for the coastal California gnatcatcher.

Our Response: Since the listing of the coastal California gnatcatcher as threatened in 1993 (58 FR 16742), a significant amount of survey information has become available that provides a much more complete dataset delimiting the range of the species within the United States. We used this new survey information in mapping areas containing the PCEs required by the species throughout its range.

We are required to describe critical habitat with specific limits using reference points and lines as found on standard topographic maps of the area (50 CFR 424.12(c)). In the April 24, 2003, proposed revised designation, we delineated critical habitat based on Universal Transverse Mercator (UTM) gridlines set every 328 feet (ft) (100 meters (m)). We overlaid these 100 meter square grids on areas determined to contain the PCEs required by the species. While we removed entire grid squares that did not contain the PCEs for the coastal California gnatcatcher, portions of grid squares that did not contain PCEs were inadvertently included within the boundaries of our proposed revision of critical habitat due to mapping limitations. However, in this final designation, we revised the methodology used to delineate critical habitat unit boundaries (see ''Criteria Used To Identify Critical Habitat'' section below for a detailed discussion). Using this revised methodology allowed us to describe more precisely boundaries associated with areas that we have determined to contain the PCEs and to eliminate additional areas that do not contain the PCEs for the species.

Comment 10: Several commenters suggested that the PCEs defined as being essential for the coastal California gnatcatcher are not specific and appear to encompass most natural plant communities in southern California. Furthermore, the commenters assert that the proposed rule to revise critical habitat does not explain why the PCEs are essential.

Our Response: The PCEs for the coastal California gnatcatcher are based on data from peer-reviewed published literature, gray literature (non-published or non-peer-reviewed survey or research reports), and biologists knowledgeable about the species and its habitat requirements. The PCEs, as described, represent the specific physical and biological features essential for the conservation of the coastal California gnatcatcher, such as habitat for breeding, foraging, and dispersal. The coastal California gnatcatcher, while considered an obligate (requires a specific habitat type to survive) of sage scrub plant communities, utilizes other plant communities and associations such as chaparral, grassland, and riparian (areas near a source of water) habitats where they occur in proximity to sage scrub. These non-sage scrub habitats are used for dispersal and foraging. Though the majority of coastal California gnatcatchers are likely restricted to sage scrub, availability of these non-sage scrub areas is essential during certain times of the year, particularly during drought conditions, for dispersal, foraging, or nesting (see the ''Primary Constituent Elements'' section below for a detail discussion of this species' habitat requirements).

These additional plant communities and associations have become more important to the conservation of the coastal California gnatcatcher with the continued loss of coastal sage scrub habitat due to urban and agricultural development. For this reason, we categorize the PCEs in spatial arrangement and structure and function to capture the plant communities, associations, and corridors of vegetation (i.e., linkages) that are essential for conservation of coastal California gnatcatcher and that provide connectivity between populations. In this final rule, we have clarified and refined the PCEs to enable landowners and managers to more clearly identify habitat containing features essential to the conservation of the species. We have also provided a clearer connection between the PCEs and the basic components of the life history of the coastal California gnatcatcher to show why these elements are essential.

Comment 11: Several commenters stated that the model used to assist in identifying PCEs is flawed and should not have been used.

Our Response: The model is one of many tools used to define the specific areas containing the PCEs for the coastal California gnatcatcher and, therefore, to define the areas proposed as revised critical habitat as explained in the Methods section, we used many other categories of information, including coastal California gnatcatcher presence and absence survey data, vegetation data, land use data, and aerial photography to delineate areas containing features in a spatial arrangement that provides the structure and function essential to the conservation of the species. Most coastal sage scrub patches in Orange and San Diego counties, the Counties covered by the model, have been surveyed for the species at least once. These survey data were the primary information used, in conjunction with aerial photography, in those Counties. We verified the accuracy of the model using survey data, and then we used the model primarily to help identify high quality breeding habitat in Orange and San Diego counties in locations where no survey information was available.

The model used in the proposed rule to revise critical habitat was developed during the planning process for the North San Diego County Multiple Habitat Conservation Plan. Though many potential parameters could be used in a model, we selected four parameters for our model: habitat patch size, slope, temperature, and precipitation. The predictive power of the model beyond the specific geographical area for which it was developed was tested with a large coastal California gnatcatcher data set of abundance information from surveys conducted in 2002 during the breeding season. This data set was collected to provide an estimate of current population levels in Orange and San Diego counties, and it provided a useful and appropriate test of the predictive power of the model. Forty-eight percent of the points located in habitat modeled as very-high quality were occupied, 28

percent of the points located in high-quality habitat were occupied, 8 percent of the points in medium-quality habitat were occupied, and none of the points in low-quality habitat were occupied (see ''Criteria Used To Identify Critical Habitat'' section below for more detailed discussion). We used this model to assist us in identifying breeding habitat quality because of the predictive power of the model.

Comment 12: Several commenters identified specific areas that they thought should not be designated as critical habitat. The CDFG requested that CDFG-owned conservation lands be removed from critical habitat since these lands are already protected and managed for the coastal California gnatcatcher as well as other listed and sensitive species. They further commented that designating critical habitat on State lands within the CDFG's jurisdiction would provide no added conservation benefit and would be detrimental to State conservation efforts, as critical resources would be diverted from substantive resource protection to procedural regulatory efforts.

Our Response: When commenters provided us site-specific documentation that explained why an area should not be designated critical habitat, we evaluated that information in accordance with the definition of critical habitat in section 3(5)(A) of the Act and the provisions of section 4(b)(2) of the Act. Following our evaluation of the new information, we made a determination as to whether modifications to the critical habitat boundaries were warranted. In the preparation of this final rule, we reexamined and refined the critical habitat boundaries to remove those areas that do not, or are not likely to, contain the physical and biological features in spatial arrangement and quantity (i.e., PCEs) essential for the conservation of the coastal California gnatcatcher or areas that may have one or more of the PCEs but are no longer essential to the conservation of the species (e.g., area does not contain a core population or provide important linkage habitat). We also exempted and excluded additional areas from this revised final designation under sections 4(a)(3)(B) or 4(b)(2) of the Act. Please refer to the ''Summary of Changes From the 2003 Proposed Rule To Revise Critical Habitat'' section below for a detailed discussion of changes from the revised proposed rule and the ''Application of Section 4(a)(3) of the Act'' and ''Exclusions under Section 4(b)(2) of the Act'' sections for a discussion of our exemption or exclusion of additional lands in this revised final rule.

Regarding the CDFG's request that CDFG-owned conservation lands be removed from critical habitat, we excluded from this final designation, under section 4(b)(2) of the Act, three ecological reserves (McGinty Mountain, Otay Mountain and Rancho Jamul) in Unit 1 and five ecological reserves (Pilgrim Creek, Carlsbad Highland, Agua Hedionda Lagoon, Batiquitos Lagoon, and San Elijo Lagoon) in Unit 3 based on management actions that are or will be conducted under the San Diego Multiple Species Conservation Program (MSCP) and the San Diego Multiple Habitat Conservation Plan (MHCP), respectively. While CDFG is not a permittee to these regional HCPs, they have committed to manage their lands consistent with the MSCP and MHCP regional conservation plans (see *''Other Conservation Partnerships—Exclusions Under Section 4(b)(2) of the Act''* section below for a detailed discussion). The only CDFG lands included in this final revised designation are approximately 9 ac (4 ha) of the San Luis Rey River Ecological Reserve in Unit 5 (see ''Table 3'' below). Since this 9 ac (4 ha) is not within an area covered by an approved HCP or other management plan and the PCEs may require special management protections or considerations, this area was not excluded from this final designation.

Issue 3: Regulatory Impacts and Exclusions

Comment 13: Several commenters requested that their individual properties be excluded from critical habitat because they have completed a section 7 consultation for the coastal California gnatcatcher.

Our Response: We disagree that all lands addressed by a section 7(a)(2) consultation should be excluded from critical habitat. However, we agree that lands that no longer contain PCEs as a result of a section 7 consultation should be removed from the revised designation. As discussed in the ''Summary of Changes from the 2003 Proposed Rule To Revise Critical Habitat'' section below, we used recent aerial imagery to re-evaluate and subsequently remove lands that do not contain the physical and biological features essential to the conservation of the species.

Comment 14: Some commenters stated that the protections provided to the coastal California gnatcatcher by the 4(d) special rule for the species at 50 CFR 17.41(b) are more comprehensive than those provided by critical habitat. Therefore, lands within jurisdictions enrolled in the Natural Community Conservation Planning (NCCP) process and that are subject to a coastal California gnatcatcher habitat loss permit under the 4(d) special rule should be excluded from the final critical habitat designation.

Our Response: The Special Rule under section 4(d) of the Act at 50 CFR 17.41(b) allows for a limited amount of incidental take of coastal California gnatcatchers (associated with the loss of up to five percent of sage scrub, i.e., coastal California gnatcatcher habitat) for an interim period of time while enrolled jurisdictions are actively engaged in preparing an NCCP plan, provided the activities resulting in such take are conducted in accordance with the NCCP Conservation and Process Guidelines finalized by the California Department of Fish and Game (CDFG) updated in January 1998. These guidelines rely on the voluntary commitment of jurisdictions to engage in the subregional conservation planning process and complete a Habitat Conservation Plan (HCP) or NCCP. While we trust that jurisdictions will fulfill their commitment to complete conservation plans, this voluntary enrollment does not assure that such plans will be completed. As such, the 4(d) special rule protections for coastal California gnatcatcher habitat provided through a participating jurisdiction's enrollment in the NCCP process are temporary and are not assured; such protections are lost if the enrolled jurisdiction elects to withdraw from the NCCP program. Given the temporary nature of the habitat protections afforded by the special 4(d) rule for the coastal California gnatcatcher, lands containing PCEs essential for the conservation of this species that are covered by the 4(d) rule do not warrant exclusion from critical habitat.

Comment 15: Naval Weapons Station Seal Beach, Detachment Fallbrook (Detachment Fallbrook), Marine Corps Base Camp Pendleton (MCB Camp Pendleton), and Marine Corps Air Station Miramar (MCAS Miramar) suggested that they should be exempt or excluded from critical habitat under sections 3(5)(A), 4(b)(2), or 4(a)(3)(B) of the Act based on their approved Integrated Natural Resource Management Plans (INRMPs) and adverse effects to military training and readiness.

Our Response: We have re-examined the inclusion of lands on these three military installations in light of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136), which amended the Act. Specifically,

section 4(a)(3)(B) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) states that 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 INRMP 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. Following a review of the INRMPs prepared for each of these three installations, we have determined that the approved INRMPs for each provides a benefit the coastal California gnatcatcher, its habitat, and its PCEs on the subject lands, and we have exempted these lands from this final designation under section 4(a)(3)(B) of the Act (see ''Application of Section 4(a)(3) of the Act'' below for a detailed discussion).

Comment 16: The Pala Band of Mission Indians and the Rincon Band of Luiseño Indians (on behalf of the Capitan Grande Reservation) expressed support for and concurred with the exclusion of those Tribal lands from critical habitat designation, stating that failure to designate these lands as critical habitat will not result in the extinction of the coastal California gnatcatcher. The Bureau of Indian Affairs opposed the inclusion of Capitan Grande and Pala Tribal lands in the designation of critical habitat for the coastal California gnatcatcher. They note that Tribal lands have not been subjected to the same development philosophies and pressures that have occurred on non-Indian lands and that Tribal conservation practices and Tribal resource management programs should be rewarded when we are considering designation of critical habitat.

Our Response: As stated in the revised proposed rule, physical and biological features essential to the conservation of the coastal California gnatcatcher exist on Pala Reservation lands. We considered but did not propose lands on the Pala Reservation in the April 24, 2003, proposed rule and we affirm our exclusion of these areas in this final rule (see ''Exclusion of Pala Band of Mission Indians Tribal Lands Under Section 4(b)(2) of the Act—American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' section below for a detailed discussion). We do not consider the physical and biological features on lands within the Capitan Grande Reservation to be essential to the conservation of the coastal California gnatcatcher. Therefore, the lands containing these features were not included in the April 24, 2003, revised proposed rule and are not included in this final designation of critical habitat for the coastal California gnatcatcher.

Comment 17: One commenter stated that our analysis under section 4(b)(2) of the Act for excluding lands from the Pala Band of Mission Indians Reservation from proposed critical habitat for the coastal California gnatcatcher on the basis of our efforts to preserve partnerships should also extend to private landowners.

Our Response: As discussed in the ''Exclusion of Pala Band of Mission Indians Tribal Lands Under Section 4(b)(2) of the Act—American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' section below, we are working with the Pala Band of Mission Indians and other Tribes under Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2) to preserve our partnership. We readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, make information regarding federally listed species available to Tribes, and remain sensitive to Indian sovereignty and culture. We further acknowledge that special considerations flow from our government-to-government relationship with Indian Tribes, the U.S. trust responsibility for Tribal natural resources it holds in trust, and the fact that Tribal lands are not subject to the same controls as Federal public lands. The special considerations inherent in our trust responsibilities to Indian tribes do not apply to private landowners. However, we are continuing to work to develop positive partnerships with private landowners that result in benefits to the coastal California gnatcatcher, through conservation tools such as HCPs and Safe Harbor Agreements. We recognize that private landowners play a significant role in helping to recover listed species, including the coastal California gnatcatcher, and therefore we continue to seek opportunities to work cooperatively with landowners to conserve the coastal California gnatcatcher and its habitat.

Comment 18: Several commenters, including the CDFG, were supportive of our proposal that lands covered by approved HCPs that provide take authorization for the coastal California gnatcatcher be excluded from critical habitat because they do not meet the definition of critical habitat or because the benefits of exclusion outweigh the benefits of designating such lands as critical habitat. These commenters stated that exclusion of lands covered by approved HCPs benefits partnerships, benefits future planning, prevents additional regulation, avoids legal challenges that HCPs will result in ''adverse modification'' of critical habitat, and supports implementation agreements. They also stated that without the exclusion of HCPs from critical habitat, ongoing and future HCP planning efforts would be jeopardized. Several commenters stated that HCPs protect habitat on a larger scale, rather than a piece-meal ''project-by-project'' approach that is achieved through the section 7 consultation process. Commenters further stated that HCPs provide a much greater conservation benefit than critical habitat designation to private land areas because HCPs incorporate management measures and protections for conservation lands designed to preserve, restore, and enhance the lands' value as habitat for covered species.

Our Response: We recognize that critical habitat is one of many tools available to help conserve federally listed species and agree that approved HCPs are one of the most important tools for reconciling land use with the conservation of listed species on non-Federal lands. Section 4(b)(2) of the Act allows us to exclude from critical habitat areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances the benefits of excluding lands covered by approved HCPs from critical habitat designations will outweigh the benefits of including them. For this final designation, we have determined that the benefits of exclusion outweigh the benefits of designation for all approved and legally operative HCPs in which coastal California gnatcatcher is a covered species (see ''Exclusions Under Section 4(b)(2) of the Act'' section below for a detailed discussion).

Comment 19: Several commenters, including the CDFG, stated that the benefits of excluding specific lands under section 4(b)(2) of the Act include the development of much needed housing, increased local government funding, decreased litigation burdens, production of new jobs, creation of additional habitat preserves, greater participation in HCPs, and/or promotion of smart growth.

Our Response: As discussed in the ''Effects of Critical Habitat'' section of this rule, section 4(b)(2) of the Act and 50 CFR 424.19 require us to consider the economic impact, impact on national security, and any other relevant impact, of designating any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of exclusion outweigh the benefits of designating the specific areas as critical habitat, unless that exclusion will lead to extinction of the species. We have considered and analyzed the benefits of exclusion described under section 4(b)(2) of the Act and we discuss them in this final rule (see ''Exclusions Under Section 4(b)(2) of the Act'' section below for a detailed discussion).

Comment 20: Several commenters requested that exclusions of HCPs under section 4(b)(2) of the Act should also apply to pending HCPs and lands enrolled in the NCCP program because the designation may have a chilling effect on entities pursuing HCP approval and diminish the assurances that are one of the key reasons entities participate in HCPs. Commenters further stated that the net result of designating lands as critical habitat within jurisdictions currently working to develop an HCP/NCCP will result in a diversion of scarce resources to address the uncertainties, probable litigation, and additional section 7 consultations that would be created by such designation and that these diversions of resources amount to a ''relevant impact'' under section 4(b)(2) and that the Service should not designate lands within pending HCPs for this reason alone.

Our Response: Protections for coastal California gnatcatcher habitat provided through a participating jurisdiction's enrollment in the NCCP process is temporary, is not legally assured, and would be lost if the jurisdiction elects to withdraw from the NCCP program. In addition, because HCPs/NCCPs under development that propose to cover the coastal California gnatcatcher are not finalized, the Service has not determined whether they are adequate to support the issuance of incidental take permits under section 10 of the Act or the Special Rule for the coastal California gnatcatcher under section 4(d) of the Act at 50 CFR 17.41(b). Also, the conservation measures proposed or under consideration in such plans have not been assured through binding permit conditions. However, we may consider excluding under section 4(b)(2) of the Act habitat covered by a pending HCP if we determine that an applicant has demonstrated a sustained commitment to develop the HCP to comply with section 10(a)(1)(B) of the Act, the California Endangered Species Act, and the State's NCCP program. In the past, we have excluded habitat covered by pending HCPs that have undergone public review as a result of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) review process. Currently, there are no pending HCPs that have undergone public review as a result of the NEPA review process. Therefore, we are not excluding any pending HCPs from this final revised critical habitat designation.

Comment 21: Several commenters, including the CDFG, suggested that designated critical habitat be removed concurrently with approval of future HCPs. Commenters recommended the establishment of a set of standards for HCPs/NCCPs that would provide for their automatic removal from critical habitat designated for species covered under such plans upon the issuance of the permit, if these standards are met.

Our Response: Revisions to critical habitat are governed by section 4 of the Act and require publication of a proposed rule and an opportunity for public comment on the proposed revision prior to removing lands from critical habitat designation. Future revisions to critical habitat based on the approval of HCPs must follow this statutory process. We anticipate that some future HCPs will include the coastal California gnatcatcher as a covered species and provide for its long-term conservation. We expect that HCPs undertaken by local jurisdictions (e.g., counties and cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species.

Section 10(a)(1)(B) of the Act states that HCPs must meet issuance criteria, including minimizing and mitigating any take of the listed species covered by the permit to the maximum extent practicable, and that the taking must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. We fully expect that our future analyses under section 7 of the Act of HCPs and section 10(a)(1)(B) permits will show that covered activities carried out in accordance with the provisions of the HCPs and section 10(a)(1)(B) permits will not result in the destruction or adverse modification of critical habitat designated for the coastal California gnatcatcher. The take minimization and mitigation measures provided under these HCPs are expected to adequately protect the lands designated as critical habitat in this rule, such that the value of these lands for the survival and recovery of the coastal California gnatcatcher is not appreciably diminished through direct or indirect alterations. If an HCP that addresses the coastal California gnatcatcher as a covered species is ultimately approved, we may elect to revise the critical habitat boundaries through a subsequent rulemaking if available funding and program priorities allow us to do so.

Comment 22: Several commenters stated that the critical habitat rule should not distinguish between individual and regional HCPs.

Our Response: Our evaluation of the benefits provided to listed species and their habitat by HCPs under section 4(b)(2) of the Act is the same regardless of HCP scale (e.g., regional or individual). We distinguished between the two types of HCPs solely to organize our discussion of areas considered but not proposed as critical habitat under section 4(b)(2) of the Act by grouping HCPs of a similar scale. We have continued this grouping of HCPs of similar scale in this final rule (see ''Exclusions Under Section 4(b)(2) of the Act'' section below).

Comment 23: One commenter stated that the establishment of HCPs in no way removes the attendant lands from the scope of section 4(a)(3) of the Act, which requires the designation of critical habitat, and states that the Service is legally required to designate critical habitat irrespective of other agencies' management considerations. Therefore, the approval of incidental take permits for completed regional HCPs, including the Southern Orange County Subregion HCP and Western Riverside County MSHCP, and pending HCPs, including the City of Rancho Palos Verdes, should not reduce the Service's proposed designation of critical habitat for the coastal California gnatcatcher.

Our Response: As discussed in our response to comment 20, we are not excluding any pending HCPs from this critical habitat designation. We are, however, excluding lands covered by the Southern Orange County Subregion HCP and Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) under section 4(b)(2) of the Act. Section 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances the benefits of excluding essential areas within approved HCPs from critical habitat designations will outweigh the benefits of including them. For this designation, we find that the

benefits of exclusion outweigh the benefits of designation for all approved and legally operative HCPs in which coastal California gnatcatcher is a covered species (see ''Exclusions Under Section 4(b)(2) of the Act'' section below for a detailed discussion).

Regional Habitat Conservation Plans (HCPs) have been the primary tool for recovering the coastal California gnatcatcher in southern California since the early 1990s. Development of regional HCPs in southern California has enabled the Service to conduct detailed evaluations of habitat for numerous species, including the gnatcatcher, in the context of developing a system of interconnected reserves to provide for the long-term biological needs of the species. This has been a challenging and complex undertaking, in large part due to the mix of Federal and non-Federal landownership patterns throughout the listed species' range. Completion and implementation of these HCPs will provide for the long term recovery and conservation of the coastal California gnatcatcher due to a significant reduction in and management of threats facing the species.

Most of the core populations of the coastal California gnatcatcher are concentrated along the coastal portions of Los Angeles, Orange, and San Diego counties. The eastern boundary of the species' range includes portions of southwestern San Bernardino County, and western Riverside County. Conservation and management of core populations of the coastal California gnatcatcher are addressed in the Orange County Central and Coastal NCCP/HCP, the City and County of San Diego's Multiple Species Conservation Program (MSCP) (including the cities of Poway, La Mesa, and Chula Vista), the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), and the City of Carlsbad within the multi-city Multiple Habitat Conservation Program (MHCP). Other HCPs are under development or have recently been completed, such as the Southern Orange County Subregion NCCP/HCP and the Rancho Palos Verdes HCP. Similar management of core gnatcatcher populations in northern San Diego County are being addressed through the proposed North County MSCP.

On Federal lands and other portions of the species' range in southern California, major core populations of the species have been conserved through section 7 consultations or are located on lands controlled by the Department of Defense and managed through their Integrated Natural Resource Management Plans (INRMP).

The combined efforts of regional HCPs, INRMPs, and key consultations under section 7 of the Act have made significant progress in managing the threats to the coastal California gnatcatcher and collectively will provide for the species' long term conservation. We conclude that completion and implementation of these HCPs/NCCPs is usually a more effective conservation approach than is a designation of critical habitat on these lands. Such a designation would provide redundant regulatory oversight and in some cases could hinder effective implementation of the respective HCPs/NCCPs. Thus we believe it is an appropriate use of the Secretary's authority to exclude such areas from critical habitat under section 4(b)(2) of the Act.

Comment 24: Several commenters stated opposition to the exclusion of pending and approved HCPs from critical habitat for the coastal California gnatcatcher, stating that we have relied on an erroneous interpretation of the phrase ''special management considerations'' in section 3(5)(A) of the Act.

Our Response: In this final rule, we are no longer relying on section 3(5)(A) of the Act as a basis to not include lands in the designation. We have reevaluated and reaffirmed our exclusion of areas considered but not proposed as critical habitat in the April 24, 2003, proposed rule under section 4(b)(2) of the Act (see ''Exclusions Under Section 4(b)(2) of the Act'' section below for a detailed discussion).

Comment 25: USFS commented that like HCPs, Land Management Plans (LMP) are designed to ensure the long-term survival of covered species in the plan area and their recently revised LMPs for the Cleveland, Angeles, and San Bernardino National Forests incorporate management direction they believe provides sufficient protection and management for coastal California gnatcatchers and their habitat. USFS further commented that the Cleveland National Forest's LMP includes management direction specifically designed to protect, restore, and enhance the value of Forest Lands as habitat for listed species. Standards 11 and 12 (part 3, page 6 of the LMP) stipulate that, ''When occupied or suitable habitat for a threatened, endangered, proposed, candidate or sensitive species is present on a project site, consider species guidance documents to develop project specific design criteria.'' These standards also stipulate, ''when implementing new projects in areas that provide for threatened, endangered, proposed or candidate species, use design criteria so that discretionary uses and facilities promote the conservation and recovery of these species and their habitats.''

Our Response: We have determined that Forest Service lands meet the definition of critical habitat and are essential to the conservation of coastal California gnatcatcher (see ''Criteria Used to Identify Critical Habitat'' section below). We acknowledge that the LMP will benefit coastal California gnatcatcher and its habitat. The LMP contains general provisions for species conservation and suggests specific management and conservation actions that will benefit this species and its PCEs. Implementation of the LMP should address known threats to this species on Forest Service lands. As stated above, we appreciate and commend the efforts of USFS to conserve federally listed species on their lands. However, Federal agencies have an independent responsibility under section 7(a)(1) of the Act to use their programs in furtherance of the Act and to utilize their authorities to carry out programs for the conservation of endangered and threatened species. USFS'' development and implementation of the LMP is consistent with the agency's statutory obligation under section 7(a)(1) of the Act, and is not an appropriate basis for excluding essential coastal California gnatcatcher habitat on Forest Service lands from critical habitat designation.

The Secretary may exclude an area from critical habitat under section 4(b)(2) of the Act after taking into consideration the economic impact, the impact on national security and any other relevant impact if he determines that the benefits of such exclusion outweigh the benefits of specifying such area, unless he determines that the exclusion would result in the extinction of the species concerned. We have considered the request from USFS that we exclude their lands based on the burden that the critical habitat designation would add to their section 7(a)(2) consultation requirement for actions on their lands and the fact that they completed consultation under section 7(a)(2) of the Act on their LMP. The primary benefit of including an area within a critical habitat designation is the protection provided by section 7(a)(2) of the Act that directs Federal agencies to ensure that their actions do not result in the destruction or adverse modification of critical habitat. This benefit of designating an area as critical habitat is limited if the areas under consideration for designation occur on

private lands for which there may not be a Federal nexus to invoke the protections of section 7(a)(2) of the Act. Federal lands by default have a Federal nexus and the intent of section 7 of the Act is to require Federal Agencies to consult on any action authorized, funded, or carried out by such agency to insure that the action will not jeopardize a listed species or destroy or adversely modify its critical habitat. Therefore, the benefits of inclusion of these areas are greater because they are Federal lands. We do not agree that any additional analysis required under section 7(a)(2) due to this critical habitat designation on Federal lands constitutes an undue burden for USFS such that the benefits of exclusion would outweigh the benefits of inclusion in this circumstance.

Under the Joint Counterpart Endangered Species Act Section 7 Consultation Regulations published in the **Federal Register** on December 8, 2003 (68 FR 68254), projects that support the National Fire Plan that the Forest Service determines are ''not likely to adversely affect'' any listed species or designated critical habitat do not require any additional consultation under the Act with the Service. Projects within the scope of the National Fire Plan include projects such as, prescribed fire, mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions. Therefore, projects such as restoration, revegetation, and removal of nonnative species conducted in support of the National Fire Plan that are not likely to adversely affect federally-listed species should not add to USFS' workload or cost burden by requiring them to conduct a separate analysis and make a determination of effect on critical habitat when consulting under section 7 of the Act.

Also, as part of our Section 7 consultation with the USFS on the LMP, the USFS has already consulted on various activities carried out on national forest lands including: roads and trail management; recreation management; special use permit administration; administrative infrastructure; fire and fuels management; livestock grazing and range management; minerals management; and law enforcement. In our 2005 biological opinion on the LMP, we determined that implementation of the plan was not likely to jeopardize the continued existence of the coastal California gnatcatcher or adversely modify critical habitat designated in 2000 or revised critical habitat proposed in 2003 for this species. Since the USFS has already consulted with us on potential impacts to critical habitat (both currently designated and proposed related to the activities outlined in the LMP, the designation of revised critical habitat should not require additional consultation for those activities.

In conclusion, we are designating Forest Service lands that meet the definition of critical habitat for the coastal California gnatcatcher because we have determined that the exclusion of Forest Service lands is not appropriate in light of the USFS' independent obligation under section 7(a)(1) of the Act to utilize the agency's authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of the coastal California gnatcatcher. Also, because of the agency's statutory obligations, the additional analysis under section 7(a)(2) of the Act as a result of designation of critical habitat on National Forest lands should not be considered a relevant impact under Section 4(b)(2) or constitute an undue burden for USFS.

Comment 26: USFS commented that they believe that no additional benefit to, or protection for, this species would occur as a result of critical habitat designation and that designation of the critical habitat identified in the revised proposed rule would unnecessarily add to the USFS' workload and cost burden by requiring them to conduct a separate analysis and make a determination of effect on critical habitat when consulting under section 7 of the Act. They stated that this would increase the number of formal consultations required for implementation of the fuels treatment programs and delay management actions yet to be implemented such as restoration, revegetation, and removal of nonnative species. They further stated that the additional time needed to comply with the added regulations under section 7 of the Act resulting from the critical habitat designation could delay some emergency maintenance activities that could compromise public safety.

Our Response: As explained in our response to comment 25 above, the USFS has an independent statutory obligation under Section 7 of the Act to protect the coastal California gnatcatcher and its essential habitat on Federal lands it administers. We point out that the Act's section 7 consultation regulations specifically address emergency situations and provide an alternative consultation procedure to enable rapid responses to emergencies. The regulations at 50 CFR 402.05 allow for informal consultation where emergency circumstances mandate the need to consult in an expedited manner. The Act does not prohibit any Federal agency from undertaking actions necessary to protect human health and safety during a declared emergency. Formal consultation must be initiated as soon as possible after the emergency is under control. In addition, we have conducted programmatic consultations with Federal Emergency Management Agency (FEMA) and other Federal agencies for future anticipated emergency actions. These consultations can be conducted prior to the emergency and address anticipated response activities.

Regarding potential delays in management actions, any action that ''may affect'' the species or its designated critical habitat, even if beneficial, is required to undergo consultation under section 7 of the Act if there is a Federal nexus. However, under the Joint Counterpart Endangered Species Act Section 7 Consultation Regulations published in the **Federal Register** on December 8, 2003 (68 FR 68254), projects that support the National Fire Plan that the USFS determines are ''not likely to adversely affect'' any listed species or designated critical habitat do not require any additional consultation under the Act with the Service. Projects within the scope of the National Fire Plan include projects such as, prescribed fire, mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions. Therefore, projects such as restoration, revegetation, and removal of nonnative species being conducted in support of the National Fire Plan should not add to the USFS' workload and cost burden by requiring them to conduct a separate analysis and make a determination of effect on critical habitat when consulting under section 7 of the Act.

Comment 27: USFS commented that extrapolating costs from recently completed consultations, the estimated cost to USFS for conferencing under section 7 of the Act on proposed critical habitat would exceed $150,000 over the next 3 to 5 years and includes payment to the Service to work on the consultations, USFS costs to complete biological assessments and surveys, and USFS costs to implement terms and conditions. They state that this estimated cost is not consistent with the statement made on page 20247 of the April 24, 2003, revised proposed rule

that designation of critical habitat will not cause ''any increases in costs or prices * * * for Federal agencies.'' They further commented that these consultations would be required for critical habitat that is not suitable for the coastal California gnatcatcher, and for which consultation would not otherwise have been required.

Our Response: As discussed in the April 24, 2003, proposed rule, the statement that designation of critical habitat will not cause ''any increases in costs or prices * * * for Federal agencies'' was based on a preliminary version of the DEA. We noted our intention to modify our assessment of economic effect based on the development and review of the DEA (see page 20247 of the ''Regulatory Flexibility Act'' section of the proposed rule). Based on the DEA, costs associated with section 7 consultations and associated project modifications for land management projects on Federal lands are estimated to total approximately $1 million through 2025. However, since completion of the DEA analysis in 2003, two section 7(a)(2) consultations have been completed that should decrease the economic impacts of critical habitat designation on USFS lands: The Joint Counterpart Endangered Species Act Section 7 Consultation Regulations (68 FR 68254; December 8, 2003) and the section 7(a)(2) consultation on the USFS' LMP completed in 2005.

As discussed in our response to comment 25 above, projects conducted under the Joint Counterpart Endangered Species Act Section 7 Consultation Regulations in support of the National Fire Plan that are not likely to adversely affect federally-listed species or their habitat should not add to USFS' workload or cost burden. As also discussed in our response to comment 25 above, the USFS has already consulted with us on potential impacts to critical habitat (both currently designated and proposed) related to various land management activities outlined in the LMP. The designation of revised critical habitat should not require additional consultation for those activities already analyzed in the LMP.

We disagree with the statement that consultations would be required for critical habitat that is not suitable. As discussed in the April 24, 2003, proposed revised rule, the areas we are designating as critical habitat are within the geographical area occupied by the species at the time of listing and currently occupied and contain PCEs in sufficient quantity and spatial arrangement such that these areas are essential to the conservation of the species (see ''Criteria Used To Identify Critical Habitat'' section below for a detailed discussion).

Comment 28: One commenter stated that critical habitat designated in areas containing species with different habitat needs creates needless confusion for land managers.

Our Response: Many lands are managed for multiple species at different temporal and spatial scales. A matrix of lands with different vegetation characteristics is consistent with historic conditions that supported coastal California gnatcatchers. Management plans to conserve coastal California gnatcatchers and other listed species already address the varying needs of these species and their habitats, as do the section 7 consultations conducted on these plans. We believe the addition of a critical habitat consideration to these management plans and consultations should not result in significantly different conservation requirements or create confusion for land managers.

Issue 4: Notification and Public Comments

Comment 29: Several commenters requested that the complete administrative record be made available for review with additional time granted for the public to respond.

Our Response: Until a final critical habitat determination is made, a complete record for this action does not exist. However, we have made documents used to prepare the April 24, 2003, revised proposed rule, including the model used to assist in defining specific areas containing the PCEs for the coastal California gnatcatcher, available to all who requested it. Files concerning the listing of the coastal California gnatcatcher and the primary supporting files for the designation of critical habitat are currently available for review, upon request, at the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section above).

Comment 30: Several commenters requested that we extend the comment period on the proposed revised designation and DEA.

Our Response: We have opened three public comment periods associated with the April 24, 2003, proposed rule to revise critical habitat, of which the second and third comment periods also sought public comment on the associated 2004 DEA. The public comment periods were as follows: April 24 to June 23, 2003 (68 FR 20228); April 8 to May 10, 2004 (69 FR 18516); and April 3 to May 3, 2007 (72 FR 15857). During these open comment periods, we conducted outreach notifying affected elected officials, local jurisdictions, interest groups and property owners. We notified interested parties through the publication of legal notices in regional newspapers, telephone calls, letters and news releases sent by facsimile and/or mailed to affected elected officials, local jurisdictions, and interest groups. We also posted information and materials related to the proposed revised designation on the Carlsbad Fish and Wildlife Office's public Web site *(http://www.fws.gov/Carlsbad/).*

During the second comment period (April 8 to May 10, 2004), we made the 2004 DEA of the April 24, 2003, proposed revised critical habitat designation available to the public for review. During this comment period, we also held two public hearings on April 29, 2004, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. in Carlsbad, California. We provided notification of the DEA through telephone calls and letters and news releases faxed and/or mailed to affected elected officials, local jurisdictions, and interest groups. We also published the DEA and associated material on our Web site following the draft's release on April 8, 2004. In addition, several public comment periods were held on our 2000 proposed and final critical habitat rules, which are similar in many respects to the 2003 proposed revised and this final rule.

In light of these actions, we have met the statutory and regulatory requirements to notify the public and seek public comment on our proposed designation. Also, as stated in the April 3, 2007, **Federal Register** notice announcing the reopening of the comment period for the proposed critical habitat for the coastal California gnatcatcher, we are under a court order to finalize the critical habitat designation for the coastal California gnatcatcher on or before November 2, 2007. Given the relatively short timeframe in which we have to finalize this proposed action, we are unable to open any additional comment periods or hold additional public hearings for the proposed designation and still meet our court-mandated deadline.

Issue 5: Economic Analysis

Comment 31: Several commenters stated that the DEA should have incorporated the approach and findings from a study released by the California Resource Management Institute (CRMI) (dated August 15, 2003) entitled ''Economic Impacts of Critical Habitat Designation for the Coastal California Gnatcatcher'' (Sunding 2003). Several commenters stated that the economic impacts estimated in the DEA are

incorrect because they are significantly lower than those contained in the CRMI study.

Our Response: We released the DEA for public comment on April 8, 2004 (69 FR 18516), but we completed the analysis prior to the public release of the CRMI study. However, we subsequently reviewed the CRMI study and its results in detail. The CRMI study relies on an economic model developed to assess the impacts of reductions in real estate product (e.g., residential and commercial buildings) in areas of the proposed revised designation. In order to respond to public comments regarding comparisons between the CRMI study and the DEA, our discussion below of the DEA and costs outlined in Table 1 are based on the total economic impact estimated in the DEA ($915 million) minus the costs borne by the Transportation Corridor Agency (TCA) ($35 million) since the CRMI study did not include TCA costs.

The CRMI study calculates a total economic impact due to the critical habitat designation of $4.6 billion, compared to $880 million in the DEA, a difference of approximately $3.7 billion. Differences in the magnitude of these estimates of total impact are primarily due to differences in the scope of the impacts measured. Despite the use of different economic models of regulatory impact, when CRMI's analysis is adjusted to address the same question as the DEA (i.e., the economic impact of section 7 of the Act), the estimated total economic impacts and ranking of proposed units by cost are relatively comparable, as discussed further below.

The DEA and CRMI study share a number of important analytical and methodological similarities. For example, both studies rely on demographic and land use projections provided by the Southern California Association of Governments (SCAG) and the San Diego Association of Governments (SANDAG) as the basis for calculating the economic impacts of the critical habitat designation. In addition, both studies agree that the primary economic impacts will result from: (1) Reduced real estate development; (2) project modification and regulatory compliance costs associated with coastal California gnatcatcher conservation activities; and (3) project delay. The DEA also includes a number of additional economic categories not evaluated in the CRMI study, but these categories represent a relatively small component of the total economic impact (including costs associated with uncertainty as well as those incurred by State and Federal entities).

Much of the difference in the magnitude of the cost estimates reported in the DEA and CRMI study results from the DEA's exclusion from the analysis of real estate development projects that are unlikely to have a Federal nexus, and thus not likely to be regulated under section 7 of the Act. The DEA also excludes ''baseline'' economic impacts that are attributable to existing regulations other than section 7 of the Act.

Under section 7 of the Act, projects or activities within critical habitat that are authorized, funded, or carried out by a Federal agency, that is, have a Federal nexus, will require consultation with the Service to ensure that they do not jeopardize the continued existence, or adversely modify the habitat, of threatened or endangered species. The DEA assumes that the designation of critical habitat will have no direct impact on projects or activities that do not have a Federal nexus.

As described in Chapter III of the DEA, the issuance of section 404(b) permits by the U.S. Army Corps of Engineers (USACE) is likely to represent the primary Federal nexus for private real estate development activities. The DEA estimates that this Federal nexus will occur in approximately 69 percent of all real estate projects. Consequently, the economic impact estimated in the DEA assumes that approximately 31 percent of future real estate projects will have no Federal nexus and thus will not be directly impacted by the critical habitat designation.

In contrast to the DEA, the CRMI study assumes that all projects will be affected, regardless of the presence of a Federal nexus. This difference accounts for approximately $1.4 billion, or approximately 28 percent of the total difference between the two estimates.

The DEA endeavors to account for the regulatory impacts that are expected to occur in the absence of this rulemaking (a further discussion of the baseline approach is provided elsewhere in this Response to Comments). Existing ''baseline'' regulations that provide protection to the coastal California gnatcatcher and its habitat, absent section 7 and the proposed designation, include the Orange County Central/Coastal NCCP/HCP, the 4(d) special rule at 50 CFR 17.41(b), and the California Environmental Quality Act (CEQA). (Pertinent baseline laws, regulations, and policies are described in detail in Chapter II of the DEA.)

The CRMI study considers the cost of all future coastal California gnatcatcher conservation activities. In other words, the CRMI does not factor out the impact of the ''baseline'' regulations noted above. This difference in the scope of impacts estimated in the two studies accounts for $2.3 billion, or approximately 62 percent, of the difference between the DEA and CRMI study results. In certain units (e.g., San Diego) this difference significantly affects estimated costs, whereas in others (e.g., Riverside) there is no effect at all (i.e., the two models yield results of similar magnitude).

An estimate of the cumulative effect of applying the DEA assumptions regarding (1) Federal nexus and (2) baseline regulations to the CRMI study is summarized in Table 1. As shown, making these adjustments to the CRMI study reduces the total economic impact from $4.6 billion to an estimated $1.38 billion (the total or cumulative impact of each of these assumptions when applied to the CRMI study is less than the sum of their separate impacts). This revised $1.38 billion estimate is approximately $497 million more than the $880 million economic impact reported in the DEA (compared to the $3.7 billion difference without these adjustments). Thus, together the Federal nexus and regulatory baseline assumptions used in the DEA account for most of the difference between the two studies.

TABLE 1.—COMPARISON OF ADJUSTED CRMI STUDY RESULTS AND DEA RESULTS—CALIFORNIA GNATCATCHER RESPONSE TO COMMENTS

Unit	Adjusted CRMI study results (1)		DEA results (2)	
	Amount	Unit rank	Amount	Unit rank
1	$100,097	10	$4,014,410	10
2	6,342	11	3,533,136	11
3	2,696,488	8	11,009,233	7
4	518	12	2,719,057	12

TABLE 1.—COMPARISON OF ADJUSTED CRMI STUDY RESULTS AND DEA RESULTS—CALIFORNIA GNATCATCHER RESPONSE TO COMMENTS—Continued

Unit	Adjusted CRMI study results (1)		DEA results (2)	
	Amount	Unit rank	Amount	Unit rank
5	277,649	9	13,806,983	6
6	70,163,377	5	53,968,904	4
7	3,820,191	7	5,306,404	8
8	0	13	449,115	13
9	140,463,276	3	42,671,006	5
10	524,487,037	1	459,907,538	1
11	75,371,628	4	93,364,387	3
12	37,759,521	6	4,029,835	9
13	521,667,076	2	185,457,233	2
Total	1,376,813,200		880,237,241	

(1) Estimates of CRMI study results adjusted to include DEA regulatory baseline and Federal nexus assumptions.
(2) Differences between the unit costs given in this table and those given in the DEA are due to differences in rounding.

Once the methodological assumptions described above are accounted for, the CRMI study and the DEA generate similar relative cost rankings between units. For example, the DEA and adjusted CRMI study results identify the same five units as generating the greatest costs (units 6, 9, 10, 11, and 13). Conversely, revising the DEA findings to eliminate the regulatory baseline and Federal nexus assumptions produces results comparable to those in the unadjusted CRMI study. That is, despite using different economic models and assumptions, the two reports generally agree in terms of the magnitude and distribution of costs.

The DEA and CRMI study do produce results that differ by $497 million, even after accounting for the key assumptions described above. A variety of other factors contributes to the different economic impact calculations, many of which are difficult to isolate and quantify with precision. For example, the DEA assumes that developers on average will incur a much higher economic burden when compensating for impacts to coastal California gnatcatcher habitat (i.e., the DEA assumes that developers will set aside 1.26 ac (0.51 ha) on site for every acre of developed habitat compared to a ratio of approximately 0.11:1.0 in the CRMI study). However, two key analytical differences that appear to contribute significantly to the higher economic costs calculated in the CRMI study include (1) discounting, and (2) consumer surplus effects, as described below:

(1) Discounting: The two studies apply a different approach to evaluating economic impacts that occur over time. Specifically, the DEA applies a positive real discount rate to costs that occur in the future to account for the effect of the time value of money. In contrast, the CRMI study assumes that the real discount rate will equal real property appreciation, and thus the timing of development has no impact on economic value. (The CRMI study does assume a positive discount rate to calculate the economic impact of delay.)

(2) Consumer Surplus: The DEA concludes that the critical habitat designation will primarily affect individual property owners/developers and not market prices or consumers of real estate. In contrast, the CRMI study concludes the critical habitat designation will lead to an increase in real estate market prices and thus a reduction in consumer surplus. The CRMI study calculates this reduction in consumer surplus and includes it in the total economic impact (our response to Comment 32 below provides a further discussion of this issue).

Comment 32: David Sunding of Charles River Associates (author of the CRMI study described in Comment 31 above) submitted a comment letter on the DEA criticizing its methodology and findings in a number of areas. Many of these criticisms are similar to those submitted by others and as such are addressed elsewhere in this ''Public Comments'' section. The primary comment addressed here is that the DEA's estimates of real estate development impacts are low because they are based solely on the cost incurred by individual landowners/developers and do not adequately account for impacts to real estate markets and thus consumers.

Our Response: Chapter III of the DEA evaluates the potential for the critical habitat designation to reduce consumer surplus by increasing real estate market prices. The analysis concludes that the critical habitat designation will not affect regional real estate markets or prices, and thus consumer surplus, because the total reduction in land supply is expected to represent a very small component of total future market demand in the region. Specifically, the estimated amount of acres that would have been developed but for critical habitat designation represents about 1.7 percent of future market growth in the six counties (San Diego, Orange, Riverside, San Bernardino, Los Angeles, and Ventura) through 2025. Supply adjustments by developers, including increased density and/or project reconfigurations, are likely to further cancel the market impact of the relatively small land supply reduction potentially created by the critical habitat designation.

The comment from Dr. Sunding argues that the DEA analysis is flawed because (1) it assumes that housing prices are determined at the county rather than the census tract level, and (2) it ignores the severely land-constrained nature of the southern California region as a whole. The DEA (as well as the CRMI study) rely on real estate growth projections provided by SCAG and SANDAG, which reflect economic and demographic trends at the county and regional level. The DEA assumes that in this instance county-wide economic and demographic trends are a better determinant of real estate prices than are individual census tracts because aggregate consumer behavior is expected to be more heavily influenced by broader or regional market supply and demand dynamics than by those within the more arbitrary boundaries of an individual census tract.

The DEA also acknowledges that the regional land supply is scarce relative to projected growth in several counties within the critical habitat designation. However, since the reduction in land supply resulting from the critical habitat designation represents such a small

fraction of the total market, the DEA reasonably assumes that it will not alter these regional market dynamics, affect market prices, or result in consumer surplus losses. Although the DEA does not anticipate consumer surplus effects, the DEA's ranking of critical habitat units by cost is similar to that provided in the CRMI study after adjusting for other methodological differences (see our response to Comment 31 above).

Comment 33: One commenter stated that the Service's DEA fails to account for, and thus fails to quantify the economic impacts of the reduction in, the overall size of development projects and/or the number of housing units constructed. The commenter also stated that the DEA assumes, against all reason with virtually no methodological or evidentiary support, that the designation will have no impact whatsoever on the size or quality of the housing stock in southern California and that all costs of the proposed rule will be borne by landowners, with absolutely no housing price implications. Dr. Sunding estimated reduced project output of 10 percent as a result of the proposed designation of critical habitat for the coastal California gnatcatcher alone. Further restricting the amount of developable land by a vast designation of critical habitat has the potential to impose large economic costs. Taking these and other factors into his analysis of the economic impacts of critical habitat designation for the coastal California gnatcatcher alone, Dr. Sunding has estimated economic impacts in the range of $4.6 to $5.1 billion, roughly five times higher than the Service's estimate.

Our Response: As noted in the Response to Comment 32, the DEA acknowledges that the regional land supply is scarce relative to projected growth in several counties within the critical habitat designation. However, since the reduction in land supply resulting from the critical habitat designation represents such a small fraction of the total market, the DEA assumes that it will not alter these regional market dynamics, affect market prices, or result in consumer surplus losses.

Comment 34: One commenter questions why losses to development in locations within the proposed critical habitat designation are not offset by gains to development in locations outside the proposed critical habitat designation. Furthermore, the commenter questions why offsetting economic gains are not estimated. Given the likelihood of offsetting economic gains, the costs to individual property owners estimated in the DEA should be presented as primarily distributional in nature rather than as a reduction in economic efficiency.

Our Response: As described in our responses to Comments 31 and 32 above, the DEA concludes that the critical habitat designation is unlikely to affect regional real estate prices because the amount of land that would have been developed but for critical habitat designation is small relative to market supply. Consequently, offsetting gains to property owners outside the critical habitat designation after designation are also expected to be minor. The long-term scarcity of land in some of the counties affected by the critical habitat designation will constrain the reallocation of output to other locations. Consequently, the DEA treats the cost to individual landowners resulting from the critical habitat designation as a reduction in economic efficiency rather than a distributional impact.

Comment 35: Several commenters stated that the coastal sage scrub CEQA baseline assumptions employed by the DEA should not be applied throughout the entire proposed critical habitat designation. Specifically, one comment asserts that ''the proposed critical habitat designation for the coastal California gnatcatcher includes a variety of vegetation communities and coastal sage scrub vegetation covers much less than 50 percent of the overall critical habitat acreage under the revised proposed designation.''

Our Response: Coastal sage scrub is a PCE for coastal California gnatcatcher critical habitat. The DEA found that, in many areas within revised proposed critical habitat, coastal sage scrub mitigation resulting from the California Environmental Quality Act (CEQA) review process provides pre-existing protection for Gnatcatcher habitat. Specifically, the DEA assumes that CEQA serves as a baseline regulation in San Diego and Orange County as well as parts of Los Angeles County. In addition, according to the Service, Federal Agencies active in Southern California routinely consult with the Service for projects that occur in areas with coastal sage scrub. In other words, critical habitat does not provide any new information about the potential presence of the species in areas with coastal sage scrub because the presence of coastal sage scrub would likely already trigger a consultation and regulatory protection under the listing. Therefore, we maintain that in certain areas within the critical habitat determination, coastal sage scrub mitigation resulting from the CEQA review process provides pre-existing protection for coastal California gnatcatcher habitat.

However, we acknowledge that coastal sage scrub may not be present within each acre of the critical habitat designation. To the degree that coastal sage scrub is not present in specific areas within the critical habitat designation, the DEA may have overstated its role in providing baseline protection for coastal California gnatcatcher. The final addendum to the DEA (dated September 14, 2007) found that, based on estimates provided by the Service, about 40 percent of the revised proposed critical habitat for coastal gnatcatcher contains coastal sage scrub (see ''Economic Analysis'' section for further discussion of the final DEA addendum). If coastal sage scrub is assumed to be present in only 40 percent of the designation, total private development project modification costs increase from $743 million to about $800 million. This increase of $58 million represents approximately 6 percent of the original total DEA cost estimate of $915 million.

The DEA assumes that CEQA is the primary baseline regulation in areas where the 4(d) rule (50 CFR 17.41(b)) has not been adopted. The DEA assumes CEQA is a secondary baseline regulation in areas where the 4(d) rule is the primary baseline regulation. In areas covered by the 4(d) rule, the DEA assumes that mitigation under CEQA applies to the 5 percent of projects that are ''exempt'' or ''ineligible'' for 4(d) processing.

Reducing the CEQA baseline by 60 percent causes the number of acres, assumed to be restricted by section 7 consultations, to increase substantially in some areas. In San Diego County, for example, reducing the CEQA baseline by 60 percent increases the amount of foregone development resulting from section 7 consultations for the California gnatcatcher from 34 ac (14 ha) to 372 ac (150 ha). In other areas, the CEQA baseline assumption has little or no effect since the 4(d) rule applies as a pre-existing regulation or lead agencies do not normally mitigate for coastal sage scrub habitat loss (as noted in the DEA, lead agencies in California have different practices regarding the implementation of CEQA).

Comment 36: Rancho Mission Viejo commented that the pending Orange County Southern Subregion HCP/NCCP would preclude the use of the 4(d) rule on the vast majority of the remaining land in Unit 6.

Our Response: The DEA assumes that CEQA is the primary baseline regulation in Unit 6 (i.e., the DEA does not consider the 4(d) rule in this unit),

which includes the Rancho Mission Viejo project. A text omission in DEA Table 10, footnote 2, creates confusion regarding the treatment of the units where the 4(d) rule does not apply. In actuality, ''Projected Growth Acres Affected by Section 7'' in Table 10 are reduced to reflect both areas covered by the 4(d) rule (as stated in footnote 2) and CEQA mitigation resulting in reduced development.

Comment 37: One commenter stated that the DEA ignores the direct impacts that the critical habitat designation may have on projects that are subject to CEQA.

Our Response: The DEA treats the potential impact of the critical habitat designation on CEQA as an indirect cost (Chapter V of the DEA). CEQA costs are indirect because there is no statutory link between CEQA and the critical habitat designation. That is, CEQA does not explicitly require consideration of critical habitat in the project review process. Consequently, the DEA considers the potential for the critical habitat designation to provide new information that may indirectly generate CEQA costs. Because coastal sage scrub is well identified, the DEA concludes that the critical habitat designation will not provide new information regarding coastal California gnatcatcher habitat. To the degree that coastal sage scrub is not present in areas of the critical habitat designation, the critical habitat designation may provide new information and trigger additional CEQA costs not accounted for in the DEA, as discussed in our Response to Comment 35 above.

Comment 38: One commenter stated that the use of CEQA mitigation ''requirements'' to estimate CEQA baseline protection for the coastal California gnatcatcher and its habitat is incorrect. Similarly, economic impacts resulting from CEQA compliance due to the species being federally listed should be attributed to the designation of critical habitat and should not be included in the baseline.

Our Response: The DEA assumes that CEQA acts as a baseline regulatory requirement in certain Counties containing revised proposed critical habitat. The DEA utilizes CEQA ''mitigation ratios'' as a proxy for negotiated environmental impact report (EIR) outcomes. That is, the mitigation ratios used represent the expected outcome of an EIR. The CEQA related mitigation ratios represent an average outcome of the CEQA process, not a requirement of CEQA. These average mitigation ratios are based on information provided by the CDFG. Also, as discussed in our response to comment 37 above, there is no statutory link between CEQA and the critical habitat designation. That is, CEQA does not explicitly require consideration of critical habitat in the project review process. Therefore it is appropriate to include economic impacts resulting from CEQA compliance in the baseline.

Comment 39: Several commenters addressed the DEA's treatment of section 7 consultation costs associated with HCP approval. In particular, commenters pointed out that third-party costs associated with section 7 consultations on HCPs are not accounted for in the DEA.

Our Response: The DEA incorrectly states that existing ''HCPs would require internal, informal [section 7] consultations and that the costs would be borne by the Service'' (DEA p. 20). This is an error in the DEA text and does not reflect the actual calculations of economic costs provided. The administrative cost reported in the DEA assumes that one third-party participant is engaged in each of the 28 consultations. Approximately 27 percent of the $141,000 cost estimate presented in the DEA will be borne by third parties.

Furthermore, it is true that third-party HCP proponents may bear administrative costs associated with section 7 consultations on future HCPs. To address this comment the Service estimates a range of administrative costs associated with future HCPs that reflect potential third-party involvement. The DEA identifies 16 ''reasonably foreseeable'' future consultations involving HCPs in critical habitat and estimates an associated administrative cost of approximately $37,000 (DEA, pp. 21 and 128–129). If third-party costs are included, these administrative costs are estimated to increase to as much as $104,000.

Comment 40: One commenter asserted that the DEA should consider potential future HCPs within the Matrix NCCP Subregion of Orange County. Specifically, the commenter stated that five HCPs exist or are in progress in this area currently and that the DEA should consider the related costs.

Our Response: The DEA only considers costs that are reasonably foreseeable. Plans for HCPs in the Matrix NCCP Subregion of Orange County had stalled and were therefore not considered reasonably foreseeable. Because these HCPs were not reasonably foreseeable at that time, administrative costs associated with section 7 consultations on the HCPs were not included in the DEA.

Comment 41: One commenter stated that the DEA accounts for regulatory burdens only as they exist at this moment in time, making no attempt to assess whether and how these burdens may change over the study period. This results in an underestimate of the baseline regulations.

Our Response: While it is possible that Federal, State, or local agencies will promulgate regulations that will affect future land uses, the Service has no reasonable means for predicting future regulatory changes. The Office of Management and Budget (OMB), in its guidance on preparing regulatory analysis, agrees that, ''It may be reasonable to forecast that the world absent the regulation will resemble the present'' (OMB, Circular A–4, September 17, 2003). Given the lack of reasonably foreseeable changes in the regulatory environment, the Service believes an analysis based on the current regulatory environment provides the best estimate of potential impacts.

Comment 42: Several commenters argued that impacts to local water providers are not appropriately addressed by the DEA. Specifically, comments pointed out that the DEA does not present information on how the rulemaking will affect individual water districts. Additionally, commenters suggested that the DEA ignores project modification costs, consultation costs, delay costs, potential water replacement costs, potential capital facilities costs, and other costs that may be borne by water providers.

Our Response: Due to the large number of independent water providers operating within the proposed critical habitat designation, the DEA does not examine specific impacts to each. The DEA focuses on larger water agencies and the regional distribution network. Nonetheless, some of the costs borne by local water providers are captured by the DEA. Estimated costs associated with real estate development project modifications (e.g., land set-asides) include compliance costs associated with development of local water infrastructure (i.e., some water infrastructure is installed within real estate development project sites). Allocating these water infrastructure costs to real estate development is appropriate since local water agencies are likely to pass on compliance costs to consumers, including developers and owners of real estate. In addition, it is important to note that no specific information indicating how or the extent to which particular local water districts will be unduly burdened has been identified.

The DEA estimates that the critical habitat designation delays projects in

the first year after designation (Chapter V of the DEA, p. 131). To the degree that water infrastructure project modifications are captured by the DEA's analysis of real estate development, water infrastructure delay costs are also captured.

The DEA addresses the consultation cost expected to be associated with the HCPs covering water operations. The DEA cost estimate includes the expected cost to the Service of an internal consultation on these HCPs. Furthermore, third-party HCP proponents may bear administrative costs associated with section 7 consultations on HCPs (See our response to Comment 31 above).

The water replacement costs and capital costs cited in some comments are potential costs that the DEA does not address. Additional analysis would be needed to quantify these costs. Specifically, the Service would need to evaluate whether coastal California gnatcatcher conservation efforts are likely to affect specific water systems. In addition, this analysis might require a model of water system operations to quantify changes in water supply in some cases.

Comment 43: The DEA ignores the economic impacts of critical habitat proposed on important regional transportation facilities. Dr. Sunding's report documents costs of $450 million to the existing Transportation Corridor Agency (TCA) projects (not including the pending Foothill (South) Transportation Corridor) attributable to regulatory delays, including those attributable to the Act.

Our Response: The DEA discusses potential impacts of revised proposed critical habitat on regional transportation facilities starting on page 110 of Chapter IV. Future transportation projects include road construction by California Department of Transportation (Caltrans) Districts 7, 8, 11, and 12, and the Transportation Corridor Agency (TCA). Total costs for the four Caltrans districts are estimated at approximately $45 million, or roughly 5 percent of total costs. This analysis estimates that all Caltrans districts combined will participate in 191 formal consultations resulting in project modification costs, though construction in Riverside and San Bernardino counties is expected to result in significantly higher section 7 costs than in any other district. The TCA's proposed SR–241 Foothill-South toll road is estimated to result in an estimated section 7 cost of approximately $35 million, based on an average of two potential development scenarios.

Comment 44: The CRMI study estimates higher critical habitat designation costs associated with local infrastructure (including water infrastructure) than the DEA.

Our Response: The DEA estimates $63 million in project modification and administrative costs for local infrastructure projects (this figure excludes TCA costs so as to provide a more comparable estimate to the CRMI study which also estimates these costs separately). The CRMI study reports an increase in compliance cost to local public infrastructure from the coastal California gnatcatcher critical habitat designation equal to $1,000 per housing unit constructed, roughly $124 million in total.

The CRMI study relies on an average local infrastructure cost of $33,000 per new housing unit and an incremental impact of the critical habitat designation on local public infrastructure of 3 percent. The DEA applies a cost estimate based on anticipated project modification costs associated with planned or proposed projects identified primarily through interviews with potential public project proponents. The DEA discounts estimates at 7 percent while it appears the CRMI study does not discount public infrastructure costs. The Service believes that applying a positive discount rate to future costs provides a better estimate of the present value of these costs since this methodology accounts for the time value of money.

Comment 45: One commenter stated that the DEA does not account for additional costs related to review of Federal documents (e.g., review and preparation of comments on the DEA of the critical habitat designation for the coastal California gnatcatcher) and costs related to legal challenges (e.g., whether the MSCP Subarea plans may result in adverse modification). Another commenter stated that the analysis considers permitting cost and land prices only, and ignores factors like reduction in output, delay costs, indirect costs and other real costs that Dr. Sunding analyzed. According to the commenter, when all costs are applied, the costs are profound. For example, the CRMI study states that if a designation reduces a 1,000-unit subdivision by just 200 units, the economic impact is $33 million, and that impact falls most heavily on consumers. The commenter asserts that home and land costs are higher today in southern California than they were in 2004, so that even with the recent downturn, greater economic impact would be expected.

Our Response: Potentially affected parties likely incurred administrative costs related to review of Federal documents, such as the proposed rule for example, to ensure their activities were appropriately considered in the DEA or to request exemption from the rulemaking. The DEA appropriately considers only the direct and indirect costs associated with compliance with the final designation since the purpose of the economic analysis is to determine what the economic costs resulting from designation would be on a particular area, so that the benefits of including the area in critical habitat can be weighed against the benefits of excluding the area. The DEA does, however, include administrative costs of compliance with the rulemaking where appropriate, for example the administrative costs of section 7 consultation, which may similarly include review of Federal documents. In addition, the DEA focuses on activities that are considered reasonably foreseeable. The number, scope, and timing of potential legal challenges associated with the rulemaking are speculative and impossible to quantify.

Comment 46: According to one commenter, development areas proposed for designation provide critically needed housing to the region, create new sources of employment, and provide tax revenues for local jurisdictions. The commenter stated that the DEA fails to capture the opportunity cost of lost benefits from real estate development.

Our Response: The DEA concludes that the reduction in real estate development is unlikely to substantially affect regional housing markets. Therefore, it is unlikely that the coastal California gnatcatcher critical habitat designation will alter job growth. In addition, while it is true that future tax revenue may be lower than projected due to a potentially reduced level of real estate development, corresponding public expenditures on public services and infrastructure related to new development would also be lower. The net affect of these two factors is difficult to determine and the Service considers such an estimate as speculative.

Comment 47: One commenter stated that the critical habitat designation would create delays in the processing of various proposed development projects. These delays may result in lost employment benefits, lost tax revenue, delayed mitigation measures that may benefit the species, and lost benefits from decreased housing availability.

Our Response: The DEA estimates that project delay lasts 6 months and occurs only in the first year after the critical habitat designation (Chapter V of the DEA, p. 131). It is possible that in

the first six months, some projects may be so delayed because other entitlement activities (e.g., preparation of an Environmental Impact Report) may have been completed and consideration of critical habitat designation may result in additional administrative effort. As described in the DEA, however, after the first six months any additional administrative or regulatory compliances costs associated with critical habitat is expected to be coordinated simultaneously with other standard entitlement activity and thus not delay project start time. The DEA estimates costs associated with delay using a time value of money equal to 12 percent. While it is true that the DEA does not capture the cost to the species of delayed mitigation, such costs are difficult to quantify monetarily and are best evaluated in biological terms. Substantial impacts to regional housing markets or employment levels are not anticipated to result from the critical habitat designation (See our responses to Comments 31 and 32 above).

Comment 48: One commenter stated that the DEA does not properly consider the environmental implications of the economic impacts identified in the analysis. The economic impacts identified affect population and its distribution in the study area, along with the location and number of housing units in the region.

Our Response: It is difficult to predict a-priori how the pattern of development will change due to the critical habitat designation. Limits on development within the critical habitat designation could conceivably induce sprawl, increase density, or a combination of both.

Comment 49: One commenter stated that the DEA states that it is not able to predict the number of reinitiated section 7 consultations that will be required once revised critical habitat for the coastal California gnatcatcher is designated. This leads to an underestimate of the costs of the critical habitat designation.

Our Response: The DEA looks at consultations that are reasonably foreseeable. The best publicly available data regarding future consultations were used. The comment does not provide any specific new information about future consultations.

Comment 50: One commenter stated that the impacts specific to Rancho Mission Viejo ranching operations include costs of new section 7 consultation, loss of income as a result of delays and restrictions to activities, and increased operating costs attributable to regulatory restrictions resulting from implementing the Act. The DEA does not consider these costs.

Our Response: Impacts to ranching activities are potential costs that are not included in the DEA. However, these costs are likely to be small in magnitude relative to the impacts calculated in the report and are unlikely to result in a change in the ranking of units by cost. Also, lands owned by Rancho Mission Viejo included in the Orange County Southern Subregion HCP have been excluded from this revised final rule. Therefore, we anticipate that costs associated with the proposed designation of critical habitat on Rancho Mission Viejo would be nonexistent.

Comment 51: One commenter stated that the Service is required to completely revise its critical habitat economic impact analysis in light of the passage in 2006 of California Propositions 1A through1E, which will fund a massive infrastructure construction program. The majority of the proposed projects to be funded by these propositions are in southern California, many within coastal California gnatcatcher habitat areas. A critical habitat designation would increase the costs of proposed infrastructure projects because of increased capital costs caused by delays, increased planning costs, and increased construction and land acquisition costs that would result when the lowest-cost alternative is made infeasible due to critical habitat impacts.

Our Response: Proposition 1A–1E, approved by California voters on November 7, 2006, provides $40.4 billion in bond revenue for transportation, education, housing, and flood control. These bonds are to be used to upgrade transportation infrastructure, modernize and build new schools facilities, expand funding for affordable and infill housing programs, and repair and secure all flood control facilities throughout the State. It is also worth noting that most of the projects to be funded by these bonds focus on expanding and repairing already existing facilities in urban areas such as the improving security at ports, procuring new buses and rail cars, funding construction on existing community college and university campuses, and providing for infill housing.

With a few exceptions, Propositions 1A–1E do not specify where or on what projects the bond revenue must be applied. The only exception is for improvements on Route 99 and flood control improvements on Folsom Dam. Both these projects are located outside of gnatcatcher critical habitat. Since Propositions 1A–1E were approved subsequent to the completion of the DEA, they are not addressed therein. In addition, the September 14, 2007, addendum to the DEA does not attempt to quantify the impact of the revised proposed critical habitat on infrastructure projects funded by these propositions. The Service regards such impacts, if any, as speculative given the lack of geographic specificity in Propositions 1A–1E.

Comment 52: Several commenters questioned the accuracy of development projections used in the DEA.

Our Response: The DEA relies on development projections generated by SCAG and SANDAG to determine the number of acres slated for real estate development. The DEA does not assume that absent designation, all of the proposed critical habitat designation will be developed. The DEA only evaluates the impact of the proposed designation on land that is within the critical habitat designation and forecasted (by SCAG or SANDAG) to be developed by the year 2025. The 23-year time frame (2003 to 2025) was chosen for the analysis because, as the time horizon for an economic analysis is expanded, the assumptions on which the projected number of projects and cost impacts associated with those projects become increasingly speculative.

Commenters have identified some growth projection inaccuracies. For example, Rancho Mission Viejo stated that it owns 12,067 ac (4,883 ha) of undeveloped land within Unit 6 of the revised proposed critical habitat designation. The DEA reports that there are 3,387 ac (1,371 ha) of projected growth acres with a Federal nexus. Rancho Mission Viejo, however, has already filed a general plan amendment/zone change (GPA/ZC) that would develop about 7,700 ac (3,116 ha), the vast majority of which would have a Federal nexus. Also, because lands owned by Rancho Mission Viejo included in the Orange County Southern Subregion HCP have been excluded from this revised final rule, we anticipate that costs associated with the proposed designation of critical habitat on Rancho Mission Viejo would be nonexistent.

Though SCAG projections do rely on general plan and zoning information, these projections do not reflect very recent amendments and changes. An evaluation of every local land use plan or proposal that could potentially affect development of coastal California gnatcatcher habitat was beyond the scope of this analysis and would not likely lead to more accurate results. SCAG and SANDAG are the best

publicly available sources of development projection data.

Comment 53: A number of commenters questioned the accuracy of the land values relied upon by the DEA. Whereas the DEA uses a residual land value of 10 percent, one commenter suggested that 30 to 40 percent would be appropriate.

Our Response: The DEA estimates the per-acre value of raw, unimproved, and residentially zoned land at ten percent of the built value. The Service recognizes that the value of raw land as a percent of home price will depend on a variety of factors and can differ significantly by region. In general, raw land values for single-family homes of equal density are higher in areas with high land supply constraints. However, raw land values as a percent of home price also declines as density and development costs increase. The 10 percent assumption represents a generalized estimate for all the critical habitat designation submarkets. It is based on a residual land value analysis that subtracts hard and soft real estate development costs from median home prices in a number of southern California Counties. Median home prices and densities are based on data from Rand and Data Quick while development cost estimates are based on data from Square Foot Costs by RSMeans, a product of the Reed Construction Data company that supplies construction cost information.

Additionally, it is important to note that the 10 percent residual land value assumptions reflect raw rather than improved land. Raw land does not include backbone infrastructure such as roads and utilities, as developers are unlikely to set aside improved land for habitat. The 30 to 40-percent residual land value sited in several comments is more consistent with improved land values. Raw land value appears more appropriate in this context since developers will not build backbone infrastructure to serve areas that they cannot develop.

Comment 54: One commenter stated that the DEA adjusted 1998 home values by 3 percent per year between 1998 and 2002, when in reality it should have used 10 percent per year during this time.

Our Response: The DEA relies on home value data from Rand. Rand reports 2002 sales prices in 1998 dollars, adjusted for inflation. Therefore, the DEA inflates the Rand data using an annual inflation rate of 3 percent in order to return 2002 home values to 2002 dollars.

Comment 55: One commenter stated that the DEA estimates costs of $30,000 per acre to restore coastal sage scrub. One comment states that this estimate should be closer to $50,000.

Our Response: To address this comment, total restoration costs are estimated using the $50,000 per acre figure. This increase in per-acre restoration cost yields a $29.6 million increase in total restoration cost.

Comment 56: One commenter asserted that the DEA understates mitigation costs. According to this comment, mitigation costs are regularly in excess of $100,000 per acre.

Our Response: The DEA relies on data from 16 active private mitigation banks to develop mitigation credit price estimates. The $100,000/acre price cited is within range of reported prices, $6,000 to $125,000 per acre. The DEA estimates costs based on an average per-acre cost of offsite mitigation.

Comment 57: San Diego Gas and Electric (SDG&E) commented that the cost of future section 7 consultations will be greater than that estimated by the DEA. The DEA estimates that the cost of habitat mitigation to offset impacts resulting from potential future SDG&E projects on up to 183 ac (74 ha) would be approximately $70,000. SDG&E stated that the basis for this is unclear as the DEA indicates a net mitigation ratio of 0.6:1 and a per-acre cost of $19,750, which would result in a total cost of $217,000.

Our Response: The $70,000 presented in the DEA reflects the present value of mitigation costs over 23 years, discounted at 7 percent (see Appendix Table G–11). Calculations presented in this comment do not take into account that 183 ac (74 ha) will be impacted over 23 years and should be discounted accordingly.

Comment 58: One commenter stated that the Service is not precluded from conducting its economic analyses consistent with the standard enunciated in *New Mexico Cattle Growers* and its progeny as long as the Service gives sufficient consideration to the recovery standard. Where, as in *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* much of the proposed critical habitat has been shown to have substantial economic impacts and a substantial portion of that is covered by an HCP, NCCP, or similar management plan, the Service must conclude that exclusion of these areas is appropriate.

Our Response: In conducting economic analyses, we are guided by the Tenth Circuit Court of Appeal's ruling in the New Mexico Cattle Growers Association case (248 F.3d at 1285), which directed us to consider all impacts, ''regardless of whether those impacts are attributable co-extensively to other causes.'' Therefore, the DEA 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. As explained in the analysis, due to possible overlapping regulatory schemes and other reasons, some elements of the analysis may also overstate some costs.

As discussed in more detail in the ''Economic Analysis'' section below, we developed an addendum of the potential economic effects of the proposed revised designation (dated September 14, 2007) that estimates the total cost attributable to the critical habitat designation. The addendum further estimates that the *Gifford Pinchot* decision could have either negligible impact or could increase the economic impacts reported in the draft analysis based on the extent that the court decision results in additional ''within critical habitat'' conservation above that required by existing HCPs that provide baseline protection. However, the final addendum states that the implications of this relatively recent court decision are difficult to quantify at this time. We have evaluated numerous management plans, HCPs, and NCCPs for exclusion from this final critical habitat. For those plans where we have determined the benefits of exclusion outweigh those of inclusion, we have excluded them from this final critical habitat designation. Therefore, since the final addendum is based on the 2003 revised proposed critical habitat boundaries, and it does not account for the removal, exclusion, and exemption of lands from this revised final designation as discussed in the ''Exclusions under Section 4(b)(2) of the Act'' section below, we anticipate the actual costs of the final designation to be somewhat less than those estimated in the 2004 DEA or the 2007 final addendum.

Issue 6: Procedural and Legal

Comment 59: Many commenters believed that the designation of critical habitat for the coastal California gnatcatcher should be postponed until the listing classification of the species is resolved.

Our Response: As discussed in the ''Previous Federal Actions'' section above, we announced and sought comment on our review of the current listing classification of the coastal California gnatcatcher as a subspecies under the Act and its potential reclassification as a distinct population segment (DPS) as part of the April 24, 2003 proposed revised designation. As also discussed above, we initiated work on both the final revised critical habitat

rule and listing classification review for the coastal California gnatcatcher following the publication of the April 24, 2003 proposed revised designation but because of other court-ordered priorities we did not complete these tasks. Then, as a result of a lawsuit in 2007 and subsequent settlement agreements, we agreed to finalize this revised designation of critical habitat for the coastal California Gnatcatcher on or before December 3, 2007. As a result of court-ordered priorities and our court-ordered deadline to complete the revised critical habitat designation, we were unable to postpone the final rule until we complete our review of the listing classification for the coastal California gnatcatcher. We announced our intent to publish a listing classification determination for the coastal California gnatcatcher at a later date, separate from the critical habitat designation, in the April 3, 2007 (72 FR 15857) **Federal Register** notice reopening the comment period on the proposed revised designation.

Comment 60: One commenter suggested that the designation of critical habitat should be combined with the preparation of the recovery plan for the coastal California gnatcatcher so that all of the information about the species could be considered simultaneously.

Our Response: Not only is the Service constrained by the court-ordered deadline to submit this revised final rule to the **Federal Register** on or before December 3, 2007 (see ''Previous Federal Actions'' section above), but as we indicated in our latest report to Congress, the coastal California gnatcatcher is ''exempt'' from the requirement to develop a recovery plan (Service 2004c, page 40). Species are ''exempt'' if we determine that developing a recovery plan will not promote the conservation of the species (Service 2004c, page 34). The State of California's Natural Community Conservation Planning Act of 1991 (NCCP), is designed specifically to address conservation of its wildlife while allowing for appropriate development and growth. The concept behind NCCP was to create a multiple species-multiple habitat reserve system to provide for the conservation of a suite of wildlife and plant species. The first focus of the NCCP program was the coastal sage scrub vegetation community, which is essential to the conservation of the coastal California gnatcatcher and numerous other species. The approval and implementation of the NCCP program and the development of regional NCCP/HCPs throughout the range of the coastal California gnatcatcher in the United States, provides for the conservation needs of the species. Regional NCCP/HCPs include funding mechanisms to provide for habitat acquisition, species monitoring, and adaptive management, and are vital to moving the coastal California gnatcatcher towards recovery. In contrast to actions outlined in recovery plans that are voluntary, NCCP/HCPs require the approval of the State and the Service, thus providing greater assurance that measures specifically benefitting recovery of the coastal California gnatcatcher will be implemented. Based on these considerations, the Service determined that a recovery plan for the coastal California gnatcatcher is not beneficial to the species, and that the NCCP program in southern California is superior to the development of a recovery plan in terms of promoting conservation actions that will further recovery of the species.

Comment 61: One commenter thought that only the minimum amount of habitat needed in the short-term to avoid a jeopardy determination was appropriate for designation as critical habitat.

Our Response: We disagree. Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species (see ''Critical Habitat'' section below for more discussion).

Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Prior to our designation of critical habitat, Federal agencies consult with us on actions that may affect a listed species and must refrain from undertaking actions that are likely to jeopardize the continued existence of the species. Thus, the analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species and requires that we specifically take into account the potential impacts of a proposed action on the ability of designated critical habitat to continue to perform its intended species conservation function. For some species, and in some locations, the outcome of these analyses will be similar, because effects on habitat will often result in effects on the species. However, the regulatory standard is different: the jeopardy analysis looks at the action's impact on survival and recovery of the species, while the adverse modification analysis looks at the action's effects on the designated habitat's contribution to the species' conservation. This will, in many instances, lead to different results and different regulatory requirements.

Comment 62: Some commenters stated that, according to the Tenth Circuit Court of Appeals finding in *Catron County Board of Commerce, New Mexico* v. *United States Fish and Wildlife Service,* 75F.3d 1429 (10th Cir 1996) (*Catron* v. *FWS*), we are required to prepare an environmental assessment or environmental impact statement before designating critical habitat.

Our Response: It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA (42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). In that case the Court held that NEPA does not apply to the Secretary's decision to designate critical habitat for an endangered or threatened species under the Act because (1) Congress intended that the Act's critical habitat procedures displace the NEPA requirements; (2) NEPA does not apply to actions that do not change the physical environment; and (3) to apply NEPA to the Act would further the purposes of neither statute. Please refer to our discussion of NEPA in the Required Determinations section of this final rule.

Comment 63: One commenter stated that critical habitat should not have been proposed before an economic analysis was completed and that the opportunity to comment on the DEA and the revised proposed rule was limited.

Our Response: We were unable to complete a DEA prior to publication of the revised proposed critical habitat rule in compliance with the court-ordered deadline. Pursuant to 50 CFR 424.19, we are not required to consider the probable economic impacts of designating a particular area as critical habitat until after critical habitat is proposed. Upon publication of the

proposed rule to revise the designation of critical habitat for the coastal California gnatcatcher in the **Federal Register** (68 FR 18516; April 24, 2003), we invited public comment and held two public hearings. We used comments received on the proposed critical habitat to develop the DEA. We invited public comments for 30 days on the DEA and additionally on the revised proposed designation. Also, on April 3, 2007, we published a notice in the **Federal Register** announcing the reopening of the public comment period for the 2003 proposed rule to revise critical habitat (68 FR 20228; April 24, 2003) for the coastal California gnatcatcher and accepted comments and information until May 3, 2007 (72 FR 15857). We were unable to provide a longer comment period given the statutory deadline for publication of this final rule.

Comment 64: One commenter cited the court case *Sierra Club* v. *U.S. Fish and Wildlife Service,* 245 F.3d 434 (5th Cir. La. 2001), and stated that the proposed rule should explicitly address the issues raised in this case.

Our Response: Due to decisions by the 5th and 9th Circuit Court of Appeals that have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (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)), we no longer rely on the regulatory definition of adverse modification of critical habitat. Instead we rely on the statutory provision of the Act to complete the analysis on critical habitat. Please see ''Effects of Critical Habitat Designation, Section 7 Consultation'' section below for additional information.

Comment 65: Several commenters stated that the proposed critical habitat for the coastal California gnatcatcher failed to make findings that individual properties require special management or protection, and thus, did not comply with the statutory definition of critical habitat as defined in section 3(5)(A) of the Act.

Our Response: The first prong of the statutory definition of critical habitat under Section 3(5)(A) of the Act requires us to identify specific areas within the geographical area occupied by the species at the time it is listed that contain physical and biological features essential to the conservation of the gnatcatcher and that may require special management considerations or protection. While we have identified the specific areas containing features essential to the conservation of the species that meet this definition through the designation of individual critical habitat units and have summarized the special management considerations or protection that apply to the PCEs within the units, we are not required to provide parcel-by-parcel findings of special management considerations or protections that may be needed. Moreover, such an effort would be impracticable. In this revised final rule, we have provided a discussion of the general special management considerations and protections that may be required throughout designated critical habitat (See ''Special Management Considerations and Protections'' section below). These management considerations and protections apply to PCEs within each unit of critical habitat designated.

Summary of Changes From the 2000 Final Rule To Designate Critical Habitat

The areas identified in this final rule constitute a revision of the areas we designated as critical habitat for coastal California gnatcatcher on October 24, 2000 (65 FR 63680). This final revision includes 197,303 ac (79,846 ha) of land in San Diego, Orange, Riverside, San Bernardino, Los Angeles, and Ventura Counties, California. Table 2 below outlines the changes in area in each Unit between the 2000 final critical habitat rule, the 2003 revised proposed critical habitat rule, and this 2007 revised final critical habitat rule for coastal California gnatcatcher. Of the area included in the 2000 final critical habitat rule, 123,891 ac (50,137 ha) overlap with areas included in this revised final critical habitat rule.

TABLE 2.—CHANGES IN AREA (ACRES (AC) AND HECTARES (HA)) BETWEEN THE 2000 FINAL CRITICAL HABITAT RULE, THE 2003 REVISED PROPOSED CRITICAL HABITAT RULE, AND THE 2007 REVISED FINAL CRITICAL HABITAT RULE FOR COASTAL CALIFORNIA GNATCATCHER

Unit	County	2000 Final rule (65 FR 63680) (ac (ha))	2003 Revised proposed rule (68 FR 20228) (ac (ha))	2007 Revised final rule (ac (ha))
1	San Diego	25,000 ac (10,120 ha)	25,100 ac (10,155 ha)	14,898 ac (6,029 ha).
2	San Diego	12,780 ac (5,170 ha)	16,075 ac (6,490 ha)	14,508 ac (5,871 ha).
3	San Diego	29,320 ac (11,865 ha)	32,465 ac (13,140 ha)	17,325 ac (7,011 ha).
4	San Diego	8,690 ac (3,515 ha)	8,690 ac (3,515 ha)	0 ac (0 ha).
5	San Diego	40,640 ac (16,450 ha)	34,705 ac (14,045 ha)	29,639 ac (11,995 ha).
6	Orange	55,880 ac (22,615 ha)	44,340 ac (17,940 ha)	6,515 ac (2,637 ha).
7	Orange	5,780 ac (2,340 ha)	5,775 ac (2,340 ha)	4,309 ac (1,744 ha).
8	Los Angeles	8,220 ac (3,225 ha)	7,160 ac (2,895 ha)	4,462 ac (1,806 ha).
9	Orange, Los Angeles, San Bernardino.	33,540 ac (13,575 ha)	22,595 ac (9,140 ha)	17,552 ac (7,103 ha).
10	San Bernardino, Riverside	199,940 ac (80,915 ha)	176,720 ac (71,505 ha)	27,529 ac (11,140 ha).
11	San Bernardino	58,800 ac (23,795 ha)	14,990 ac (6,065 ha)	0 ac (0 ha).
12	Los Angeles	10,080 ac (4,080 ha)	3,890 ac (1,570 ha)	2,829 ac (1,145 ha).
13	Ventura, Los Angeles	24,980 ac (10,110 ha)	103,290 ac (41,795 ha)	57,737 ac (23,365 ha).
Totals		513,650 ac (207,890 ha)	495,795 ac (200,595 ha)	197,303 ac (79,846 ha).

Summary of Changes From the 2003 Proposed Rule To Revise Critical Habitat

The areas identified in this revised final rule also constitute a revision of the areas we proposed to designate as critical habitat for coastal California gnatcatcher on April 24, 2003 (68 FR 20228). Of the area included in the 2003 revised proposed critical habitat rule, 298,444 ac (120,776 ha) were not included in this revised final critical habitat rule.

The reduction in total area from the 2003 proposed critical habitat designation is primarily the result of (1) additional exemptions under section 4(a)(3) of the Act or exclusions of habitat under section 4(b)(2) of the Act (described below); (2) the re-evaluation and subsequent removal of areas that either do not contain the physical and biological features essential to the conservation of the species, or specific areas that are not considered essential to the conservation of the species; and (3) the revision of the methodology used to delineate the boundaries of critical habitat. The main differences between the 2003 proposed rule and this final rule include the following:

1. In the 2003 revised proposed critical habitat rule (68 FR 20228), we considered but did not propose as critical habitat lands on MCAS Miramar pursuant to sections 3(5)(A) and 4(b)(2) of the Act based on the benefits provided by their completed INRMP. We also considered but did not propose, mission-essential training areas on MCB Camp Pendleton pursuant to section 4(b)(2) of the Act for national security reasons. Although these areas were not included in the revised proposed critical habitat, we sought public review and comment on these lands and provided maps on the Carlsbad Fish and Wildlife Office's public Web site to facilitate the public's ability to comment substantively on these lands. Through such notice and request for public comment, we alerted the public that the lands could potentially be included in the final designation. Lands considered but not proposed for designation were also analyzed for potential economic impacts in the DEA made available for public review on April 8, 2004 (69 FR 18516). In this final rule, we reaffirm our non-inclusion or exclusion of these lands on MCAS Miramar and MCB Camp Pendleton from critical habitat. However, we have revised the rationale for the exclusion of these lands from final critical habitat and are now exempting these lands under section 4(a)(3)(B) of the Act based on approved INRMPs (see ''Application of Section 4(a)(3) of the Act'' section below for a detailed discussion of these exemptions).

2. We exempted from final critical habitat all lands owned or managed by MCB Camp Pendleton (including San Onofre State Beach; a portion of Unit 6) and Naval Weapons Station Seal Beach, Detachment Fallbrook (all of Unit 4) under section 4(a)(3)(B) of the Act based on approved INRMPs (see ''Application of Section 4(a)(3)(B) of the Act'' section below for a detailed discussion of these exemptions).

3. In the 2003 proposed rule, we considered but did not propose as critical habitat, pursuant to sections 3(5)(A) and 4(b)(2) of the Act, reserve lands covered by three completed and approved regional/subregional HCPs (San Diego Multiple Species Conservation Program (MSCP), Orange County Central-Coastal NCCP/HCP, and San Diego Gas & Electric), Tribal lands of the Pala Band of Mission Indians, and lands covered by completed and approved individual HCPs: (1) Meadowlark Estates, (2) City of Carlsbad/Fieldstone/La Costa, (3) Coyote Hills East, (4) Shell Oil, (5) Ocean Trails, (6) Lake Mathews, (7) North Peak, (8) Rancho Bella Vista. Although these areas were not included in the proposed critical habitat, we sought public review and comment on these lands and provided maps on the Carlsbad Fish and Wildlife Office's public Web site to facilitate the public's ability to comment substantively on these lands. Through such notice and request for public comment, we alerted the public that the lands could potentially be included in the final designation. Lands considered but not proposed for designation were also analyzed for potential economic impacts in the DEA made available for public comment on April 8, 2004 (69 FR 18516). In this revised final rule, we reaffirm our exclusion of these lands under section 4(b)(2) of the Act (see ''Exclusions under Section 4(b)(2) of the Act'' section below for a detailed discussion of these exclusions). We are no longer relying on section 3(5)(A) as a basis to exclude these lands from the designation.

4. In the 2003 proposed rule, we also considered but did not propose as critical habitat, pursuant to sections 3(5)(A) and 4(b)(2) of the Act, lands covered by the completed and approved Bennett Property and Railroad Canyon HCPs (individual HCPs). We also excluded lands covered by these HCPs from the 2000 final critical habitat designation (65 FR 63680; October 24, 2000). However, after a re-evaluation of these lands, we have determined that these areas were not mapped as essential habitat for the coastal California gnatcatcher for the 2003 revised proposed critical habitat designation. We described the onsite lands covered by both HCPs as being of low or limited long-term conservation value for the coastal California gnatcatcher (Service 1998c, p. 5; Service 2000a, p. 11). Therefore, we have revised the rationale for non-inclusion of these lands and are now removing these lands from revised final critical habitat because they are not essential to the conservation of the species.

5. We excluded from this final designation under section 4(b)(2) of the Act non-Federal lands in San Diego, Riverside, and Orange Counties covered by the following four regional HCPs: (1) 13,313 ac (5,387 ha) within the San Diego MSCP plan area (Unit 1); (2) 5,600 ac (2,266 ha) within the San Diego MHCP plan area (Unit 3); (3), 17,022 ac (6,888 ha) within the Orange County Southern Subregion HCP plan area (Unit 6) and (4) 129,686 ac (52,478 ha) within the Western Riverside MSHCP plan area (Unit 10) and one individual HCP (O'Hill HCP) (Unit 7) (see ''Exclusions under Section 4(b)(2) of the Act'' section below for a detailed discussion of these exclusions).

6. We excluded from this final designation under section 4(b)(2) of the Act a total of 2,146 ac (868 ha) within eight CDFG-owned ecological reserves (McGinty Mountain, Otay Mountain, Rancho Jamul, Pilgrim Creek, Carlsbad Highland, Agua Hedionda Lagoon, Batiquitos Lagoon, and San Elijo Lagoon) in Unit 1 and Unit 3 based on management actions that are or will be conducted consistent with the San Diego MSCP (Unit 1) and the San Diego MHCP (Unit 3), respectively, and lands on the Irvine Ranch being conserved by the Irvine Ranch Conservancy (Unit 7) (see ''*Other Conservation Partnerships—Exclusions Under Section 4(b)(2) of the Act*'' section below for a detailed discussion).

7. We removed 342 ac (138 ha) on and around Defense Fuel Support Point (DFSP) San Pedro in Los Angeles County (Unit 8) from the revised final designation. Upon a re-evaluation of the information contained in the INRMP for DFSP, it appears that about 26 ac (11 ha) of habitat occurs on the installation and that few individual or breeding pairs of coastal California gnatcatchers have been observed on this installation since the 1980's. However, based on aerial imagery, it appears that habitat on DFSP is isolated from the closest patches of habitat in the Rancho Palos Verdes area. Based on these factors (not a core population or an important linkage

area), we have determined that the habitat on and around DFSP does not currently have the spatial configuration and quantity of the PCEs essential to the conservation of the species, and therefore is not included in this final designation of critical habitat for the coastal California gnatcatcher.

8. We removed all lands (14,990 ac (6,065 ha)) included in Unit 11 from this revised final designation. We stated in the proposed rule that lands in this unit contained the features essential to the conservation of the species because the vegetation mosaic of the Etiwanda fan represents a unique habitat type that may be important to the species as environmental conditions change through time. However, documented use of these areas by the coastal California gnatcatcher is sparse. We also acknowledged in the revised proposed rule that linkages between populations in Unit 11 and populations in more southerly portions of the range are unconfirmed. We have not received any additional occurrence information in this area and have, upon reevaluation of the limited occurrence data in our files, determined that since this area does not support a core population or provide an important linkage area. Further, the features in this area are not of sufficient quantity and spatial configuration to be considered essential to the conservation of the species. Therefore, it is not included in this final designation of critical habitat for the coastal California gnatcatcher.

9. We removed 45,553 ac (18,435 ha) from the eastern portion of Unit 13, in the vicinity of Santa Clarita Valley. After re-evaluating all available scientific information for this area including information from comments we received during the public comment periods (see Comment 8 in the ''Public Comments'' section above), we have determined that there is no documentation that this area has ever been occupied by nesting pairs of coastal California gnatcatchers either historically or currently. Therefore, we have determined that this area is not essential to the conservation of the species (does not support a core population) nor does it currently have the spatial configuration and quantity of the PCEs essential to the conservation of the species. Therefore, it is not included in this final designation of critical habitat for the coastal California gnatcatcher.

10. We revised our methodology to delineate critical habitat boundaries. In the 2003 proposed designation, we based the critical habitat legal descriptions on Universal Transverse Mercator (UTM) gridlines set every 328 feet (ft) (100 meters (m)). We overlaid these 100-meter-square grids on areas determined to contain the PCEs required by the species. While we removed entire grid squares that did not contain the PCEs for the coastal California gnatcatcher, portions of grid squares that did not contain PCEs were inadvertently included within the boundaries of our proposed revision of critical habitat due to mapping limitations. The use of this gridding methodology was considered the best available at the time of the 2003 proposed designation. However, we are now able to delineate critical habitat unit boundaries by screen digitizing habitat polygons using ArcMap, a computer GIS program. Using this methodology allows us to produce boundaries associated more precisely with areas that we determine contain the PCEs for the species (see ''Criteria Used To Identify Critical Habitat'' section below for a detailed discussion).

11. In the April 3, 2007, **Federal Register** notice (72 FR 15857) announcing the reopening of the public comment period for the 2003 proposed rule to revise critical habitat, we specifically requested comments on the effects of the large wildfires that occurred in October 2003, and more recently in the coastal sage scrub habitat in Ventura, Los Angeles, Riverside, San Bernardino, and San Diego Counties. We also sought information on the publication of any new biological information regarding the effects of wildfires from 2003 to the present or other relevant biological publications addressing the status and recovery of sage scrub habitat and conservation of the coastal California gnatcatcher. While we did not receive information on the publication of new biological information associated with the effects of the wildfires in 2003 or more recently on this species or its habitat during this recent comment period, we did respond to two comment letters directly related to this issue (see Comments 7 and 8 above). We also added a discussion of the potential effects of wildfires as they relate to the recovery of sage scrub and conservation of the coastal California gnatcatcher in this revised final designation (see ''Primary Constituent Elements'' section below).

12. Further, as a result of comments received, we made editorial changes to the ''Criteria Used To Identify Critical Habitat'' and ''Primary Constituent Elements'' sections of this revised final rule in order to eliminate redundancy, improve clarity, and provide a more in-depth explanation of the biological necessity of the designation for the coastal California gnatcatcher.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) essential to the conservation of the species and

(II) that may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping and transplantation, and in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where the landowner seeks or requests federal agency funding or authorization that may affect a listed species or critical habitat, the consultation requirements of Section 7 would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the

geographical area occupied by the species at the time it was listed must 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)).

Areas within the geographical area occupied by the species at the time of listing that contain the features essential to the conservation of the species meet the definition of critical habitat only if those features may require special management considerations or protection.

Under the Act, we can designate as critical habitat areas outside of the geographical area occupied at the time of listing only when we determine that the best available scientific data demonstrate that the designation of the areas is essential to the conservation needs of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts 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 the geographical areas occupied by the species at the time of listing, we consider the physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific PCEs required for the coastal California gnatcatcher from its biological needs as described below.

Space for Individual and Population Growth and Normal Behavior

Coastal California gnatcatchers typically occur in or near sage scrub habitat. Sage scrub is patchily distributed throughout the range of the species, and coastal California gnatcatchers are not uniformly distributed within the structurally and floristically variable coastal sage scrub vegetation community. Sage scrub is a broad category of vegetation that includes the following plant communities: Venturan coastal sage scrub, Diegan coastal sage scrub, Riversidean sage scrub, maritime succulent scrub, Riversidean alluvial fan (areas created when sediments from the stream are deposited) scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub (Kirkpatrick and Hutchinson 1977, p. 33; Westman 1983, pp. 84–86; Holland 1986, pp. 9–11). Based on dominant species, these communities have been further divided into series such as black sage, brittlebush, California buckwheat, California buckwheat-white sage, California encelia, California sagebrush, California sagebrush-black sage, California sagebrush-California buckwheat, Chamise-black sage, Chamise-white sage, and coast prickly-pear (Sawyer and Keeler-Wolf 1995, pp. 109, 114, 120–127, 133, 139, 141).

Dominant species within these plant communities include *Artemisia californica* (California sagebrush), *Eriogonum fasciculatum* (California buckwheat), *Encelia californica* (California encelia), *E. farinosa* (brittlebush), *Salvia mellifera* (black sage), *S. apiana* (white sage), and *S. leucophylla* (purple sage). Other commonly occurring plants include *Isocoma menziesii* (coast goldenbush), *Viguiera laciniata* (San Diego sunflower), *Baccharis pilularis* (coyote brush), *Baccharis sarothroides* (broom baccharis), *Mimulus aurantiacus* (bush monkeyflower), *Lotus scoparius*, *Malosma laurina* (laurel sumac), *Rhus integrifolia* (lemonadeberry), and *Rhus ovata* (sugarbush), *Lycium* spp. (box-thorn), *Euphorbia misera* (cliff spurge), *Simmondsia chinensis* (jojoba), and *Opuntia littoralis* (prickly pear), *O. prolifera* (cholla), and *Ferocactus viridescens* (coast barrel cactus), and Dudleya spp. (live-forever) (Sawyer and Keeler-Wolf 1995, pp. 109, 114, 120–127, 133, 139, 141).

While several studies have reported that coastal California gnatcatcher densities are highest in areas where *Eriogonum fasciculatum* or *Encelia californica* are co-dominant with *Artemisia californica* (e.g., Roach 1989,

p. 40; Weaver 1998, pp. 398, 401, 403; ERCE 1990, p. 24; Bontrager 1991, p. 4), others have reported occupancy at sites where the composition of shrub species varied considerably (Beyers and Wirtz 1997, p. 84) or where these shrub species were lacking (Atwood 1990, pp. 11–12). Therefore, it appears that all shrub species within coastal sage scrub are used by gnatcatchers.

Coastal California gnatcatchers are typically found in stands of coastal sage scrub that have moderate shrub canopy cover, generally greater than 50 percent (Beyers and Wirtz 1997, p. 86). Coastal California gnatcatchers will use sparsely vegetated coastal sage scrub as long as perennial shrubs are available, although there appears to be a minimum cover threshold below which the habitat becomes unsuitable (Beyers and Wirtz 1997, p. 86). The relative density of shrub cover influences gnatcatcher territory sizes, with territory sizes increasing as shrub cover decreases, probably due to limited resource availability. Beyers and Wirtz (1997, p. 86) speculate that the non-native grasses and forbs that typically occupy the gaps between shrub species do not support a sufficient insect fauna and that there are probably differences in insect availability among shrub species as well, which may explain shrub species preferences by gnatcatchers. The coastal California gnatcatcher preys upon arthropods, including insects such as leafhoppers and planthoppers (Homoptera) and spiders commonly found in sage scrub plant communities (Burger *et al.* 1999, p. 304).

The coastal California gnatcatcher tends to occur most frequently within California sagebrush-dominated stands on mesas, gently sloping areas, and along the lower slopes of the coast ranges. Atwood and Bolsinger (1992, p. 161) reported that 84 percent of all recent coastal California gnatcatcher locality records in the U.S. (324) occurred below an elevation of 820 ft (250 m) and 97 percent occurred below 1,640 ft (500 m). They further found that in locality records in areas of Los Angeles, Orange, and San Diego Counties located less than 22 miles (mi) (35 kilometers (km)) from the coast (289), 93 percent occurred at elevations below 820 ft (250 m); however, of locality records in Riverside County more than 22 mi (35 km) inland (32), 3 percent occurred below 820 ft (250 m) and 75 percent occurred below 1,640 ft (500 m). Based on a much larger sample size (781) for the same geographic area (Los Angeles, Orange, Riverside, and San Diego Counties), MBA (1991) reported that 91 percent of all coastal California gnatcatcher records occur at or below 820 ft (250 m) and that 99 percent occur at or below 984 ft (300 m) in elevation. Based on the findings in the Atwood and Bolsinger (1992) study, it is reasonable to assume that the majority of the locality records from coastal areas of Ventura County would be found at elevations similar to coastal areas in Los Angeles, Orange, and San Diego Counties (below 820 ft (250 m)) and that the majority of the locality records from San Bernardino County would be found at elevations similar to those in Riverside County (below 1,640 ft (500 m)). While Atwood and Bolsinger (1992, p. 163) speculate that coastal sage scrub above 820 ft (250 m) in Orange County and coastal areas of Los Angeles and San Diego Counties and above 1,640 ft (500 m) in Riverside County and inland portions of Los Angeles and San Diego Counties may contribute little to the long-term maintenance of viable coastal California gnatcatcher population, they also state that protection of these areas is important for other biological reasons. We believe that these areas are essential to the conservation of the species as they provide space for species dispersal (see ''Space for Dispersal'' section below).

Fire is important to southern coastal scrub communities and often sweeps through these communities during summer and fall (Holland and Keil 1995, p. 166). Therefore, fire plays an important role in regulating sage scrub distribution, density, and species composition, and consequently the extent of habitat available to coastal California gnatcatchers. While in some cases coastal California gnatcatchers have quickly repopulated burned areas, it may take several years for the vegetation to recover to a point where it again supports nesting pairs (Atwood *et al.* 1998, p. 14; Wirtz *et al.* 1997, p. 95; Beyers and Pena 1995, p. 153). Studies conducted after fires in San Diego, Riverside, and Orange Counties suggest that post-fire coastal California gnatcatcher population recovery is likely dependent on the amount of suitable vegetation remaining within the burned area and the presence of gnatcatcher source populations in close proximity to areas affected by the fire (Beyers and Pena 1995, p. 153; Wirtz *et al.* 1997, pp. 95–96; Atwood *et al.* 1998, p. 14). Furthermore, Wirtz *et al.* (1997, p. 92) found that following a fire, regrowing coastal sage scrub will not be recolonized by coastal California gnatcatchers until total shrub cover approaches 50 percent, which is expected to take a minimum of four to five years. In a post-fire recovery and succession study of chaparral and sage scrub in southern California, Keeley *et al.* (2005, p. 1518) stated that all vegetation types exhibited a high proportion of structural similarity between pre- and post-fire communities after five years. According to Atwood *et al.* (2000, p. 5), the period of habitat recovery necessary before coastal California gnatcatchers reoccupy burned areas depends on fire intensity, existence of unburned refugia within or adjacent to the burn perimeter, seasonal timing of the burn, soil type, post-fire rainfall patterns, topography, and pre-fire habitat conditions.

Depending on the scope and intensity of a fire, the areas affected are likely to take several years to fully recover to the point where they will provide suitable coastal California gnatcatcher habitat. However, fire and vegetation recovery cycles are a natural component of southern California coastal sage scrub and chaparral ecosystems. Therefore, while periodic fire eliminates sage scrub and chaparral habitat, it is a temporary disruption from which the ecosystem, under the appropriate conditions, has the ability to recover. And as burned areas proximal to source populations recover to their pre-fire structure, they are likely to be recolonized by coastal California gnatcatcher. Therefore, habitat proximal to source populations temporarily disrupted due to period fire is still essential to the conservation of the species. Also, while burned areas are recovering to their pre-fire structure, they may still provide important dispersal and foraging habitat.

In October 2003, wildfires burned approximately 64,235 ac (25,995 ha) of designated coastal California gnatcatcher critical habitat throughout southern California (Service 2004b). These fires burned coastal sage scrub habitat in three major geographical areas occupied by gnatcatcher: (1) The Moorpark area of Ventura County; (2) the northern portion of the San Bernardino Valley, including portions of the Etiwanda Fan and Lytle and Cajon Washes; and (3) eastern San Diego County, including Otay, Lake Jennings, Miramar, Ramona, and Escondido (Service 2004b). Due to the scope and intensity of the October 2003 southern California fires, the areas affected are expected to take a decade or longer to fully recover. However, as explained above, fire and vegetation recovery cycles are a natural component of southern California terrestrial ecosystems and we believe the coastal California gnatcatcher will likely re-colonize these burned areas over time. The Service and U.S. Geological Survey are currently researching the impact of

the October 2003 wildfires specifically on the coastal California gnatcatcher.

In October of this year, a series of wildfires burned as much as 500,000 ac (200,000 ha) of land across southern California, burning portions of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Santa Barbara counties. This gross acreage figure is based on the cumulative total of acreage measured within the approximate outer perimeter of each individual fire. However, because the fires were often patchy, this acreage total likely is an overestimate. Because the extent of the actual burn footprint for the 2007 fires has not yet been determined, we are unable at this time to determine the amount of coastal California gnatcatcher critical habitat impacted by the 2007 fires. Based on maps of the perimeter of the 2007 fires, it appears that some designated critical habitat in the southern and eastern parts of San Diego County burned in both the 2003 and 2007 fires. However, as stated above, we do not know the extent of the actual 2007 fire footprint at this time. In sum, the cumulative effect of the 2003 and 2007 fires on the species will not be known for several years when the vegetation recovers and affected areas are assessed as to their habitat quality and extent of coastal California gnatcatcher occupation. However, as explained above, fire is a natural part of the dynamic coastal sage scrub ecosystem and we assume that the burned areas will eventually return to their pre-fire structure.

Space for Dispersal

Juvenile coastal California gnatcatchers stay within their natal territories up to five weeks after fledging from the nest (Grishaver *et al.* 1998), then subsequently disperse to find their own foraging and nesting territories (process referred to as natal dispersal). While juvenile coastal California gnatcatchers appear to be capable of dispersing long distances (possibly up to 14 mi (22 km)) as modeled by Bailey and Mock (1998, p. 358), they generally disperse short distances, less than an average of 1.9 mi (3.0 km), from their natal site (Atwood *et al.* 1998, p. 27; Bailey and Mock 1998; Galvin 1998, p. 327; Atwood and Bontrager 2001, p. 20).

An essential feature for the dispersal of juveniles is a corridor or linkage of native vegetation providing certain foraging and shelter requisites to link larger patches of appropriate sage scrub vegetation (Soulé 1991, p. 92). These dispersal corridors facilitate the exchange of genetic material and provide a path for recolonization of areas from which the species has been extirpated (Soulé 1991, pp. 92–93; Galvin 1998, p. 323). Galvin (1998, p. 323) concluded that, ''natal dispersal [through corridors] is therefore an important aspect of the biology of [a] * * * nonmigratory, territorial bird * * * [such as] the California gnatcatcher * * *.'' While juvenile coastal California gnatcatchers appear to be capable of dispersing long distances across fragmented and highly disturbed sage scrub habitat, such as found along highway and utility corridors or remnant mosaics of habitat adjacent to developed lands, generally the species disperses short distances through contiguous undisturbed habitat (Bailey and Mock 1998, pp. 352–353; Famolaro and Newman 1998, p. 451; Galvin 1998, p. 330). However, the quality of the natal habitat may also influence dispersal distances as juveniles in more urbanized and fragmented landscapes may be forced to move greater distances, on average, to reach suitable habitat than birds fledged on territories located in a more natural vegetation matrix (Atwood *et al.* 1998, p. 34).

While the coastal California gnatcatcher is largely restricted to sage scrub, they also use non-sage scrub habitat such as chaparral (shrubby plants adapted to dry summers and moist winters), grassland, and riparian (areas near a source of water) habitats where they occur in proximity to sage scrub (Atwood *et al.* 1998, p. 34; Campbell *et al.* 1998, pp. 421–426). The use of these atypical habitats appears to be most frequent during late summer, fall, and winter, with smaller numbers of birds using non-sage scrub areas during the breeding season. However, a few breeding territories have been documented in non-coastal sage scrub habitat (Campbell *et al.* 1998, p. 422). The availability of these non-sage scrub areas may be important during certain times of the year, particularly during drought conditions, for dispersal, foraging, or nesting (Campbell *et al.* 1998, p. 432). As stated above, while studies suggest that coastal California gnatcatchers avoid nesting on very steep slopes (greater than 40 percent) (e.g., Bontrager 1991), steep slopes may still be suitable for dispersal and foraging. Based on currently available information, we believe that these non-sage scrub areas are essential to the conservation of the species to provide space for dispersal, foraging, or nesting.

Dispersal of coastal California gnatcatchers is critical to demographic and genetic soundness of the population, and to population persistence and recovery of the species in the fragmented habitat characteristic of coastal southern California. In general, corridors provide sufficient connectivity to improve the viability of populations in habitat connected by corridors (Beier and Noss 1998, p. 1249). For relatively sedentary bird species such as the coastal California gnatcatcher, connectivity of habitat patches is probably the most important landscape feature for maintaining species diversity of native biota. Corridors counteract the effects of fragmentation, and should eliminate or minimize the attrition of species over time by facilitating dispersal and recolonization (Brown and Kodric-Brown 1977, p. 445; Noss and Harris 1986, p. 304; Soule and Simberloff 1986; Diamond *et al.* 1987; Noss 1987). Corridors that support resident populations of animals are more likely to function effectively as long-distance dispersal conduits for those species (Bennett 1990, p. 119).

Sites for Breeding and Reproduction

The coastal California gnatcatcher is a nonmigratory bird that defends home ranges (total area in which a pair of gnatcatchers live including undefended area) or territories (area defended by a pair of gnatcatchers). Atwood (1990, pp. 14–15) summarized information from nine different studies on territory size of the coastal California gnatcatcher and reported that territories range from 2 to 14 ac (1 to 6 ha). However, reported home ranges for seven banded pairs studied on a site in San Diego County southeast of the City of El Cajon varied in size from 13 to 39 ac (5 to 15 ha), with an average of approximately 24 ac (8 ha) (ERCE 1990, pp. 13–14). Bontrager (1991, p. 12) reported that breeding season home ranges for 12 pairs of coastal California gnatcatchers in Orange County ranged from approximately 4 ac to 12 ac (2 ha to 5 ha) and that non-breeding season home ranges for 11 pairs ranged from approximately 5 ac to 20 ac (2 ha to 8 ha). Mock *et al.* (cited in Bontrager (1991, p. 12)) reported mean breeding season home range for 25 pairs in inland San Diego County was approximately 20 ac (8 ha) while mean non-breeding season home range for 41 pairs was approximately 35 ac (14 ha). Atwood *et al.* (1998) and Preston *et al.* (1998) report that breeding season territories range in size from less than 2.5 ac to 25 ac (1 ha to greater than 10 ha), with mean territory size generally being greater for inland populations than coastal populations, while during the non-breeding season, the area used by individual gnatcatchers may be almost twice as large as that used during the breeding season. Atwood (1990, p. 16) also speculates that breeding birds may

expand their territories during the non-breeding season to encompass areas and vegetation types not used during nesting. The size of coastal California gnatcatcher home ranges is probably determined by a combination of factors including plant species composition, shrub density, overall habitat quality and level of disturbance, and presence or absence of neighboring gnatcatchers or inappropriate adjacent habitat (Bontrager 1991, p. 12; ERCE 1990, p. 24).

Nests are generally small, open, and located near the top (about 3 ft (1 m) above the ground) of a variety of California sage scrub plants, most likely the plant species dominant at a particular site (Roach 1989, pp. 16, 35). Studies suggest that coastal California gnatcatchers avoid nesting on very steep slopes (greater than 40 percent) (e.g., Bontrager 1991). AMEC (2001) found that approximately 93 percent of the documented coastal California gnatcatcher sightings in the MSCP/MHCP study areas occur on slopes less than 40 percent. However, Grishaver *et al.* (1998, p. 314) found that coastal California gnatcatchers showed no significant preference for nesting on steeper or shallower slopes but that slope had a significant influence on nesting success. They report that nests on shallow slopes (less than about 20 percent) were more likely to be successful than those on steeper slopes. Potential nest predators are numerous, and include snakes, various small mammals, and several bird species (Braden *et al.* (1997, p. 864); Grishaver *et al.* 1998, p. 310). The coastal California gnatcatcher also is known to be affected by nest parasitism of the brown-headed cowbird (Braden *et al.* 1997, p. 861).

In summary, patches of sage scrub and chaparral habitats are essential to the conservation of the species because these areas maintain core populations of coastal California gnatcatcher by providing essential foraging habitat supporting insects for nestlings and adults; cover to escape predation during foraging and nesting; shelter from adverse environmental conditions; and space for population growth, including natural population cycling. Non-sage scrub areas adjacent to sage scrub habitat are also essential to the conservation of the species as these areas provide space for foraging or nesting, and space for dispersal. Also, sage scrub and non-sage scrub habitat proximal to source populations of coastal California gnatcatcher disrupted by period fire is considered essential to the conservation of the species because once the area returns to its pre-fire structure, these areas will again provide space for individual and population growth, normal behavior, breeding, reproduction, nesting, foraging, and/or dispersing. The presence of dispersal habitat facilitates the exchange of genetic material and provides a path for recolonization of areas from which the species has been extirpated, for example, as a result of periodic wildfire. Sage scrub and non-sage scrub plant communities are also representative of the historic geographical and ecological distribution of this species.

Primary Constituent Elements for the Coastal California Gnatcatcher

Pursuant to the Act and its implementing regulations, we are required to identify the known physical or biological features (PCEs) within the geographical area occupied at the time of listing that are essential to the conservation of the coastal California gnatcatcher, which may require special management considerations or protection.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined the PCEs for the coastal California gnatcatcher are:

(1) Dynamic and successional sage scrub habitats: Venturan coastal sage scrub, Diegan coastal sage scrub, Riversidean sage scrub, maritime succulent scrub, Riversidean alluvial fan scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub in Ventura, Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties that provide space for individual and population growth, normal behavior, breeding, reproduction, nesting, dispersal and foraging; and

(2) Non-sage scrub habitats such as chaparral, grassland, riparian areas, in proximity to sage scrub habitats as described for PCE 1 above that provide space for dispersal, foraging, and nesting.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas within the geographical area occupied at the time of listing contain the primary constituent elements that may require special management considerations or protection. For example, we have several regional HCPs under development, and this designation will be useful in helping applicants determine what coastal California gnatcatcher habitat areas should be accorded the highest priority for special management considerations or protection. This designation will guide them and us in ensuring that all HCP development efforts are consistent with conservation objectives for the coastal California gnatcatcher.

Once coastal California gnatcatcher habitat has been protected from direct loss, such habitat may still be rendered unsuitable for the species because of type conversion (conversion of one habitat type to another), habitat degradation, altered fire regime, or other factors. Many of the factors that limit the population size and growth rate of coastal California gnatcatcher populations can be controlled through special management actions. Examples of special management actions that may be necessary to protect essential habitat features and thus prevent further declines and loss of populations of coastal California gnatcatchers are the following:

(1) Actions to prevent the type conversion of sage scrub (PCE 1) into other unsuitable habitats. Many factors either individually or in tandem appear to result in the type-conversion of sage scrub into other vegetation types, especially nonnative grasslands. Factors such as exotic weed invasion, increased fire frequency, human disturbance, and possibly air pollution have combined to reduce sage scrub cover in southern California (Minnich and Dezzani 1998). Special management actions, such as exotic weed control and fire management and prescription, can help to retard the conversion of shrublands to grasslands.

(2) Actions to reduce human degradation of sage scrub (PCE 1). Many otherwise productive coastal California gnatcatcher habitats have been compromised by human actions including unauthorized trail use, off-road vehicle use, and illegal dumping. Special management actions such as fencing, trail building, posting signs, and increased law enforcement attention can help to reduce these destructive activities.

(3) Actions to restore degraded habitat areas. Coastal sage scrub and related plant communities (PCEs 1 and 2) have been successfully restored to support breeding coastal California gnatcatchers. Restoration of degraded habitats can increase local population sizes and facilitate movement between populations (e.g., Miner *et al.* 1998).

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific data

available in determining areas that contain the features essential to the conservation of the coastal California gnatcatcher. We considered several qualitative criteria in the delineation of specific areas for inclusion in our revised final designation of critical habitat for the coastal California gnatcatcher. Such criteria focused on designating areas: (1) Throughout the geographical and elevational range of the species; (2) within various occupied plant communities, such as Venturan coastal sage scrub, Diegan coastal sage scrub, Riversidean sage scrub, maritime succulent scrub, Riversidean alluvial fan scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub; and (3) in documented areas of large, contiguous blocks of occupied habitat; or in areas that link essential populations areas (i.e., linkage areas). These criteria are similar to criteria used to identify reserve or preserve lands in approved regional HCPs covering the coastal California gnatcatcher.

At the time of listing in 1993, the species was known to occur from Los Angeles, Orange, Riverside, and San Diego Counties and was thought to be extirpated from Ventura and San Bernardino Counties (58 FR 15742). As stated in the listing rule (58 FR 15742), coastal California gnatcatchers were not known to occur in San Bernardino County at that time except from historic museum records. Subsequent to the publication of the final listing rule, Davis *et al.* (1998, pp. 362–364) summarized survey efforts in San Bernardino County, documenting species occurrences, including some breeding pairs, from several different locations in 1990, 1993, 1994, and 1995. Also subsequent to the publication of the final listing rule, survey efforts in Ventura County (Leverett 1998, p. 1; Jones 2004, p. 2) revealed the species in several locations. Based on pre-listing occupancy data and museum records, we consider San Bernardino County to have been occupied at the time of listing. While we do not currently have pre-listing occupancy data for Ventura County, based on recent documented occupancy, the species' non-migratory nature, and generally limited dispersal distances are usually limited, we believe that Ventura County was occupied by coastal California gnatcatcher at the time of listing. All areas included in this final designation are within the geographical area occupied by the species at the time of listing, and likely used by the species for breeding, feeding, sheltering, or dispersing during some point in their lifecycle.

In all counties within the range of the species, including the counties for which we have modeled habitat, we first examined those lands identified for conservation under approved individual and regional HCPs covering the coastal California gnatcatcher. These planning efforts utilized habitat evaluation models, coastal California gnatcatcher occurrence data, and reserve design criteria to identify reserve systems of essential (core) coastal California gnatcatcher populations and linkage areas that are essential for the conservation of the species. We considered lands within existing designated reserves, preserves, or other conservation areas to be important to the species at the time we issued the permits for the HCPs. We reevaluated those areas at the time of the 2003 revised proposed rule and again in this revised final determination, and we adhere to our earlier conclusion that such lands contain the physical and biological features in a spatial arrangement and quantity essential to the conservation of the coastal California gnatcatcher.

Those conservation lands considered for critical habitat designation include: (1) Designated reserve system lands within the Orange County NCCP for the Central-Coastal Subregions; (2) designated preserve lands within the County of San Diego Subarea within the San Diego MSCP; (3) designated preserve lands within the City of San Diego Subarea within the San Diego MSCP; and (4) designated preserve lands within the Poway Subarea within the San Diego MSCP. In addition, we considered conservation lands established through other approved HCPs covering the coastal California gnatcatcher (e.g., East Coyote Hills HCP, Shell/Metropolitan Water District HCP, Lake Mathews MSHCP and NCCP, Sycamore Canyon HCP, the HCP for the Southeast Quadrant of the City of Carlsbad (Villages of La Costa) and others).

The boundaries of these designated reserves, preserves, and other conservation lands were mapped following the most current approved boundaries. Lands outside of designated reserves, preserves, or other lands where incidental take has been authorized for the coastal California gnatcatcher under section 10(a)(1)(B) of the Act were not included in critical habitat. As stated in the 2003 revised proposed designation, we concluded that these lands do not contain the physical and biological features in the spatial arrangement or quantity essential to the conservation of the species. We have reviewed those conclusions in developing this revised final rule and determined that these conclusions are still valid. As such, these areas are not included in this revised final rule.

We then evaluated those areas where ongoing regional HCP efforts have resulted in the preparation of biological analyses that identify habitat important for the conservation of the coastal California gnatcatcher. These efforts include the Rancho Palos Verdes MSHCP, San Diego County MHCP in the northern portion of the County, and North County Subarea of the MSCP for unincorporated San Diego County. We utilized those biological analyses in concert with data regarding current coastal California gnatcatcher occurrences, sage scrub, elevation, and connectivity to identify those lands that are essential for the conservation of the species within the respective planning area boundaries.

Finally, we evaluated other lands for their conservation value for the coastal California gnatcatcher. We delimited a study area by selecting geographic boundaries based on the following: (1) Coastal California gnatcatcher occurrences, (2) sage scrub distribution, (3) elevation, and (4) connectivity to other coastal California gnatcatcher occurrences. We determined conservation value based on the presence of, or proximity to, significant (core) populations and/or sage scrub, sage scrub habitat quality, parcel or habitat patch size, surrounding land-uses, and potential to support resident coastal California gnatcatchers and/or facilitate movement of birds between known habitat areas.

To help predict the presence of coastal California gnatcatcher occurrences throughout the range of the species, especially in areas with limited survey information, we commissioned a spatial habitat evaluation model incorporating habitat parameters used by the coastal California gnatcatcher during the breeding season. We began with a GIS layer identifying California sagebrush habitats (e.g., Venturan, Diegan, and Riversidean sage scrub). We recognize that other habitats are used by coastal California gnatcatchers at various points in their life history, such as chaparral, grassland, and riparian habitats during foraging or dispersal. However, few breeding territories have been documented in habitats devoid of California sagebrush. Once the vegetation layer was created, ''core'' patches of sagebrush were selected using a minimum patch size of 25 ac (10 ha) in a coastal climate zone, and 50 ac (20 ha) in an inland climate zone. Coastal climate zone is defined as having an average January minimum temperature above 41 degrees Fahrenheit (F) (5 degrees Celsius (C)),

whereas an inland climate zone is defined as having an average January minimum temperature below 41 degrees F (5 degrees C).

For coastal California gnatcatcher habitat within the maritime and coastal climate zones, a patch size equal to or greater than 25 ac (10 ha) was considered suitable coastal California gnatcatcher habitat. For coastal California gnatcatcher habitat east of the maritime and coastal climate zones, a patch size of equal to or greater than 50 ac (20 ha) was used because the density of coastal California gnatcatchers generally is lower farther from the coast. Research on home range and territory size indicates that territory size is generally greater for inland populations than coastal populations and that during the non-breeding season, the area used by individual gnatcatchers may be almost twice as large as that used during the breeding season (e.g., Atwood 1990; ERCE 1990; Preston et al. 1998) (see ''Primary Constituent Elements'' section above for a detailed discussion); therefore, the model reflects this patch size difference between climate zones. Then, ''satellite'' patches less than 25 ac (10 ha) within 1600 ft (488 m) of core areas were identified. The 1,600 ft (488 m) distance is the distance a bird would have to travel across the landscape to reach a core area while avoiding developed areas (as established by Mock 1992). The vegetation was then expanded beyond the 1,600 ft (488 m) search distance by including sagebrush habitat contiguous to the satellite. A layer called ''high quality habitat'' was then created by combining core and satellite areas. This high quality habitat was then given a value of one, while all other areas were given a value of zero.

The second step used a digital elevation model to classify the sagebrush layer by slope. As discussed in the ''Primary Constituent Elements'' section above, studies have suggested that coastal California gnatcatchers avoid nesting on very steep slopes, greater than 40 percent (Bontrager 1991; AMEC 2001). Consequently, sagebrush areas with slopes above 40 percent received a value of zero, while areas with slopes less than 40 percent received a value of one.

Finally, the sagebrush layer was overlaid with a climate layer to delimit areas above and below a mean minimum January temperature of 41 degrees F (5 degrees C), and an average rainfall of 13.25 inches (in) (33.66 centimeters (cm)). Forty-one degrees F (5 degrees C) was determined to be the threshold where the effects of temperature had an impact on coastal California gnatcatcher energetics (Mock 1998). The threshold for precipitation was determined by identifying the precipitation contour that captured 95 percent of the known occurrences. Sagebrush areas that are cold (i.e., below 5 degrees C (41 degrees F)) and wet (i.e., above 33.66 cm rainfall) received a value of zero. Areas that are warm and wet, or cold and dry, received a value of one. Areas that are warm and dry received a value of two.

To create the final model, the values for each area were totaled, with possible scores ranging from zero to four. Areas with a value of 0 (zero) or one are considered to be of low quality, areas with a value of two of moderate quality, areas with a value of three of high quality, and areas with a value of four of very high quality. This model was run using the vegetation coverage data available from the three southern California Counties that have digital vegetation maps: San Diego, Orange, and Riverside Counties.

After generating the model across the three Counties, we tested it to see if it accurately predicted coastal California gnatcatcher occurrences. We used an independently derived data set of coastal California gnatcatcher occurrences across Orange and San Diego Counties (Service unpublished GIS data). This data set was collected in the summer of 2002 using systematic point counts with a random start, incorporating distance sampling. Over a GIS data layer depicting vegetation types in the two Counties, points were randomly placed over all habitats incorporating coastal sagebrush, including coastal sage scrub vegetation types and coastal sage scrub/chaparral ecotone. The sampling protocol included recording weather, vegetation, and coastal California gnatcatcher observations at each point. Coastal California gnatcatcher observations were recorded for a 10-minute data collection period followed by a 2.5-minute period during which a coastal California gnatcatcher taped call was played twice. A total of 436 points were surveyed during this effort, each between 1 and 4 times.

To test the predictive power of the model, we compared the independent data set of coastal California gnatcatcher points with the model to see what percentage of coastal California gnatcatcher points were found to be occupied in each of the four different zones of habitat quality. The test found that 48 percent of the points located in habitat modeled as very high quality were occupied, 28 percent of the points in high quality were occupied, 8 percent of the points in medium quality were occupied, and none of the points in low quality were occupied. The model was also tested and accepted under the Akaike's Information Criterion (AIC). This statistic is widely used as a measure for comparing the predictive power of constructed models (Burnham and Anderson 1998). Our independent study only sampled coastal California gnatcatcher abundance in San Diego and Orange Counties, so we could not test the predictive power of the model in Riverside County. Therefore, the model was used as a guide for determining high-quality breeding habitat only in San Diego and Orange Counties. Also, as the model helped to identify breeding habitat only, it was not used to determine linkage areas or other aspects of critical habitat.

After determining those specific areas that are essential to the conservation of the species based on areas that: (1) Contain at least one of the PCEs required by the species and either (2) contain core populations of the species; or (3) provide linkage areas between core populations, we delineated the unit boundaries by screen digitizing habitat polygons using ArcMap (Environmental Systems Research, Inc.), a computer GIS program. The ArcMap program also calculates the area of each polygon and produces the legal descriptions for each polygon included in this revised final designation. When determining the revised final critical habitat boundaries, we made every effort to avoid lands occupied by development such as buildings, paved areas, and other structures that lack PCEs for the coastal California gnatcatcher. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of all such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in this rule and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they may affect the species or primary constituent elements in adjacent critical habitat.

Critical Habitat Designation

The approximate area of revised final critical habitat and land ownership is shown in Table 3 below. Critical habitat includes coastal California gnatcatcher habitat throughout the species' range in the U.S. (i.e., Ventura, Los Angeles, Orange, San Bernardino, and San Diego Counties, California) in a variety of climatic zones and vegetation types to preserve the genetic and behavioral diversity that currently exists within the

species. The designated lands are under Federal, State, local, and private ownership (see Table 3 below). Lands designated as revised critical habitat include the PCEs for the coastal California gnatcatcher that provide for foraging, nesting, rearing of young, intra-specific communication, roosting, dispersal, genetic exchange, or sheltering. Known movement corridors are also included to allow for demographic and genetic interchange between populations. Lands designated as final critical habitat have been divided into 11 critical habitat units (as discussed in the ''Summary of Changes From the 2003 Proposed Rule To Revise Critical Habitat'' section above, Units 4 and 11 have been exempted or removed from this revised final rule). A brief description of each unit and reasons for designating it as critical habitat are presented below.

Table 3.—County and land ownership of final critical habitat (acres (ac), hectares (ha)) for the coastal California gnatcatcher. [Area estimates reflect all land within the revised critical habitat unit boundaries.]

Unit	County	Land ownership * ac (ha)		Total area ac (ha).
1	San Diego	Federal (Service, BLM)	7,211 ac (2,918 ha).	14,898 ac (6,029 ha).
		Local (city/county park)	191 ac (77 ha).	
		Private	7,496 ac (3,034 ha).	
2	San Diego	Federal (USFS)	8,787 ac (3,556 ha)	14,508 ac (5,871 ha).
		Local (city/county park)	3 ac (1 ha).	
		Private	5,718 ac (2,314 ha).	
3	San Diego	Federal (BLM)	122 ac (49) ha	17,325 ac (7,011 ha).
		Private	17,203 ac (6,962 ha).	
4	San Diego			0 ac** (0 ha).
5	San Diego	Federal (BLM)	282 ac (114 ha)	29,639 ac (11,995 ha).
		State (CDFG, CSLC)	135 ac (55 ha).	
		Private	29,222 ac (11,826 ha).	
6	Orange	Federal (USFS)	10 ac (4 ha)	6,515 ac (2,637 ha).
		Local (city/county park)	160 ac (65 ha).	
		Private	6,345 ac (2,568 ha).	
7	Orange	Federal	0 ac (0 ha)	4,309 ac (1,744 ha).
		State (CDPR)	643 ac (260 ha).	
		Local (county reuse authority)	1,000 (405 ha).	
		Private	2,666 ac (1,079 ha).	
8	Los Angeles	Federal	0 ac (0) ha	4,462 ac (1,806 ha).
		Private	4,462 ac (1,806 ha).	
9	Orange, Los Angeles, San Bernardino.	State (CDPR)	2,700 ac (1,093 ha)	17,552 ac (7,103 ha).
	Private	14,854 ac (6,011 ha).		
10	San Bernardino, Riverside	Federal (USFS, BLM)	11,113 ac (4,497) ha	27,529 ac ha(11,140 ha).
		Private	16,416 ac (6,643 ha).	
11	San Bernardino			0 ac*** (0 ha)
12	Los Angeles	Local (city/county park)	1,287 ac (521 ha)	2,829 ac (1,145 ha).
		Private	1,542 ac (624 ha).	
13	Ventura, Los Angeles	Federal (BLM, USFS)	1,223 ac (495 ha)	57,737 ac (23,365 ha).
		State (CDPR)	347 ac (140 ha).	
		Local (city/county park or open space).	279 ac (113 ha).	
		Private	55,888 ac (22,617).	
Total				197,303 ac (79,846 ha).

* BLM = Bureau of Land Management; CDFG = California Department of Fish and Game; CSLC = California State Lands Commission; CDPR = California Department of Parks and Recreation; DOD = Department of Defense; USFS = U.S. Forest Service.
** All lands in Unit 4 were exempted from this revised final designation under section 4(a)(3)(B) of the Act.
*** All lands in Unit 11 were removed from this revised final designation.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the coastal California gnatcatcher, below.

Unit 1: South San Diego County

Unit 1 encompasses approximately 14,898 ac (6,029 ha) within the MSCP planning area of which about half is under Federal ownership (San Diego National Wildlife Refuge and Bureau of Land Management (BLM)) and the other half is under private ownership (see Table 3 above). Lands essential to the conservation of the coastal California gnatcatcher within the cities of El Cajon, and Santee; major amendment areas within the San Diego County MSCP Subarea Plan; and water district lands owned by Sweetwater Authority, Helix Water District, Otay Water District, the San Diego National Wildlife Refuge, and BLM lands on Otay Mountain are included in this unit. Lands designated as critical habitat contain core populations of the species, sage scrub, and non-sage scrub habitats (PCEs 1 and 2), and areas providing connectivity between core populations and sage scrub. Populations in this unit occur in high-quality coastal sage scrub and persist in high densities. Lands in the eastern section of this unit are also some of the least fragmented within this portion of the range in the U.S. and, therefore, are less subject to edge effects which negatively influence habitat quality. Lands in this unit are also located adjacent to the U.S./Mexico border, and populations located there serve to promote demographic and genetic interchange with populations in Mexico.

Habitat within this unit is being designated because it was occupied at the time of listing, is currently occupied, and contains all of the features essential to the conservation of the coastal California gnatcatcher (PCEs 1 and 2). Additionally, this unit provides for connectivity and genetic

interchange among core populations and contains large blocks of high-quality habitat capable of supporting persistent populations of coastal California gnatcatchers. The PCEs contained within this unit may require special management considerations or protection to minimize impacts associated with habitat type conversion and degradation occurring in conjunction with urban and agricultural development.

Unit 2: Upper San Diego River and El Capitan Linkage

Unit 2 encompasses approximately 14,508 ac (5,871 ha) in the upper San Diego River drainage area of which the majority are under Federal (USFS) and private ownership (see Table 3 above). This unit includes an essential population of coastal California gnatcatchers on the Cleveland National Forest south of State Route 78 near the upper reaches of the San Diego River, as well as canyons and corridors that provide linkages to MSCP Multiple Habitat Preserve Area (MHPA) lands adjacent to this unit. This population is the easternmost within the species' range and occurs at one of the highest elevations known. Individuals within this population likely contain unique genetic or behavioral adaptations that allow them to persist, which is essential to the species survival and recovery as environmental conditions change through time.

Therefore, habitat within this unit is being designated because it was occupied at the time of listing, is currently occupied, and contains all of the features essential to the conservation of the coastal California gnatcatcher (PCEs 1 and 2). Additionally, this unit provides for connectivity and genetic interchange among core populations and contains large blocks of high-quality habitat capable of supporting persistent populations of coastal California gnatcatchers. The PCEs contained within this unit may require special management considerations or protection to minimize impacts associated with habitat type conversion especially in light of the October 2003 wildfires and degradation occurring in conjunction with urban and agricultural development.

Unit 3: North San Diego County Multiple Habitat Conservation Plan (MHCP)

Unit 3 encompasses approximately 17,325 ac (7,011 ha) of which the majority are under private ownership (see Table 3 above) within the MHCP planning area in northwestern San Diego County. Included are lands within the cities of Encinitas, Escondido, Oceanside, San Marcos, Solana Beach, and Vista. Lands designated as critical habitat contain the last significant coastal California gnatcatcher populations remaining south of MCB Camp Pendleton abutting the coast. Coastal populations of the coastal California gnatcatcher have been found to be denser than inland locales (Preston *et al.* 1998), and are essential to support more inland populations through emigration (e.g., Unit 4). This unit also provides connectivity between significant populations at MCB Camp Pendleton (adjacent to Unit 5), MSCP reserve areas in Unit 1, and populations in northern San Diego County (Unit 4).

Lands within this unit are being designated as critical habitat because they were occupied at the time of listing, are currently occupied, and contain all of the features essential to the conservation of the coastal California gnatcatcher (PCEs 1 and 2). Additionally, this unit provides for connectivity and genetic interchange among core populations and contains large blocks of high-quality habitat capable of supporting persistent populations of coastal California gnatcatchers. The PCEs contained within this unit may require special management considerations or protection to minimize impacts associated with habitat type conversion and degradation occurring in conjunction with urban and agricultural development.

Unit 4: Fallbrook Naval Weapons Station

All lands in Unit 4 (8,690 ac (3,515 ha)) included in the 2003 revised proposed designation have been exempted from this revised final designation under section 4(a)(3)(B) of the Act (see ''Application of Section 4(a)(3)(B) of the Act'' section below for a detailed discussion of this exemption).

Unit 5: North County Subarea of the MSCP for Unincorporated San Diego County

Unit 5 encompasses approximately 29,639 ac (11,995 ha) within the planning area for the North County Subarea of the MSCP for San Diego County. The majority of the lands is under private ownership (see Table 3 above). Lands designated within this unit contain several core coastal California gnatcatcher populations and intervening linkage areas of sage scrub. This unit constitutes the primary inland linkage along the I–15 corridor between San Diego populations and those in southwestern Riverside County. Habitat quality in this area was also classified as high to very high by the habitat model. This population is located adjacent to a north-south corridor connecting Riverside and San Diego Counties, and likely provides a significant number of dispersing juveniles into this corridor.

Habitat within this unit is being designated because it was occupied at the time of listing, is currently occupied, and contains all of the features essential to the conservation of the coastal California gnatcatcher (PCEs 1 and 2). Additionally, this unit provides for connectivity and genetic interchange among core populations and contains large blocks of high-quality habitat capable of supporting persistent populations of coastal California gnatcatchers. The PCEs contained within this unit may require special management considerations or protection to minimize impacts associated with habitat type conversion and degradation occurring in conjunction with urban and agricultural development.

Unit 6: Southern NCCP Subregion of Orange County

Unit 6 encompasses approximately 6,515 ac (2,637 ha) the majority of which is under private ownership (see Table 3 above). While these lands are within the approximately 131,000 ac (53,014 ha) study area for the Orange County Southern Subregion HCP, they are not included in the approximately 86,076 ac (34,834 ha) permit area covered under the HCP (Service 2007a, p. 24). Areas not covered by the HCP include land in the cities of Lake Forest and Dana Point, portions of San Juan Capistrano, an ''Existing Use'' Girl Scout Camp, Ladera Ranch, Las Flores, Tesoro High School, the Foothill Transportation Corridor-North, the Nichols Institute bounded by Caspers Wilderness Park, the sewage treatment facility in Chiquita Canyon and other areas that are in the Southern Subregion but are defined as ''Not a Part'' of the HCP (Service 2007a, p. 24).

As stated in the 2003 revised proposed rule, lands within the study area for the Orange County Southern Subregion HCP contain some of the largest, most robust populations known (e.g., Chiquita ridge), as well as essential regional populations (e.g., Prima Deshecha Canada, Talega Canyon) and linkages in Cristianitos Canyon, Arroyo Trabuco, and Saddle Creek/Live Oak Canyon, and provide for connectivity and genetic interchange among core populations and contain large blocks of high-quality habitat capable of supporting persistent populations of coastal California gnatcatchers. This

area also provides the primary linkage for significant populations in North San Diego MHCP (Unit 3), and the Fallbrook Naval Weapons Station, to those further north in Orange County (Unit 7).

Of the 44,340 ac (17,940 ha) included in the 2003 revised proposed critical habitat designation, approximately 17,022 ac (6,888 ha) within the Orange County Southern Subregional HCP area are being excluded from this revised final designation under section 4(b)(2) of the Act (see ''Exclusions Under Section 4(b)(2) of the Act'' section below for a detailed discussion of this exclusion). The remaining approximately 7,576 ac (3,066 ha) included in this revised final designation were occupied at the time of listing, are currently occupied, and contain all of the features essential to the conservation of the coastal California gnatcatcher (PCEs 1 and 2). These 7,576 ac (3,066 ha) are within modeled habitat for the coastal California gnatcatcher identified as containing core populations or providing important linkage areas within the Orange County Southern Subregion HCP study area. The PCEs contained within this unit may require special management considerations or protection to minimize impacts associated with habitat type conversion and degradation occurring in conjunction with urban and agricultural development.

Unit 7: Central-Coastal NCCP Subregions of Orange County (Central-Coastal NCCP)

Unit 7 encompasses approximately 4,309 ac (1,744 ha) under private ownership (see Table 3 above). The areas included in this revised final designation include core coastal California gnatcatcher populations and sage scrub within select areas defined in the NCCP/HCP as Existing Use Areas (areas not included in the Central-Coastal NCCP/HCP), the designated reserve (panhandle portion) of the El Toro Reuse Area, approximately 210 ac (85 ha) owned by the Boy Scouts of America within the area formerly referred to as the North Ranch Policy Planning Area, and the most southern portion of Chino Hills State Park (CDPR) in Orange County.

While these lands are within the approximately 208,000 ac (84,175 ha) planning area for the Orange County Central-Coastal NCCP/HCP, they are not included in the permit area covered under the NCCP/HCP (Service 1996b, pp. 15–16) and, therefore, there is no requirement to manage for coastal California gnatcatcher or its habitat in these areas. As discussed in the 2003 revised proposed critical habitat rule, lands identified for preservation under the Orange County Central-Coastal NCCP/HCP were considered but not included in the proposed designation (see ''Exclusions under Section 4(b)(2) of the Act'' section below for a re-affirmation of our exclusion of these areas). Additionally in this revised final rule, we have excluded lands covered by the O'Hill HCP and lands within the area formerly referred to as the North Ranch Policy Planning Area on The Irvine Ranch under section 4(b)(2) of the Act (see the ''Exclusions under Section 4(b)(2) of the Act'' and ''Other Conservation Partnerships—Exclusions Under Section 4(b)(2) of the Act'' sections below for detailed discussions of these exclusions).

Habitat within this unit was occupied at the time of listing, is currently occupied, and contains all of the features essential to the conservation of the coastal California gnatcatcher (PCEs 1 and 2). These areas contain high-quality habitat and dense populations of coastal California gnatcatchers and also serve to link populations located in southern Orange County (Unit 6) with those in northern Orange and Riverside Counties. These lands are within modeled habitat for the coastal California gnatcatcher identified as containing core populations and/or providing important linkage areas within the NCCP/HCP study area. Habitat within this unit is being designated because it was occupied at the time of listing, is currently occupied, and contains all of the features essential to the conservation of the coastal California gnatcatcher (PCEs 1 and 2). The PCEs contained within this unit may require special management considerations or protection to minimize impacts associated with habitat type conversion and degradation occurring in conjunction with urban and agricultural development.

Unit 8: Palos Verdes Peninsula Subregion, Los Angeles County

Unit 8 encompasses approximately 4,462 ac (1,806 ha) under private ownership (see Table 3 above) on the Palos Verdes Peninsula, the majority of which is within the City of Rancho Palos Verdes' draft NCCP/MSHCP subregional planning area. This unit includes a core population of coastal California gnatcatchers and high-quality sage scrub habitat in Portuguese Bend, Agua Amarga Canyon, San Pedro, and adjacent canyons, as well as connecting linkages. The former landfill adjacent to the South Coast Botanic Garden does not currently contain habitat and is not designated as critical habitat, yet it will continue to be evaluated as it represents a significant potential restoration area for the recovery of this population of the species.

Habitat within this unit is being designated because it was occupied at the time of listing, is currently occupied, and contains all of the features essential to the conservation of the coastal California gnatcatcher (PCEs 1 and 2). Additionally, this unit provides for connectivity and genetic interchange among core populations and contains large blocks of high-quality habitat capable of supporting persistent populations of coastal California gnatcatchers. The PCEs contained within this unit may require special management considerations or protection to minimize impacts associated with habitat type conversion and degradation occurring in conjunction with urban and agricultural development.

Unit 9: East Los Angeles County-Matrix NCCP Subregion of Orange County

Unit 9 encompasses approximately 17,552 ac (7,103 ha) the majority of which is under private ownership (see Table 3 above) within the Montebello Hills, Puente-Chino Hills, and West Coyote Hills areas. Core populations are known from the Montebello Hills, south slopes of the Puente-Chino Hills from Whittier east to Yorba Linda, and the East and West Coyote Hills. The Brea Canyon Landfill is not designated as critical habitat, but represents a significant potential restoration area to support these remaining populations and aid in recovery of the species. The unit also provides the primary connectivity between significant coastal California gnatcatcher populations and sage scrub habitat within the Orange County Central-Coastal NCCP (Unit 6), the Western Riverside County MSHCP (Unit 10) and the Bonelli Regional Park population within East Los Angeles (Unit 12).

Habitat within this unit is being designated because it was occupied at the time of listing, is currently occupied, and contains all of the features essential to the conservation of the coastal California gnatcatcher (PCEs 1 and 2). Additionally, this unit provides for connectivity and genetic interchange among core populations and contains large blocks of high-quality habitat capable of supporting persistent populations of coastal California gnatcatchers. The PCEs contained within this unit may require special management considerations or protection to minimize impacts associated with habitat type conversion

and degradation occurring in conjunction with urban and agricultural development.

Unit 10: Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)

Unit 10 encompasses a total of approximately 27,529 ac (11,140 ha) the majority of which is under private and Federal (USFS, BLM) ownership (see Table 3 above). Of this total, 21,776 ac (8,812 ha) are in the Western Riverside County MSHCP plan area and approximately 5,757 ac (2,330 ha) are within southern San Bernardino County adjacent to the planning area for the Western Riverside County MSHCP. Of the 21,776 ac (8,812 ha) in the Western Riverside County MSHCP plan area being designated as critical habitat, 10,176 ac (4,118 ha) are owned by the Metropolitan Water District who is not a permittee to the MSHCP and therefore not being excluded from this final designation. An additional 199 ac (81 ha) of private land in the Western Riverside County MSHCP plan area are also not being excluded from this final designation. These 199 ac (81 ha) are covered under a settlement agreement and Memorandum of Understanding (MOU) signed on February 24, 2004, by the County of Riverside and several property owners, including Murdock Alberhill, the owner of these 199 ac (81 ha), which specifically exempts and excludes these landowners' properties from the Western Riverside County MSHCP (Riverside County 2004, p. 5). Therefore, the 199 ac (81 ha) owned by Murdock Alberhill are not required to be managed for coastal California gnatcatcher consistent with the Western Riverside County MSHCP. The remaining 11,401 ac (xx ha) being designated in the Western Riverside County MSHCP plan area are under Federal ownership (BLM and USFS). Since these lands contain the features essential to the conservation of the species and may require special management considerations and protection, they are being included in this revised final designation.

This unit also encompasses contiguous habitats in southern San Bernardino County, including essential coastal California gnatcatcher populations in the Jurupa Hills, and the Blue Mountain/Reche Canyon region. Though not included, the Santa Ana River may be an important movement corridor in this area, connecting the Jurupa and La Loma Hills to populations in the Box Springs Mountains, as well as to the few pairs known from the Pedley Hills and Norco Hills. Though a few coastal California gnatcatchers have been observed from the upper Santa Ana River wash in the vicinity of Highland, we do not yet have evidence that this area constitutes a core population. Further survey work in this area may help clarify its use by coastal California gnatcatchers.

Habitat within this unit is being designated because it was occupied at the time of listing, is currently occupied, and contains all of the features essential to the conservation of the coastal California gnatcatcher (PCEs 1 and 2). Additionally, this unit provides for connectivity and genetic interchange among core populations and contains large blocks of high-quality habitat capable of supporting persistent populations of coastal California gnatcatchers. The PCEs contained within this unit may require special management considerations or protection to minimize impacts associated with habitat type conversion and degradation occurring in conjunction with urban and agricultural development.

Unit 11: San Bernardino Valley MSHCP, San Bernardino County

All lands proposed as critical habitat in Unit 11 (14,990 ac (6,065 ha)) have been removed from this revised final designation (see ''Summary of Changes From the 2003 Proposed Rule To Revise Critical Habitat'' section above for a detailed discussion).

Unit 12: East Los Angeles County

Unit 12 encompasses approximately 2,829 ac (1,145 ha) all of which is under private and local ownership (see Table 3 above) in eastern Los Angeles County in Bonelli Regional Park and along the San Jose Hills to the west. This unit functions as an archipelago of persistent populations toward the northern end of the range of the species, and is a likely source population for the nesting pairs that are reported from the foothills of the San Gabriel Mountains north of the Los Angeles basin. Disturbed and vacant areas within Bonelli Regional Park and the BKK landfill at the western end of the San Jose Hills represent the last available vacant land for restoration of habitat to recover the species in this unit. Isolated habitat patches between this unit and the East Los Angeles County-Matrix NCCP Subregion of Orange County (Unit 9), are not included, but serve to maintain connectivity. This unit does not include a potential movement corridor along the foothills of the San Gabriel Mountains towards the Etiwanda Fan (former Unit 11) as we do not currently have evidence of coastal California gnatcatcher movement through this area.

Habitat within this unit is being designated because it was occupied at the time of listing, is currently occupied, and contains all of the features essential to the conservation of the coastal California gnatcatcher (PCEs 1 and 2). Additionally, this unit provides for connectivity and genetic interchange among core populations and contains large blocks of high-quality habitat capable of supporting persistent populations of coastal California gnatcatchers. The PCEs contained within this unit may require special management considerations or protection to minimize impacts associated with habitat type conversion and degradation occurring in conjunction with urban and agricultural development.

Unit 13: Western Los Angeles and Ventura Counties

Unit 13 encompasses approximately 57,737 ac (23,365 ha) of which the majority is under private ownership (see Table 3 above) in eastern Ventura and western Los Angeles Counties along the southern and eastern slopes of the Santa Susana Mountains and a portion of the interior foothills of the San Gabriel Mountains. It includes the only known breeding population of coastal California gnatcatchers in Ventura County and includes high-quality coastal sage scrub. Habitat between the San Gabriel and Santa Susana Mountains contains the PCEs required by this species and serves as an essential linkage between the two isolated populations: the core population in the Moorpark area in Ventura County and the pairs documented in the foothills of the San Gabriel Mountains in Los Angeles County. Without this linkage, the population located in Ventura County has no other natural area connecting them with populations located east and south of Ventura County. Also, without the natural areas and habitat located on the south-facing slopes of the Santa Susana and San Gabriel Mountains, these two populations of coastal California gnatcatchers would be completely isolated and prone to extirpation.

This unit encompasses the northern and western distributional extreme of the coastal California gnatcatcher's current range, and as such acts as a source population for future recovery of coastal California gnatcatcher populations to the north and west. Peripheral populations also likely contain essential genetic or behavioral adaptations that are important to the

species as environmental conditions change through time (Lesica and Allendorf 1995).

Habitat within this unit is being designated because it is currently occupied and contains all of the features essential to the conservation of the coastal California gnatcatcher (PCEs 1 and 2). As discussed in the ''Criteria Used To Identify Critical Habitat'' section above, while we do not currently have pre-listing occupancy data for Ventura County, we do have records of the species occurrence in that County as early as 1998 (Leverett 1998, p. 1). Based on the species' non-migratory nature and the fact that dispersal distances are usually limited (see ''Primary Constituent Elements'' section above), we believe that Ventura County was occupied by coastal California gnatcatcher at the time of listing. Habitat within this unit is also essential to the conservation of the species because it provides for connectivity and genetic interchange among core populations and contains large blocks of high-quality habitat capable of supporting persistent populations of coastal California gnatcatchers. The PCEs contained within this unit may require special management considerations or protection to minimize impacts associated with habitat type conversion especially in light of the 2003 wildfires and degradation occurring in conjunction with urban and agricultural development.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the coastal California gnatcatcher or its designated critical habitat require consultation under section 7 of the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are also subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Adverse Modification Standard for Actions Involving Effects to the Critical Habitat

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the primary constituent elements to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the coastal California gnatcatcher. Generally, the conservation role of coastal California gnatcatcher critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and, therefore, should result in consultation for the coastal California gnatcatcher include, but are not limited to:

(1) Removing, thinning, or destroying gnatcatcher habitat (as defined in the primary constituent elements (PCE) discussion above), whether by burning

or mechanical, chemical, or other means (e.g., woodcutting, grubbing, grading, overgrazing, construction, road building, mining, herbicide application, etc.); and

(2) Activities that cause indirect effects that appreciably decrease habitat value or quality (e.g., activities that create or foster permanent noise, edge effects, invasion of exotic plants or animals, or fragmentation such that it appreciably decreases habitat value or quality). These activities result in the loss of foraging and nesting habitat, as well as the potential abandonment of active nests, which preclude the survival and recovery of the species.

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' We consult with the military on the development and implementation of INRMPs for installations with federally listed species. INRMPs developed by military installations located within the range of the coastal California gnatcatcher and which contain those features essential to the species' conservation were analyzed for exemption under the authority of section 4(a)(3)(B) of the Act.

In the 2003 proposed rule to revise critical habitat (68 FR 20228), we considered but did not propose lands on MCAS Miramar pursuant to sections 3(5)(A) and 4(b)(2) of the Act, based on the benefits provided by their completed INRMP. We also considered but did not propose mission-essential training areas on MCB Camp Pendleton pursuant to section 4(b)(2) of the Act for national security reasons. However, nontraining areas on MCB Camp Pendleton and Naval Weapons Station Seal Beach, Detachment Fallbrook were included in the 2003 proposed critical habitat designation.

We cannot designate critical habitat on lands owned or controlled by the Department of Defense pursuant to section 4(a)(3)(B) of the Act if the lands are covered by an approved INRMP that provides a benefit to the coastal California gnatcatcher. In accordance with section 4(a)(3)(B) of the Act, we have determined that the INRMPs for MCAS Miramar, MCB Camp Pendleton, and Naval Weapons Station Seal Beach, Detachment Fallbrook provide benefits to the coastal California gnatcatcher and its habitat occurring on these installations. Therefore, we have exempted essential habitat lands on MCAS Miramar, and mission-essential training areas on MCB Camp Pendleton and all remaining lands covered by MCB Camp Pendleton's INRMP (including San Onofre State Beach), and all lands on Naval Weapons Station Seal Beach, Detachment Fallbrook under section 4(a)(3)(B) of the Act. A detailed analysis of our exemption of these lands under section 4(a)(3)(B) of the Act is provided in the paragraphs that follow.

Approved IN RMPs

Marine Corps Air Station (MCAS), Miramar

MCAS Miramar occupies approximately 23,015 acres (9,314 ha) in San Diego County. Major vegetation types on MCAS Miramar include chaparral, coastal sage scrub, and grasslands. This installation also contains the largest and most contiguous vernal pool habitat remaining in southern California. The entire eastern portion of MCAS Miramar (i.e., east of I–15) functions as an essential habitat linkage with adjacent open space areas (MCAS Miramar 2006, p. ES–4).

Since the publication of the 2003 revised proposed critical habitat designation for the coastal California gnatcatcher, MCAS Miramar has revised its 2000 INRMP to address conservation and management recommendations within the scope of the installation's military mission. According to the 2006 INRMP (MCAS Miramar 2006, pp. 7–14, 7–15), this revised plan continues the protection and benefits afforded to all threatened and endangered species present on MCAS Miramar. Management actions that benefit the federally listed species generally include: (1) Development and use of Management Areas focused on differing resource types and sensitivities to guide management and planning afford protection to high concentrations of listed species and their habitats; (2) limiting activities, minimizing development, and mitigating actions in areas supporting high densities of listed species and managing activities and development in areas with low densities, or no special status species and sensitive habitat; (3) restoring degraded sites; (4) restricting access to sensitive areas through fencing/signage; (5) training military personnel to recognize and avoid sensitive areas via incorporated natural resources instructions in the MCAS Miramar training order; (6) distributing sensitive resources maps and brochures to MCAS Miramar personnel; (7) invasive/exotic species removal; (8) surveys to identify areas suitable for habitat restoration/enhancement; (9) habitat compensation for unavoidable impacts from MCAS Miramar projects to ensure no net loss of habitat value; (10) plant and animal surveys for listed and rare species; and (11) long-term ecosystem monitoring of both plant communities and selected wildlife.

Conservation measures that have been completed, are being conducted, and are planned for 2006 to 2010 for the coastal California gnatcatcher include: (1) A Habitat Evaluation, Home Range Determination and Dispersal Study (1993–1996); (2) coastal sage scrub restoration site survey; (3) study for effects of helicopter noise on the coastal California gnatcatcher (final report in preparation); (4) station-wide population surveys (conducted 1998–2001, 2004, planned for funding 2006 and 2008); and (5) completion of field work meeting BRAC (Base Realignment and Closure) 1995 commitments to restore 87 ac (35 ha) of coastal sage

scrub habitat (MCAS Miramar 2006, pp. 7–14, 7–15).

Based on the above considerations, and consistent with the direction provided in section 4(a)(3)(B) of the Act, we have determined that conservation efforts on MCAS Miramar identified in the Revised 2006 INRMP provide benefits to the coastal California gnatcatcher and the features essential to its conservation. Therefore, MCAS Miramar is exempt from inclusion in this revised designation of critical habitat for the coastal California gnatcatcher pursuant to section 4(a)(3)(B) of the Act.

Marine Corps Base (MCB) Camp Pendleton

MCB Camp Pendelton occupies over 125,000 ac (50,586 ha) of land in the northwest corner of San Diego County. Among the plant communities that characterize MCB Camp Pendleton are oak woodlands, a range of chaparral and sage scrub communities (including the largest remaining contiguous Diegan coastal sage scrub, coastal bluff scrub), native and nonnative grasslands, coastal dunes, riparian communities, and wetlands (including isolated ephemeral wetlands or vernal pools unique to this region) (MCBCP 2007, p. ES–3). As stated in the 2003 revised proposed rule, MCB Camp Pendleton contains a coastal corridor of coastal California gnatcatcher-occupied sage scrub that provides the primary linkage between San Diego populations and those in southern Orange County.

Since the publication of the 2003 revised proposed critical habitat designation for the coastal California gnatcatcher, MCB Camp Pendleton has revised and updated its 2001 INRMP to address conservation and management recommendations within the scope of the installation's military mission. The coastal California gnatcatcher benefits from current management practices under the 2007 INRMP through: (1) Nonnative vegetation control; (2) brown-headed cowbird management; (3) investigative research (e.g., to determine effects of wildfire on coastal California gnatcatcher habitat quality and distribution); (4) the establishment and management of coastal sage scrub mitigation areas, and (5) habitat enhancement by using native seed stock in restoration and recovery measures (MCBCP 2007, p. F–25). Also, according to the 2007 INRMP, California State Parks is required to conduct its natural resources management consistent with the philosophies and supportive of the objectives of the revised 2007 INRMP (MCBCP 2007, p. 2–31).

Based on the above considerations, and consistent with the direction provided in section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the revised 2007 INRMP will provide benefits to the coastal California gnatcatcher and the features essential to the species' conservation occurring on MCB Camp Pendleton and lands leased to California State Parks (San Onofre State Beach). As discussed above, these conservation measures include managing habitat for the coastal California gnatcatcher on MCAS Pendleton; conducting baseline surveys; and monitoring and management activities to enhance and or create coastal sage scrub and minimize threats to the PCEs required by the species. Therefore, MCB Camp Pendleton (including San Onofre State Beach) is exempt from the revised final designation of critical habitat for the coastal California gnatcatcher.

Naval Weapons Station Seal Beach, Detachment Fallbrook

Naval Weapons Station Seal Beach, Detachment Fallbrook (Detachment Fallbrook) occupies approximately 8,852 ac (3,582 ha) in San Diego County and is bound to the north, west, and much of the south by MCB Camp Pendleton. Among the plant communities that characterize Detachment Fallbrook are coastal sage scrub, mixed chaparral, chamise chaparral, valley foothill riparian, annual grasslands, fresh emergent wetlands, and eucalyptus (Navy 2006, p. 3–37).

Since the publication of the 2003 proposed rule to revise critical habitat for the coastal California gnatcatcher, Detachment Fallbrook has revised its 1996 INRMP to address conservation and management recommendations within the scope of the installation's military mission. According to the 2006 revised INRMP (Navy 2006, pp. 3–124 to 3–126), conservation measures for the coastal California gnatcatcher include: (1) Avoidance and minimization measures to protect the species as part of normal project site approval process (NEPA); (2) maintenance of a minimum of 2,000 ac (809 ha) of coastal sage scrub suitable for the species; (3) establishment of three coastal sage scrub priority management areas, each with specific fire suppression and prescribed fire guidelines based on level of occupation, proximity to MCB Camp Pendleton coastal California gnatcatcher populations, and habitat type; (4) monitoring coastal California gnatcatcher populations every 5 years; (5) establishment of a ledger system to provide for net gains in coastal California gnatcatcher habitat to protect against future encroachment on the military mission; (6) monitoring and managing of grazing livestock to avoid or minimize impacts to the species' habitat; (7) conducting weed eradication in coastal sage scrub; and (8) monitoring different coastal sage types in relation to fire, grazing, and site factors to improve understanding of how to manage for a range of conditions over time using fire and grazing.

The conservation measures listed above provide management and protection of the features essential to the conservation of the coastal California gnatcatcher. Based on the above considerations, and consistent with the direction provided in section 4(a)(3)(B) of the Act, we have determined that conservation efforts identified in the Revised 2006 INRMP provide benefits to the coastal California gnatcatcher and the features essential to the species' conservation. As discussed above, these conservation measures include managing habitat for the coastal California gnatcatcher on Detachment Fallbrook; conducting baseline surveys; and monitoring and management activities to enhance and/or create coastal sage scrub and minimize threats to the PCEs required by the species. Therefore, Detachment Fallbrook is exempt from inclusion in this designation of critical habitat for the coastal California gnatcatcher pursuant to section 4(a)(3)(B) of the Act.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the

designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If we consider excluding an area, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we have considered. In addition, we conducted a draft economic analysis (DEA) of the impacts of the proposed revised critical habitat designation and completed an addendum to the DEA dated September 14, 2007, which identifies the incremental impacts of designation (see ''Economic Analysis'' section below for more details about the addendum). The DEA (dated February 24, 2004) was made available for public review and comment from April 8, 2004, to May 10, 2004 (69 FR 18516) and April 3, 2007, to May 3, 2007 (72 FR 15857). Substantive comments and information received on the DEA are summarized above in the Public Comment section. After considering the DEA and public comment thereon, the addendum to the DEA, the proposed revision to critical habitat, and the information in this revised final designation of critical habitat, we have excluded areas from critical habitat under the provisions of section 4(b)(2) of the Act. This is provided for in the Act and in our implementing regulations at 50 CFR 424.19.

Benefits of Designating Critical Habitat

The process of designating critical habitat as described in the Act requires that the Service identify those lands on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and those areas outside the geographical area occupied by the species at the time of listing that are essential to the conservation of the species. In identifying those lands, the Service must consider the recovery needs of the species, such that, on the basis of the best scientific and commercial data available at the time of designation, the habitat that is identified, if managed, could provide for the survival and recovery of the species.

The identification of those areas that are essential for the conservation of the species and can, if managed, provide for the recovery of a species is beneficial. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to determine the features or PCEs essential for conservation of the species within the geographical area occupied by the species at the time of listing, as well as to determine other areas essential to the conservation of the species. The designation process includes peer review and public comment on the identified features and areas. This process is valuable to land owners and managers in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat.

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects on habitat will often result in effects on the species. However, the regulatory standard is different: the jeopardy analysis looks at the action's impact on survival and recovery of the species, while the adverse modification analysis looks at the action's effects on the designated habitat's contribution to the species' conservation. This will, in many instances, lead to different results and different regulatory requirements.

For 30 years prior to the Ninth Circuit's decision in *Gifford Pinchot*, consistent with the 1986 regulations, we essentially combined the jeopardy standard with the standard for destruction or adverse modification of critical habitat when evaluating Federal actions that affected currently occupied critical habitat. However, the court of appeals ruled that the two standards are distinct and that adverse modification evaluations require consideration of impacts on species recovery. Thus, critical habitat designations may provide greater regulatory benefits to the recovery of a species than would listing alone.

There are two limitations to the regulatory effect of critical habitat. First, a section 7(a)(2) consultation is required only where there is a Federal nexus (an action authorized, funded, or carried out by any Federal agency)—if there is no Federal nexus, the critical habitat designation of private lands itself does not restrict any actions that destroy or adversely modify critical habitat. Second, the designation only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure that the conservation role and function of those areas that contain the physical and biological features essential to the conservation of the species or of unoccupied areas that are essential to the conservation of the species is not appreciably reduced. Critical habitat designation alone, however, does not require property owners to undertake specific steps toward recovery of the species.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when we concur in writing that the proposed Federal action is not likely to adversely affect critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then we would initiate formal consultation, which would conclude when we issue a biological opinion on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat.

For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not suggest the implementation of any reasonable and prudent alternative. We suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in an adverse modification conclusion.

As stated above, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and/or adverse modification of its critical habitat, but not specifically to manage remaining lands or institute recovery actions on remaining lands. Conversely, voluntary conservation efforts implemented through management plans institute proactive actions over the lands they encompass and are put in place to remove or reduce known threats to a species or its habitat; therefore, implementing recovery actions. We believe that in many instances the benefit to a species and/or its habitat realized through the

designation of critical habitat is low when compared to the conservation benefit that can be achieved through conservation efforts or management plans. The conservation achieved through implementing HCPs or other habitat management plans can be greater than what we achieve through multiple site-by-site, project-by-project, section 7(a)(2) consultations involving consideration of critical habitat. Management plans may commit resources to implement long-term management and protection to particular habitat for at least one and possibly additional listed or sensitive species. Section 7(a)(2) consultations commit Federal agencies to preventing adverse modification of critical habitat caused by the particular project only, and not to providing conservation or long-term benefits to areas not affected by the proposed project. Thus, implementation of any HCP or management plan that considers enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation.

Another benefit of including lands in critical habitat is that designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the coastal California gnatcatcher. In general, critical habitat designation always has educational benefits; however, in some cases, they may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefits of a critical habitat designation. Including lands in critical habitat also would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). Stein *et al.* (1995, p. 400) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998; Crouse *et al.* 2002; James 2002). Building partnerships and promoting voluntary cooperation of landowners are essential to our understanding the status of species on non-Federal lands, and necessary for us to implement recovery actions such as reintroducing listed species and restoring and protecting habitat.

Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. We promote these private-sector efforts through the Department of the Interior's Cooperative Conservation philosophy. Conservation agreements with non-Federal landowners (HCPs, safe harbor agreements, other conservation agreements, easements, and State and local regulations) enhance species conservation by extending species protections beyond those available through section 7(a)(2) consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on the view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (61 FR 63854; December 2, 1996).

Many private landowners, however, are wary of the possible consequences of attracting endangered species to their property. Mounting evidence suggests that some regulatory actions by the Federal Government, while well-intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook *et al.* 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability. This perception results in anti-conservation incentives, because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003).

According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). The magnitude of this outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002). We believe that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7(a)(2) of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. Thus the benefits of excluding areas that are covered by effective partnerships or other conservation commitments can often be high.

Benefits of Excluding Lands With HCPs

The benefits of excluding lands with approved HCPs from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by critical habitat. Many HCPs take years to develop, and upon completion, are consistent with recovery objectives for listed species that are covered within the plan area. Many conservation plans also provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine conservation efforts and partnerships designed to proactively protect species to ensure that listing under the Act will not be necessary. Our experience in implementing the Act has found that designation of critical habitat within the boundaries of management plans that provide conservation measures for a species is a disincentive to many entities which are either currently developing such plans, or contemplating doing so in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species will

be affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning. In fact, designating critical habitat in areas covered by a pending HCP or conservation plan could result in the loss of some species' benefits if participants abandon the planning process, in part because of the strength of the perceived additional regulatory compliance that such designation would entail. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for them to be perceived as an additional Federal regulatory burden sufficient to discourage continued participation in developing plans targeting listed species' conservation.

A related benefit of excluding lands covered by approved HCPs from critical habitat designation is the unhindered, continued ability it gives us to seek new partnerships with future plan participants, including States, Counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. We have found that potential participants are not inclined to participate in such management plans when we designate critical habitat within the area that would be covered by such a management plan, thus having a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, HCP applications require consultation, which would review the effects of all HCP-covered activities that might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), even without the critical habitat designation. In addition, all other Federal actions that may affect the listed species would still require consultation under section 7(a)(2) of the Act, and we would review these actions for possibly significant habitat modification in accordance with the definition of harm referenced above.

The information provided in the previous section applies to all the following discussions of benefits of inclusion or exclusion of critical habitat.

Areas Considered for Exclusion Under Section 4(b)(2) of the Act

At the request of the USFS we evaluated the appropriateness of excluding National Forest lands in Units 2, 6, 10, and 13 (see Table 3 above) from this revised final designation under section 4(b)(2) of the Act based on management provided for federally-listed species including the coastal California gnatcatcher under the USFS Land Management Plan. As discussed in more detail in our response to Comment 25 in the ''Public Comments'' section above, we have concluded that exclusion of National Forest lands is not appropriate in light of the USFS' independent obligation under section 7(a)(1) of the Act to utilize the agency's authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of the coastal California gnatcatcher. Further, the intent of section 7(a)(2) of the Act is to require Federal Agencies to consult on any action authorized, funded, or carried out by such agency to insure that the action will not jeopardize a listed species or destroy or adversely modify its critical habitat. Therefore the benefit of consultation under section 7(a)(2) of the Act is greatest on Federal lands. In light of the USFS's independent statutory obligations under the Act we do not believe exclusion of USFS lands from critical habitat designation under section 4(b)(2) is appropriate. Nor, because of the agency's statutory obligations, should the additional analysis under section 7(a)(2) of the Act as a result of designation of critical habitat on National Forest lands be considered a relevant impact under Section 4(b)(2) or constitute an undue burden for USFS.

Exclusions Under Section 4(b)(2) of the Act

In the 2003 revised proposed critical habitat rule (68 FR 20228), we considered but did not propose as critical habitat for the coastal California gnatcatcher, pursuant to sections 3(5)(A) and 4(b)(2) of the Act, lands covered by three completed and approved regional/subregional HCPs (San Diego MSCP, Orange County Central-Coastal NCCP/HCP, and San Diego Gas & Electric NCCP/HCP), Tribal lands of the Pala Band of Mission Indians, and lands covered by eight completed and approved individual HCPs ((1) Meadowlark Estates; (2) City of Carlsbad/Fieldstone/La Costa; (3) Coyote Hills East; (4) Shell Oil; (5) Ocean Trails (now referred to as the Trump National Golf Club HCP); (6) Lake Mathews; (7) North Peak; (8) Rancho Bella Vista). In this revised final rule, we reaffirm our exclusion of these lands under section 4(b)(2) of the Act and are no longer relying on section 3(5)(A) of the Act as a basis to exclude these lands from the designation.

We are also excluding from this revised final designation lands in San Diego, Riverside, and Orange Counties covered by the following four completed and approved regional HCPs: (1) San Diego MSCP plan area (Unit 1); (2) San Diego MHCP plan area (Unit 3); (3) Orange County Southern Subregion HCP plan area (Unit 6); and (4) Western Riverside MSHCP plan area (Unit 10) and one individual HCP (O'Hill HCP) (Unit 7) and lands on the Irvine Ranch being conserved by the Irvine Ranch Conservancy (Unit 7). These lands are being excluded pursuant to section 4(b)(2) of the Act.

We are excluding these areas because we believe that:

(1) Their value for conservation will be preserved for the foreseeable future by existing protective actions, or

(2) They are appropriate for exclusion under the ''other relevant factor'' provisions of section 4(b)(2) of the Act.

A detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act is provided in the paragraphs that follow.

Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act

In reviewing approved HCPs for potential exclusion under section 4(b)(2) of the Act we consider, in addition to the general partnership relationships identified above, whether the plan provides for protection and appropriate management, if necessary, of essential habitat within the plan area and incorporates conservation management strategies and actions consistent with currently accepted principles of conservation biology.

We believe that the plans discussed in the paragraphs below fulfill these criteria and have, therefore, excluded lands covered by these plans that provide for the conservation of the coastal California gnatcatcher from the final designation of critical habitat.

Regional HCPs

San Diego MSCP (San Diego County)

In southwestern San Diego County, the San Diego Multiple Species Conservation Program (MSCP) effort encompasses more than 582,000 ac (236,000 ha) and anticipates the participation of 12 jurisdictions. Under the broad umbrella of the MSCP, each of the 12 participating jurisdictions

prepares a subarea plan that implements the goals of the MSCP within that particular jurisdiction. Five of the 12 jurisdictions cover lands that support coastal California gnatcatcher: City of Poway; City of San Diego; County of San Diego; City of La Mesa; and City of Chula Vista.

We conduct a consultation on each subarea plan and associated permit under section 7 of the Act to ensure they are not likely to result in jeopardy or adversely modify or destroy the designated critical habitat of any covered species. We also review the subarea plans under section 10 of the Act to ensure they meet the criteria for issuance of an incidental take permit and are consistent with the terms and goals of the MSCP. We completed these analyses and issued incidental take permits to the following jurisdictions based on their completed subarea plans: City of Poway (July 19, 1996); City of San Diego (July 18, 1997); County of San Diego (March 17, 1998); City of La Mesa (January 31, 2000); and City of Chula Vista (January 12, 2005) (see below for a discussion of each subarea plan). The regional MSCP is also a regional subarea plan under the State of California's NCCP program and was developed in cooperation with CDFG.

Over the 50-year term of the permit, the MSCP provides for the establishment of approximately 171,000 ac (69,573 ha) of preserve lands within the Multi-Habitat Planning Area (MHPA) (City of San Diego) and Pre-Approved Mitigation Areas (PAMA) (County of San Diego) to benefit the 85 federally listed and sensitive species, including coastal California gnatcatcher, covered under the plan. Of this, approximately, 57,874 ac (23,421 ha) (68 percent) of the core scrub habitat supporting coastal California gnatcatcher populations will be conserved within the MSCP planning area (Service 1997, p. 67).

Private lands within the MHPA and PAMA lands are subject to special restrictions on development and, as they are committed to the preserve, must be legally protected and permanently managed to conserve the covered species. Public lands owned by the City of Poway, City of San Diego, County of San Diego, City of La Mesa, and City of Chula Vista that are identified for conservation under the MSCP must also be protected and permanently managed to protect the covered species. The Service and CDFG also commit to manage, maintain, and monitor all lands they contribute to the MSCP (whether owned or administered by them as of the effective date of the MSCP or later acquired) consistent with the MSCP (Service 1998a, p. 40). State and Federal lands considered part of the MSCP reserve system include State Ecological Reserves and San Diego National Wildlife Refuge lands. We have excluded three ecological reserves (McGinty Mountain, Otay Mountain and Rancho Jamul) in Unit 1 that are or will be managed consistent with the MSCP from this final designation (see ''Other Conservation Partnerships—Exclusions Under Section 4(b)(2) of the Act'' section below for a detailed discussion).

Habitat for the coastal California gnatcatcher also occurs on lands owned and managed by the BLM. While not a signatory to the MSCP, the BLM signed a Memorandum of Understanding (MOU) with the County and City of San Diego, the Service, the CDFG and the San Diego Association of Governments in 1994 establishing a partnership among these entities to cooperate in planning and managing publicly owned lands within the San Diego region for the purpose of conserving the area's rich and unique biological diversity and maintaining its economic viability (BLM 1994, p. 2). Under the MOU, approximately 180,000 ac (72,843 ha) in the San Diego region managed by the BLM will be managed consistent with the MSCP.

The MSCP requires the participating jurisdictions to develop broad framework and site-specific management plans, subject to the review and approval of the Service and CDFG, to guide the management of all preserve lands under the jurisdictions' control. The plans incorporate requirements to monitor and adaptively manage coastal California gnatcatcher habitats over time. Under the MSCP, the CDFG and Service have also committed to provide similar management for their preserve lands and have agreed to conserve approximately 36,510 ac (14,775 ha) in the MSCP preserve for biological resource protection (Service 1997, p. 9).

As discussed above, each take authorization holder prepares a framework management plan as a condition of its implementing agreement. The framework management plan provides general direction for all preserve management issues within the subarea plan's boundaries. Area-specific management directives are developed for managing lands that are conserved as part of the reserves. The framework and area-specific management plans are comprehensive and address a broad range of management needs at the preserve and species levels. These plans include the following general provisions: (1) Fire management; (2) public access control; (3) fencing and gates; (4) ranger patrol; (5) trail maintenance; (6) visitor/interpretive and volunteer services; (7) hydrological management; (8) signage and lighting; (9) trash and litter removal; (10) access road maintenance; (11) enforcement of property and/or homeowner requirements; (12) removal of invasive species; (13) nonnative predator control; (14) species monitoring; (15) habitat restoration; (16) management for diverse vegetation age classes; (17) restricted use of herbicides and rodenticides; (18) biological surveys; (19) research; and (20) species management conditions (Final MSCP Plan 1998). These management measures benefit coastal California gnatcatcher and its PCEs and reduce the threats to this species and its habitat. The MSCP also provides for a biological monitoring program for coastal California gnatcatcher. A discussion of each subarea plan is provided in the paragraphs that follow.

City of Poway MSCP Subarea Plan

The City of Poway's MSCP Subarea Plan, covering 25,000 ac (10,117 ha) under the City's jurisdiction, was approved by the Service through an incidental take permit issued on July 19, 1996. This subarea plan covers 43 federally listed and non-listed species. The City of Poway MSCP Subarea Plan serves two general functions: (1) To create a sustainable, interconnected network of habitat preserves throughout (and ultimately beyond) the city and thus maintain functioning ecosystems and viable populations of biological resources; and (2) to mitigate adverse impacts to biological resources from city development activities (Ogden Environmental and Energy Services 1996, p. 1–3).

A total of 10,800 ac (4,371 ha) of natural habitats will be conserved as open-space in a mitigation area under the City of Poway MSCP Subarea Plan that is intended to remain a viable component of the regional preserve system (Service 1996a, p. 4). To further compensate for unavoidable biological impacts to covered species, including the coastal California gnatcatcher, the City has committed to: (1) Preserve 95 to 100 percent of habitats on each cornerstone land (protected public land) as biological open space; (2) minimize development in costal sage scrub habitat in the mitigation area, ensuring at least 90 percent preservation outside of cornerstone lands; (3) preserve 98 percent of existing riparian and oak woodland habitat; (4) preserve key linkages and corridors within and beyond the mitigation area; and(5) provide mitigation for impacts to sensitive habitats through either onsite dedications or offsite mitigation or fees

for acquisition of crucial preserve lands (Service 1996a, p. 5).

When the City of Poway MSCP Subarea Plan was approved in 1996, approximately 7,300 ac (2,954 ha) of coastal sage scrub existed within the planning area (Service 1996a, p. 16). The subarea plan will conserve approximately 5,567 ac (2,253 ha), or 76 percent, of coastal sage scrub habitat for the coastal California gnatcatcher in an ecologically viable preserve (Service 1996a, p. 21). This area includes approximately 170 of the estimated 220 pairs of this species within the Poway planning area (Service 1996a, p.21). The location of these coastal sage scrub areas is crucial in the north-south and east-west biological linkage of the region (Service 1996a, p. 17). Thus habitat conserved through the City of Poway MSCP Subarea Plan will protect coastal sage scrub habitat which will link sage scrub and non-sage scrub habitats (PCEs 1 and 2) required by the coastal California gnatcatcher within the larger regional area.

City of San Diego MSCP Subarea Plan

The City of San Diego's MSCP Subarea Plan, covering approximately 206,000 ac (83,365 ha) under the City's jurisdiction, was approved by the Service through an incidental take permit issued on July 18, 1997. The subarea plan proposes 90 percent conservation of 56,831 ac (22,999 ha) within the Multiple Habitat Planning Area (MHPA) for a total of 51,148 ac (20,699 ha).

The management objectives for the City of San Diego's MHPA lands are to: (1) Ensure the long-term viability and sustainability of native ecosystem function and natural processes throughout the MHPA; (2) protect the existing and restored biological resources from intense or disturbing activities within and adjacent to the MHPA while accommodating compatible public recreational uses; (3) enhance and restore, where feasible, the full range of native plant associations in strategic locations and functional wildlife connections to adjoining habitat in order to provide viable wildlife and sensitive species habitat; (4) facilitate monitoring of selected target species, habitats, and linkages in order to ensure long-term persistence of viable populations of priority plant and animal species and to ensure functional habitats and linkages; and (5) provide for flexible management of the preserve that can adapt to changing circumstances to achieve the above objectives (City of San Diego 1997, pp. 49–50).

Specific to the coastal California gnatcatcher, the City of San Diego's MSCP Subarea Plan will conserve approximately 19,862 ac (8,038 ha) of scrub habitat including 18,951 ac (7,669 ha) (70 percent) the 27,073 ac (10,956 ha) of coastal sage scrub, 95 ac (38 ha) (63 percent) coastal sage scrub/chaparral, 681 ac (276 ha) (60 percent) of the maritime succulent scrub, and 135 ac (55 ha) (88 percent) of southern coastal bluff scrub (Service 1997, pp. 66–67) (PCEs 1 and 2). Also, the City of San Diego MSCP Subarea Plan includes 77 percent of its biological cores and linkage habitat (PCEs 1 and 2) within the MHPA which is anticipated to conserve the majority of the 5 major populations identified in the coastal California gnatcatcher population viability analysis for MSCP (Lake Hodges, Otay/San Ysidro, and San Miguel/Lower Sweetwater) occurring within the MSCP plan area (Service 1997, p. 68).

County of San Diego MSCP Subarea Plan

The County of San Diego's MSCP Subarea Plan, covering approximately 252,000 ac (101,980 ha) under the County's jurisdiction, was approved by the Service through an incidental take permit issued on March 17, 1998. The objectives of this subarea plan are to: (1) Acknowledge the no-net-loss-of-wetlands standard to satisfy State and Federal wetland goals, policies, and standards; (2) include measures to maximize the habitat structural diversity of conserved habitat areas, including conservation of unique habitats and habitat features; (3) provide for the conservation of spatially representative examples of habitat types ranked as having high and very high biological value by the MSCP; (4) create significant blocks of habitat to reduce edge effects and maximize the ratio of surface area to the perimeter of conserved habitats; (5) provide incentives for development in the least sensitive habitat areas; (6) provide for the conservation of key regional populations of the covered species, and representation of sensitive habitats and their geographic sub-associations in biologically functioning units; and (7) conserve large interconnected blocks of habitat that contribute to the preservation of wide-ranging species (County of San Diego 1996, p. 1–11).

This subarea plan is expected to result in preservation of approximately 45,737 ac (18,509 ha) of coastal California gnatcatcher habitat including 44, 254 ac (17,909 ha) of coastal sage scrub, 158 ac (64 ha) maritime succulent scrub, and 1,325 ac (536 ha) of coastal sage scrub/chaparral (PCEs 1 and 2) within the preserve planning area, which is roughly 62 percent of the existing coastal California gnatcatcher habitat in the County (Service 1998b, p. 25). Also, the preserve will provide connectivity of occupied habitat through non-sage scrub habitats (PCE 2) (Service 1998b, p. 56). Three of the five major gnatcatcher populations identified in the coastal California gnatcatcher population viability analysis for MSCP (Lake Hodges, Otay/San Ysidro, and San Miguel/Lower Sweetwater) occur wholly or partially within the subarea plan area. We anticipate that the majority of these populations will be conserved because the subarea plan will preserve 65 percent of coastal California gnatcatcher occurrences in the planning area (Service 1998b, p. 25). Furthermore, habitat fragmentation and edge effects will be minimized through implementation of design criteria on each development and area-specific management directives to: (1) Reduce edge effects; (2) minimize disturbance during the nesting season; (3) develop fire protection measures to reduce the potential for habitat degradations due to unplanned fire; and (4) implement management measures to maintain or improve habitat quality including vegetation structure (Service 1998b, p. 26).

City of La Mesa MSCP Subarea Plan

The City of La Mesa's MSCP Subarea Plan, covering approximately 6,200 ac (2,509 ha) under the City's jurisdiction, was approved by the Service through an incidental take permit issued on January 31, 2000. At the time of plan approval, approximately 172 ac (70 ha) of undeveloped land existed within the subarea plan area (Service 1999, p. 7). To carry out the MSCP and the subarea plan, the City of La Mesa commits to: (1) Preserve in perpetuity approximately 55 ac (22 ha) consisting of natural open space; (2) offset impacts to southern maritime chaparral, native grassland, and oak woodlands through in-kind mitigation at a 2:1 ratio; and (3) offset impacts to coastal sage scrub and other significant sensitive vegetation communities and associated species within the subarea plan area by mitigation through the acquisition of offsite, in-kind, habitat at a 1:1 ratio for all other upland habitats (Service 1999, p. 7).

The 55 ac (22 ha) of natural open space consists of approximately 38 ac (15 ha) of coastal sage scrub, 15 ac (6 ha) of disturbed open land, and 2 ac (0.8 ha) of chaparral (PCEs 1 and 2) and was preserved as permanent open space and habitat area through the granting of an

open space easement to the City of La Mesa (Service 1999, p. 20). The subarea plan preserves lands with features essential to the conservation of the gnatcatcher. The preserved lands link surrounding large, interconnected blocks of occupied coastal California gnatcatcher sage scrub and non-sage scrub habitat (PCEs 1 and 2) preserved under other approved MSCP subarea plans.

City of Chula Vista MSCP Subarea Plan

The City of Chula Vista's MSCP Subarea Plan, covering approximately 58,000 ac (23,472 ha) under the City's jurisdiction, was approved by the Service through an incidental take permit issued on January 12, 2005. This subarea plan's goals are to: (1) Conserve Covered Species, including the coastal California gnatcatcher, and their habitats through the conservation of interconnected significant habitat cores and linkages; (2) delineate and assemble a preserve using a variety of techniques including public acquisition, onsite and offsite mitigation, and land use regulations; (3) provide a preserve management program that, together with Federal and State management activities, will be carried out over the long-term, further ensuring the conservation of covered species; (4) provide necessary funding for a preserve management program and biological monitoring of the preserve; and (5) reduce or eliminate redundant Federal, State, and local natural resource regulatory and environmental review of individual projects by obtaining Federal and State take authorizations for 86 species (City of Chula Vista 2003, p. 1–2).

This subarea plan provides for the conservation of 65 percent of coastal sage scrub habitat and 65 percent of maritime succulent scrub habitat (PCE 1) within the subarea (Service 2003, p. 99). The coastal California gnatcatcher will benefit from the system of large, interconnected blocks of sage scrub and non-sage scrub habitat (PCEs 1 and 2) that the City of Chula Vista, in conjunction with other approved MSCP subarea plans and other resource management plans, will establish and preserve in perpetuity (Service 2003, p. 101). Land and the features thereon within the habitat preserve will be managed and maintained in accordance with specific management objectives as follows: (1) To ensure the long-term viability and sustainability of native ecosystem function and natural processes throughout the preserve; (2) to protect existing and restored biological resources from intense or disturbing activities within the preserve while accommodating compatible uses; (3) to enhance and restore, where feasible, appropriate native plant associations and wildlife connections to adjoining habitat to provide viable wildlife and sensitive species habitat; and (4) to facilitate monitoring of selected target species, habitats, and linkages to ensure long-term persistence of viable populations of priority and animal species and to ensure functional habitats and linkages for those species (Service 2003, p.18). The preserve will be adaptively managed, according to the measures included in the subarea plan and the MSCP, which will further reduce indirect effects and benefit the coastal California gnatcatcher and the features essential to its conservation (Service 2003, p. 101).

In the 1993 final rule listing this species as threatened (58 FR 15742), we identified habitat loss and fragmentation occurring in conjunction with urban and agricultural development as the primary threat to the species. As described above, the MSCP and associated approved subarea plans for the cities of Poway, San Diego, La Mesa, Chula Vista and the County of San Diego provide protection for essential coastal sage scrub habitat (PCE 1) and features through the permanent protection, enhancement, and management of large, interconnected habitat preserves, including sage scrub and non-sage scrub habitats (PCEs 1 and 2) that support core populations of coastal California gnatcatchers. The approved MSCP and subarea plans remove or reduce threats to this species through protection and management of the features essential to the species' conservation within the plan areas.

Benefits of Exclusion Outweigh the Benefits of Inclusion

As discussed in the Benefits of Designating Critical Habitat section above, we believe that the regulatory benefit of critical habitat is low when compared to conservation efforts or management plans, such as in place for the MSCP. The MSCP and associated approved subarea plans for the Cities of Poway, San Diego, La Mesa, and Chula Vista and the County of San Diego address conservation issues from a coordinated, integrated perspective rather than a piecemeal project-by-project approach and will achieve more coastal California gnatcatcher conservation than we would achieve through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. This regional HCP and its associated approved subarea plans provide for the proactive monitoring and management of conserved lands (as previously described), which will remove or reduce known threats to the coastal California gnatcatcher or its habitat. Conservation and management of coastal California gnatcatcher habitat is essential to survival and recovery of this species. Such conservation needs are typically not addressed through the application of the statutory prohibition on adverse modification or destruction of critical habitat. The MSCP and its associated approved subarea plans provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision. Furthermore any educational benefits that may be derived from a critical habitat designation are redundant to other educational effects that were met through significant public, State, and local government input during the development and ongoing implementation of this regional HCP and its associated approved subarea plans.

As discussed in the Conservation Partnerships on Non-Federal Lands and Benefits of Excluding Lands with HCPs sections, many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. This perception results in anti-conservation incentives, because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003). The designation of critical habitat on private lands may significantly reduce the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). We believe that the judicious use of excluding specific areas of non-federal lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

We have developed close partnerships with the cities of Poway, San Diego, La Mesa, and Chula Vista, the County of San Diego, and CDFG through the development of the MSCP and associated subarea plans. We believe the MSCP and associated subarea plans incorporate appropriate protections and management for sage scrub habitat areas, and their constituent PCEs, essential for the conservation of this species. Those protections are consistent with the mandates under section 7 of the Act to avoid adverse modification or destruction of critical habitat, and go beyond that prohibition

by including active management and protection of essential habitat areas. By excluding these lands from designation, we are eliminating an essentially redundant layer of regulatory review for projects covered by the regional HCP and associated subarea plans and helping to preserve our ongoing partnerships with the permittees and other plan participants (e.g., CDFG) and to encourage new partnerships with other landowners and jurisdictions. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning and would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. Those partnerships, and the landscape level, multiple-species conservation planning efforts they promote, are critical for the conservation of the coastal California gnatcatcher.

We have reviewed and evaluated the exclusion of non-Federal essential habitat within approved MSCP subarea plans from the designation of final critical habitat for the coastal California gnatcatcher and have determined that the benefits of excluding these lands in Unit 1 outweigh the benefits of including these lands. As discussed above, the MSCP subarea plans will provide for significant preservation and management of essential habitat for the coastal California gnatcatcher and will help reach the recovery goals for this species.

Exclusion Will Not Result in Extinction of the Species

We do not believe that the exclusion of non-Federal essential habitat within the plan areas of the approved MSCP subarea plans from the final designation of critical habitat for the coastal California gnatcatcher will result in the extinction of the species because the MSCP subarea plans for the cities of Poway, San Diego, La Mesa, and Chula Visa and the County of San Diego provide protection and management in perpetuity of essential habitat, including its PCEs, for the coastal California gnatcatcher within Unit 1. In addition, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct.

San Diego MHCP (San Diego County)

The northwestern San Diego Multiple Habitat Conservation Program (MHCP) encompasses approximately 112,000 ac (45,325 ha) and proposes to establish 19,928 ac (8,064 ha) of preserve lands covering Federal or State listed, unlisted, and sensitive species, including the coastal California gnatcatcher. The MHCP is a plan to minimize and mitigate for the potential loss of covered species, including the coastal California gnatcatcher, and their habitat due to the direct, indirect and cumulative impacts of future development of both public and private lands within the MHCP area. The overall goal of the MHCP is to maintain biodiversity and ecosystem health in the region while maintaining quality of life and economic growth opportunities (AMEC *et al.* 2003, p. 1–1). The biological goals of the MHCP are to maintain the range of natural biological communities and species native to the region, and contribute to regional viability of endangered, threatened, and key sensitive species and their habitats, thereby preventing local extirpation or species extinction (AMEC *et al.* 2003, p. 1–1).

There are approximately 9,152 acres (3,704 ha) of sage scrub habitat within the MHCP area of which approximately 61 percent is proposed for conservation under the MHCP (AMEC *et al.* 2003, p. 3–16). Specific to the coastal California gnatcatcher, the MHCP projects the following minimum conservation estimates: (1) Conserve at least 5,580 ac (2,258 ha) (61 percent) of the extant coastal scrub (including coastal sage scrub, maritime succulent scrub, coastal bluff scrub, and mixed coastal sage scrub/chaparral vegetation communities) within the MHCP plan area; (2) conserve at least 2,780 ac (1,125 ha) (55 percent) of the remaining high-value breeding habitat and 963 ac (xx ha) (60 percent) of the remaining moderate-value breeding habitat in the MHCP plan area, as determined using the MHCP habitat suitability model; (3) conserve at least 5,185 ac (2,098 ha) (68 percent) of the coastal scrub that lies within the biological core and linkage area (BCLA), and conserve at least 2,551 ac (1,032 ha) (64 percent) of the high-value breeding habitat and 891 ac (360 ha) (78 percent) of the moderate-value breeding habitat that lies within the BCLA; (4) conserve at least 62 percent of known localities (333 of 539 points), including 69 percent of the locations within the BCLA (295 of 431 points); (5) restore and enhance at least 338 ac (137 ha) of coastal sage scrub in critical locations to increase breeding habitat and improve functionality of a ''stepping-stone'' linkage through the MHCP plan area; and (6) conserve 400 to 500 ac (162 to 202 ha) of core breeding habitat capable of supporting at least 16 to 23 pairs of breeding birds during good years in the unincorporated area southeast of the MHCP plan area, but contiguous with and contributing to the stepping-stone corridor across the plan area (AMEC *et al.* 2003, p. 4–333 and 4–334).

Under the MHCP, the Federal and State governments will contribute to the preserve 1,944 ac (787 ha) of natural habitat lands that they currently administer in the MHCP area (AMEC *et al.* 2003, p. 4–2). Federal and State lands that will be managed consistent with the MHCP include lands administered by the BLM and the CDFG (e.g., ecological reserves) (AMEC *et al.* 2003, p. 4–8). We have excluded from this final designation five CDFG ecological reserves (Pilgrim Creek, Carlsbad Highland, Agua Hedionda Lagoon, Batiquitos Lagoon, and San Elijo Lagoon) in Unit 3 that will be managed consistent with the MHCP (see ''*Other Conservation Partnerships—Exclusions Under Section 4(b)(2) of the Act*'' section below for a detailed discussion).

Seven incorporated cities, including Carlsbad, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach, and Vista are participants in this regional NCCP/HCP. Under the broad umbrella of the MHCP, each participating jurisdiction prepares a subarea plan that complements the goals of the MHCP. We consult on each subarea plan under section 7 of the Act to ensure they are consistent with the aims of the MHCP. The City of Carlsbad Habitat Management Plan (HMP), a subarea plan of the MHCP, covering approximately 24,500 ac (9,915 ha), was approved by the Service through an incidental take permit issued on November 12, 2004. The coastal California gnatcatcher is one of the species covered under the City of Carlsbad HMP.

The City of Carlsbad HMP area includes approximately 3,315 ac (1,342 ha) of coastal sage scrub and 3,790 ac (1,534 ha) of other habitat that may be used by coastal California gnatcatchers for biological needs such as breeding, foraging, dispersal, or drought refugia (Service 2004a, p. 199). Conservation under the City of Carlsbad HMP is focused primarily on the maintenance and enhancement of functional regional linkages that would ensure long-term connectivity between large coastal California gnatcatcher populations that exist to the north and south of the city (City of Carlsbad 1999, Appendix C–42). Under the HMP, the City of Carlsbad will protect, in perpetuity, approximately 3,315 ac (1,342 ha) of coastal sage scrub (PCE 1) and

approximately 3,790 ac (1,534 ha) non-sage scrub (PCE 2) habitat (Service 2004a, p. 209). These lands will be actively managed and monitored to minimize detrimental effects from the adjacent development. Also, approximately 189 ac (76 ha) will be acquired with the coastal California gnatcatcher core area 30 ac (12 ha) of which have already been acquired, and approximately 104 ac (42 ha) of habitat will be restored and enhanced to improve linkages (PCEs 1 and 2) (Service 2004a, p. 209).

In the 1993 final rule listing this species as threatened (58 FR 15742), we identified habitat loss and fragmentation occurring in conjunction with urban and agricultural development as the primary threat to the species. As described above, the City of Carlsbad HMP provides protection for essential coastal sage scrub habitat (PCE 1) within the plan area through the permanent protection, enhancement, and management of functional regional linkages (PCEs 1 and 2) that will ensure long-term connectivity between large core coastal California gnatcatcher populations that exist to the north and south of the city habitat. The City of Carlsbad HMP removes or reduces threats to this species through protection and management of the features essential to the species' conservation within the plan area.

Benefits of Exclusion Outweigh the Benefits of Inclusion

As discussed in the Benefits of Designating Critical Habitat section, we believe that the regulatory benefit of critical habitat is low when compared to conservation efforts or management plans, such as those in place for the City of Carlsbad HMP. The MHCP and associated City of Carlsbad HMP address conservation issues from a coordinated, integrated perspective rather than a piece-meal project-by-project approach and will achieve more coastal California gnatcatcher conservation than we would achieve through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. The MHCP and associated City of Carlsbad HMP provide for the proactive monitoring and management of conserved lands (as previously described), which will remove or reduce known threats to the coastal California gnatcatcher or its habitat. Conservation and management of coastal California gnatcatcher habitat is essential to survival and recovery of this species. Such conservation needs are typically not addressed through the application of the statutory prohibition on adverse modification or destruction of critical habitat. The MHCP and associated City of Carlsbad HMP provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision. Furthermore any educational benefits that may be derived from a critical habitat designation are redundant to other educational effects that were met through significant public, State, and local government input during the development and ongoing implementation of this regional HCP and its associated approved subarea plan.

As discussed in the Conservation Partnerships on Non-Federal Lands and Benefits of Excluding Lands with HCPs sections, many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. This perception results in anti-conservation incentives, because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003). The designation of critical habitat on private lands may significantly reduce the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). We believe that the judicious use of excluding specific areas of non-Federal lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

We have developed close partnerships with the County of San Diego, the City of Carlsbad, CDFG and BLM, through the development of the MHCP as implemented in the City of Carlsbad through the HMP. These plans incorporate appropriate protections and management for sage scrub habitat areas, and their constituent PCEs, essential for the conservation of this species. Those protections are consistent with section 7's statutory mandate to avoid adverse modification or destruction of critical habitat, and go beyond that prohibition by including active management and protection of essential habitat areas. By excluding these lands from designation, we are eliminating an essentially redundant layer of regulatory review for projects covered by the approved Carlsbad HMP and helping to preserve our ongoing partnerships with the permittee and other regional plan participants (e.g., CDFG) to encourage new partnerships with other landowners and jurisdictions. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning and would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. Those partnerships, and the landscape level, multiple-species conservation planning efforts they promote, are critical for the conservation of the coastal California gnatcatcher.

Exclusion Will Not Result in Extinction of the Species

We do not believe that the exclusion of non-Federal essential habitat within the approved MHCP and City of Carlsbad HMP plan areas from the final designation of critical habitat for the coastal California gnatcatcher will result in the extinction of the species because the MHCP and the City of Carlsbad HMP provide protection and management in perpetuity of essential habitat, including its PCEs, for the coastal California gnatcatcher in Unit 3. In addition, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct.

Western Riverside County MSHCP (Riverside County)

We are excluding all non-Federal lands (approximately 132,587 ac (53,656 ha)); within proposed Unit 10 [or proposed as critical habitat] that are covered by the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) under Section 4(b)(2) of the Act. The MSHCP is a large-scale, multi-jurisdictional HCP encompassing 1.26-million ac (510,000 ha) in western Riverside County. The MSHCP addresses 146 listed and unlisted ''covered species,'' including the coastal California gnatcatcher. Participants in the Western Riverside County MSHCP include 14 cities in western Riverside County; the County of Riverside, including the Riverside County Flood Control and Water Conservation Agency (County Flood Control), Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department; California Department of Parks and Recreation; and the California Department of Transportation (Caltrans). The Western Riverside County MSHCP was designed to establish a multi-species conservation program that minimizes and mitigates the expected

loss of habitat and the incidental take of covered species. On June 22, 2004, the Service issued an incidental take permit (TE–088609–0) under section 10(a)(1)(B) of the Act to 22 permittees under the MSHCP for a period of 75 years.

The Western Riverside County MSHCP will establish approximately 153,000 ac (61,916 ha) of new conservation lands (Additional Reserve Lands) to complement the approximate 347,000 ac (140,426 ha) of existing natural and open space areas designated by the MSHCP as Public/Quasi-Public (PQP) lands. These PQP lands include those under Federal ownership, primarily managed by the USFS and BLM, and also permittee-owned open-space areas (e.g., State Parks, County Flood Control, and County Park lands). Federally owned PQP lands have been designated as critical habitat herein. Collectively, the Additional Reserve Lands and PQP lands form the overall MSHCP Conservation Area. The precise configuration of the 153,000 ac (61,916 ha) of Additional Reserve Lands is not mapped or precisely identified in the MSHCP, but rather is based on textual descriptions of a Conceptual Reserve Design within the bounds of a 310,000 ac (125,453 ha) ''Criteria Area'' that is interpreted as implementation of the MSHCP proceeds.

As analyzed in our biological opinion for the MSHCP (Service 2004b pp.192–205), the primary constituent elements for this species are provided in undeveloped areas that support, through natural successional processes (e.g., post-fire recovery), various types of habitats (e.g., sage scrub, chaparral, grassland, riparian) used by gnatcatchers for biological needs such as breeding, foraging, or dispersal. Primary constituent elements associated with the biological needs of dispersal are also found in undeveloped areas that provide connectivity or linkage between larger core areas. The long-term conservation of the coastal California gnatcatcher requires the conservation and adaptive management of interlinked habitat blocks or core populations. Conservation of core populations will require securing large patches of suitable habitat to minimize edge effects to allow for effective management of coastal sage scrub with the appropriate structure for the gnatcatcher.

As analyzed in our biological opinion for the MSHCP (Service 2004b pp.192–205), at least 13 of the identified 16 core gnatcatcher areas and interconnecting linkages are to be included in the MSHCP Conservation Area, including large blocks of habitat in the southeastern portion of the plan area, such as Wilson Valley, Vail Lake, Hogbacks, and Lake Skinner. Significant portions of these acres include sage scrub with sizeable gnatcatcher populations. The northern core areas conserved by the MSHCP include Lake Mathews and Estelle Mountain totaling 23,710 acres within the MSHCP Conservation Area. These geographical regions include the habitats with the highest densities of gnatcatchers in the plan area.

The MSHCP includes ongoing management and monitoring for the coastal California gnatcatcher. Reserve Managers will evaluate the condition of the sage scrub within the 13 core area and maintain a program to enhance and/or create coastal sage scrub within the core areas to keep the percent cover of coastal sage scrub vegetation within 10 percent of the baseline value within 77,070 acres (30,828 ha) of suitable habitat in Riverside Lowland and San Jacinto Foothill Bioregions. Occupancy of at least 80 percent of the occupied gnatcatcher habitat within each core area, as determined using existing information and baseline surveys, will be maintained.

The potential impacts associated with loss of this species' habitat when viewed in conjunction with the protection and management of the MSHCP Conservation Area is not anticipated to result in an appreciable reduction in the numbers, reproduction, or distribution of this species throughout its range, and will provide for its long term recovery and conservation. As described above regarding critical habitat, the effects of implementing the Western Riverside MSHCP (i.e., impacts to proposed and designated critical habitat together with the offsetting land conservation and management prescriptions) do not appreciably diminish the value of the primary constituent elements essential to the species' conservation, nor do the effects preclude the ecological role of that designated critical habitat in both the survival and recovery of the species, both at the local Plan level or at the level of the listed entity.

In summary, although the total amount of habitat that will be protected under the Plan is less than what was originally designated as critical habitat in 2000 and reproposed in 2003, it is our conclusion that the Western Riverside County MSHCP will conserve and manage gnatcatcher habitat and associated PCEs in sufficient quantity and distribution to provide for the long term conservation and recovery of this species. We reached this conclusion because:

1. An adequate amount of suitable and essential habitat will be conserved in the Plan area as follows.

a. 21,776 ac (8,812 ha) of Federal and some private lands in the Plan area are now designated as critical habitat.

b. 24,599 ac (9,955 ha) are conserved within pre-existing non-federal PQP lands, or have already been acquired for conservation and management under the MSHCP.

c. 46,307 ac (18,740 ha) are anticipated to be conserved within the Criteria Area as Additional Reserve Lands.

d. 25,989 ac (10,517 ha) of lands are within the Criteria Area and therefore may still be conserved under the MSHCP. Within the Criteria Area, the MSHCP allows for adjustments to be made in the final configuration of the Additional Reserve Lands. Thus, some areas of critical habitat within the Criteria Area but currently outside the Conceptual Reserve Design may still be included as Additional Reserve Lands at a later date under the Plan. It is unknown at this time how much of this area will eventually be conserved.

e. 35,692 ac (14,444 ha) of privately-owned land will not be conserved under the MSHCP, however, these areas are all peripheral to ''core'' coastal California gnatcatcher areas identified by the MSHCP. Of these 35,692 acres approximately 12,247 ac (4,956 ha) are designated as Rural Mountainous under the MSHCP. Rural Mountainous development zones have a minimum lot size restriction of 10 ac (4 ha), and we anticipate that much of this area will not be developed and will still provide a dispersal function for gnatcatchers.

2. Although the total amount of conserved areas is less than that originally designated as critical habitat in 2000, and reproposed in 2003, a minimum of approximately 93,000 ac (37,200 ha) will be conserved in the Plan area for gnatcatcher, with the possibility of additional conservation in Rural Mountainous zones and Criteria Areas. Therefore, we believe these conservation areas are sufficient in size and distribution to provide for the long term conservation and recovery of the gnatcatcher in the Plan area.

3. The reserve lands will be adaptively managed for the gnatcatcher under the Plan.

4. The Plan provides protection for essential sage scrub habitats (PCE 1) within the plan area through the permanent protection, enhancement, and management of functional regional linkages for species dispersal (PCEs 1 and 2) that will ensure long-term connectivity between large core coastal

California gnatcatcher populations in and adjacent to the plan area.

5. At a regional level, the 1993 final rule listing this species as threatened (58 FR 15742) identified habitat loss and fragmentation occurring in conjunction with urban and agricultural development as the primary threat to the species. Concurrent completion and implementation of other HCPs/NCCPs, section 7 consultations, and other gnatcatcher management actions throughout the listed range have significantly reduced these threats (see Service Response to Comment 23). Therefore, as explained in (1) and (2), above, the Western Riverside MSHCP conservation areas will provide for a well-distributed gnatcatcher population in the Plan area, which in turn will contribute to a well-distributed gnatcatcher population throughout the listed range.

6. Although there will still be some loss of suitable habitat in the Western Riverside County MSHCP, including areas previously designated or proposed as critical in this Plan area in 2000, we believe the areas managed for conservation under this HCP and other HCPs/NCCPs and other management actions provide for a comprehensive recovery strategy for the gnatcatcher (see Service Response to Comment 23).

Benefits of Exclusion Outweigh the Benefits of Inclusion

As discussed in the Benefits of Designating Critical Habitat section and in the Service Response to Comment 23, we believe that the regulatory benefit of designating critical habitat on private lands covered by the Western Riverside County MSHCP and other HCPs/NCCPs would be low and may hinder the effective implementation of the Plan. Section 7 consultation typically addresses impacts to critical habitat through piecemeal, project-by-project review. In contrast, the Western Riverside County MSCHP currently provides for protection of essential gnatcatcher habitat within the plan area from a coordinated, integrated perspective designed to achieve conservation on a regional scale. Given that the Federal lands within the Plan boundary were not excluded from critical habitat, the regulatory benefits of additional section 7 review for Federal actions occurring on the non-Federal lands addressed by the MSHCP would be minimal and rare because such actions would be subject to Plan restrictions and provisions. The MSHCP also provides for the proactive monitoring and management of conserved lands (as previously described), which will remove or reduce known threats to the coastal California gnatcatcher and its habitat in these conserved areas. Therefore, there is little added regulatory benefit to designating coastal California gnatcatcher habitat on non-federal lands within the MSHCP boundary. Finally, any educational benefits that may be derived from a critical habitat designation are redundant to other educational effects that were met through significant public, State, and local government input during the development and ongoing implementation of this regional HCP.

As discussed in the Conservation Partnerships on Non-Federal Lands and Benefits of Excluding Lands with HCPs sections, many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. This perception results in anti-conservation incentives, because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003). The designation of critical habitat on private lands may significantly reduce the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). We believe that the judicious use of excluding specific areas of non-Federal lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

We have developed close partnerships with the 22 MSHCP permittees through the development of this regional HCP that incorporates appropriate protections and management of this species' PCEs in a quantity and spatial distribution essential for the conservation of this species. Those protections are consistent with the mandates under section 7 of the Act to avoid adverse modification or destruction of critical habitat and go beyond that prohibition by including active management and protection of essential habitat areas. By excluding these lands from designation, we are eliminating a largely redundant layer of regulatory review for limited set of projects on non-Federal lands that are addressed by the MSHCP and we are helping to preserve our ongoing partnerships with the permittees and to encourage new partnerships with other landowners and jurisdictions. Those partnerships, and the landscape level, multiple-species conservation planning efforts they promote, are critical for the conservation of the coastal California gnatcatcher. Designating critical habitat on non-Federal lands within the Western Riverside County MSHCP could have a detrimental effect to our partnerships with the 22 MSHCP permittees and could be a significant disincentive to the establishment of future partnerships and HCPs with other partners.

We have reviewed and evaluated the exclusion of 132,587 ac (53,656 ha) of non-Federal lands that meet the definition of critical habitat within the Western Riverside County MSHCP plan area from the designation of final critical habitat for the coastal California gnatcatcher and have determined that the benefits of excluding these lands in Unit 10 outweigh the benefits of including them. As discussed above, the MSHCP will provide for significant preservation and management of habitat for and features essential to the coastal California gnatcatcher and will help reach the recovery goals for this species.

Exclusion Will Not Result in Extinction of the Species

In keeping with our analysis and conclusion detailed in our biological opinion for the MSHCP (Service 2004b pp. 192–205), we do not believe that the exclusion of non-Federal lands that meet the definition of critical habitat within the Western Riverside County MSHCP plan area from the revised final designation of critical habitat for the coastal California gnatcatcher will result in the extinction of the species because the MSHCP provides protection and management in perpetuity of, lands that meet the definition of critical habitat, including PCEs, for the coastal California gnatcatcher within Unit 10. In addition, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct.

Orange County Central-Coastal NCCP/HCP

The Orange County Central-Coastal NCCP/HCP (Central-Coastal NCCP/HCP) was developed in cooperation with numerous State and local jurisdictions, agencies, and participating landowners including the cities of Anaheim, Costa Mesa, Irvine, Orange, and San Juan Capistrano; Southern California Edison; the Transportation Corridor Agencies; The Irvine Company; CDPR; Metropolitan Water District of Southern California; and the County of Orange. The Central-Coastal NCCP/HCP is also a regional subarea plan under the State of California's NCCP program and was developed in cooperation with the CDFG.

Approved through an incidental take permit issued on July 10, 1996, the Central-Coastal NCCP/HCP planning area encompasses 209,000 ac (84,579 ha) and provides for the establishment of approximately 38,738 ac (15,677 ha) of reserve lands for 39 Federal or State listed, unlisted, and sensitive species including the coastal California gnatcatcher. The Central-Coastal NCCP/HCP incorporates the basic conservation planning tenets of the NCCP Conservation Guidelines in establishing its reserve system. This is accomplished by protecting large blocks of core habitat and habitat linkages, supplementing the basic reserve design with other important habitat connections within and outside of the subregion, and adopting an adaptive management program to maintain the net long-term habitat value of the reserve system (Service 1996b, p. 48).

There are approximately 34,392 ac (13,918 ha) of coastal sage scrub habitat in the Central-Coastal NCCP/HCP planning area (Service 1996b, p. 23). The reserve system, consisting of two subarea reserves (central and coastal), protects a total of approximately 18,015 ac (7,290 ha) of coastal sage scrub habitat (PCE 1) and 370 coastal California gnatcatcher sites (Service 1996b, pp. 43, 46). Acknowledging the importance of maintaining linkages between habitat patches for species dispersal (PCEs 1 and 2) within each subarea of the reserve system, the Central-Coastal NCCP/HCP protects the functionally contiguous habitat in the reserve system and Special Linkage Areas that contain all but one of the substantial concentrations of coastal California gnatcatcher found in the coastal subarea. While not directly connected via reserve lands, the coastal subarea reserve provides for an inter-subregion linkage to the central subarea reserve through the Salt Creek corridor (Service 1996b, p. 46).

The adaptive management program of the Central-Coastal NCCP/HCP is intended to address adverse edge effects to the coastal California gnatcatcher and coastal sage scrub habitat through its biological monitoring and habitat enhancement activities, which include pest/invasive species control efforts (Service 1996b, p. 48). Active management activities initiated under the adaptive management program, such as brown-headed cowbird trapping, prescribed burns, grazing, or other habitat manipulations, are monitored to directly assess the efficacy of management activities in meeting the goal of the Central-Coastal NCCP/HCP (Service 1996b, p. 48). Enhancement and restoration measures, designed to improve the biological productivity and diversity within the reserve system, include: (1) The control of invasive and exotic plant and animal species such as artichoke thistle, black mustard, brown-headed cowbirds, bull frogs, or red foxes; (2) reseeding with native plant species; (3) fire management; (4) controlling public access; and (5) managing agricultural practices (Service 1996b, p. 48).

In the 1993 final listing rule (58 FR 15742), we identified habitat loss and fragmentation occurring in conjunction with urban and agricultural development as the primary threat to the coastal California gnatcatcher. As described above, the Central-Coastal NCCP/HCP provides protection for essential coastal sage scrub features (PCE 1) and habitat through the permanent protection, enhancement, and management of large, interconnected habitat preserves (PCEs 1 and 2) that support core populations of coastal California gnatcatchers. The approved Central-Coastal NCCP/HCP removes or reduces threats to this species and essential features through protection and management of the features essential to the species' conservation within the plan area.

Benefits of Exclusion Outweigh the Benefits of Inclusion

As discussed in the Benefits of Designating Critical Habitat section, we believe that the regulatory benefit of critical habitat is low when compared to conservation efforts or management plans, such as those in place for the Central-Coastal NCCP/HCP. The Central-Coastal NCCP/HCP addresses conservation issues from a coordinated, integrated perspective rather than a piece-meal project-by-project approach and will achieve more coastal California gnatcatcher conservation than we would achieve through multiple site-by-site, project-by-project, consultations under section 7 of the Act involving consideration of critical habitat. The Central-Coastal NCCP/HCP provides for the proactive monitoring and management of conserved lands (as previously described), which will remove or reduce known threats to the coastal California gnatcatcher or its habitat. Conservation and management of coastal California gnatcatcher habitat is essential to survival and recovery of this species. Such conservation needs are typically not addressed through the application of the statutory prohibition on adverse modification or destruction of critical habitat. The Central-Coastal NCCP/HCP provides as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision. Furthermore any educational benefits that may be derived from a critical habitat designation are redundant to other educational effects that were met through significant public, State, and local government input during the development and ongoing implementation of this regional HCP plan.

As discussed in the Conservation Partnerships on Non-Federal Lands and Benefits of Excluding Lands with HCPs sections, many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. This perception results in anti-conservation incentives, because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003). The designation of critical habitat on private lands may significantly reduce the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). We believe that the judicious use of excluding specific areas of non-Federal lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

We have developed close partnerships with State and local jurisdictions, agencies, and participating landowners including the cities of Anaheim, Costa Mesa, Irvine, Orange, and San Juan Capistrano; Southern California Edison; the Transportation Corridor Agencies; The Irvine Company; CDPR; Metropolitan Water District of Southern California; and the County of Orange through the development of this regional HCP. We believe this plan incorporates appropriate protections and management for sage scrub habitat areas, and their constituent PCEs, essential for the conservation of this species. Those protections are consistent with the mandates under section 7 of the Act to avoid adverse modification or destruction of critical habitat, and go beyond that prohibition by including active management and protection of essential habitat areas. By excluding these lands from designation, we are eliminating an essentially redundant layer of regulatory review for projects covered by the regional HCP and helping to preserve our ongoing partnerships with the permittees and other plan participants and to encourage new partnerships with other landowners and jurisdictions. Addition of a new regulatory requirement would

remove a significant incentive for undertaking the time and expense of management planning and would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. Those partnerships, and the landscape-level, multiple-species conservation planning efforts they promote, are critical for the conservation of the coastal California gnatcatcher.

We have reviewed and evaluated the exclusion of non-Federal essential habitat within the Central-Coastal NCCP/HCP plan area from the designation of final critical habitat for the coastal California gnatcatcher and have determined that the benefits of excluding these lands in Unit 7 outweigh the benefits of including these lands. As discussed above, the Central-Coastal NCCP/HCP will provide for significant preservation and management of habitat for the coastal California gnatcatcher and will help reach the recovery goals for this species.

Exclusion Will Not Result in Extinction of the Species

We do not believe that the exclusion of non-Federal essential habitat within the Central-Coastal NCCP/HCP plan area from the revised final designation of critical habitat for the coastal California gnatcatcher will result in the extinction of the species because the Central-Coastal NCCP/HCP provides protection and management in perpetuity of essential habitat, including its PCEs, for the coastal California gnatcatcher within Unit 7. In addition, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct.

Orange County Southern Subregion HCP

The Orange County Southern Subregion HCP (Southern Subregion HCP) is a large-scale regional HCP developed by the County of Orange, Rancho Mission Viejo, and the Santa Margarita Water District to address impacts to 32 species, including the coastal California gnatcatcher, resulting from residential and associated infrastructure development in southern Orange County. The Service issued an incidental take permit for covered species, including the coastal California gnatcatcher, on January 10, 2007. The final HCP has not been approved by the State of California as an NCCP; therefore, take of coastal California gnatcatcher under the HCP is not exempted under the 4(d) Special Rule for the Coastal California Gnatcatcher. (See ''Relationship to the 4(d) Special Rule for the Coastal California Gnatcatcher'' section below).

The Southern Subregion HCP action area encompasses approximately 86,076 ac (34,834 ha) (Service 2007a, p. 24) and provides for the conservation of covered species, including the coastal California gnatcatcher, with the establishment of an approximately 30,426 ac (12,313 ha) habitat reserve and 4,456 ac (1,803 ha) of supplemental open space areas (Service 2007a, p. 19). The HCP provides for a large, biologically diverse and permanent subregional habitat reserve that will protect: (1) Large blocks of natural vegetation communities that provide habitat for the covered species; (2) ''important'' and ''major'' populations of the covered species in key locations; (3) wildlife corridors and habitat linkages that connect the large habitat blocks and covered species populations to each other; the Cleveland National Forest, and the adjacent Orange County Central-Coastal NCCP/HCP; and (4) the underlying hydrogeomorphic processes that support the major vegetation communities providing habitat for the covered species (Service 2007a, p. 10).

The action area for the Southern Subregion HCP contains 20,716 ac (8,390 ha) of suitable coastal California gnatcatcher nesting and foraging habitat (coastal sage scrub) and 722 coastal California gnatcatcher locations (Service 2007a, p. 75). To offset the impacts of covered activities on the coastal California gnatcatcher, a total of 406 or 56 percent of the coastal California gnatcatcher locations and 12,376 ac (5,008 ha) or 60 percent of the coastal sage scrub required by the species for nesting and foraging (PCE 1) within the action area will be included in the habitat reserve and supplemental open space (Service 2007a, p. 84). An additional 2,061 ac (843 ha) of nesting and foraging habitat, including 21 coastal California gnatcatcher locations, will remain conserved at the National Audubon Society's (NAS) Starr Ranch bringing the total of conserved coastal sage scrub habitat to 14,437 ac (5,842 ha) or 70 percent within the action area (Service 2007a, p. 93).

A detailed monitoring plan will be developed in coordination with the wildlife agencies to monitor both changes in the coastal sage scrub community and coastal California gnatcatcher population size, with the goal of maintaining the approximate coastal sage scrub (PCE 1) acreage in the habitat reserve (Service 2007a, p. 88). Furthermore, habitat connectivity for dispersal within the action area will be maintained through conservation and adaptive management of several linkage areas that contain suitable dispersal habitat (PCEs 1 and 2) (Service 2007a, p. 86). The Southern Subregion HCP also contains a grazing management plan which manages grazing activities and restoration of upland habitat with native grasses and coastal sage scrub to help ensure that the habitat remains suitable for the coastal California gnatcatcher and other species (Service 2007a, p. 88).

At a general landscape habitat level, adaptive management goals and objectives for coastal sage scrub habitat include monitoring coastal California gnatcatcher population levels, maintaining the physiographic diversity of coastal sage scrub and associated focal species in the habitat reserve, restoring coastal sage scrub and enhancing the quality of existing sage scrub in the habitat reserve, managing fire regimes to maintain a natural diversity of age-stands throughout the habitat reserve, and controlling of exotic plant and animal invasions of coastal sage scrub along the habitat reserve-urban development interface (Draft NCCP 2006, p. 13–69).

The 1993 final listing (58 FR 15742) identified habitat loss and fragmentation occurring in conjunction with urban and agricultural development as the primary threat to the coastal California gnatcatcher. As described above, the Southern Subregion HCP provides protection for the features essential to the coastal California gnatcatcher (i.e., coastal sage scrub habitat (PCE 1) through the permanent protection, enhancement, and management of large, interconnected habitat preserves that support core populations of coastal California gnatcatcher and wildlife corridors and habitat linkages (PCEs 1 and 2) that connect the large habitat blocks and coastal California gnatcatcher populations to each other, the Cleveland National Forest, and the adjacent Central-Coastal NCCP/HCPs. The approved Southern Subregion HCP removes or reduces threats to this species through protection and management of the features essential to the species' conservation within the plan area.

Benefits of Exclusion Outweigh the Benefits of Inclusion

As discussed in the Benefits of Designating Critical Habitat section, we believe that the regulatory benefit of critical habitat is low when compared to voluntary conservation efforts or management plans, such as those in place for the Southern Subregion HCP. The Southern Subregion HCP addresses

conservation issues from a coordinated, integrated perspective rather than a piece-meal project-by-project approach and will achieve more coastal California gnatcatcher conservation than we would achieve through multiple site-by-site, project-by-project, consultations under section 7 of the Act involving consideration of critical habitat. This regional HCP provides for the proactive monitoring and management of conserved lands (as previously described), which will remove or reduce known threats to the coastal California gnatcatcher or its habitat. Conservation and management of coastal California gnatcatcher habitat and PCEs is essential to survival and recovery of this species. Such conservation needs are typically not addressed through the application of the statutory prohibition on adverse modification or destruction of critical habitat. The Southern Subregion HCP provides as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision. Furthermore any educational benefits that may be derived from a critical habitat designation are redundant to other educational effects that were met through significant public, State, and local government input during the development and ongoing implementation of this HCP.

As discussed in the Conservation Partnerships on Non-Federal Lands and Benefits of Excluding Lands with HCPs or Other Approved Management Plans sections, many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. This perception results in anti-conservation incentives, because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003). The designation of critical habitat on private lands may significantly reduce the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). We believe that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

We have developed close partnerships with Orange County, Rancho Mission Viejo, and the Santa Margarita Water District through the development of the Southern Subregion HCP, a plan that incorporates appropriate protections and management for sage scrub habitat areas, and their constituent PCEs, essential for the conservation of this species. Those protections are consistent with the mandates under section 7 of the Act to avoid adverse modification or destruction of critical habitat, and go beyond that prohibition by including active management and protection of essential habitat areas. By excluding these lands from designation, we are eliminating an essentially redundant layer of regulatory review for projects covered by the HCP and helping to preserve our ongoing partnerships with the permittees and other plan participants and to encourage new partnerships with other landowners and jurisdictions. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning and would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. Those partnerships, and the landscape level, multiple-species conservation planning efforts they promote, are critical for the conservation of the coastal California gnatcatcher and its PCEs.

We have reviewed and evaluated the exclusion of non-Federal essential habitat within the Southern Subregion HCP area from the designation of final critical habitat for the coastal California gnatcatcher. Included within the area being excluded are lands described as ''additional conservation lands'' in the biological opinion on the Implementing Agreement for this HCP that have already been purchased and placed in conservation, such as the Starr Ranch property. We have determined that the benefits of excluding these lands in Unit 6 outweigh the benefits of including these lands. As discussed above, the Southern Subregion HCP will provide for significant preservation and management of habitat for the coastal California gnatcatcher and will help reach the recovery goals for this species.

Exclusion Will Not Result in Extinction of the Species

We do not believe that the exclusion of non-Federal essential habitat within the Southern Subregion HCP plan area from the final designation of critical habitat for the coastal California gnatcatcher will result in the extinction of the species because the Southern Subregion HCP provides protection and management in perpetuity of essential habitat, including its PCEs, for the coastal California gnatcatcher within Unit 6. In addition, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct.

SDG&E Subregional NCCP/HCP

The San Diego Gas and Electric (SDG&E) Subregional NCCP/HCP encompasses lands in San Diego County west of the desert, the portion of Orange County within the existing SDG&E's service territory, and the SDG&E's Moreno Compressor Station in Riverside County. The NCCP/HCP covers biological impacts to 18 federally listed species, including the coastal California gnatcatcher, from use, maintenance, and repair of existing gas and electric facilities and, with limited exception, includes the typical expansions to those systems (as described in the HCP and Implementing Agreement) (Service 1995a, p. 4). According to the Service's biological opinion, under the NCCP/HCP, SDG&E is authorized to impact through habitat modification a maximum of 400 ac (162 ha) of natural land over a 55-year permit period (Service 1995a, p. 5). SDG&E will follow operational protocols to avoid and minimize impacts to covered species while conducting covered activities in occupied habitat (Service 1995a, p. 32). To compensate for unavoidable impacts to covered species, SDG&E agreed to: (1) Dedicate certain fee-owned rights-of-way as corridors (for species dispersal; PCEs 1 and 2) for wildlife (totaling approximately 5,300 ac (2,145 ha)); (2) establish a conservation bank of approximately 240 ac (97 ha) to offset permanent impacts to upland habitats, including coastal sage scrub (PCE 1) and areas of unsuccessful revegetation; (3) develop restoration protocols for temporary impacts; and (4) enhance through vegetation restoration and/or habitat reclamation disturbed areas which do not need to be continuously cleared. The 240 ac (97 ha) conservation bank, dominated by coastal sage scrub habitat, has been transferred to the Service's San Diego National Wildlife Refuge and is currently being managed for listed and sensitive species, including the coastal California gnatcatcher, by the Service.

The 1993 final listing (58 FR 15742) identified habitat loss and fragmentation occurring in conjunction with urban and agricultural development as the primary threat to the coastal California gnatcatcher. As described above, the SDG&E Subregional NCCP/HCP provides protection for the features essential to the coastal California gnatcatcher through the protection coastal sage scrub habitat (PCE 1), provides for the maintenance of

corridors that will serve as dispersal linkages (PCEs 1 and 2) for the species, and provides for enhancement of the habitat by removing or reducing threats to this species.

Benefits of Exclusion Outweigh the Benefits of Inclusion

As discussed in the Benefits of Designating Critical Habitat section, we believe that the regulatory benefit of critical habitat is low when compared to voluntary conservation efforts or management plans, such as those in place for the Southern Subregion HCP. The SDG&E Subregional NCCP/HCP addresses conservation issues from a coordinated, integrated perspective rather than a piece-meal project-by-project approach and will achieve more coastal California gnatcatcher conservation than we would achieve through multiple site-by-site, project-by-project, consultations under section 7 of the Act involving consideration of critical habitat. This regional HCP provides for the proactive monitoring and management of conserved lands (as previously described), which will remove or reduce known threats to the coastal California gnatcatcher or its habitat. Conservation and management of coastal California gnatcatcher habitat and PCEs is essential to survival and recovery of this species. Such conservation needs are typically not addressed through the application of the statutory prohibition on adverse modification or destruction of critical habitat. The SDG&E Subregional NCCP/HCP provides as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision. Furthermore any educational benefits that may be derived from a critical habitat designation are redundant to other educational effects that were met through significant public, State, and local government input during the development and ongoing implementation of this HCP.

As discussed in the Conservation Partnerships on Non-Federal Lands and Benefits of Excluding Lands with HCPs sections, many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. This perception results in anti-conservation incentives, because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003). The designation of critical habitat on private lands may significantly reduce the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). We believe that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

We have developed a close partnership with SDG&E through the development of the Subregional NCCP/HCP, a plan that incorporates appropriate protections and management for sage scrub habitat areas, and their constituent PCEs, essential for the conservation of this species. Those protections are consistent with mandates under section 7 of the Act to avoid adverse modification or destruction of critical habitat, and go beyond that prohibition by including active management and protection of essential habitat areas. By excluding these lands from designation, we are eliminating an essentially redundant layer of regulatory review for projects covered by the HCP and helping to preserve our ongoing partnerships with the permittee and to encourage new partnerships with other landowners and jurisdictions. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning and would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. Those partnerships, and the landscape-level, multiple-species conservation planning efforts they promote, are critical for the conservation of the coastal California gnatcatcher.

We have reviewed and evaluated the exclusion of non-Federal essential habitat owned by SDG&E and covered under the Subregional NCCP/HCP area from the designation of final critical habitat for the coastal California gnatcatcher and have determined that the benefits of excluding these lands in Unit 1 outweigh the benefits of including these lands. As discussed above, the SDG&E Subregional NCCP/HCP will provide for significant preservation and management of habitat for the coastal California gnatcatcher and will help reach the recovery goals for this species.

Exclusion Will Not Result in Extinction of the Species

We do not believe that the exclusion of non-Federal essential habitat owned by SDG&E and covered under the Subregional NCCP/HCP from the final designation of critical habitat for the coastal California gnatcatcher will result in the extinction of the species because the SDG&E Subregional NCCP/HCP provides protection and management in perpetuity of essential habitat, including its PCEs, for the coastal California gnatcatcher within Unit 1. In addition, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct.

Individual HCPs

As described in the 2003 revised proposed critical habitat rule (68 FR 20228), we considered but did not propose as critical habitat essential coastal California gnatcatcher habitat lands covered by eight completed and approved individual HCPs (Meadowlark Estates, City of Carlsbad/Fieldstone/La Costa, Coyote Hills East, Shell Oil/Metropolitan Water District, Ocean Trails (now referred to as the Trump National Golf Club HCP), Lake Mathews, North Peak, and Rancho Bella Vista) pursuant to sections 3(5)(A) and 4(b)(2). We are reaffirming our exclusion of these lands under section 4(b)(2) of the Act. In addition, we are excluding lands covered by the approved HCP for the Tentative Parcel Map 93–129 in Orange County (referred to as the O'Hill Project HCP) from this final revised designation under section 4(b)(2) of the Act. The benefits to the coastal California gnatcatcher and its habitat provided by these individual HCPs are discussed in the paragraphs that follow.

(1) Meadowlark Estates HCP (San Diego County—Unit 3)

The Meadowlark Estates HCP was prepared pursuant to an incidental take permit (TE–839428) for the coastal California gnatcatcher issued on February 13, 1998, to the Sun Cal Company for residential development on approximately 198 ac (80 ha) in the City of San Marcos, San Diego County. The Meadowlark Estates HCP provides for the conservation of the coastal California gnatcatcher, with the establishment of an approximately 85 ac (34 ha) onsite habitat reserve and acquisition of approximately 16 ac (6 ha) offsite within a regional open space corridor which connects natural lands near Palomar Airport Road to those near Lake Hodges (Service 1998d, p. 2). The 85-ac (34 ha) onsite reserve consists of sage scrub and non-sage scrub habitats (PCEs 1 and 2) including approximately 2 ac (0.8 ha) of Diegan coastal sage scrub 24 ac (10 ha) of southern mixed chaparral, 1 ac (0.4 ha) of southern

willow scrub, 7 ac (3 ha) of *Baccharis* scrub, and 51 ac (21 ha) of agricultural lands 12 ac (5 ha) of which will be restored to Diegan coastal sage scrub (Service 1998d, p. 6). These onsite lands have been placed under a conservation easement dedicated to the City of San Marcos and are managed by the homeowners association (Service 1998d, p. 2). Reserve management activities benefiting the coastal California gnatcatcher and its habitat include: (1) Minimization and avoidance measures; (2) habitat restoration and enhancement; and (3) establishment of a wildlife corridor (PCEs 1 and 2) between Meadowlark Estates and the Rancho Carrillo property (Service 1998d, p. 4).

(2) City of Carlsbad/Fieldstone/La Costa HCP (San Diego County—Unit 3)

The City of Carlsbad/Fieldstone/La Costa HCP was prepared pursuant to an incidental take permit (TE–818041) for covered species, including the coastal California gnatcatcher, issued on June 7, 1995, to the City of Carlsbad, Fieldstone, and La Costa Associates for residential development on approximately 1,955 ac (791 ha) in the southeast quadrant of the City of Carlsbad in San Diego County. The HCP offset impacts to the coastal California gnatcatcher and its habitat through the permanent conservation of approximately 942 ac (381 ha) of sage scrub and non sage scrub habitats (PCEs 1 and 2), including coastal sage scrub, southern maritime chaparral, and riparian scrub and woodland (Service 1995b, p. 10). This total includes the approximately 240 ac (97 ha) of coastal sage scrub that will be mitigated offsite, in a habitat corridor that provides for species dispersal (PCEs 1 and 2) between Carlsbad and the San Dieguito River Valley (Service 1995b, p. 2). Long-term management of these conserved areas benefitting coastal California gnatcatcher and its habitat includes: (1) Species monitoring; (2) habitat restoration and enhancement; (3) cowbird trapping; (4) control of nonnative invasive plant species; (5) implementation of a fire management program; (6) access control measures; and (7) public education (Service 1995b, p. 3).

(3) Coyote Hills East HCP (Orange County—Unit 9)

The Coyote Hills East HCP was prepared pursuant to an incidental take permit (TE–768184) for covered species, including the coastal California gnatcatcher, issued on October 22, 1993, to Unocal Land and Development Company for residential development on approximately 391 ac (158 ha) in the City of Fullerton, Orange County. As described in the HCP and the subsequent amendment, the following measures that provide special management considerations and protections for the PCEs required by the coastal California gnatcatcher have been and/or are being implemented: (1) Conservation of 120 ac (49 ha) of existing and restored coastal sage scrub habitat on the project site and the restoration and conservation of an additional 5 ac (2 ha) of offsite coastal sage scrub habitat (PCE 1); (2) coastal sage scrub habitat quality surveys; (2) trash removal; (3) access control; and (4) weed abatement (Sweetwater Environmental and Michael Brandman Associates 1993, pp. 1, 20, 52; Natural Resource Consultants 2003, p. 3, 5). Conserved habitat within the project site has been zoned as Natural Open Space by the City of Fullerton and is protected from development in perpetuity by a conservation easement over conserved habitat (Sweetwater Environmental and Michael Brandman Associates 1993, p. 20, 52).

(4) Shell Oil/Metropolitan Water District HCP (Orange County—Unit 9)

The Shell/Metropolitan Water District HCP was prepared pursuant to an incidental take permit (TE–027246–1 and TE–027848–1) for covered species, including the coastal California gnatcatcher, issued on November 7, 1996, to Shell Western E&P and the Metropolitan Water District of Southern California for residential and commercial development on approximately 1,055 ac (427 ha) immediately adjacent to the City of Yorba Linda and Chino Hills State Park in Orange County. The HCP includes the following measures that provide special management considerations and protection for the PCEs required by the coastal California gnatcatcher: (1) The sale of 979 ac (396 ha) of multi-species habitat consisting of coastal sage scrub, chaparral, oak and walnut woodland habitat (PCEs 1 and 2) to Chino Hills State Park for habitat protection and passive recreational purposes; (2) the establishment of a 228-ac (92-ha) mitigation bank that provides a critical linkage (PCEs 1 and 2) between open space/habitat systems within northern Orange County and eastern Los Angeles (Service 1996c, p. 3); (3) the restoration of 48 ac (19 ha) of coastal sage scrub onsite; and (4) funding for an ecologist to conduct brown-headed cowbird trapping, monitor vegetation restoration, assist in instituting fire suppression policies, assist in patrolling habitat areas to control unauthorized access, conduct baseline population estimates, and conduct short- and long-term habitat monitoring activities (Service 1996c, pp. 3–5, 13–14).

(5) Ocean Trails Habitat Conservation Plan (Now Referred to as the Trump National Golf Club HCP) (Los Angeles County—Unit 8)

The Ocean Trails HCP was prepared pursuant to an incidental take permit (TE–799348) for covered species, including the coastal California gnatcatcher, to address golf course and residential development on approximately 270 ac (109 ha) in the City of Rancho Palos Verdes in Los Angeles County. The incidental take permit was issued on February 4, 1997 to the Palos Verdes Land Holdings Company and Zuckerman Building Company. The permit is in the process of being transferred to the current owner of the Trump National Golf Club, V.H. Properties Corporation, and the HCP has been renamed and is now known as the Trump National Golf Club HCP. The following HCP measures that provide special management considerations and protection for the PCEs required by the coastal California gnatcatcher have been implemented: (1) Onsite preservation of approximately 92 ac (37 ha) of successfully enhanced natural open space consisting of coastal sage scrub habitat (PCE 1); and (2) acquisition of two conservation easements on two offsite parcels: Approximately 95 ac (38 ha) in the City of Rancho Palos Verdes ''Switchback'' area and approximately 20 ac (8 ha) of Los Angeles County's Shoreline Park property, both consisting of coastal sage scrub habitat (Service 1996d, p. 4). Other ongoing conservation measures that will benefit the PCEs required by this species include weed abatement, habitat restoration activities, and species monitoring and management (Service 1996d, pp. 5–6).

(6) Lake Mathews MSHCP/NCCP (Riverside County—Unit 10)

On December 5, 1995, the Metropolitan Water District of Southern California (Metropolitan) was issued an incidental take permit (TE–805839) for 65 covered species, including the coastal California gnatcatcher, pursuant to the Lake Mathews MSHCP/NCCP. The MSHCP/NCCP identified an 882 ac (357 ha) operations/project area and established a 5,110 ac (2,068 ha) Multiple Species Reserve (MSR). The MSR is comprised of the CDFG's 2,565 ac (1,038 ha) Lake Mathews Ecological Reserve and a 2,544 ac (1,030 ha) mitigation bank for exclusive use by the Metropolitan Water District and its partner agencies (Service 1995c, p. 3). In accordance with the MSHCP/NCCP, the

entire 5,110 ac (2,068 ha) MSR is managed as a single reserve for the benefit of all 65 species.

The MSHCP/NCCP addressed direct and indirect impacts resulting from ongoing operations and maintenance at the Lake Mathews water storage facility, including the loss of 344 ac (139 ha) of Riversidean sage scrub (Service 1995c. p. 35). As described in the MSHCP/NCCP, the following measures that provide special management considerations and protection for the PCEs required by the coastal California gnatcatcher have been and are being implemented: (1) Conservation and management of a total of 1,649 ac (667 ha) of habitat consisting primarily of Riversidean sage scrub and non-native grassland habitats (PCEs 1 and 2) within the MSR, including 728 ac (295 ha) in the Lake Mathews Ecological Reserve and 922 ac (373 ha) in the mitigation bank area (Service 1995c, pp. 35, 58); (2) fencing and patrolling to control access of people, vehicles, livestock, and domestic pets; (3) periodic species monitoring; (4) weed abatement through prescribed burns; and (5) working with fire response agencies to limit impacts from wildfires and fire suppression activities.

(7) North Peak MSHCP (Riverside County—Unit 10)

The North Peak MSHCP was prepared pursuant to an incidental take permit (TE–012768) for covered species, including the coastal California gnatcatcher, issued on June 7, 1999, to North Peak Partners for residential development on approximately 1,019 ac (412 ha) in the City of Lake Elsinore in western Riverside County. As described in the MSHCP, the following measures that provide special management considerations and protection for PCEs 1 and 2 required by the coastal California gnatcatcher have been or are being implemented: (1) Conservation of approximately 511 ac (207 ha) on and offsite, of which approximately 340 ac (138 ha) is Riversidean sage scrub; (2) offsite dedication of approximately 100 ac (40 ha) consisting primarily of Riversidean sage scrub and grassland habitats to the reserve system in western Riverside County with fee title being transferred to the Riverside County Habitat Conservation Agency; (3) maintenance of wildlife corridors and habitat connections onsite; (4) impact avoidance and reduction measures; (5) construction of barriers to control access to conserved lands; (6) control of nonnative invasive species; and (7) adaptive management and monitoring of conserved lands (North Peak Partners 1999, pp. 47–64).

(8) Rancho Bella Vista HCP (Riverside County—Unit 10)

The Rancho Bella Vista Habitat Conservation Plan (HCP) was prepared pursuant to an incidental take permit (TE–024042) for covered species, including the coastal California gnatcatcher, issued on May 8, 2000, to Pacific Bay Homes for residential development on approximately 798 ac (323 ha) in western Riverside County. As described in the HCP, the following measures that provide special management considerations and protection for the PCEs required by the coastal California gnatcatcher have been or are being implemented: (1) Onsite conservation of approximately 115 ac (46 ha) of Riversidean sage scrub habitat (PCE 1) configured to allow for connection to several other open space areas; (2) measures to avoid and/or minimize impacts to the species and its habitat; (3) control of nonnative invasive vegetation; (4) access control; and (5) preparation of a fire management plan (Service 2000b, p. 34).

(9) O'Hill Project HCP (Orange County—Unit 7)

The HCP for Tentative Parcel Map 93–129 (referred to as the O'Hill HCP) was prepared pursuant to an incidental take permit (TE–154024) for covered species, including the coastal California gnatcatcher, issued on June 25, 2007, to Bear Brand Ranch for site-preparation activities associated with residential development on approximately 50 ac (20 ha) in the City of Laguna Niguel in Orange County. As described in the HCP, the following measures that provide special management considerations and protection for the PCEs required by the coastal California gnatcatcher will be implemented (Service 2007b, pp. 2–5): (1) Measures to avoid and/or minimize impacts to coastal California gnatcatchers during construction; (2) development of an educational brochure to advise residents of the benefits and responsibilities associated with living near a wildland area; (3) the creation and/or restoration/enhancement of approximately 10 ac (4 ha) of coastal sage scrub habitat onsite (PCE 1); and (4) permanent conservation and management of a total of approximately 13 ac (5 ha) of coastal sage scrub habitat onsite (PCE 1). According to the Service's biological opinion on the project, following project completion, the amount and quality of coastal sage scrub habitat on the property will increase substantially over pre-project conditions (Service 2007b, p. 13). Also, following restoration, the habitat on the property should be able to support two to three pairs of nesting gnatcatchers as opposed to the one to two pairs currently on the property (Service 2007b, p. 13).

In the 1993 final rule listing this species as threatened (58 FR 15742), we identified habitat loss and fragmentation occurring in conjunction with urban and agricultural development as the primary threat to the species. As described above, these nine HCPs (Meadowlark Estates, City of Carlsbad/Fieldstone/La Costa, Coyote Hills East, Shell Oil/Metropolitan Water District, Ocean Trails (now referred to as the Trump National Golf Club HCP), Lake Mathews, North Peak, Rancho Bella Vista, and O'Hill) reduce threats to the coastal California gnatcatcher by providing for the protection and enhancement of habitat and PCEs essential to the conservation of the species. These HCPs preserve habitat that supports identified core populations of this species and therefore provide for recovery.

Benefits of Exclusion Outweigh the Benefits of Inclusion

As discussed in the Benefits of Designating Critical Habitat section, we believe that the regulatory benefit of critical habitat is low when compared to conservation efforts or management plans, such as those in place for the nine individual HCPs discussed above. These individual HCPs provide for the proactive monitoring and management of conserved lands (as previously described), which will remove or reduce known threats to the coastal California gnatcatcher and its habitat. Conservation and management of coastal California gnatcatcher habitat is essential to survival and recovery of this species. Such conservation needs are typically not addressed through the application of the statutory prohibition against adverse modification or destruction of critical habitat under section 7 of the Act. These individual HCPs provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision. Furthermore any educational benefits that may be derived from a critical habitat designation are redundant to other educational effects that were met through significant public, State, and local government input during the development and ongoing implementation of these HCPs.

As discussed in the Conservation Partnerships on Non-Federal Lands and Benefits of Excluding Lands with HCPs sections, many landowners fear a decline in their property value due to

real or perceived restrictions on land-use options where threatened or endangered species are found. This perception results in anti-conservation incentives, because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003). The designation of critical habitat on private lands may significantly reduce the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). We believe that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

We have developed a close partnership with the permittees through the development of these nine individual HCPs. We believe these HCPs incorporate appropriate protection and management for sage scrub habitat areas, and their constituent PCEs, essential for the conservation of this species. Those protections are consistent with mandates under section 7 of the Act to avoid adverse modification or destruction of critical habitat, and go beyond that prohibition by including active management and protection of essential habitat areas. By excluding these lands from designation, we are eliminating an essentially redundant layer of regulatory review for projects covered by the HCP and helping to preserve our ongoing partnerships with the permittees and to encourage new partnerships with other landowners. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning and would likely have a negative effect on our ability to establish new partnerships to develop these plans. Those partnerships, and the conservation planning efforts they promote, are critical for the conservation of the coastal California gnatcatcher.

We have reviewed and evaluated the exclusion of non-Federal essential habitat covered under these nine individual HCPs (Meadowlark Estates, City of Carlsbad/Fieldstone/La Costa, Coyote Hills East, Shell Oil/Metropolitan Water District, Ocean Trails (now referred to as the Trump National Golf Club HCP), Lake Mathews, North Peak, Rancho Bella Vista, and O'Hill) from the designation of final critical habitat for the coastal California gnatcatcher and have determined that the benefits of excluding these lands in Units 1, 3, 7, 8, 9, and 10 outweigh the benefits of including these lands. As discussed above, these individual HCPs will provide for significant preservation and management of habitat for the coastal California gnatcatcher and will help reach the recovery goals for this species.

Exclusion Will Not Result in Extinction of the Species

We do not believe that the exclusion of non-Federal essential habitat covered under these nine individual HCPs (Meadowlark Estates, City of Carlsbad/Fieldstone/La Costa, Coyote Hills East, Shell Oil/Metropolitan Water District, Ocean Trails (now referred to as the Trump National Golf Club HCP), Lake Mathews, North Peak, Rancho Bella Vista, and O'Hill,) from the revised final designation of critical habitat for the coastal California gnatcatcher will result in the extinction of the species because these HCPs provide protection and management in perpetuity of essential habitat, including its PCEs, for the coastal California gnatcatcher within Units 1, 3, 7, 8, 9, and 10. In addition, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct.

Other Conservation Partnerships—Exclusions Under Section 4(b)(2) of the Act

CDFG Lands

In the 2003 proposed rule to revise critical habitat, we proposed to designate lands owned and managed by CDFG. At the request of the CDFG, we evaluated the appropriateness of excluding their lands from this revised final designation under section 4(b)(2) of the Act. As discussed in our response to Comment 12 in the ''Public Comments'' section above, we have concluded that exclusion of CDFG-owned ecological reserves within the MSCP and MHCP plan areas is appropriate. The CDFG has committed to manage, maintain, and monitor all lands they contribute to the MSCP (whether owned or administered by them as of the effective date of the MSCP or later acquired) consistent with the MSCP (Service 1998a, p. 40). CDFG lands considered part of the MSCP reserve system include McGinty Mountain, Otay Mountain, and Rancho Jamul ecological reserves in Unit 1. Under the MHCP, the CDFG has also committed to contribute natural habitat lands that they currently administer in the MHCP area (AMEC *et al.* 2003, p.–4–2). CDFG lands that are and will be managed consistent with the MHCP include five ecological reserves (Pilgrim Creek, Carlsbad Highland, Agua Hedionda Lagoon, Batiquitos Lagoon, and San Elijo Lagoon) in Unit 3.

The State of California establishes ecological reserves to protect threatened or endangered native plants, wildlife, or aquatic organisms or specialized habitat types, both terrestrial and nonmarine aquatic, or large heterogeneous natural gene pools (Fish and Game Code section 1580). They are to ''be preserved in a natural condition, or which are to be provided some level of protection as determined by the commission, for the benefit of the general public to observe native flora and fauna and for scientific study or research'' (Fish and Game Code section 1584). Wildlife areas are for the purposes of propagating, feeding and protecting birds, mammals, and fish (Fish and Game Code section 1525); however, they too provide habitat for and are also managed for the benefit of listed and sensitive species (CDFG in litt. 2003).

Take of species, except as authorized under the State Fish and Game Code, is prohibited on both State ecological reserves and wildlife areas (section 1530 and section 1583). While public uses are permitted on most wildlife areas and ecological reserves, such uses are only allowed at times and in areas where listed and sensitive species are not adversely affected (CDFG 2003). The management objectives for these State lands include: to specifically manage for targeted listed and sensitive species to provide protection that is equivalent to that provided by designation of critical habitat; to provide a net benefit to the species through protection and management of the land; to ensure adequate information, resources, and funds are available to properly manage the habitat; and to establish conservation objectives, adaptive management, monitoring and reporting processes to assure an effective management program, monitoring and reporting processes to assure an effective management program'' (CDFG 2003).

In the 1993 final rule listing this species as threatened (58 FR 15742), we identified habitat loss and fragmentation occurring in conjunction with urban and agricultural development as the primary threat to the species. As described above, the conservation measures and protections for habitat owned and managed by the CDFG provide protection and enhancement of the habitat by removing or reducing threats to this species and the PCEs. Under the MSCP and MHCP plan, the CDFG has committed to reduce threats

to the coastal California gnatcatcher by providing for the protection and management of habitat and PCEs essential to the conservation of the species. The preservation and management of CDFG lands protects habitat that supports identified core populations of this species and therefore provides for recovery.

Benefits of Exclusion Outweigh the Benefits of Inclusion

As discussed in the Benefits of Designating Critical Habitat section above, we believe that the regulatory benefit of critical habitat is low considering the conservation already in place or assured on CDFG reserve lands under state law and pursuant to the agency's commitments under the MSCP and MHCP. CDFG has committed to the proactive monitoring and management of the agency's reserve lands (as previously described) under these regional plans, which will remove or reduce known threats to the coastal California gnatcatcher or its habitat. CDFG's participation in the implementation of the MSCP and MHCP addresses conservation of essential gnatcatcher habitat from a coordinated, integrated, regional perspective rather than the piece meal project-by-project approach typically achieved under Section 7. In addition, given the conservation mission of CDFG, we do not anticipate that future activities on their reserve lands would likely result in potential adverse modification to essential gnatcatcher habitat that would be addressed through Section 7 consultation. We, therefore, believe that the regulatory benefits of critical habitat designation would be low on CDFG reserve lands. Furthermore any educational benefits that may be derived from a critical habitat designation are redundant to other educational effects that were met through significant public, State, and local government input during the development and ongoing implementation of the HCPs or that are otherwise provided for under CDFG's own governing statutes.

As discussed in our response to Comment 12 in the ''Public Comments'' section above, CDFG commented that designating critical habitat on State lands within the CDFG's jurisdiction would provide no added conservation benefit and would be detrimental to State conservation efforts, as critical resources would be diverted from substantive resource protection to procedural regulatory efforts. We agree that the designation of critical habitat on CDFG-owned ecological reserves that are and will be managed for the conservation of the coastal California gnatcatcher consistent with the approved MSCP and MHCP plans would provide little additional conservation benefit and believe that the judicious use of excluding specific areas of non-federal lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

We have developed a close partnership CDFG through the development of the MSCP and MHCP and through other conservation efforts for rare and listed species. As previously discussed above, we believe the MSCP and MHCP incorporate appropriate protections and management for sage scrub habitat areas, and their constituent PCEs, essential for the conservation of this species. Those protections are consistent with the mandates under section 7 of the Act to avoid adverse modification or destruction of critical habitat, and go beyond that prohibition by including active management and protection of essential habitat areas. By excluding CDFG lands from designation, we are eliminating an essentially redundant layer of regulatory review for projects covered by these regional HCPs and helping to preserve our ongoing partnership with the CDFG.

We have reviewed and evaluated the exclusion of a total of approximately 958 ac (388 ha) of CDFG-owned ecological reserves (McGinty Mountain, Rancho Jamul, and Otay Mountain) within the approved MSCP plan area and a total of approximately 1,188 ac (481 ha) of CDFG-owned ecological reserves (Pilgrim Creek, Carlsbad Highland, Agua Hedionda Lagoon, Batiquitos Lagoon, and San Elijo Lagoon) in Unit 3 within the approved MHCP plan area from the designation of final critical habitat for the coastal California gnatcatcher and have determined that the benefits of excluding these lands in Units 1 and 3 outweigh the benefits of including these lands. As discussed above, the CDFG has committed to implement species-specific management under the MSCP and MHCP which will provide for significant preservation and management of essential habitat for the coastal California gnatcatcher and will help reach the recovery goals for this species.

Exclusion Will Not Result in Extinction of the Species

We do not believe that the exclusion of approximately 2,146 ac (868 ha) of CDFG lands within the MSCP and MHCP plan areas from the final designation of critical habitat for the coastal California gnatcatcher will result in the extinction of the species because these essential habitat areas and their PCEs are protected as ecological reserves and wildlife areas and will be managed by CDFG for the benefit of the coastal California gnatcatcher within Units 1 and 3. In addition, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct.

The Irvine Ranch (Formerly Known as the Irvine Ranch Land Reserve)

In the 2003 proposed rule to revise critical habitat (68 FR 20228; April 24, 2003), we proposed to designate approximately 1,549 ac (627 ha) of essential habitat for the coastal California gnatcatcher on The Irvine Ranch (formerly known as the Irvine Ranch Land Reserve (Irvine Ranch 2007a)), owned by the Irvine Company. These 1,549 ac (627 ha) are within an area previously identified as the North Ranch Policy Planning Area. This area was excluded from take authorization provided for the Central Coastal NCCP/HCP due to a lack of detailed biological information and specific conservation commitments at the time of adoption of the NCCP/HCP in 1996. We subsequently determined that lands containing features essential to the conservation of the coastal California gnatcatcher occur within this area and as a result, included these lands in the 2003 proposed rule to revise critical habitat.

In 1992, the Irvine Company initiated a partnership with the Nature Conservancy to develop and implement a stewardship plan for 35,000 ac (14,164 ha) of what is presently called The Irvine Ranch to address compatible public access, habitat management and restoration. An additional 11,500 ac (4,654 ha) was donated by the Irvine Company in 2001 (TNC 2007, p. 1). In 2005, all 50,000 ac (20,234 ha) of The Irvine Ranch's permanently protected open space were placed under the responsibility of the Irvine Ranch Conservancy (formerly referred to as the Irvine Ranch Land Reserve Trust), a non-profit organization created to protect the wildlands and parks of The Irvine Ranch with a financial commitment of $50 million to help protect, restore and enhance the resources of these lands (Irvine Ranch 2007b).

The mission of the Irvine Ranch Conservancy is to help protect, restore and enhance the natural resources of The Irvine Ranch in perpetuity and to encourage the creation of new and diverse opportunities for public

enjoyment and education (IRC 2007a). The reserve consists of various natural communities including coastal sage scrub, chaparral, and coast live oak woodlands and is occupied by a variety of native animals including the coastal California gnatcatcher (TNC 2007, p. 1). Effective land stewardship includes (1) strategies for habitat protection, restoration and public access in a way that ensures the long-term well-being of the native habitat and wildlife; (2) hands-on field work to maintain trails, restore habitat, and remove invasive weeds; (3) ongoing biological monitoring to assess the health of native plants and wildlife; and (4) a group of committed volunteers to serve as naturalist-guides for public hikes, mountain-bike rides, and horse rides, and to assist with other activities (IRC 2007b). The Irvine Ranch Conservancy is currently working on a conservation strategy for the Irvine Ranch wildlands that will formalize their conservation vision, strategy, and approach for all the wildlands they directly manage (Olson 2007).

In the 1993 final rule listing this species as threatened (58 FR 15742), we identified habitat loss and fragmentation occurring in conjunction with urban and agricultural development as the primary threat to the species. As described above, the conservation measures and protections for habitat owned and managed by The Irvine Company provide enhancement of the habitat by removing or reducing threats to this species and the PCEs. The Irvine Ranch reduces threats to the coastal California gnatcatcher by providing for the protection and management of habitat and PCEs essential to the conservation of the species. The Irvine Ranch protects habitat that supports identified core populations of this species and therefore provides for recovery.

Benefits of Exclusion Outweigh the Benefits of Inclusion

As discussed in the Benefits of Designating Critical Habitat section above, we believe that the regulatory benefit of critical habitat is low when compared to voluntary conservation efforts or management plans, such as the one in place for habitat owned by The Irvine Company and managed by the Irvine Ranch Conservancy. This conservation effort addresses conservation issues from a coordinated, integrated perspective and provides for the proactive monitoring and management of conserved lands, which will remove or reduce known threats to the coastal California gnatcatcher and its habitat. Conservation and management of coastal California gnatcatcher habitat is essential to survival and recovery of this species. Such conservation needs are typically not addressed through the application of the statutory prohibition on adverse modification or destruction of critical habitat under section 7 of the Act. The Irvine Ranch will provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision. Additionally, the potential for educational benefits arising from designating this area as critical habitat has already been met through the Irvine Ranch Conservancy's commitment to ongoing environmental education programs to promote public understanding and appreciation of the natural resources on The Irvine Ranch.

As discussed in the Conservation Partnerships on Non-Federal Lands and Benefits of Excluding Lands with HCPs sections, many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. This perception results in anti-conservation incentives, because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003). The designation of critical habitat on private lands may significantly reduce the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). We believe that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

We have developed a close partnership with the Irvine Ranch Conservancy through the development and implementation of the stewardship plan for the Irvine Ranch. We believe the conservation measures that are and will be conducted on the Irvine Ranch incorporate appropriate protections and management for sage scrub habitat areas, and their constituent PCEs, essential for the conservation of this species. Those protections are consistent with mandates under section 7 of the Act to avoid adverse modification or destruction of critical habitat, and go beyond that prohibition by including active management and protection of essential habitat areas. By excluding these lands from designation, we are helping to preserve our ongoing partnership with the Irvine Conservancy and encouraging new partnerships with other landowners. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning and would likely have a negative effect on our ability to establish new partnerships to develop conservation measures and strategies, particularly plans that address landscape-level conservation of species and habitats. Those partnerships, and the landscape-level, multiple-species conservation planning efforts they promote, are critical for the conservation of the coastal California gnatcatcher.

In 2003, when we proposed designating lands within the area formerly referred to as the North Ranch Policy Planning Area as critical habitat, we had incomplete information about the extent to which the area would be managed for the conservation of sensitive species, including the coastal California gnatcatcher. As discussed above, we are now aware that the majority of the area included in the 2003 revised proposed critical habitat designation is within The Irvine Ranch and is permanently protected by the Irvine Ranch Conservancy. We have reviewed and evaluated the exclusion of 1,339 ac (542 ha) of essential habitat within the area formerly known as the North Ranch Policy Plan from the designation of final critical habitat for the coastal California gnatcatcher and have determined that the benefits of excluding these lands in Unit 7 outweigh the benefits of including these lands. As discussed above, the conservation efforts being conducted on habitat owned and managed by Irvine Ranch Conservancy on The Irvine Ranch will provide for significant preservation and management of habitat for the coastal California gnatcatcher and will help reach the recovery goals for this species. By excluding these lands from critical habitat designation, we are also acknowledging our role as a partner with the Irvine Ranch Conservancy in preserving the whole of The Irvine Ranch for future generations.

Exclusion Will Not Result in Extinction of the Species

We do not believe that the exclusion of 1,339 ac (542 ha) of essential habitat from the revised final designation of critical habitat for the coastal California gnatcatcher will result in the extinction of the species because these lands are permanently protected through a conservation agreement and being managed by the Irvine Ranch Conservancy for the conservation of this species and its PCEs on occupied areas in Unit 7. In addition, the jeopardy

standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct.

Exclusion of Pala Band of Mission Indians Tribal Lands Under Section 4(b)(2) of the Act—American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on Tribal lands are better managed under Tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in most cases, designation of Tribal lands as critical habitat provides very little additional benefit to threatened and endangered species. Conversely, such designation is often viewed by Tribes as unwarranted and an unwanted intrusion into Tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

As stated in the 2003 proposed critical habitat rule (68 FR 20228), we determined that habitat essential to the coastal California gnatcatcher exists on the Pala Band of Mission Indian lands. However, in accordance with Executive Order 13175, which states that the U.S. Government will establish regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications in order to strengthen the United States government-to-government relationships with Indian Tribes, and reduce the imposition of unfunded mandates upon Indian Tribes, these lands were considered but not proposed as critical habitat. In this final rule, we reaffirm our exclusion of 7,534 ac (3,049 ha) of essential habitat on Pala Band of Mission Indian lands under section 4(b)(2) of the Act.

The Pala Band of Mission Indians highly values its wildlife and natural resources and is charged to preserve and protect these resources under the Tribal Constitution. Consequently, the Tribe has long worked to manage the habitat of wildlife on its lands, including the habitat of endangered and threatened species. During the public comment period, the Pala Band of Mission Indians expressed support for and concurred with the exclusion of these Tribal lands from the 2003 revised proposed critical habitat designation (see Comment 16 in the ''Public Comments'' section above). We are committed to maintaining a positive working relationship with the Tribes and will continue our attempts to work with them on conservation measures benefiting the coastal California gnatcatcher.

Benefits of Exclusion Outweigh the Benefits of Inclusion

The general benefits of critical habitat described in the ''Benefits of Critical Habitat Designation'' section would apply to habitat designated on Tribal lands. Activities occurring on Tribal lands will generally involve a Federal nexus. However, as discussed above, the Tribe is aware of the value of Tribal lands to the conservation of the coastal California gnatcatcher and currently implements management measures that contribute to the conservation of the subspecies and protect its essential habitat. Conservation measures will continue to be implemented by the Tribe regardless of whether the areas are designated as critical habitat. In light of this continued commitment by the Tribe to manage its lands in a manner that promotes the conservation of the coastal California gnatcatcher, the designation of critical habitat would provide minimal additional benefit to the subspecies on these Tribal lands.

The designation of critical habitat would be expected to adversely impact our working relationship with the Tribe, and we believe that Federal regulation through critical habitat designation would be viewed as an unwarranted and unwanted intrusion into tribal natural resource programs. Our working relationship with the Tribe has been extremely beneficial in implementing natural resource programs of mutual interest. The benefits of excluding Pala Band of Mission Indians Tribal lands from critical habitat include: (1) The advancement of our Federal Indian Trust obligations and our deference to Tribal conservation and natural resource management plans for their lands and resources, which includes the coastal California gnatcatcher and other Federal trust species; (2) the maintenance of effective working relationships to promote the conservation of the coastal California gnatcatcher, its PCEs, and its habitat; (3) the allowance for continued meaningful collaboration and cooperation on coastal California gnatcatcher management and other resources of interest to the Federal Government; and (4) the provision of conservation benefits to scrub ecosystems and a host of species, including the coastal California gnatcatcher, its PCEs, and its habitat, that might not otherwise occur.

We believe that the Tribe should be the governmental entity to manage and promote the conservation of the coastal California gnatcatcher on its lands. We recognize and endorse the Tribe's fundamental right to provide for Tribal resource management activities, including those relating to coastal California gnatcatcher. We have determined that the identified benefits of excluding the Tribal lands from the critical habitat designation outweigh the minimal benefits of inclusion, and are re-affirming our exclusion of approximately 7,534 ac (3,049 ha) of essential habitat on Pala Band of Mission Indian lands from the final designation under section 4(b)(2) of the Act.

Exclusion Will Not Result in Extinction of the Species

We have determined that the exclusion of 7,534 ac (3,049 ha) owned by the Pala Tribe from the final designation of critical habitat for the coastal California gnatcatcher will not result in the extinction of the species. Under section 7(a)(2) of the Act, the Bureau of Indian Affairs is required to consult with us for any project on trust lands that may adversely affect the gnatcatcher, regardless of whether critical habitat is designated. Application of the jeopardy standard under section 7 provides additional assurances the species will not go extinct.

Relationship to the 4(d) Special Rule for the Coastal California Gnatcatcher

On December 10, 1993, we published a final Special Rule concerning take of the coastal California gnatcatcher pursuant to section 4(d) of the Act (58 FR 63088). Under the 4(d) Special Rule, incidental take of the species is not considered to be a violation of section 9 of the Act if: (1) Take results from activities conducted pursuant to the NCCP and in accordance with an approved NCCP plan for the protection of coastal sage scrub, prepared consistent with the State of California's Conservation and Process Guidelines (Guidelines) updated January 1998 and

(2) the Service issues written concurrence that the plan meets the standards for issuance of an incidental take permit under 50 CFR 17.32(b)(2). Within enrolled subregions actively engaged in the preparation of an NCCP plan, the take of coastal California gnatcatchers will not be a violation of section 9 of the Act if such take results from activities conducted in accordance with the Guidelines. The Guidelines limit habitat loss during the interim planning period to no more than five percent of coastal sage scrub with lower long-term conservation potential in existence at the time of adoption of the 4(d) Special Rule.

The Guidelines specify criteria to evaluate the long-term conservation potential of sage scrub that is proposed for loss during the period that NCCP plans are being developed to assist participating jurisdictions in providing interim protection for areas that support habitat that is likely to be important to conservation of the coastal California gnatcatcher. Approved NCCP plans in Southern California currently include the following: (1) Orange County Central-Coastal Subregional Plan; (2) Western Riverside County MSHCP; (3) San Diego MSCP and MSCP subarea plans for the cities of Poway, San Diego La Mesa, Chula Vista, and the County of San Diego; (4) San Diego MHCP and the MHCP subarea plan for the City of Carlsbad (MHCP); and (5) San Diego Gas and Electric Company subregional plan. Draft or pending NCCP plans in Southern California currently include the following: (1) Palos Verdes Peninsula subregional plan; (2) San Diego MSCP subarea plans for the cities of Coronado, Del Mar, El Cajon, and Santee, the East and North San Diego County MSCP subarea plans, and the Otay Water District MSCP subarea plan; (3) San Diego MHCP subarea plans for the cities of Encinitas, Escondido, Oceanside, San Marcos, and Vista; (4) San Diego County Water Authority; and (5) San Diego Joint Water Agencies subregional plan.

We intend that participating jurisdictions will be able to continue to apply the 4(d) Special Rule within designated critical habitat and to issue Habitat Loss Permits, with the joint concurrence of us and the CDFG, provided the jurisdictions are actively working to complete their subarea plans and adhere to the Guidelines. To be consistent with the Guidelines, the jurisdictions must find, and we and CDFG must concur, that:

(1) The proposed habitat loss is consistent with the interim loss criteria in the Guidelines and with any subregional process if established by the subregion:

(a) The habitat loss does not cumulatively exceed the five percent guideline;

(b) The habitat loss will not preclude connectivity between areas of high habitat values;

(c) The habitat loss will not preclude or prevent the preparation of the subregional NCCP; and

(d) The habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with section 4.3 of the Guidelines.

(2) The habitat loss will not appreciably reduce the likelihood of the survival and recovery of listed species in the wild.

(3) The habitat loss is incidental to otherwise lawful activities.

Because, in addition to avoiding jeopardy to the coastal California gnatcatcher, the Guidelines restrict interim habitat loss allowed under the 4(d) rule to areas with low long-term conservation potential that will not preclude development of adequate NCCP plans and that will not adversely impact connectivity between areas of high habitat value, we believe that allowing a small percentage of habitat loss that could potentially occur pursuant to the 4(d) rule is not likely to impair the ability of a particular critical habitat unit to serve its intended conservation function.

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 impact on national security and other relevant impacts of designating a particular area as critical habitat. The Secretary may exclude areas from critical habitat if it is determined 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.

Following the publication of the revised proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. We made the draft economic analysis (DEA) of the impacts of the proposed revised critical habitat designation (dated February 24, 2004) available for public review and comment from April 8, 2004, to May 10, 2004 (69 FR 18516) and April 3, 2007, to May 3, 2007 (72 FR 15857).

The primary purpose of the draft economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the coastal California gnatcatcher. 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. 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 draft analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The draft analysis examines activities taking place both within and adjacent to the designation. It estimates impacts based on activities that are ''reasonably foreseeable'' including, but not limited to, activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. Accordingly, the analysis bases estimates on activities that are likely to occur within a 23-year time frame, from when the proposed rule became available to the public (April 24, 2003, 68 FR 20228). The 23-year time frame (2003 to 2025) was chosen for the analysis because, as the time horizon for an economic analysis is expanded, the assumptions on which the projected number of projects and cost impacts associated with those projects become increasingly speculative.

We developed a final addendum of the potential economic effects of the proposed designation (dated September 14, 2007). The addendum relies on the boundaries outlined in the 2003 revised proposed critical habitat designation and assesses the potential implications on the key findings of the DEA: (1)

Changes in type of economic impacts reported; (2) changes in legal parameters; (3) changes in baseline regulations; and (4) changes in key economic and demographic data. The addendum does not recreate the analysis provided in the DEA or re-calculate all the results but rather is designed to assess the primary implications of the changes to the DEA. Therefore, in many cases, the discussion is qualitative, indicating whether a factor is likely to significantly increase or decrease the economic costs reported in the DEA. Also, the addendum does not address information, data, or issues raised in the public comment periods for the DEA. Those issues are addressed in the ''Public Comments'' section above.

The addendum recognizes that the original draft economic analysis was done in 2002 dollars and that all costs are in real 2002 dollars so as to be directly comparable to the draft analysis. Of the approximately $915 million in total economic costs estimated in the draft analysis for areas included in the proposed revised designation over the next 23 years or approximately $40 million annually, the final addendum estimates that about 62 percent or approximately $565 million is attributable to the critical habitat designation only over the next 23 years. The final addendum further estimates that the *Gifford Pinchot* decision could have either negligible impact or could increase the economic impacts reported in the draft analysis based on the extent that the court decision results in additional ''within critical habitat'' conservation above that required by existing HCPs that provide baseline protection. However, the final addendum states that the implications of this relatively recent court decision are difficult to quantify at this time. The addendum also estimates that the total cost attributable to the critical habitat designation (approximately $565 million) could be approximately $75 million higher based on updated market data. Most of the impact results from private land development avoiding coastal sage scrub habitat.

According to the final addendum, on a cost per unit basis, the largest portion of forecast costs is expected to occur in Units 6 and 10. The total cost estimate associated with the 2003 revised proposed designation in Unit 6 was estimated as $89.0 million in the DEA. The final addendum assumes that 90 percent of Unit 6 falls with the Southern Subregion HCP, a new baseline regulation, and that based on this assumption the cost estimate reduction is $80.1 million, with a remaining cost estimate of $8.9 million. The total cost estimate associated with the 2003 revised proposed designation in Unit 10 was estimated as $459.9 million in the DEA. The final addendum assumes that 95 percent of Unit 10 falls with the Western Riverside County MSHCP, a new baseline regulation, and that based on this assumption the cost estimate reduction is $413.9 million, with a remaining cost estimate of $46 million. Although we do not find the economic costs to be disproportionate, they were considered in balancing the benefits of including and excluding areas from critical habitat.

A copy of the February 24, 2004, DEA, associated 2007 final addendum, and supporting documents are included in our supporting record and may be obtained by contacting U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section) or for downloading from our Web site at *http://www.fws.gov/carlsbad.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (E.O.) 12866, this document is a significant rule in that it may raise novel legal and policy issues, but this rule will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. To determine the economic consequences of designating the specific area as critical habitat, we prepared a draft economic analysis of the 2003 proposed rule, which was made available for public comment during two comment periods: April 8, to May 10, 2004 (69 FR 18516) and April 3, to May 3, 2007 (72 FR 15857). We considered those comments during the preparation of this final rule. The economic analysis indicates that this rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. Our detailed assessment of the economic effects of the proposed designation is described in the Final Economic Analysis of Critical Habitat Designation for the Coastal California Gnatcatcher. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (OMB Circular A–4, September 17, 2003). Under Circular A–4, once an agency determines that the Federal regulatory action is appropriate, the agency must consider alternative regulatory approaches. Because the determination of critical habitat is a statutory requirement under the Act, we must evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or a combination of both, constitutes our regulatory alternative analysis for designations.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for the coastal California gnatcatcher will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as

independent nonprofit organizations and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result.

SBREFA does not explicitly define either ''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 the area. Similarly, the analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a ''significant economic impact.'' Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA. (*Mid-Tex Electric Co-Op, Inc.* v. *F.E.R.C.* and *American Trucking Associations, Inc.* v. *EPA*).

To determine if a rule would 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, etc.). We apply the ''substantial number'' test individually to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial.

In estimating the numbers 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. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect the coastal California gnatcatcher. Federal agencies must also consult with us if their activities may affect designated 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.

In compliance with section 4(b)(2) of the Act, we prepared an analysis of this critical habitat designation to evaluate the potential economic impacts that may result from its promulgation. This analysis provides an estimate of the number of small entities potentially affected by the designation of critical habitat for the coastal California gnatcatcher. The analysis conservatively examines total estimated section 7 costs. According to the analysis, section 7 implementation for the coastal California gnatcatcher is likely to affect small businesses in the land development and real estate industry and small governments. Approximately 12 small businesses in the land development and real estate industry are affected annually, which represents less than one percent of the total number of small businesses in the industry within the proposed critical habitat boundary. These small businesses are likely to experience impacts equivalent to about 4 percent of their per-business annual gross revenue. For the small governments in the study area, less than one agency is likely to be affected annually, which represents about two percent of the total number of small governments in the study area. Affected small governments are likely to experience impacts equivalent to less than one percent of the median revenue of small governments in the study area.

In summary, we have concluded that this rule would not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for the coastal California gnatcatcher 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.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 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. Although this rule is a significant regulatory action in that it may raise novel legal and policy issues, under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Based on the 2004 DEA (p. 155–157), research conducted during the course of the analysis did not reveal any instances in which the revised proposed designation was anticipated to affect the construction of any new power-generating facilities, or the operation of any existing facilities. Furthermore, the revised proposed designation is not expected to affect crude oil supply or increases in energy use. However, the DEA concludes that the revised proposed designation will affect the cost of delivering energy to end users due to additional costs incurred through the section 7 consultation process. To estimate the section 7 effect on energy distribution costs, the DEA evaluates whether the estimated section 7 administrative and project modification costs that will be borne by the energy industry represent greater than one percent of current energy distribution costs. Based on the annual distribution costs described in the DEA, section 7 regulation following the revised proposed designation would have to result in costs to the energy industry greater than $7.54 million per year for the impact to be considered a ''significant adverse effect''. As described in the DEA, the estimated cost of the revised proposed designation on the energy industry is approximately $1.5 million per year or 14 percent of the significance threshold based on distribution costs. Therefore, this action will not result in a significant adverse effect on the energy industry and no Statement of Energy Effects is required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the coastal California gnatcatcher in Ventura, Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties, California, in a takings implications assessment. The takings implications assessment concludes that this final designation of critical habitat for the coastal California gnatcatcher does not pose significant takings implications for lands within or affected by the designation.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal 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 [T]ribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) Based on the 2004 DEA, for the small governments in the study area, approximately 1.5 agencies are likely to be affected annually, which represents about six percent of the total number of small governments in the study area. Affected small governments are likely to experience impacts equivalent to less than one percent of the median revenue of small governments in the study area. The DEA (p. 152–153) estimates the annual effects on small governments, based on median revenue of all affected small governments, to be $16,800,428 and the per-government annual cost to be $3,500. Since this revised final rule will not produce a Federal mandate of $100 million or greater in any year, we do not believe it will significantly or uniquely affect small governments and therefore, 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.

Federalism

In accordance with E.O. 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 critical habitat designation with appropriate State resource agencies in California. We received comments from California Department of Fish and Game (CDFG); those comments and our responses are included in the Summary of Comments and Recommendations section of this final rule. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the PCEs of the habitat essential to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat for the coastal California gnatcatcher in accordance with the provisions of section 4 of the Act. This final rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of the coastal California gnatcatcher.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 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)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d

1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that there are Tribal lands essential for the conservation of the coastal California gnatcatcher because they do support significant coastal California gnatcatcher populations and provide high-quality habitat that has been determined to be essential to the conservation of this species. However, Tribal lands were considered but not proposed as critical habitat in the 2003 revised proposed designation and we re-affirmed our exclusion of these lands in this revised final rule (see ''*Exclusion of Pala Band of Mission Indians Tribal Lands Under Section 4(b)(2) of the Act—American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act*'' section above for a detailed discussion).

References Cited

A complete list of all references cited in this final rule is available upon request from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section above).

Author

The primary author of this notice is staff of the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed 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 § 17.95(b), revise the entry for ''Coastal California Gnatcatcher (Polioptila californica californica)'' as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Coastal California Gnatcatcher (*Polioptila californica californica*)

(1) Critical habitat units are depicted for Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties, California, on the maps below.

(2) The primary constituent elements (PCEs) of critical habitat for coastal California gnatcatcher are:

(i) Dynamic and successional sage scrub habitats: Venturan coastal sage scrub, Diegan coastal sage scrub, Riversidean sage scrub, maritime succulent scrub, Riversidean alluvial fan scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub in Ventura, Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties that provide space for individual and population growth, normal behavior, breeding, reproduction, nesting, dispersal and foraging; and

(ii) Non-sage scrub habitats such as chaparral, grassland, riparian areas, in proximity to sage scrub habitats as described for PCE 1 above that provide space for dispersal, foraging, and nesting.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the PCEs.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 1:24,0000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Note: Index map of critical habitat units for the coastal California gnatcatcher (Map 1) follows:

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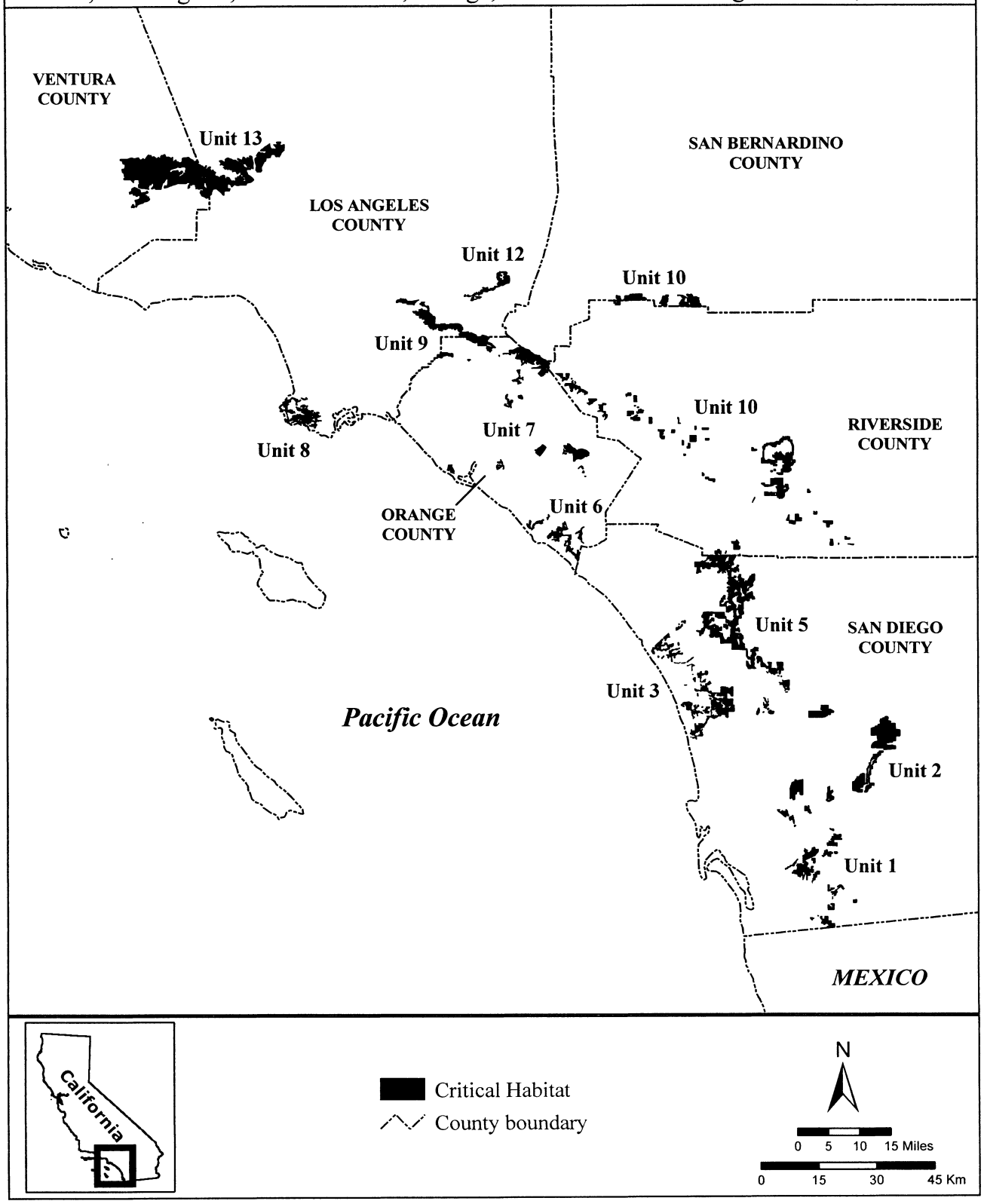
Map 1: Index
Critical Habitat for Coastal California Gnatcatcher (*Polioptila californica californica*), Ventura, Los Angeles, San Bernardino, Orange, Riverside and San Diego Counties, California



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(6) Unit 1: South San Diego County, San Diego County, California.

(i) From USGS 1:24,000 quadrangle maps Alpine, Dulzura, El Cajon, Jamul Mountains, La Mesa, National City, Otay Mesa, Otay Mountain, and San Vicente Reservoir. Land bounded by the following UTM NAD27 coordinates (E,N):503600, 3640300; 503600, 3640200; 503600, 3640100; 503600, 3640090; 503600, 3640090; 503600, 3640000; 503600, 3639900; 503600, 3639800; 503600, 3639700; 503600, 3639600; 503600, 3639500; 503600, 3639400; 503600, 3639300; 503600, 3639200; 503600, 3639100; 503600, 3639000; 503600, 3638900; 503600, 3638800; 503600, 3638700; 503600, 3638600; 503600, 3638500; 503600, 3638400; 503599, 3638300; 503600, 3638200; 503600, 3638200; 503600, 3638100; 503600, 3638029; 503600, 3638000; 503600, 3637900; 503600, 3637800; 503600, 3637790; 503600, 3637789; 503600, 3637789; 503600, 3637789; 503600, 3637700; 503600, 3637433; 503600, 3637400; 503600, 3637400; 503600, 3637234; 503600, 3637200; 503600, 3637200; 503600, 3637034; 503600, 3637000; 503600, 3637000; 503600, 3636700; 503600, 3636700; 503600, 3636635; 503600, 3636600; 503600, 3636500; 503600, 3636436; 503600, 3636436; 503600, 3636400; 503600, 3636393; 503591, 3636394; 503500, 3636399; 503500, 3636400; 503490, 3636400; 503243, 3636415; 503005, 3636470; 502885, 3636643; 502906, 3636830; 502915, 3636842; 502915, 3636900; 502950, 3636901; 502974, 3636969; 502975, 3637052; 503108, 3637243; 502788, 3637235; 502788, 3637240; 502578, 3637232; 502578, 3637276; 502391, 3637278; 502392, 3637230; 502392, 3637229; 502409, 3637229; 502441, 3637229; 502459, 3637229; 502492, 3637229; 502525, 3637230; 502529, 3637230; 501985, 3637208; 501991, 3636637; 501580, 3636638; 501580, 3636437; 501568, 3636437; 501568, 3636436; 501577, 3636436; 501579, 3636251; 501581, 3636251; 501581, 3636235; 501594, 3636236; 501600, 3635683; 501600, 3635600; 501601, 3635600; 501605, 3635222; 501551, 3635178; 501431, 3635124; 501383, 3635120; 501312, 3635113; 501280, 3635099; 501171, 3635048; 501135, 3635048; 501019, 3635048; 501030, 3635189; 501138, 3635298; 501167, 3635340; 501201, 3635389; 501236, 3635439; 501199, 3635450; 501160, 3635461; 501019, 3635417; 500889, 3635395; 500813, 3635602; 500889, 3635775; 500878, 3635905; 500769, 3635938; 500704, 3635808; 500683, 3635623; 500628, 3635526; 500498, 3635493; 500400, 3635471; 500379, 3635352; 500300, 3635372; 500300, 3635400; 500300, 3635500; 500300, 3635600; 500300, 3635700; 500300, 3635800; 500300, 3635900; 500300, 3636000; 500300, 3636057; 500300, 3636100; 500300, 3636148; 500300, 3636200; 500300, 3636250; 500300, 3637152; 500300, 3637204; 500301, 3637770; 500301, 3637770; 500302, 3637915; 500374, 3638063; 500521, 3638385; 500562, 3638476; 500563, 3638477; 500470, 3638539; 500721, 3639101; 500762, 3639420; 501160, 3639790; 501561, 3639931; 501582, 3640333; 501688, 3640344; 501938, 3640372; 501952, 3640029; 502735, 3640197; 502765, 3640204; 503532, 3640368; 503532, 3640368; 503532, 3640366; 503532, 3640365; 503596, 3640380; 503600, 3640380. Excluding land bounded by the following UTM NAD27 coordinates (E,N): 502178, 3637276; 502177, 3637276; 501978, 3637278; 501980, 3637232; 501981, 3637232; 501994, 3637232; 502031, 3637232; 502061, 3637232; 502114, 3637232; 502146, 3637232; 502181, 3637232; 502184, 3637232; 502201, 3637232; 502221, 3637232; 502240, 3637232; 502260, 3637231; 502280, 3637231; 502300, 3637231; 502321, 3637230; 502338, 3637230; 502366, 3637229; 502365, 3637274; 502184, 3637276.

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Land bounded by the following UTM NAD27 coordinates (E,N): 511846, 3612134; 511839, 3612054; 511830, 3611961; 511701, 3611902; 511666, 3611886; 511545, 3611830; 511545, 3611830; 510881, 3611525; 510818, 3611496; 510561, 3611378; 510370, 3611291; 510370, 3611291; 510370, 3611291; 510296, 3611294; 510296, 3611294; 510277, 3611295; 510276, 3611295; 510220, 3611297; 510219, 3611297; 510092, 3611303; 510082, 3612923; 510314, 3612925; 510462,

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Land bounded by the following UTM NAD27 coordinates (E,N): 512163, 3610363; 512178, 3610355; 512173, 3610118; 512173, 3610118; 512162, 3610118; 512121, 3610119; 512121, 3610119; 511744, 3610121; 511744, 3610121; 511744, 3610068; 511743, 3610036; 511704, 3610065; 511702, 3610069; 511685, 3610099; 511699, 3610145; 511745, 3610173; 511745, 3610173; 511822, 3610197; 511871, 3610232; 511910, 3610254; 511965, 3610274; 511989, 3610291; 512008, 3610315; 512059, 3610349; 512102, 3610378; 512137, 3610376; 512138, 3610375.

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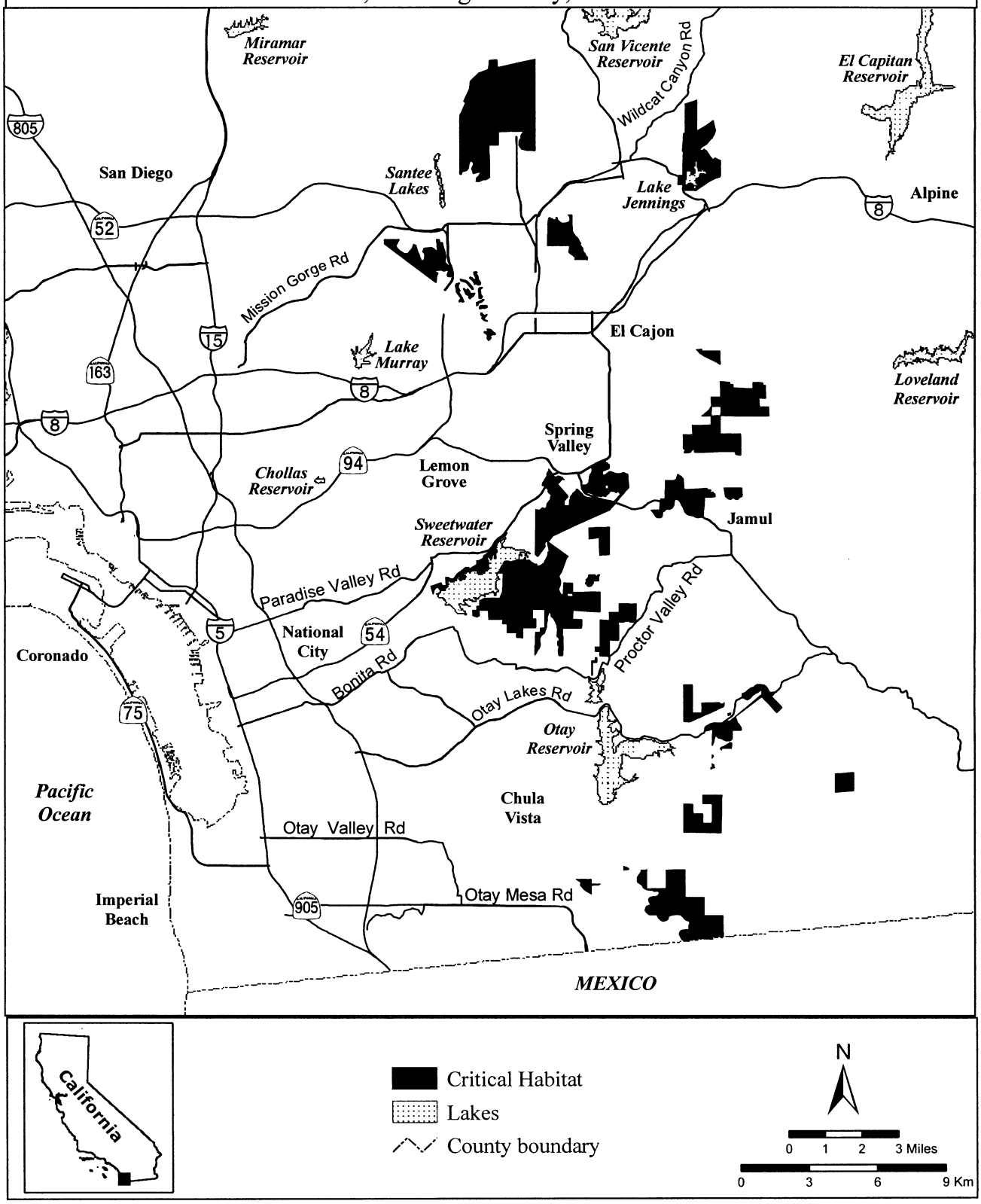
Land bounded by the following UTM NAD27 coordinates (E,N): 505519, 3604361; 505641, 3604360; 505641, 3604359; 505964, 3604358; 506051, 3604357; 506050, 3604209; 506050, 3604160; 506276, 3604160; 506455, 3604159; 506381, 3604107; 506323, 3604100; 506247, 3604100; 506164, 3604099; 506115, 3604093; 506049, 3604085; 506051, 3603876; 506052, 3603715; 506032, 3603725; 505890, 3603795; 505885, 3603797; 505884, 3603798; 505802, 3603848; 505738, 3603911; 505667, 3603993; 505577, 3604095; 505582, 3604222; 505582, 3604235; 505525, 3604267; 505387, 3604361.

(ii) Note: Map of Unit 1—South San Diego County (Map 2) follows:

BILLING CODE 4310–55–P

Map 2
Critical Habitat for Coastal California Gnatcatcher (*Polioptila californica californica*), Unit 1, San Diego County, California



BILLING CODE 4310–55–C

(7) Unit 2: Upper San Diego River and El Capitan Linkage, San Diego County, California.

(i) From USGS 1:24,000 quadrangle maps Alpine, El Cajon Mountain, Ramona, Santa Ysabel, and Tule Springs. Land bounded by the following UTM NAD27 coordinates (E,N): 519122, 3637860; 519110, 3637817; 519117, 3637751; 519153, 3637717; 519164, 3637691; 519171, 3637639; 519157, 3637559; 519139, 3637531; 519147, 3637508; 519150, 3637482; 519185, 3637477; 519183, 3637401; 519159, 3637381; 519139, 3637378; 519132, 3637353; 519129, 3637316; 519148, 3637298; 519148, 3637277; 519135, 3637258; 519149, 3637223; 519155, 3637200; 519144, 3637174; 519144, 3637153; 519145, 3637138; 519154, 3637128; 519137, 3637098; 518974, 3637098; 518221, 3637100; 518069, 3637101; 518065, 3637103; 518040, 3637114; 517326, 3637402; 516582, 3637580; 516580, 3638282; 516579, 3638676; 516577, 3639365; 516593, 3639384; 516672, 3639635; 516774, 3639844; 516875, 3639866; 516986, 3639869; 517177, 3639923; 517277, 3640022; 517350, 3640165; 517375, 3640317; 517464, 3640520; 517540, 3640549; 517623, 3640657; 517677, 3640790; 517741, 3641032; 517753, 3641079; 517782, 3641190; 517921, 3641219; 518159, 3641206; 518444, 3641327; 518469, 3641349; 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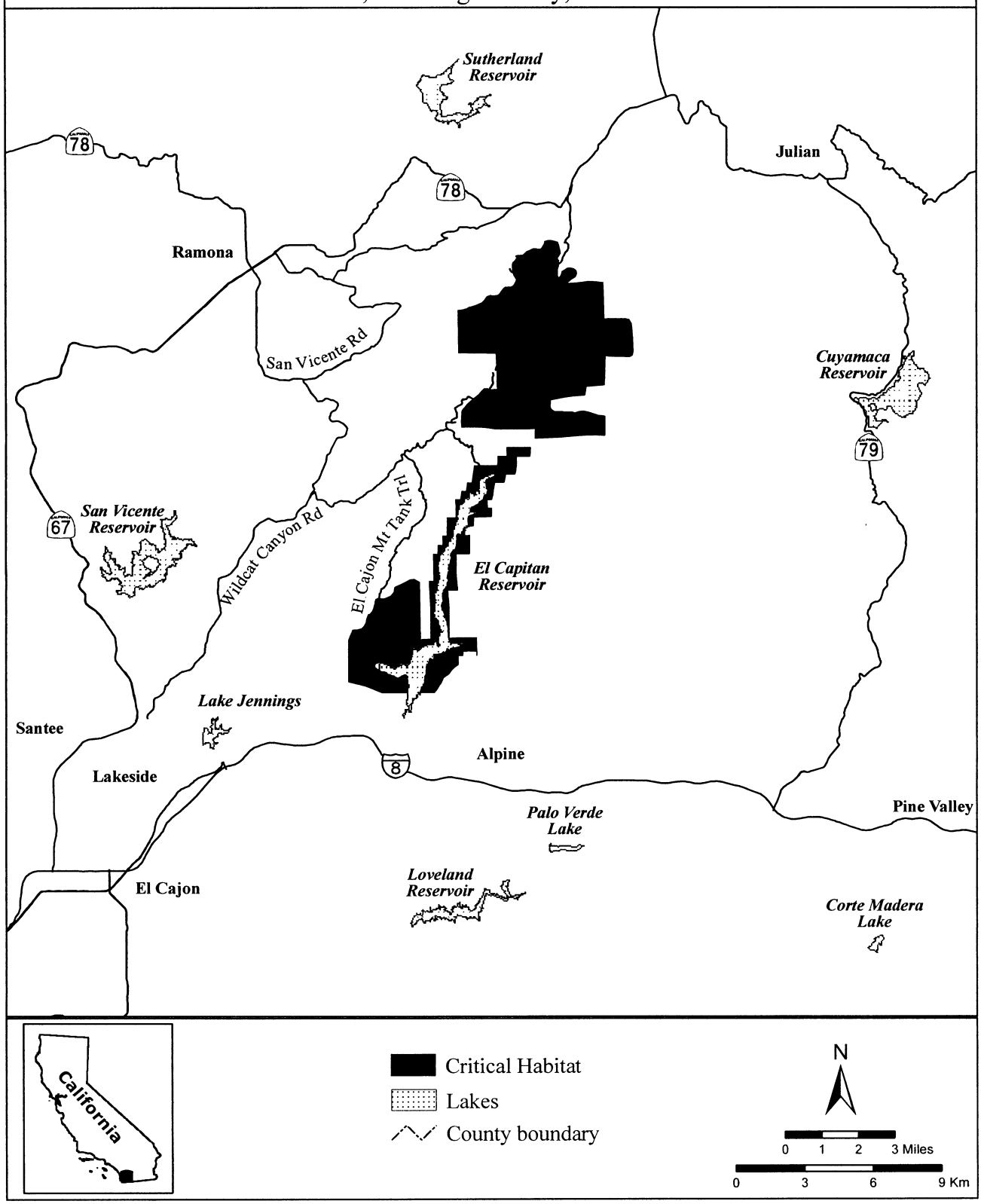
(ii) Note: Map of Unit 2—Upper San Diego River and El Capitan Linkage (Map 3) follows:

BILLING CODE 4310–55–P

Map 3
Critical Habitat for Coastal California Gnatcatcher (*Polioptila californica californica*), Unit 2, San Diego County, California



BILLING CODE 4310–55–C

(8) Unit 3: North San Diego County Multiple Habitat Conservation Plan (MHCP), San Diego County, California.

(i) From USGS 1:24,000 quadrangle maps Bonsall, Del Mar, Encinitas, Escondido, Morro Hill, Oceanside, Rancho Santa Fe, Rodriquez Mountain, San Luis Rey, San Marcos, San Pasqual, and Valley Center. Land bounded by the following UTM NAD27 coordinates (E,N): 472475, 3682070; 472501, 3682025; 472544, 3682028; 472644, 3682015; 472719, 3681997; 472786, 3681979; 472870, 3682025; 472958, 3682088; 473079, 3682152; 473173, 3682161; 473246, 3682121; 473288, 3682088; 473297, 3682040; 473270, 3682000; 473212, 3682009; 473191, 3681979; 473194, 3681601; 473221, 3681604; 473215, 3681510; 473137, 3681507; 473131, 3681480; 472886, 3681477; 472883, 3681477; 472886, 3681538; 472952, 3681544; 472955, 3681568; 473040, 3681565; 473043, 3681595; 473152, 3681601; 473158, 3681964; 473125, 3681958; 472964, 3681888; 472907, 3681873; 472831, 3681864; 472795, 3681837; 472749, 3681795; 472686, 3681780; 472641, 3681798; 472607, 3681843; 472547, 3681837; 472462, 3681861; 472456, 3681749; 472326, 3681783; 472262, 3681767; 472226, 3681767; 472199, 3681807; 472193, 3681815.

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Land bounded by the following UTM NAD27 coordinates (E,N): 468428, 3675982; 468308, 3676314; 468315, 3676314; 468736, 3675136; 468865, 3675334; 468862, 3675328; 468850, 3675309; 468841, 3675295; 468831, 3675279; 468822, 3675263; 468813, 3675248; 468803, 3675233; 468793, 3675218; 468783, 3675201; 468774, 3675186; 468764, 3675170; 468754, 3675154; 468734, 3675122; 468734, 3675123; 468720, 3675162; 468719, 3675162; 468718, 3675161; 468717, 3675160; 468716, 3675159; 468715, 3675158; 468713, 3675157; 468712, 3675156; 468711, 3675155; 468710, 3675155; 468709, 3675154; 468708, 3675153; 468706, 3675152; 468705, 3675151; 468704, 3675150; 468703, 3675149; 468702, 3675148; 468701, 3675147; 468700, 3675146; 468699, 3675145; 468698, 3675144; 468697, 3675142; 468696, 3675141; 468695, 3675140; 468695, 3675139; 468694, 3675137; 468693, 3675136; 468693, 3675134; 468692, 3675133; 468692, 3675132; 468691, 3675130; 468691, 3675129; 468691, 3675127; 468690, 3675126; 468690, 3675125; 468690, 3675123; 468690, 3675122; 468690, 3675120; 468689, 3675119; 468689, 3675117; 468689, 3675116; 468689, 3675114; 468688, 3675113; 468688, 3675111; 468687, 3675110; 468687, 3675108; 468686, 3675107; 468686, 3675105; 468685, 3675104; 468685, 3675103; 468684, 3675101; 468683, 3675100; 468683, 3675099; 468682, 3675097; 468681, 3675096; 468680, 3675095; 468694, 3675057; 468706, 3675024; 468720, 3674986; 468734, 3674946; 468743, 3674922; 468755, 3674888; 468761, 3674870; 468771, 3674841; 468779, 3674820; 468791, 3674786; 468825, 3674689; 468818, 3674689; 468773, 3674687; 468773, 3674668; 468604, 3674675; 468551, 3674659; 468487, 3674659; 468366, 3674622; 468332, 3674675; 468290, 3674656; 468264, 3674610; 468286, 3674580; 468347, 3674565; 468305, 3674508; 468252, 3674376; 468192, 3674323; 468059, 3674327; 468071, 3674463; 468029, 3674489; 467874, 3674531; 467678, 3674531; 467598, 3674512; 467500, 3674501; 467422, 3674583; 467451, 3674641; 467549, 3674739; 467908, 3674618; 467938, 3674588; 468029, 3674569; 468086, 3674497; 468169, 3674584; 468192, 3674754; 468218, 3674750; 468237, 3674890; 468252, 3674883; 468339, 3674841; 468456, 3674822; 468600, 3674822; 468664, 3674743; 468748, 3674731; 468785, 3674796; 468241, 3676306; 468241, 3676308; 468238, 3676313; 468243, 3676313; 468251, 3676291; 468297, 3676161; 468384, 3675920; 468392, 3675934; 468400, 3675947; 468406, 3675959; 468428, 3675958; 468428, 3675982. Excluding land bounded by the following UTM NAD27 coordinates (E,N): 468627, 3675422; 468626, 3675421; 468624, 3675421; 468623, 3675420; 468622, 3675419; 468620, 3675418; 468619, 3675417; 468618, 3675417; 468617, 3675416; 468615, 3675415; 468614, 3675414; 468613, 3675413; 468612, 3675412; 468611, 3675411; 468576, 3675383; 468585, 3675358; 468592, 3675340; 468598, 3675322; 468605, 3675303; 468611, 3675286; 468618, 3675267; 468625, 3675249; 468632, 3675230; 468639, 3675211; 468646, 3675190; 468655, 3675166; 468659, 3675153; 468671, 3675120; 468672, 3675122; 468672, 3675123; 468672, 3675125; 468672, 3675126; 468672, 3675128; 468672, 3675129; 468673, 3675131; 468673, 3675132; 468673, 3675134; 468674, 3675135; 468674, 3675136; 468675, 3675138; 468675, 3675139; 468676, 3675141; 468676, 3675142; 468677, 3675144; 468677, 3675145; 468678, 3675146; 468679, 3675148; 468680, 3675149; 468680, 3675150; 468681, 3675152; 468682, 3675153; 468683, 3675154; 468684, 3675155; 468685, 3675157; 468686, 3675158; 468687, 3675159; 468688, 3675160; 468689, 3675161; 468690, 3675162; 468691, 3675163; 468692, 3675164; 468693, 3675165; 468695, 3675166; 468696, 3675167; 468697, 3675168; 468698, 3675169; 468700, 3675170; 468701, 3675170; 468702, 3675171; 468703, 3675172; 468705, 3675173; 468706, 3675174; 468707, 3675175; 468708, 3675176; 468709, 3675178; 468710, 3675179; 468711, 3675180; 468712, 3675181; 468713, 3675182; 468698, 3675223; 468690, 3675248; 468683, 3675267; 468676, 3675285; 468669, 3675305; 468662, 3675324; 468656, 3675343; 468649, 3675361; 468642, 3675381; 468635, 3675400. Excluding land bounded by the following UTM NAD27 coordinates (E,N): 468576, 3675565; 468544, 3675538; 468526, 3675523; 468559, 3675431; 468570, 3675402; 468599, 3675425; 468600, 3675426; 468601, 3675427; 468603, 3675428; 468604, 3675429; 468605, 3675430; 468606, 3675431; 468607, 3675431; 468609, 3675432; 468610, 3675433; 468611, 3675434; 468613, 3675435; 468614, 3675435; 468615, 3675436; 468617, 3675437; 468618, 3675438; 468619, 3675438; 468621, 3675439; 468621, 3675439; 468610, 3675472.

Land bounded by the following UTM NAD27 coordinates (E,N): 470059, 3676232; 470044, 3675918; 469984, 3675911; 469659, 3675922; 469647, 3675548; 469712, 3675556; 469715, 3675620; 469817, 3675616; 469855, 3675654; 469889, 3675639; 469931, 3675661; 469961, 3675699; 470018, 3675665; 470063, 3675631; 470041, 3675563; 469935, 3675567; 469927, 3675510; 469791, 3675510; 469753, 3675465; 469715, 3675457; 469715, 3675397; 469685, 3675351; 469674, 3675291; 469572, 3675283; 469553, 3675340; 469583, 3675416; 469613, 3675450; 469640, 3675484; 469617, 3675533; 469360, 3675525; 469386, 3675590; 469386, 3675718; 469394, 3675767; 469372, 3675942; 469373, 3675961.

Land bounded by the following UTM NAD27 coordinates (E,N): 468773, 3675127; 468883, 3675303; 468901, 3675333; 469070, 3675607; 468905, 3675671; 468892, 3675676; 469213, 3675903; 469167, 3675624; 469137, 3675412; 469114, 3675219; 469103, 3675064; 469073, 3674890; 469016, 3674659; 469004, 3674660; 469004, 3674660; 469004, 3674662; 469004, 3674663; 469005, 3674665; 469005, 3674666; 469005, 3674668; 469005, 3674669; 469005, 3674670; 469005, 3674671; 469005, 3674672; 469006, 3674674; 469006, 3674675; 469006, 3674677; 469006, 3674678; 469006, 3674679; 469006, 3674681; 469007, 3674682; 469007, 3674684; 469007, 3674685; 469007, 3674687; 469007, 3674688; 469008, 3674690; 469008, 3674691; 469008, 3674693; 469008, 3674694; 469009, 3674696; 468888, 3674692; 468810, 3674912; 468748, 3675086.

Land bounded by the following UTM NAD27 coordinates (E,N): 471500, 3673900; 471500, 3673899; 471246, 3673719; 470411, 3673516; 469108, 3673531; 469032, 3673743; 469014, 3673937; 469023, 3674254; 469037, 3674258; 469144, 3674266; 469320, 3674336; 469498, 3674348; 469855, 3674620; 469991, 3674644; 470641, 3674672; 470750, 3674799; 470862, 3674838; 470974, 3674826; 471150, 3674820; 471289, 3674886; 471391, 3674898; 471558, 3674995; 471612, 3675028; 471606, 3674805; 471488, 3674802; 471398, 3674708; 471286,

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Land bounded by the following UTM NAD27 coordinates (E,N): 466800, 3674600; 466800, 3674600; 466856, 3674526; 466954, 3674489; 466914, 3674440; 466963, 3674365; 467037, 3674364; 467162, 3674379; 467204, 3674352; 467272, 3674337; 467219, 3674277; 467045, 3674262; 466890, 3674330; 466841, 3674368; 466803, 3674439; 466769, 3674470; 466709, 3674458; 466640, 3674477; 466591, 3674466; 466542, 3674409; 466512, 3674402; 466554, 3674576; 466629, 3674579; 466610, 3674632; 466580, 3674655; 466554, 3674636; 466550, 3674610; 466497, 3674610; 466448, 3674659; 466429, 3674591; 466421, 3674496; 466399, 3674477; 466387, 3674481; 466387, 3674606; 466308, 3674610; 466266, 3674587; 466251, 3674587; 466206, 3674591; 466164, 3674591; 466126, 3674602; 466104, 3674625; 466062, 3674647; 466009, 3674647; 465956, 3674651; 465956, 3674594; 465956, 3674553; 465960, 3674545; 466028, 3674587; 466088, 3674560; 466138, 3674541; 466157, 3674507; 466145, 3674496; 466100, 3674499; 466100, 3674500; 466091, 3674500; 466039, 3674504; 466009, 3674511; 465971, 3674507; 465975, 3674311; 465963, 3674313; 465835, 3674678; 466448, 3674840; 466467, 3674799; 466467, 3674761; 466478, 3674742; 466497, 3674734; 466569, 3674689; 466599, 3674791; 466690, 3674693; 466784, 3674621; 466800, 3674600.

Land bounded by the following UTM NAD27 coordinates (E,N): 488969, 3674574; 489177, 3674559; 489177, 3674559; 489200, 3674502; 489200, 3674500; 489201, 3674500; 489207, 3674484; 489207, 3674484; 489260, 3674408; 489242, 3674349; 489142, 3674119; 489196, 3674055; 489293, 3673902; 489275, 3673758; 489229, 3673666; 489351, 3673634; 489291, 3673586; 489298, 3673509; 489258, 3673414; 489240, 3673286; 489254, 3673238; 489382, 3673143; 489364, 3673099; 489386, 3672924; 489390, 3672759; 489419, 3672741; 489752, 3672722; 489788, 3672576; 489924, 3672576; 489931, 3672448; 490187, 3672459; 490187, 3673048; 490267, 3673052; 490271, 3672997; 490355, 3673004; 490359, 3673077; 490443, 3673194; 490465, 3673260; 490564, 3673293; 490564, 3673458; 490534, 3673502; 490567, 3674167; 490200, 3674000; 490188, 3674500; 490187, 3674530; 490361, 3674536; 490492, 3674540; 490525, 3674540; 490693, 3674535; 490830, 3674530; 491679, 3674500; 491679, 3674500; 492049, 3674487; 492086, 3674224; 491730, 3674224; 491742, 3674181; 491627, 3674169; 491627, 3674292; 491524, 3674359; 491432, 3674328; 491452, 3674224; 491357, 3674197; 491146, 3674201; 491130, 3674157; 491253, 3674081; 491265, 3673871; 491345, 3673871; 491361, 3673620; 491464, 3673593; 491500, 3673501; 491500, 3673500; 491501, 3673500; 491524, 3673442; 491547, 3673291; 491488, 3673183; 491365, 3672981; 491253, 3672901; 491126, 3672877; 491126, 3672833; 491118, 3672829; 491016, 3672615; 491006, 3672460; 491054, 3672422; 491122, 3672296; 491209, 3672122; 491218, 3671948; 491190, 3671891; 491180, 3671788; 491160, 3671769; 491122, 3671685; 491135, 3671654; 491118, 3671633; 491055, 3671663; 491012, 3671647; 490934, 3671664; 490835, 3671564; 490828, 3671644; 490776, 3671630; 490783, 3671654; 490742, 3671654; 490729, 3671654; 490696, 3671654; 490621, 3671654; 490630, 3671563; 490630, 3671552; 490414, 3671572; 490419, 3671462; 490233, 3671478; 490200, 3671967; 489953, 3671972; 489969, 3672038; 489887, 3672082; 489755, 3672148; 489640, 3672142; 489618, 3672093; 489574, 3672066; 489519, 3672159; 489420, 3672175; 489409, 3672433; 489299, 3672532; 489173, 3672609; 489010, 3672773; 489008, 3672914; 489000, 3673259; 489000, 3673300; 488999, 3673300; 488983, 3673983; 488972, 3674448; 488971, 3674500; 488969, 3674574.

Land bounded by the following UTM NAD27 coordinates (E,N): 465000, 3673623; 464950, 3673604; 464886, 3673600; 464780, 3673774; 464678, 3673816; 464622, 3673967; 464561, 3674050; 464519, 3674046; 464652, 3674186; 464652, 3674216; 464746, 3674322; 464851, 3674419; 464947, 3674345; 465026, 3674356; 465079, 3674330; 465094, 3674243; 465068, 3674213; 465030, 3674209; 464996, 3674122; 465064, 3674073; 465064, 3674035; 465162, 3674042; 465155, 3673502.

Land bounded by the following UTM NAD27 coordinates (E,N): 472425, 3673694; 472425, 3673692; 472425, 3673689; 472425, 3673686; 472424, 3673684; 472424, 3673682; 472424, 3673678; 472424, 3673674; 472424, 3673672; 472424, 3673668; 472424, 3673665; 472424, 3673664; 472423, 3673619; 472420, 3673377; 472299, 3673371; 472217, 3673404; 472126, 3673401; 472045, 3673392; 472012, 3673437; 471984, 3673437; 471897, 3673441; 471773, 3673450; 471700, 3673456; 471630, 3673456; 471585, 3673456; 471555, 3673456; 471522, 3673437; 471443, 3673450; 471443, 3673419; 471391, 3673456; 471343, 3673465; 471322, 3673450; 471252, 3673468; 471225, 3673453; 471195, 3673453; 471161, 3673522; 471128, 3673646; 471325, 3673692; 471706, 3673713; 472190, 3673701; 472424, 3673743.

Land bounded by the following UTM NAD27 coordinates (E,N): 469218, 3673386; 469380, 3673389; 469377, 3673489; 469831, 3673477; 469831, 3673413; 469286, 3673280; 469221, 3673376.

Land bounded by the following UTM NAD27 coordinates (E,N): 469298, 3673256; 469837, 3673395; 469949, 3673401; 470148, 3673310; 471010, 3673456; 470811, 3673199; 470771, 3673138; 470638, 3673093; 470548, 3673138; 470460, 3673147; 470387, 3673102; 470148, 3673075; 469967, 3673078; 469831, 3673072; 469801, 3672978; 469667, 3672872; 469580, 3672947; 469492, 3672878; 469568, 3672754; 469522, 3672706.

Land bounded by the following UTM NAD27 coordinates (E,N): 469227, 3673255; 469226, 3673255; 469224, 3673255; 469223, 3673255; 469221, 3673254; 469220, 3673254; 469218, 3673254; 469217, 3673254; 469215, 3673254; 469214, 3673254; 469212, 3673254; 469211, 3673254; 469209, 3673254; 469208, 3673254; 469207, 3673254; 469213, 3673239; 469282, 3673074; 469369, 3672867; 469369, 3672867; 469436, 3672706; 469335, 3672681; 469238, 3672678; 469223, 3672775; 469220, 3672807; 469127, 3672879; 469006, 3672881; 468998, 3672855; 468990, 3672843; 468981, 3672824; 468962, 3672824; 468926, 3672834; 468900, 3672836; 468878, 3672808; 468859, 3672798; 468848, 3672803; 468831, 3672801; 468828, 3672777; 468819, 3672765; 468805, 3672752; 468821, 3672624; 468831, 3672517; 468860, 3672417; 468819, 3672397; 468764, 3672388; 468710, 3672402; 468655, 3672428; 468610, 3672469; 468569, 3672536; 468567,

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Land bounded by the following UTM NAD27 coordinates (E,N): 467520, 3672836; 467537, 3672896; 467606, 3672956; 467696, 3672977; 467717, 3672921; 467644, 3672887; 467597, 3672874; 467584, 3672725; 467503, 3672797; 467426, 3672716; 467443, 3672695; 467473, 3672707; 467524, 3672600; 467422, 3672553; 467225, 3672391; 467315, 3672583; 467156, 3672489; 467113, 3672485; 467105, 3672451; 467049, 3672395; 467071, 3672356; 467105, 3672241; 467062, 3672220; 466930, 3672505; 467242, 3672665; 467299, 3672700; 467300, 3672700; 467300, 3672700.

Land bounded by the following UTM NAD27 coordinates (E,N): 465979, 3672902; 466078, 3672853; 466120, 3672973; 466300, 3672917; 466326, 3672836; 466296, 3672767; 466210, 3672703; 466202, 3672643; 466232, 3672600; 466189, 3672528; 466168, 3672528; 465977, 3672791.

Land bounded by the following UTM NAD27 coordinates (E,N): 470339, 3672379; 470327, 3672442; 470284, 3672464; 470297, 3672557; 470336, 3672566; 470333, 3672727; 470224, 3672727; 470251, 3672775; 470269, 3672802; 470309, 3672799; 470306, 3672881; 470230, 3672938; 470336, 3672966; 470433, 3672902; 470487, 3672793; 470532, 3672712; 470517, 3672488; 470445, 3672479; 470451, 3672448; 470463, 3672412; 470466, 3672355.

Land bounded by the following UTM NAD27 coordinates (E,N): 498493, 3671181; 498493, 3671181; 498493, 3671181; 498493, 3671177; 498500, 3671001; 498500, 3671000; 498500, 3671000; 498502, 3670956; 498505, 3670883; 498509, 3670761; 498520, 3670482; 498524, 3670395; 498519, 3670364; 498443, 3669904; 498444, 3669902; 498590, 3669513; 498601, 3669471; 498673, 3669198; 498665, 3669199; 498657, 3669199; 498651, 3669198; 498648, 3669197; 498644, 3669194; 498640, 3669190; 498637, 3669186; 498636, 3669182; 498634, 3669178; 498631, 3669174; 498628, 3669173; 498624, 3669171; 498601, 3669169; 498596, 3669168; 498591, 3669165; 498574, 3669154; 498562, 3669145; 498559, 3669142; 498556, 3669136; 498556, 3669133; 498556, 3669129; 498557, 3669126; 498473, 3669130; 498459, 3669130; 498257, 3669139; 498256, 3669139; 497925, 3669153; 497925, 3669152; 497923, 3669122; 497860, 3668196; 497849, 3668195; 497811, 3668192; 497777, 3668185; 497743, 3668171; 497698, 3668167; 497653, 3668194; 497632, 3668211; 497594, 3668218; 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Land bounded by the following UTM NAD27 coordinates (E,N): 469622, 3672591; 469622, 3672554; 469619, 3672494; 469646, 3672461; 469649, 3672349; 469640, 3672216; 469528, 3672209; 469522, 3672318; 469549, 3672588; 469560, 3672591.

Land bounded by the following UTM NAD27 coordinates (E,N): 474026, 3671712; 474074, 3671760; 474111, 3671798; 474155, 3671843; 474200, 3671843; 474333, 3671850; 474377, 3671857; 474446, 3671889; 474559, 3672004; 474597, 3672042; 474609, 3672112; 474622, 3672157; 474640, 3672214; 474652, 3672227; 474646, 3672294; 474649, 3672295; 474890, 3672409; 474999, 3672460; 475022, 3672471; 475036, 3672486; 475113, 3672524; 475149, 3672542; 475177, 3672556; 475204, 3672568; 475216, 3672573; 475226, 3672576; 475228, 3672577; 475230, 3672578; 475273, 3672585; 475241, 3672570; 475224, 3672559; 475198, 3672539; 475178, 3672518; 475147, 3672484; 474970, 3672283; 474953, 3672267; 474925, 3672248; 474870, 3672217; 474663, 3672103; 474660, 3672094; 474635, 3672036; 474591, 3671992; 474510, 3671896; 474421, 3671845; 474377, 3671825; 474350, 3671813; 474327, 3671815; 474282, 3671806; 474212, 3671805; 474187, 3671805; 474130, 3671779; 474074, 3671728; 474036, 3671690.

Land bounded by the following UTM NAD27 coordinates (E,N): 469601, 3672035; 469600, 3671978; 469630, 3671977; 469708, 3671967; 469716, 3671968; 469771, 3671693; 469724, 3671672; 469733, 3671637; 469630, 3671608; 469630, 3671548; 469818, 3671445; 469801, 3671428; 469733, 3671441; 469716, 3671428; 469686, 3671419; 469643, 3671453; 469600, 3671462; 469574, 3671548; 469549, 3671633; 469596, 3671659; 469596, 3671872; 469491, 3671875; 469490, 3671905; 469552, 3671904; 469553, 3671953; 469553, 3671954; 469553, 3671954; 469551, 3671991; 469494, 3671996; 469506, 3672110; 469604, 3672103; 469601, 3672045; 469601, 3672039; 469602, 3672037.

Land bounded by the following UTM NAD27 coordinates (E,N): 473609, 3671335; 473609, 3671364; 473633, 3671383; 473657, 3671393; 473728, 3671396; 473813, 3671434; 473829, 3671474; 473879, 3671543; 473907, 3671578; 473933, 3671639; 473968, 3671687; 474003, 3671725; 474006, 3671665; 473973, 3671614; 473886, 3671474; 473823, 3671410; 473779, 3671384; 473703, 3671371; 473665, 3671358; 473609, 3671302.

Land bounded by the following UTM NAD27 coordinates (E,N): 490586, 3671253; 490600, 3671253; 490638, 3671252; 490673, 3671252; 490676, 3671252; 490678, 3671259; 490715, 3671255; 490719, 3671255; 490813, 3671340; 491035, 3671350; 491051, 3670867; 491054, 3670780; 491054, 3670519; 490726, 3670519; 490678, 3670480; 490668, 3670200; 490919, 3670219; 491112, 3670084; 491132, 3669823; 491441, 3669717; 491441, 3669635; 490673, 3669640; 490668, 3669717; 490687, 3669823; 490639, 3669901; 490600, 3669901; 490542, 3669814; 490465, 3669756; 490378, 3669775; 490330, 3669852; 490301, 3670026; 490243, 3670162; 490050, 3670171; 490253, 3669881; 490300, 3669682; 490300, 3669665; 490298, 3669638; 490287, 3669638; 489819, 3669644; 489496, 3669649; 489461, 3669814; 489013, 3670333; 489013, 3670441; 489025, 3671281; 489023, 3671520; 489151, 3671577; 489228, 3671385; 489343, 3671462; 489481, 3671379; 489557, 3671253; 489420, 3671259; 489420, 3671089; 489497, 3671023; 489453, 3670995; 489541, 3670858; 489744, 3670831; 489788, 3670765; 489793, 3670518; 489788, 3670463; 490024, 3670386; 490227, 3670457; 490364, 3670611; 490328, 3670758; 490328, 3670763; 490265, 3670754; 490249, 3671253; 490583, 3671253. Excluding land bounded by the following UTM NAD27 coordinates (E,N): 490504, 3670067; 490502, 3670067; 490501, 3670068; 490500, 3670069; 490499, 3670070; 490497, 3670070; 490496, 3670071; 490495, 3670072; 490493, 3670073; 490492, 3670073; 490491, 3670074; 490489, 3670075; 490488, 3670076; 490487, 3670077; 490485, 3670077; 490484, 3670078; 490484, 3670078; 490482, 3670079; 490481, 3670079; 490479, 3670079; 490478, 3670079; 490476, 3670078; 490475, 3670077; 490474, 3670076; 490474, 3670076; 490456, 3670049; 490460, 3670049; 490508, 3670048; 490504, 3670066. Excluding land bounded by the following UTM NAD27 coordinates (E,N): 490396, 3670451; 490431, 3670451; 490464, 3670452; 490512, 3670631; 490521, 3670668; 490533, 3670711; 490544, 3670754; 490563, 3670826; 490563, 3670826; 490563, 3670826; 490576, 3670875; 490589, 3670923; 490613, 3671012; 490624, 3671056; 490635, 3671098; 490577, 3671114; 490562, 3671118; 490547, 3671122; 490546,

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Land bounded by the following UTM NAD27 coordinates (E,N): 495339, 3671181; 495330, 3671136; 495290, 3671132; 495263, 3671149; 495236, 3671176; 495209, 3671176; 495168, 3671158; 495187, 3671099; 495223, 3671059; 495223, 3671028; 495215, 3670995; 495210, 3670974; 495152, 3670938; 495071, 3670928; 494986, 3670932; 494941, 3670932; 494897, 3670887; 494888, 3670886; 494866, 3670850; 494857, 3670792; 494859, 3670786; 494775, 3670974; 494613, 3671229; 495335, 3671202.

Land bounded by the following UTM NAD27 coordinates (E,N): 472787, 3671058; 472775, 3671066; 472764, 3671075; 472755, 3671084; 472745, 3671092; 472732, 3671097; 472720, 3671100; 472708, 3671099; 472707, 3671098; 472685, 3671098; 472647, 3671110; 472557, 3671098; 472543, 3671111; 472526, 3671128; 472571, 3671129; 472621, 3671135; 472678, 3671148; 472723, 3671142; 472774, 3671117; 472824, 3671099; 472863, 3671086; 472888, 3671099; 472932, 3671112; 472970, 3671144; 473014, 3671175; 473033, 3671189; 473071, 3671208; 473128, 3671215; 473164, 3671215; 473210, 3671215; 473244, 3671194; 473238, 3671175; 473223, 3671178; 473197, 3671190; 473115, 3671189; 473071, 3671176; 473033, 3671151; 473021, 3671125; 473027, 3671113; 473025, 3671112; 473024, 3671113; 473023, 3671115; 473020, 3671116; 473017, 3671116; 473011, 3671117; 473005, 3671116; 473000, 3671114; 472994, 3671110; 472989, 3671107; 472981, 3671102; 472967, 3671094; 472943, 3671084; 472919, 3671075; 472886, 3671067; 472861, 3671062; 472824, 3671059; 472801, 3671055.

Land bounded by the following UTM NAD27 coordinates (E,N): 472474, 3671100; 472472, 3671100; 472464, 3671103; 472459, 3671104; 472450, 3671105; 472443, 3671107; 472438, 3671109; 472432, 3671111; 472427, 3671114; 472420, 3671118; 472415, 3671121; 472406, 3671125; 472403, 3671127; 472400, 3671128; 472394, 3671130; 472389, 3671132; 472382, 3671133; 472376, 3671135; 472371, 3671135; 472366, 3671133; 472363, 3671129; 472359, 3671125; 472357, 3671123; 472353, 3671122; 472347, 3671121; 472342, 3671121; 472337, 3671118; 472333, 3671115; 472328, 3671112; 472322, 3671109; 472318, 3671106; 472311, 3671101; 472305, 3671098; 472299, 3671095; 472290, 3671091; 472280, 3671088; 472274, 3671085; 472269, 3671080; 472263, 3671077; 472256, 3671074; 472250, 3671070; 472247, 3671067; 472242, 3671062; 472234, 3671058; 472229, 3671055; 472219, 3671049; 472214, 3671047; 472208, 3671044; 472201, 3671040; 472196, 3671039; 472192, 3671039; 472189, 3671039; 472184, 3671041; 472183, 3671047; 472183, 3671051; 472185, 3671054; 472187, 3671057; 472190, 3671060; 472193, 3671064; 472198, 3671073; 472200, 3671076; 472202, 3671079; 472204, 3671083; 472205, 3671088; 472206, 3671091; 472207, 3671094; 472209, 3671097; 472212, 3671100; 472215, 3671105; 472218, 3671108; 472222, 3671113; 472226, 3671115; 472230, 3671120; 472232, 3671124; 472233, 3671127; 472236, 3671133; 472241, 3671136; 472249, 3671140; 472253, 3671144; 472255, 3671147; 472263, 3671151; 472267, 3671151; 472276, 3671151; 472280, 3671150; 472285, 3671149; 472291, 3671149; 472294, 3671148; 472304, 3671147; 472307, 3671148; 472311, 3671151; 472317, 3671155; 472321, 3671157; 472325, 3671159; 472332, 3671160; 472336, 3671160; 472340, 3671161; 472343, 3671163; 472349, 3671166; 472355, 3671168; 472359, 3671168; 472366, 3671168; 472371, 3671168; 472375, 3671167; 472379, 3671166; 472384, 3671165; 472388, 3671166; 472392, 3671168; 472397, 3671169; 472401, 3671170; 472405, 3671170; 472410, 3671166; 472413, 3671164; 472416, 3671163; 472424, 3671159; 472430, 3671159; 472437, 3671159; 472444, 3671159; 472449, 3671158; 472452, 3671157; 472456, 3671155; 472466, 3671160; 472505, 3671102; 472500, 3671100; 472500, 3671100.

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Land bounded by the following UTM NAD27 coordinates (E,N): 498693, 3669120; 498629, 3669123; 498619, 3669129; 498615, 3669131; 498610, 3669131; 498604, 3669131; 498571, 3669127; 498570, 3669128; 498568, 3669130; 498568, 3669133; 498569, 3669135; 498582, 3669146; 498598, 3669155; 498605, 3669157; 498628, 3669160; 498632, 3669161; 498636, 3669163; 498641, 3669167; 498644, 3669172; 498647, 3669177; 498648, 3669181; 498649, 3669182; 498652, 3669184; 498654, 3669186; 498659, 3669187; 498668, 3669186; 498676, 3669185.

Land bounded by the following UTM NAD27 coordinates (E,N): 478300, 3668600; 478300, 3668647; 478266, 3668754; 478313, 3668812; 478352, 3668860; 478377, 3668892; 478405, 3668925; 478425, 3668951; 478433, 3668957; 478462, 3668980; 478488, 3669000; 478510, 3669017; 478537, 3669038; 478566, 3669031; 478712, 3668994; 478779, 3668944; 478818, 3668915; 478913, 3668844; 478920, 3668777; 478934, 3668641; 478938, 3668601; 478931, 3668564; 478928, 3668550; 478879, 3668316; 478862, 3668232; 478830, 3668080; 478662, 3668082; 478542, 3668083; 478521, 3668083; 478459, 3668084; 478416, 3668084; 478380, 3668085; 478340, 3668085; 478300, 3668085; 478265, 3668086; 478224, 3668085; 478223, 3668085; 478142, 3668086; 478010, 3668087; 477907, 3668087; 477854, 3668092; 477825, 3668163; 477735, 3668158; 477738, 3668125; 477815, 3668087; 477815, 3667966; 477815, 3667870; 477732, 3667870; 477726, 3667915; 477656, 3667969; 477667, 3668013; 477681, 3668061; 477641, 3668101; 477624, 3668113; 477603, 3668113; 477597, 3668093; 477492, 3668092; 477500, 3668185; 477380, 3668184; 477372, 3667971; 477477, 3667967; 477475, 3667945; 477472, 3667917; 477471, 3667893; 477471, 3667837; 477438, 3667835; 477425, 3667879; 477297, 3667863; 477099, 3667787; 477099, 3667695; 477154, 3667694; 477167, 3667663; 477171, 3667640; 477167, 3667611; 477158, 3667566; 477116, 3667581; 477058, 3667600; 477060, 3667487; 477270, 3667420; 477271, 3667353; 477272, 3667261; 477273, 3667185; 477272, 3667168; 477231, 3667148; 477190, 3667127; 477175, 3667119; 477106,

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Land bounded by the following UTM NAD27 coordinates (E,N): 494519, 3668574; 494463, 3668601; 494447, 3668597; 494414, 3668624; 494377, 3668616; 494347, 3668675; 494261, 3668738; 494246, 3668777; 494246, 3668807; 494253, 3668806; 494258, 3668774; 494265, 3668744; 494352, 3668683; 494381, 3668628; 494414, 3668634; 494421, 3668637; 494450, 3668610; 494479, 3668611; 494498, 3668600; 494606, 3668535; 494606, 3668525.

Land bounded by the following UTM NAD27 coordinates (E,N): 494531, 3668331; 494568, 3668447; 494587, 3668444; 494608, 3668444; 494615, 3668425; 494611, 3668421; 494617, 3668374; 494537, 3668331.

Land bounded by the following UTM NAD27 coordinates (E,N): 497171, 3667590; 497171, 3667625; 497178, 3667658; 497594, 3667620; 497643, 3667616; 497661, 3667606; 497661, 3667586.

Land bounded by the following UTM NAD27 coordinates (E,N): 498166, 3667398; 498125, 3667429; 498082, 3667478; 498089, 3667517; 498113, 3667520; 498104, 3667580; 498075, 3667586; 498226, 3667587; 498226, 3667540; 498170, 3667524; 498170, 3667483; 498209, 3667464; 498212, 3667418; 498205, 3667389.

Land bounded by the following UTM NAD27 coordinates (E,N): 475297, 3666654; 475151, 3666647; 475150, 3666751; 475150, 3666760; 475150, 3666773; 475151, 3666826; 475152, 3666869; 475153, 3666898; 475190, 3666927; 475675, 3667302; 475685, 3667033; 475695, 3666757; 475718, 3666313; 475721, 3666260; 475723, 3666229; 475663, 3666226; 475530, 3666225; 475446, 3666375; 475425, 3666426; 475426, 3666431; 475420, 3666440; 475423, 3666444; 475423, 3666445; 475393, 3666495; 475334, 3666592; 475325, 3666626; 475314, 3666626.

Land bounded by the following UTM NAD27 coordinates (E,N): 500242, 3666510; 500242, 3666508; 500241, 3666064; 500241, 3666031; 500240, 3666000; 500204, 3665479; 500157, 3664802; 500208, 3664009; 499907, 3664000; 499900, 3664000; 499900, 3664000; 499814, 3663997; 499818, 3664071; 499865, 3664128; 499815, 3664179; 499814, 3664215; 499784, 3664265; 499812, 3664301; 499810, 3664355; 499794, 3664369; 499781, 3664414; 499745, 3664464; 499745, 3664497; 499755, 3664517; 499742, 3664517; 499694, 3664502; 499679, 3664527; 499694, 3664560; 499741, 3664593; 499796, 3664596; 499804, 3664602; 499799, 3664795; 499723, 3664807; 499573, 3664850; 499504, 3664863; 499479, 3664872; 499431, 3664852; 499304, 3664858; 499157, 3664857; 499044, 3664870; 499170, 3664998; 499282, 3665055; 499352, 3665091; 499522, 3665117; 499570, 3665192; 499594, 3665217; 499609, 3665264; 499608, 3665310; 499583, 3665352; 499541, 3665369; 499499, 3665397; 499485, 3665439; 499497, 3665462; 499496, 3665486; 499484, 3665520; 499477, 3665528; 499455, 3665568; 499429, 3665581; 499395, 3665589; 499358, 3665583; 499332, 3665570; 499314, 3665464; 499196, 3665210; 498989, 3665208; 498978, 3665204; 498923, 3665199; 498874, 3665223; 498805, 3665238; 498729, 3665219; 498725, 3665173; 498771, 3665144; 498758, 3665105; 498755, 3665072; 498744, 3665077; 498694, 3665089; 498735, 3664974; 498728, 3664871; 498717, 3664814; 498685, 3664835; 498672, 3664866; 498660, 3665011; 498643, 3665094; 498584, 3665094; 498568, 3665153; 498525, 3665328; 498519, 3665351; 498505, 3665373; 498481, 3665410; 498480, 3665411; 498480, 3665409; 498470, 3665425; 498454, 3665415; 498424, 3665413; 498394, 3665411; 498355, 3665417; 498340, 3665400; 498309, 3665381; 498269, 3665373; 498219, 3665371; 498179, 3665387; 498175, 3665417; 498175, 3665460; 498166, 3665492; 498147, 3665503; 498136, 3665492; 498134, 3665471; 498121, 3665447; 498099, 3665456; 498061, 3665469; 498020, 3665489; 497978, 3665507; 497952, 3665511; 497950, 3665502; 497954, 3665479; 497953, 3665464; 497936, 3665447; 497908, 3665430; 497897, 3665413; 497908, 3665393; 497907, 3665363; 497901, 3665342; 497884, 3665331; 497849, 3665334; 497806, 3665309; 497755, 3665308; 497770, 3665424; 497776, 3665473; 497808, 3665481; 497835, 3665488; 497810, 3665532; 497797, 3665572; 497774, 3665574; 497776, 3665611; 497755, 3665631; 497768, 3665659; 497773, 3665682; 497794, 3665688; 497814, 3665691; 497828, 3665692; 497831, 3665703; 497827, 3665708; 497820, 3665712; 497820, 3665742; 497829, 3665755; 497853, 3665819; 497770, 3665848; 497740, 3665861; 497673, 3665861; 497660, 3665861; 497617, 3665868; 497591, 3665869; 497549, 3665875; 497539, 3665891; 497547, 3665893; 497549,

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Land bounded by the following UTM NAD27 coordinates (E,N): 479208, 3666013; 479235, 3666046; 479262, 3666079; 479290, 3666112; 479417, 3666263; 479425, 3666268; 479432, 3666272; 479433, 3666273; 479439, 3666278; 479440, 3666181; 479441, 3666151; 479441, 3666117; 479441, 3666089; 479442, 3666074; 479442, 3666058; 479442, 3666042; 479442, 3666026; 479442, 3666010; 479443, 3665988; 479443, 3665945; 479443, 3665908; 479461, 3665908; 479481, 3665938; 479495, 3665964; 479508, 3665980; 479518, 3666001; 479538, 3666044; 479554, 3666067; 479565, 3666082; 479589, 3666117; 479603, 3666139; 479624, 3666116; 479625, 3666111; 479628, 3666095; 479628, 3666082; 479623, 3666061; 479621, 3666059; 479605, 3666043; 479599, 3666034; 479590, 3666013; 479587, 3665994; 479587, 3665986; 479588, 3665963; 479580, 3665945; 479569, 3665935; 479555, 3665907; 479551, 3665892; 479543, 3665860; 479541, 3665847; 479538, 3665826; 479540, 3665790; 479445, 3665764; 479258, 3665728; 479251, 3665727; 479247, 3665726; 479233, 3665724; 479209, 3665720; 479205, 3665719; 479204, 3665719; 479180, 3665716; 479164, 3665715; 479153, 3665714; 479133, 3665712; 479119, 3665711; 479118, 3665711; 479095, 3665710; 479085, 3665710; 479081, 3665710; 479078, 3665710; 479073, 3665710; 479043, 3665710; 479016, 3665710; 478901, 3665712; 478884, 3665712; 478880, 3665712; 478863, 3665711; 478856, 3665711; 478855, 3665711; 478849, 3665711; 478819, 3665709; 478818, 3665709; 478808, 3665709; 478808, 3665713; 478860, 3665730; 478902, 3665742; 478944, 3665753; 478987, 3665762; 478999, 3665765; 479011, 3665770; 479021, 3665775; 479033, 3665782; 479042, 3665789; 479048, 3665796; 479056, 3665805; 479106, 3665874; 479112, 3665882; 479166, 3665957; 479199, 3666000; 479200, 3666000; 479200, 3666001.

Land bounded by the following UTM NAD27 coordinates (E,N): 475651, 3666200; 475724, 3666204; 475727, 3666147; 475730, 3666097; 475731, 3666076; 475693, 3666092; 475550, 3666199.

Land bounded by the following UTM NAD27 coordinates (E,N): 479568, 3665721; 479565, 3665733; 479566, 3665746; 479843, 3665804; 479843, 3665754; 479795, 3665747; 479699, 3665734; 479640, 3665727; 479572, 3665707.

Land bounded by the following UTM NAD27 coordinates (E,N): 479132, 3665514; 479133, 3665602; 479285, 3665682; 479444, 3665681; 479444, 3665725; 479542, 3665742; 479555, 3665701; 479558, 3665688; 479574, 3665656; 479523, 3665610; 479484, 3665603; 479458, 3665595; 479419, 3665581; 479386, 3665558; 479359, 3665535; 479332, 3665512; 479306, 3665489; 479289, 3665480; 479246, 3665448; 479262, 3665392; 479234, 3665382; 479203, 3665401; 479157, 3665403; 479089, 3665422; 479046, 3665398; 479045, 3665514.

Land bounded by the following UTM NAD27 coordinates (E,N): 478627, 3665664; 478627, 3665647; 478628, 3665521; 478639, 3665526; 478639, 3664494; 478822, 3664495; 478822, 3664494; 478841, 3664489; 479035, 3664487; 479032, 3664397; 479034, 3664387; 479031, 3664387; 479030, 3664362; 478843, 3664385; 478774, 3664352; 478803, 3664268; 478948, 3664190; 479031, 3664202; 479036, 3664158; 478984, 3664125; 478886, 3664101; 478760, 3664106; 478670, 3664089; 478639, 3664091; 478639, 3664234; 478636, 3664244; 478636, 3664238; 478618, 3664259; 478597, 3664288; 478570, 3664314; 478536, 3664343; 478512, 3664355; 478452, 3664396; 478423, 3664422; 478395, 3664456; 478375, 3664470; 478332, 3664486; 478317, 3664505; 478288, 3664526; 478266, 3664530; 478238, 3664525; 478213, 3664517; 478151, 3664487; 478051, 3664608; 478021, 3664647; 478012, 3664655; 478015, 3664659; 478040, 3664690; 478070, 3664739; 478093, 3664770; 478127, 3664819; 478149, 3664848; 478156, 3664879; 478167, 3664924; 478179, 3664945; 478190, 3664969; 478197, 3664992; 478203, 3665020; 478290, 3665091; 478313, 3665109; 478360, 3665154; 478393, 3665169; 478436, 3665208; 478451, 3665266; 478453, 3665395; 478464, 3665435; 478475, 3665470; 478460, 3665496; 478430, 3665517; 478409, 3665580; 478447, 3665594; 478575, 3665634; 478627, 3665647; 478627, 3665664. Excluding land bounded by the following UTM NAD27 coordinates (E,N): 478427, 3664552; 478445, 3664555; 478472, 3664560; 478500, 3664570; 478514, 3664586; 478514, 3664605; 478503, 3664621; 478505, 3664643; 478520, 3664661; 478534, 3664676; 478539, 3664707; 478534, 3664727; 478508, 3664749; 478484, 3664765; 478475, 3664786; 478470, 3664815; 478478, 3664905; 478489, 3664950; 478499, 3664972; 478514, 3664990; 478534, 3665004; 478544, 3665029; 478549, 3665061; 478541, 3665100; 478521, 3665136; 478514, 3665144; 478503, 3665143; 478493, 3665132; 478477, 3665113; 478429, 3665019; 478397, 3664972; 478387, 3664934; 478385, 3664897; 478386, 3664848; 478370, 3664805; 478364, 3664762; 478364, 3664707; 478336, 3664649; 478332, 3664620; 478352, 3664588; 478388, 3664559; 478417, 3664551.

Land bounded by the following UTM NAD27 coordinates (E,N): 477164, 3665552; 477171, 3665550; 477171, 3665550; 477172, 3665540; 477178, 3665435; 477184, 3665376; 477194, 3665325; 477215, 3665258; 477228, 3665222; 477244, 3665188; 477261, 3665152; 477277, 3665127; 477331, 3665047; 477364, 3665010; 477344, 3664994; 477328, 3664995; 477309, 3665001; 477254, 3665023; 477224, 3665027; 477200, 3665023; 477192, 3665020.

Land bounded by the following UTM NAD27 coordinates (E,N): 473428, 3665402; 473427, 3665401; 473443, 3665302; 473117, 3665242; 473088, 3665219; 473007, 3665161; 473005, 3665161; 473005, 3665162; 473003, 3665170; 472975, 3665320; 473042, 3665332; 473219, 3665364; 473338, 3665385; 473428, 3665402.

Land bounded by the following UTM NAD27 coordinates (E,N): 477785, 3664812; 477743, 3664830; 477708, 3664842; 477711, 3664843; 477723, 3664867; 477706, 3664915; 477750, 3664997; 477747, 3665046; 477763, 3665082; 477784, 3665118; 477800, 3665157; 477803, 3665178; 477844, 3665171; 477866, 3665161; 477811, 3664812; 477807, 3664801.

Land bounded by the following UTM NAD27 coordinates (E,N): 481525, 3657212; 481647, 3657209; 481642,

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Land bounded by the following UTM NAD27 coordinates (E,N): 477212, 3664642; 477269, 3664644; 477308, 3664635; 477327, 3664601; 477331, 3664573; 477306, 3664543; 477275, 3664519; 477248, 3664498; 477256, 3664480; 477306, 3664490; 477342, 3664505; 477386, 3664544; 477421, 3664573; 477466, 3664610; 477483, 3664623; 477487, 3664673; 477531, 3664687; 477561, 3664715; 477584, 3664771; 477596, 3664811; 477607, 3664834; 477631, 3664825; 477676, 3664811; 477722, 3664796; 477738, 3664790; 477765, 3664776; 477638, 3664755; 477631, 3664684; 477632, 3664676; 477636, 3664661; 477663, 3664612; 477662, 3664601; 477651, 3664589; 477632, 3664575; 477614, 3664561; 477580, 3664523; 477566, 3664510; 477529, 3664499; 477496, 3664490; 477466, 3664481; 477426, 3664478; 477410, 3664473; 477360, 3664434; 477340, 3664418; 477295, 3664402; 477245, 3664381; 477226, 3664375.

Land bounded by the following UTM NAD27 coordinates (E,N): 499008, 3664454; 498992, 3664483; 498978, 3664506; 498931, 3664535; 498889, 3664577; 498873, 3664610; 498863, 3664642; 498847, 3664669; 498816, 3664697; 498785, 3664721; 498744, 3664723; 498738, 3664744; 498742, 3664753; 498745, 3664752; 498736, 3664780; 498778, 3664778; 498806, 3664755; 498875, 3664687; 498957, 3664618; 499017, 3664538; 499062, 3664463; 499103, 3664410; 499115, 3664367; 499128, 3664323; 499184, 3664262; 499227, 3664207; 499203, 3664151; 499197, 3664096; 499212, 3664064; 499153, 3664055; 499129, 3664108; 499135, 3664206; 499128, 3664250; 499091, 3664286; 499054, 3664341; 499064, 3664364; 499067, 3664371; 499008, 3664427.

Land bounded by the following UTM NAD27 coordinates (E,N): 476898, 3664022; 476902, 3664016; 476915, 3663986; 476927, 3663961; 476934, 3663931; 476942, 3663902; 476943, 3663892; 477030, 3663947; 477048, 3663955; 477063, 3663960; 477082, 3663962; 477101, 3663975; 477109, 3663995; 477108, 3664020; 477109, 3664021; 477109, 3664021; 477245, 3664021; 477231, 3664274; 477246, 3664274; 477271, 3664282; 477292, 3664289; 477316, 3664300; 477333, 3664308; 477362, 3664319; 477390, 3664332; 477422, 3664347; 477434, 3664353; 477457, 3664356; 477590, 3664393; 477601, 3664392; 477616, 3664371; 477634, 3664346; 477659, 3664352; 477676, 3664373; 477692, 3664389; 477712, 3664400; 477742, 3664406; 477778, 3664404; 477823, 3664398; 477842, 3664399; 477858, 3664413; 477965, 3664515; 478059, 3664544; 478083, 3664515; 478172, 3664408; 478215, 3664341; 478195, 3664329; 478158, 3664304; 478142, 3664284; 478126, 3664242; 478120, 3664194; 478121, 3664170; 478133, 3664139; 478154, 3664105; 478174, 3664068; 478187, 3664046; 478142, 3664039; 478138, 3664049; 478130, 3664074; 478121, 3664097; 478108, 3664115; 478094, 3664133; 478076, 3664152; 478048, 3664169; 478035, 3664165; 478028, 3664154; 478021, 3664147; 478011, 3664147; 477871, 3664176; 477874, 3664217; 477854, 3664218; 477816, 3664212; 477774, 3664193; 477729, 3664184; 477697, 3664193; 477649, 3664215; 477587, 3664212; 477547, 3664193; 477510, 3664165; 477477, 3664129; 477445, 3664125; 477409, 3664156; 477381, 3664176; 477358, 3664171; 477348, 3664143; 477341, 3664094; 477345, 3664050; 477342, 3664007; 477343, 3663966; 477359, 3663931; 477388, 3663922; 477431, 3663919; 477469, 3663918; 477476, 3663914; 477493, 3663901; 477514, 3663882; 477529, 3663871; 477550, 3663864; 477587, 3663854; 477616, 3663843; 477648, 3663842; 477683, 3663845; 477738, 3663846; 477785, 3663850; 477839, 3663847; 477867, 3663845; 477901, 3663833; 477931, 3663817; 477959, 3663815; 477983, 3663826; 478025, 3663849; 478051, 3663865; 478082, 3663878; 478111, 3663888; 478139, 3663905; 478160, 3663924; 478175, 3663938; 478192, 3663931; 478221, 3663927; 478250, 3663923; 478285, 3663926; 478310, 3663928; 478338, 3663937; 478376, 3663941; 478370, 3663957; 478359, 3663975; 478340, 3663994; 478329, 3664011; 478330, 3664031; 478336, 3664047; 478349, 3664067; 478367, 3664079; 478367, 3664079; 478472, 3663903; 478470, 3663902; 478456, 3663891; 478429, 3663882; 478407, 3663883; 478379, 3663895; 478360, 3663903; 478339, 3663904; 478318, 3663892; 478303, 3663883; 478296, 3663866; 478287, 3663806; 478272, 3663777; 478259, 3663752; 478257, 3663695; 478256, 3663689; 478256, 3663689; 478147, 3663687; 478147, 3663687; 478148, 3663695; 478153, 3663710; 478163, 3663734; 478163, 3663752; 478153, 3663761; 478146, 3663783; 478151, 3663807; 478151, 3663837; 478149, 3663847; 478135, 3663855; 478122, 3663856; 478113, 3663854; 478090, 3663842; 478066, 3663828; 478039, 3663815; 478016, 3663808; 477984, 3663794; 477959, 3663780; 477943, 3663767; 477928, 3663766; 477913, 3663768; 477878, 3663791; 477848, 3663800; 477826, 3663796; 477799, 3663793; 477757, 3663794; 477642, 3663811; 477591, 3663818; 477570, 3663827; 477538, 3663836; 477503, 3663850; 477474, 3663850; 477440, 3663843; 477408, 3663834; 477375, 3663836; 477343, 3663841; 477318, 3663824; 477313, 3663793; 477318, 3663747; 477310, 3663709; 477301, 3663676; 477301, 3663676; 476969, 3663671; 476933, 3663701; 476903, 3663737; 476868, 3663793; 476834, 3663847; 476799, 3663889; 476747, 3663926; 476713, 3663940; 476665, 3663950; 476576, 3663951; 476495, 3663950; 476494, 3663630; 476461, 3663669; 476439, 3663668; 476414, 3663670; 476402, 3663686; 476349, 3663695; 476307, 3663694; 476280, 3663687; 476258, 3663699; 476285, 3663732; 476283, 3663745; 476277, 3663758; 476276, 3663762; 476262, 3663784; 476252, 3663801; 476219, 3663810; 476204, 3663827; 476178, 3663824; 476173, 3663810; 476153,

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Land bounded by the following UTM NAD27 coordinates (E,N): 499111, 3664485; 499103, 3664504; 499110, 3664516; 499126, 3664516; 499138, 3664504; 499143, 3664495; 499138, 3664482; 499131, 3664478; 499120, 3664478.

Land bounded by the following UTM NAD27 coordinates (E,N): 499341, 3664088; 499399, 3664091; 499454, 3664132; 499473, 3664158; 499489, 3664202; 499506, 3664278; 499519, 3664323; 499533, 3664372; 499570, 3664365; 499572, 3664333; 499554, 3664313; 499549, 3664287; 499548, 3664233; 499548, 3664191; 499554, 3664175; 499520, 3664122; 499483, 3664096; 499457, 3664074; 499407, 3664059; 499341, 3664055.

Land bounded by the following UTM NAD27 coordinates (E,N): 475623, 3664213; 475630, 3664233; 475642, 3664252; 475658, 3664267; 475670, 3664284; 475685, 3664304; 475695, 3664312; 475703, 3664299; 475725, 3664284; 475731, 3664263; 475704, 3664227; 475703, 3664190; 475701, 3664175; 475695, 3664154; 475690, 3664134; 475674, 3664120; 475672, 3664069; 475704, 3664011; 475763, 3663985; 475779, 3663990; 475804, 3664045; 475810, 3664060; 475843, 3664073; 475852, 3664067; 475917, 3664070; 475935, 3664102; 475955, 3664115; 475988, 3664162; 476004, 3664146; 475999, 3664120; 475973, 3664118; 475941, 3664089; 475945, 3664053; 475957, 3664028; 475917, 3664034; 475901, 3664044; 475874, 3664036; 475869, 3664024; 475861, 3664012; 475848, 3663999; 475837, 3663986; 475827, 3663939; 475860, 3663892; 475812, 3663883; 475790, 3663884; 475783, 3663885; 475757, 3663876; 475731, 3663907; 475708, 3663921; 475706, 3663943; 475692, 3663952; 475679, 3663947; 475673, 3663945; 475640, 3663962; 475617, 3664010; 475614, 3664029; 475610, 3664056; 475612, 3664083; 475615, 3664103; 475615, 3664131; 475612, 3664156; 475614, 3664182; 475619, 3664199.

Land bounded by the following UTM NAD27 coordinates (E,N): 479005, 3664013; 479043, 3664079; 479043, 3663706; 479045, 3663677; 479854, 3663675; 479852, 3663271; 479851, 3663271; 479846, 3663271; 479834, 3663271; 479831, 3663474; 479491, 3663474; 479491, 3663270; 479812, 3663268; 479847, 3663204; 479880, 3663144; 479873, 3663150; 479823, 3663126; 479797, 3663102; 479761, 3663104; 479713, 3663114; 479668, 3663143; 479656, 3663140; 479627, 3663126; 479618, 3663128; 479616, 3663157; 479606, 3663176; 479587, 3663183; 479556, 3663183; 479542, 3663169; 479516, 3663169; 479492, 3663178; 479468, 3663200; 479446, 3663212; 479423, 3663212; 479396, 3663212; 479385, 3663216; 479370, 3663243; 479339, 3663264; 479327, 3663264; 479306, 3663247; 479294, 3663231; 479263, 3663262; 479246, 3663262; 479211, 3663281; 479170, 3663319; 479096, 3663385; 479058, 3663447; 479033, 3663458; 479033, 3663458; 478992, 3663558; 478947, 3663677; 478953, 3663677; 478943, 3663698; 478941, 3663753; 478943, 3663825; 478955, 3663879; 478974, 3663944; 479000, 3664000; 479000, 3664000; 479000, 3664001.

Land bounded by the following UTM NAD27 coordinates (E,N): 499113, 3663787; 499137, 3663874; 499149, 3663929; 499161, 3664003; 499158, 3664024; 499221, 3664024; 499239, 3664029; 499275, 3664034; 499302, 3664034; 499313, 3664026; 499314, 3664013; 499306, 3664008; 499293, 3664006; 499274, 3664006; 499263, 3664002; 499249, 3664000; 499242, 3663997; 499223, 3663989; 499223, 3663986; 499223, 3663905; 499193, 3663831; 499155, 3663765; 499149, 3663750; 499129, 3663750; 499072, 3663749.

Land bounded by the following UTM NAD27 coordinates (E,N): 478600, 3663700; 478563, 3663788; 478568, 3663794; 478600, 3663835; 478606, 3663838; 478622, 3663840; 478642, 3663842; 478642, 3663842; 478643, 3663707; 478643, 3663696; 478643, 3663694; 478643, 3663694; 478602, 3663694; 478602, 3663694; 478600, 3663700; 478600, 3663700.

Land bounded by the following UTM NAD27 coordinates (E,N): 499674, 3663409; 499687, 3663432; 499737, 3663460; 499794, 3663484; 499815, 3663455; 499717, 3663397; 499689, 3663394.

Land bounded by the following UTM NAD27 coordinates (E,N): 499243, 3663430; 499411, 3663431; 499528, 3663432; 499526, 3663451; 499547, 3663452; 499571, 3663451; 499591, 3663447; 499613, 3663441; 499632, 3663433; 499632, 3663404; 499529, 3663398; 499509, 3663388; 499497, 3663369; 499411, 3663356; 499409, 3663356; 499243, 3663335.

Land bounded by the following UTM NAD27 coordinates (E,N): 476312, 3663085; 476319, 3663080; 476338, 3663076; 476360, 3663072; 476369, 3663065; 476394, 3663046; 476379, 3663033; 476361, 3663041; 476345, 3663030; 476335, 3663013; 476334, 3662997; 476332, 3662980; 476331, 3662961; 476333, 3662945; 476335, 3662928; 476337, 3662918; 476332, 3662902; 476327, 3662883; 476322, 3662868; 476316, 3662849; 476311, 3662833; 476306, 3662817; 476302, 3662801; 476301, 3662789; 476298, 3662775; 476298, 3662761; 476301, 3662745; 476303, 3662732; 476308, 3662714; 476297, 3662723; 476291, 3662731; 476284, 3662743; 476262, 3662745; 476245, 3662777; 476236, 3662800; 476233, 3662808; 476237, 3662832; 476242, 3662857; 476250, 3662886; 476257, 3662908; 476261, 3662923; 476247, 3662957; 476265, 3662986; 476271, 3663010; 476273, 3663024; 476270, 3663038; 476267, 3663050; 476260, 3663062; 476247, 3663075; 476293, 3663094.

Land bounded by the following UTM NAD27 coordinates (E,N): 476486, 3662337; 476463, 3662333; 476462, 3662352; 476458, 3662360; 476449, 3662368; 476441, 3662377; 476433, 3662384; 476422, 3662390; 476412, 3662397; 476397, 3662404; 476384, 3662410; 476375, 3662417; 476363, 3662423; 476352, 3662431; 476339, 3662438; 476329, 3662444; 476301, 3662457; 476256, 3662513; 476293, 3662544; 476308, 3662576; 476324, 3662650; 476311, 3662698; 476320, 3662685; 476331, 3662665; 476339, 3662650; 476364, 3662626; 476392, 3662623; 476395, 3662607; 476394, 3662590; 476397, 3662572; 476394, 3662567; 476388, 3662556; 476387, 3662538; 476387, 3662517; 476385, 3662509; 476385, 3662498; 476383, 3662488; 476389, 3662476; 476394, 3662465; 476399, 3662457; 476488, 3662409; 476487, 3662337.

Land bounded by the following UTM NAD27 coordinates (E,N): 493819, 3661593; 493797, 3661617; 493757, 3661622; 493732, 3661644; 493722, 3661668; 493767, 3661688; 493769, 3661723; 493740, 3661768; 493638, 3661810; 493577, 3661823; 493523,

3661846; 493498, 3661866; 493486, 3661889; 493489, 3661909; 493713, 3661865; 493750, 3661857; 493779, 3661851; 493824, 3661840; 493818, 3661811; 493809, 3661772; 493830, 3661767; 493848, 3661718; 493874, 3661706; 493900, 3661723; 493900, 3661719; 493889, 3661667; 493869, 3661569.

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Land bounded by the following UTM NAD27 coordinates (E,N): 495094, 3657918; 495087, 3657918; 494993, 3657924; 494885, 3657931; 494833, 3657950; 494738, 3657987; 494757, 3657991; 494776, 3657991; 494798, 3657989; 494824, 3657983; 494852, 3657979; 494872, 3657980; 494903, 3657984; 494919, 3657976; 494929, 3657971; 494955, 3657971; 494973, 3657967; 495004, 3657961; 495022, 3657961; 495044, 3657955; 495074, 3657951; 495090, 3657954; 495094, 3657957; 495109, 3658035; 495139, 3658037; 495159, 3658045; 495185, 3658046; 495217, 3658042; 495246, 3658030; 495251, 3658030; 495278, 3658011; 495292, 3658015; 495296, 3658008; 495296, 3658001; 495278, 3657997; 495253, 3657966; 495243, 3657942; 495236, 3657912; 495245, 3657895; 495270, 3657885; 495290, 3657882; 495312, 3657889; 495291, 3657915; 495293, 3657919; 495294, 3657923; 495292, 3657935; 495292, 3657939; 495293, 3657949; 495297, 3657963; 495304, 3657980; 495306, 3657987; 495306, 3657995; 495306, 3658004; 495304, 3658011; 495302, 3658017; 495295, 3658032; 495310, 3658029; 495323, 3658014; 495330, 3657991; 495329, 3657968; 495328, 3657940; 495328, 3657930; 495348, 3657906; 495387, 3657895; 495415, 3657924; 495387, 3657945; 495387, 3657950; 495386, 3657954; 495379, 3657963; 495374, 3657973; 495372, 3657977; 495369, 3657986; 495366, 3658010; 495366, 3658016; 495364, 3658023; 495363, 3658028; 495360, 3658035; 495354, 3658044; 495350, 3658049; 495345, 3658054; 495339, 3658059; 495334, 3658063; 495326, 3658067; 495318, 3658069; 495294, 3658074; 495293, 3658074; 495291, 3658077; 495290, 3658081; 495290, 3658084; 495291, 3658087; 495295, 3658090; 495314, 3658093; 495323, 3658095; 495330, 3658098; 495342, 3658104; 495367, 3658120; 495364, 3658095; 495368, 3658060; 495400, 3658069; 495404, 3658069; 495408, 3658071; 495412, 3658074; 495414, 3658078; 495415, 3658092; 495416, 3658097; 495420, 3658109; 495421, 3658117; 495421, 3658124; 495421, 3658128; 495418, 3658135; 495415, 3658142; 495415, 3658143; 495414, 3658146; 495415, 3658150; 495435, 3658167; 495446, 3658179; 495452, 3658188; 495461, 3658200; 495467, 3658213; 495472, 3658224; 495474, 3658227; 495475, 3658227; 495478, 3658228; 495480, 3658228; 495480, 3658228; 495474, 3658204; 495465, 3658181; 495457, 3658161; 495451, 3658144; 495452, 3658133; 495456, 3658103; 495463, 3658095; 495480, 3658106; 495484, 3658099; 495488, 3658094; 495479, 3658087; 495471, 3658062; 495467, 3658050; 495469, 3658031; 495470, 3658019; 495478, 3658005; 495486, 3657992; 495494, 3657984; 495515, 3657964; 495532, 3657947; 495542, 3657941; 495553, 3657942; 495567, 3657958; 495572, 3657975; 495574, 3657978; 495578, 3657980; 495579, 3657981; 495550, 3657998; 495545, 3658003; 495523, 3658024; 495519, 3658054; 495521, 3658083; 495544, 3658116; 495560, 3658162; 495571, 3658217; 495570, 3658243; 495561, 3658267; 495543, 3658283; 495505, 3658295; 495495, 3658298; 495498, 3658317; 495521, 3658344; 495534, 3658354; 495574, 3658310; 495594, 3658292; 495595, 3658291; 495626, 3658283; 495634, 3658238; 495624, 3658190; 495620, 3658153; 495620, 3658111; 495618, 3658078; 495624, 3658055; 495627, 3658054; 495632, 3658052; 495636, 3658049; 495637, 3658048; 495653, 3658052; 495668, 3658050; 495686, 3658047; 495763, 3658049; 495763, 3658070; 495834, 3658071; 495823, 3658111; 495798, 3658115; 495780, 3658130; 495781, 3658185; 495784, 3658191; 495783, 3658193; 495757, 3658218; 495723, 3658225; 495658, 3658238; 495688, 3658278; 495731, 3658278; 495791, 3658274; 495838, 3658279; 495863, 3658298; 495902, 3658296; 495913, 3658347; 495920, 3658327; 495921, 3658295; 495942, 3658244; 495973, 3658234; 495992, 3658239; 496014, 3658219; 496057, 3658219; 496072, 3658297; 496100, 3658297; 496128, 3658287; 496148, 3658263; 496158, 3658228; 496140, 3658198; 496133, 3658138; 496154, 3658131; 496173, 3658121; 496200, 3658034; 496157, 3658014; 496105, 3657987; 496104, 3657968; 496101, 3657885; 496067, 3657777; 496006, 3657744; 495923, 3657681; 495886, 3657706; 495851, 3657676; 495727, 3657700; 495637, 3657684; 495612, 3657672; 495589, 3657663; 495588, 3657662; 495530, 3657682; 495440, 3657632; 495399, 3657630; 495355, 3657646; 495352, 3657647; 495296, 3657708; 495275, 3657712; 495250, 3657718; 495227, 3657723; 495214, 3657725; 495127, 3657743; 495009, 3657766; 495094, 3657917.

Land bounded by the following UTM NAD27 coordinates (E,N): 479207, 3658351; 479311, 3658343; 479311, 3658318; 479210, 3658284.

Land bounded by the following UTM NAD27 coordinates (E,N): 478669, 3658060; 478664, 3658060; 478663, 3658068; 478662, 3658068; 478417, 3658081; 478417, 3658078; 478421, 3658004; 478424, 3657951; 478424, 3657950; 478419, 3657949; 478378, 3657993; 478332, 3658023; 478280, 3658025; 478223, 3658024; 478178, 3658024; 478179, 3658034; 478179, 3658048; 478177, 3658057; 478171, 3658081; 478327, 3658148; 478363, 3658170; 478381, 3658189; 478399, 3658227; 478399, 3658299; 478422, 3658301; 478441, 3658259; 478463, 3658230; 478481, 3658189; 478510, 3658163; 478548, 3658154; 478606, 3658171; 478626, 3658206; 478647, 3658231; 478683, 3658240; 478715, 3658252; 478712, 3658266; 478741, 3658304; 478772, 3658310; 478807, 3658316; 478836, 3658326; 478873, 3658321; 478878, 3658297; 478934, 3658308; 478987, 3658336; 479002, 3658343; 479031, 3658344; 479141, 3658332; 479204, 3658336; 479204, 3658336; 479206, 3658298; 479206,

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Land bounded by the following UTM NAD27 coordinates (E,N): 475505, 3657619; 475491, 3657621; 475476, 3657624; 475460, 3657628; 475446, 3657633; 475431, 3657640; 475453, 3657747; 475427, 3657869; 475445, 3657876; 475458, 3657856; 475462, 3657860; 475465, 3657866; 475465, 3657869; 475465, 3657892; 475490, 3657892; 475499, 3657923; 475497, 3657938; 475482, 3657972; 475490, 3658005; 475496, 3658019; 475505, 3658060; 475513, 3658091; 475511, 3658095; 475511, 3658109; 475520, 3658162; 475520, 3658171; 475519, 3658203; 475520, 3658214; 475521, 3658232; 475519, 3658250; 475516, 3658267; 475504, 3658320; 475519, 3658323; 475530, 3658324; 475562, 3658325; 475565, 3658323; 475567, 3658320; 475568, 3658317; 475564, 3658278; 475561, 3658250; 475544, 3658104; 475539, 3658061; 475535, 3658018; 475534, 3657997; 475533, 3657975; 475533, 3657938; 475532, 3657624; 475529, 3657620; 475526, 3657619; 475523, 3657618.

Land bounded by the following UTM NAD27 coordinates (E,N): 493577, 3658172; 493542, 3658123; 493560, 3658054; 493520, 3658030; 493496, 3658019; 493494, 3658013; 493490, 3658011; 493450, 3657978; 493383, 3657965; 493330, 3657965; 493337, 3657998; 493383, 3658024; 493436, 3658051; 493436, 3658078; 493470, 3658164; 493537, 3658268; 493558, 3658262; 493584, 3658226.

Land bounded by the following UTM NAD27 coordinates (E,N): 477282, 3658206; 477340, 3658208; 477390, 3658141; 477382, 3658124; 477367, 3658131; 477352, 3658105; 477357, 3658093; 477354, 3658093; 477351, 3658091; 477348, 3658088; 477346, 3658084; 477345, 3658081; 477320, 3658060; 477266, 3658059; 477266, 3658047; 477269, 3657994; 477295, 3657937; 477282, 3657911; 477297, 3657903; 477300, 3657901; 477300, 3657900; 477301, 3657900; 477315, 3657889; 477309, 3657864; 477307, 3657865; 477306, 3657865; 477304, 3657866; 477303, 3657866; 477302, 3657867; 477300, 3657868; 477299, 3657868; 477297, 3657869; 477296, 3657870; 477295, 3657870; 477293, 3657871; 477292, 3657872; 477291, 3657873; 477290, 3657874; 477288, 3657874; 477287, 3657875; 477286, 3657876; 477256, 3657898; 477248, 3657904; 477247, 3657904; 477246, 3657905; 477244, 3657906; 477243, 3657907; 477242, 3657908; 477241, 3657909; 477240, 3657910; 477239, 3657912; 477238, 3657913; 477237, 3657914; 477236, 3657915; 477235, 3657916; 477234, 3657917; 477233, 3657918; 477232, 3657919; 477231, 3657921; 477230, 3657922; 477229, 3657923; 477254, 3657938; 477249, 3657952; 477242, 3657969; 477235, 3657987; 477228, 3658005; 477221, 3658023; 477215, 3658039; 477208, 3658056; 477202, 3658073; 477195, 3658089; 477187, 3658109; 477176, 3658127; 477162, 3658144; 477146, 3658158; 477127, 3658168; 477108, 3658176; 477087, 3658180; 477081, 3658181; 477067, 3658181; 477045, 3658179; 477027, 3658176; 477008, 3658174; 476989, 3658171; 476969, 3658168; 476969, 3658168; 476952, 3658165; 476928, 3658166; 476907, 3658167; 476884, 3658171; 476883, 3658172; 476882, 3658172; 476880, 3658173; 476879, 3658174; 476877, 3658174; 476876, 3658174; 476874, 3658175; 476873, 3658175; 476871, 3658175; 476870, 3658175; 476868, 3658175; 476867, 3658176; 476865, 3658176; 476864, 3658175; 476862, 3658175; 476861, 3658175; 476859, 3658175; 476858, 3658175; 476856, 3658175; 476855, 3658174; 476853, 3658174; 476852, 3658173; 476850, 3658173; 476849, 3658172; 476848, 3658172; 476846, 3658171; 476845, 3658170; 476843, 3658170; 476842, 3658169; 476841, 3658168; 476839, 3658167; 476838, 3658166; 476837, 3658165; 476836, 3658164; 476835, 3658163; 476834, 3658162; 476833, 3658161; 476832, 3658160; 476831, 3658159; 476830, 3658158; 476829, 3658157; 476828, 3658155; 476827, 3658154; 476826, 3658153; 476826, 3658151; 476825, 3658150; 476824, 3658149; 476824, 3658147; 476823, 3658146; 476823, 3658144; 476822, 3658143; 476822, 3658141; 476822, 3658140; 476821, 3658138; 476821, 3658137; 476821, 3658135; 476821, 3658134; 476821, 3658132; 476828, 3658101; 476832, 3658082; 476820, 3658078; 476821, 3658042; 476820, 3658042; 476818, 3658042; 476817, 3658042; 476815, 3658042; 476814, 3658042; 476813, 3658064; 476812, 3658088; 476811, 3658107; 476810, 3658127; 476810, 3658143; 476809, 3658156; 476808, 3658180; 476808, 3658185; 476845, 3658186; 476845, 3658186; 476930, 3658190; 476923, 3658190; 476965, 3658192; 477081, 3658197; 477259, 3658205.

Land bounded by the following UTM NAD27 coordinates (E,N): 479980, 3658180; 480000, 3658120; 480001, 3658119; 480001, 3658117; 480002, 3658116; 480002, 3658114; 480002, 3658113; 480003, 3658111; 480003, 3658110; 480003, 3658108; 480003, 3658107; 480003, 3658105; 480004, 3658104; 480004, 3658102; 480004, 3658101; 480004, 3658099; 480004, 3658098; 480004, 3658096; 480004, 3658095; 480004, 3658093; 480004, 3658092; 480003, 3658056; 479985, 3658059; 479986, 3658061; 479987, 3658062; 479987, 3658063; 479988, 3658065; 479989, 3658066; 479990, 3658067; 479990, 3658069; 479991, 3658070; 479992, 3658071; 479992, 3658073; 479993, 3658074; 479993, 3658076; 479994, 3658077; 479994, 3658079; 479994, 3658080; 479993, 3658082; 479993, 3658083; 479992, 3658085; 479992, 3658086; 479991, 3658087; 479990, 3658089; 479989, 3658090; 479988, 3658091; 479987, 3658092; 479986, 3658093; 479985, 3658094; 479984, 3658095; 479983, 3658096; 479982, 3658098; 479981, 3658099; 479980, 3658100; 479979, 3658101; 479978, 3658102; 479977, 3658103; 479976, 3658104; 479975, 3658105; 479974, 3658107; 479973, 3658108; 479972, 3658109; 479971, 3658110; 479970, 3658112; 479969, 3658113; 479969, 3658114; 479968, 3658116; 479967, 3658117; 479966, 3658118; 479966, 3658120; 479965, 3658121; 479964, 3658122; 479964, 3658124; 479963, 3658125; 479962, 3658126; 479962, 3658128; 479961, 3658129; 479960, 3658131; 479960, 3658132; 479959, 3658133; 479958, 3658135; 479958, 3658136; 479957, 3658137; 479956, 3658139; 479956, 3658140; 479955, 3658141; 479954, 3658143; 479954, 3658144; 479953, 3658146; 479952, 3658147; 479951, 3658148; 479951, 3658149; 479950, 3658151; 479949, 3658152; 479948, 3658153; 479948, 3658155; 479947, 3658156; 479946, 3658157; 479945, 3658159; 479944, 3658160; 479944, 3658161; 479943, 3658163; 479942, 3658164; 479941, 3658165; 479941, 3658167.

Land bounded by the following UTM NAD27 coordinates (E,N): 478428, 3658055; 478427, 3658070; 478429, 3658070; 478441, 3658069; 478442, 3658069; 478449, 3658069; 478598, 3658063; 478429, 3658039.

Land bounded by the following UTM NAD27 coordinates (E,N): 477706, 3657825; 477630, 3657821; 477544, 3657816; 477543, 3657853; 477548, 3657853; 477549, 3657854; 477551, 3657854; 477552, 3657854; 477554, 3657854; 477555, 3657854; 477557, 3657855; 477558, 3657855; 477560, 3657855; 477561, 3657856; 477563, 3657856; 477564, 3657857; 477566, 3657857; 477567, 3657858; 477569, 3657858; 477570, 3657859; 477571, 3657859; 477573, 3657860; 477574, 3657860; 477576, 3657861; 477577, 3657861; 477578, 3657862; 477580, 3657863; 477581, 3657863; 477583,

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Land bounded by the following UTM NAD27 coordinates (E,N): 476113, 3657727; 476103, 3657755; 476096, 3657771; 476090, 3657789; 476081, 3657812; 476069, 3657843; 476059, 3657872; 476058, 3657873; 476060, 3657873; 476062, 3657873; 476063, 3657872; 476064, 3657872; 476066, 3657872; 476113, 3657860; 476128, 3657820; 476144, 3657779; 476152, 3657758; 476159, 3657738; 476169, 3657713; 476168, 3657713; 476166, 3657712; 476165, 3657712; 476163, 3657712; 476162, 3657711; 476161, 3657711; 476160, 3657711; 476158, 3657711; 476157, 3657710; 476155, 3657710; 476154, 3657710; 476152, 3657709; 476151, 3657709; 476149, 3657708; 476148, 3657708; 476146, 3657707; 476145, 3657707; 476143, 3657707; 476142, 3657706; 476140, 3657706; 476139, 3657705; 476138, 3657705; 476136, 3657704; 476135, 3657704; 476133, 3657703; 476132, 3657703; 476130, 3657702; 476129, 3657702; 476128, 3657701; 476126, 3657701; 476123, 3657699.

Land bounded by the following UTM NAD27 coordinates (E,N): 476315, 3657186; 476308, 3657203; 476302, 3657219; 476294, 3657241; 476287, 3657260; 476280, 3657278; 476269, 3657309; 476240, 3657385; 476238, 3657391; 476227, 3657420; 476219, 3657441; 476212, 3657461; 476204, 3657482; 476196, 3657503; 476190, 3657519; 476180, 3657546; 476173, 3657565; 476165, 3657586; 476158, 3657607; 476153, 3657619; 476151, 3657626; 476144, 3657644; 476137, 3657662; 476130, 3657681; 476131, 3657681; 476132, 3657681; 476134, 3657682; 476135, 3657682; 476137, 3657682; 476138, 3657683; 476140, 3657683; 476141, 3657683; 476143, 3657684; 476144, 3657684; 476146, 3657684; 476147, 3657684; 476149, 3657685; 476150, 3657685; 476151, 3657685; 476153, 3657685; 476154, 3657685; 476156, 3657685; 476157, 3657686; 476159, 3657686; 476160, 3657686; 476162, 3657686; 476163, 3657687; 476165, 3657687; 476166, 3657688; 476168, 3657688; 476169, 3657688; 476171, 3657689; 476172, 3657689; 476174, 3657690; 476175, 3657690; 476176, 3657691; 476176, 3657691; 476184, 3657669; 476191, 3657651; 476200, 3657628; 476204, 3657619; 476210, 3657603; 476219, 3657580; 476230, 3657550; 476240, 3657524; 476248, 3657503; 476258, 3657478; 476266, 3657457; 476267, 3657455; 476367, 3657180; 476328, 3657165; 476327, 3657165; 476326, 3657165; 476324, 3657164; 476323, 3657164.

Land bounded by the following UTM NAD27 coordinates (E,N): 478918, 3656970; 478895, 3656977; 478839, 3656993; 478834, 3656975; 478833, 3656976; 478832, 3656976; 478830, 3656977; 478829, 3656977; 478827, 3656977; 478826, 3656978; 478824, 3656978; 478823, 3656979; 478821, 3656979; 478820, 3656979; 478818, 3656980; 478817, 3656980; 478815, 3656981; 478814, 3656981; 478812, 3656982; 478811, 3656982; 478810, 3656983; 478808, 3656983; 478807, 3656984; 478805, 3656984; 478804, 3656985; 478803, 3656986; 478801, 3656987; 478800, 3656987; 478799, 3656988; 478797, 3656989; 478796, 3656990; 478795, 3656990; 478793, 3656991; 478792, 3656992; 478791, 3656993; 478790, 3656994; 478789, 3656995; 478788, 3656997; 478787, 3656998; 478786, 3656999; 478785, 3657000; 478784, 3657001; 478783, 3657003; 478783, 3657004; 478782, 3657005; 478781, 3657007; 478781, 3657008; 478780, 3657009; 478779, 3657011; 478779, 3657012; 478778, 3657014; 478777, 3657015; 478777, 3657016; 478776, 3657018; 478776, 3657019; 478775, 3657021; 478775, 3657022; 478714, 3657039; 478715, 3657042; 478729, 3657038; 478758, 3657094; 478827, 3657074; 478811, 3657014; 478857, 3657001; 478900, 3656988; 478918, 3656983; 478943, 3656975; 478940, 3656963.

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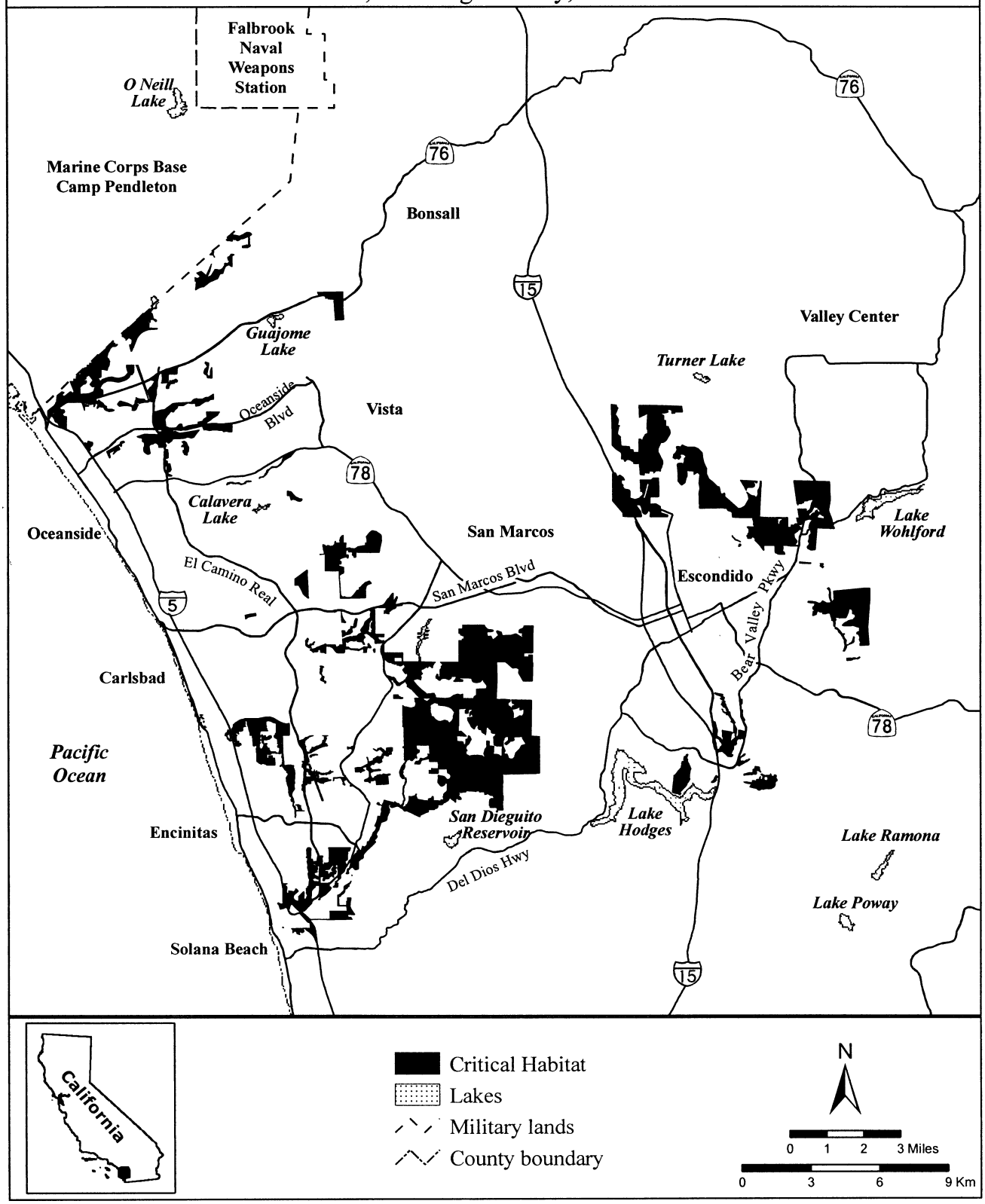
Land bounded by the following UTM NAD27 coordinates (E,N): 474600, 3651596; 474619, 3651560; 474610, 3651560; 474581, 3651572; 474582, 3651608.

(ii) Note: Map of Unit 3—North San Diego County Multiple Habitat Conservation Plan (MHCP) (Map 4) follows:

BILLING CODE 4310–55–P

Map 4
Critical Habitat for Coastal California Gnatcatcher (*Polioptila californica californica*), Unit 3, San Diego County, California



BILLING CODE 4310–55–C

(9) Unit 5: North County Subarea of the Multiple Species Conservation Program (MSCP) for Unincorporated San Diego County, San Diego County, California.

(i) From USGS 1:24,000 quadrangle maps Bonsall, Fallbrook, Pala, Pechanga, Ramona, San Marcos, San Pasqual, Temecula, and Valley Center. 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Land bounded by the following UTM NAD27 coordinates (E,N): 489695, 3690598; 489695, 3690600; 489696, 3690601; 489696, 3690602; 489697, 3690604; 489698, 3690605; 489698, 3690607; 489699, 3690608; 489700, 3690609; 489700, 3690611; 489701, 3690612; 489702, 3690614; 489702, 3690615; 489703, 3690616; 489704, 3690618; 489704, 3690619; 489705, 3690620; 489706, 3690622; 489706, 3690622; 489707, 3690623; 489708, 3690624; 489708, 3690625; 489709, 3690627; 489710, 3690628; 489711, 3690629; 489712, 3690631; 489713, 3690632; 489714, 3690633; 489715, 3690634; 489716, 3690635; 489717, 3690637; 489718, 3690638; 489719, 3690639; 489720, 3690640; 489721, 3690641; 489722, 3690642; 489723, 3690643; 489724, 3690644; 489725, 3690645; 489726, 3690646; 489727, 3690648; 489728, 3690649; 489729, 3690649; 489737, 3690656; 489740, 3690621; 489691, 3690582.

Land bounded by the following UTM NAD27 coordinates (E,N): 484271, 3680763; 484248, 3680771; 484234, 3679999; 483771, 3679915; 483771, 3680350; 483196, 3680378; 483182, 3680644; 483212, 3681146; 483212, 3681150; 483807, 3681157; 483807, 3681181; 483827, 3681191; 483827, 3681185.

Land bounded by the following UTM NAD27 coordinates (E,N): 491679, 3674500; 490830, 3674530; 490693, 3674535; 490525, 3674540; 490492, 3674540; 490525, 3674541; 490693, 3674535; 490696, 3674599; 490780, 3674636; 491207, 3674928; 491207, 3675135; 491318, 3675117; 491936, 3675033; 492115, 3675059; 492051, 3674500; 491700, 3674500; 491679, 3674500.

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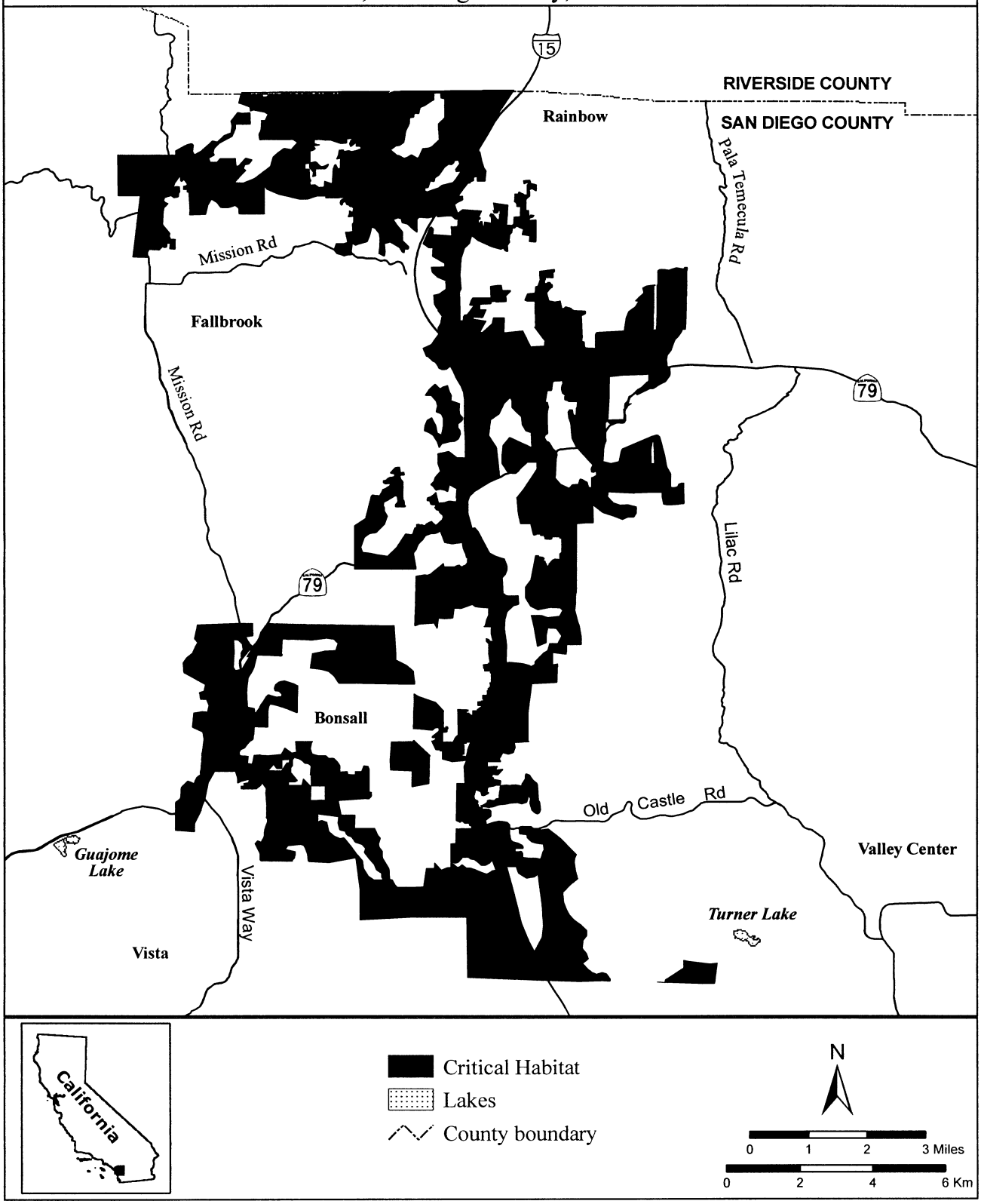
(ii) Note: Map of Unit 5—North County Subarea of the MSCP for Unincorporated San Diego County (Map 5) follows:

BILLING CODE 4310–55–P

Map 5
Critical Habitat for Coastal California Gnatcatcher (*Polioptila californica californica*), Unit 5, San Diego County, California



BILLING CODE 4310–55–C

(10) Unit 6: Southern Natural Communities Conservation Program (NCCP) Subregion of Orange County, Orange County, California.

(i) From USGS 1:24,000 quadrangle maps Canada Gobernadora, Dana Point, El Toro, San Clemente, San Juan Capistrano, and Santiago Peak. Land bounded by the following UTM NAD27 coordinates (E,N): 442340, 3727161; 442254, 3727366; 442223, 3727366; 442168, 3727378; 442149, 3727409; 442132, 3727483; 442118, 3727540; 442032, 3727504; 442021, 3727504; 441961, 3727514; 441942, 3727542; 441923, 3727590; 441887, 3727657; 441823, 3727726; 442016, 3727823; 442049, 3727802; 442090, 3727773; 442192, 3727709; 442256, 3727690; 442321, 3727661; 442352, 3727664; 442348, 3727667; 442330, 3727717; 442769, 3727695; 442759, 3728180; 442756, 3728182; 442826, 3728195; 442924, 3728207; 443081, 3728198; 443219, 3728133; 443241, 3728119; 443272, 3728092; 443623, 3727830; 443761, 3727634; 443877, 3727469; 444021, 3727302; 444025, 3727298; 444030, 3727298; 444097, 3727244; 444278, 3727155; 444586, 3727092; 444771, 3726936; 445047, 3726666; 445377, 3726489; 445537, 3726536; 445607, 3726644; 445671, 3726771; 445687, 3726772; 445769, 3726797; 446156, 3726822; 446731, 3726809; 447436, 3726660; 447839, 3726378; 447935, 3726270; 447938, 3726270; 448273, 3725993; 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Land bounded by the following UTM NAD27 coordinates (E,N): 437917, 3704476; 437902, 3704451; 437896, 3704440; 437881, 3704391; 437869, 3704366; 437865, 3704357; 437887, 3704344; 437928, 3704319; 437964, 3704297; 437973, 3704288; 437957, 3704268; 437930, 3704233; 437859, 3704144; 437826, 3704102; 437800, 3704070; 437788, 3704054; 437786, 3704053; 437761, 3704054; 437756, 3704023; 437754, 3703958; 437754, 3703935; 437762, 3703930; 437781, 3703926; 437807, 3703932; 437803, 3703909; 437803, 3703909; 437753, 3703903; 437742, 3703904; 437710, 3703909; 437630, 3703902; 437594, 3703895; 437585, 3703893; 437557, 3703872; 437559, 3703866; 437552, 3703864; 437441, 3703810; 437440, 3703812; 437456, 3703902; 437477, 3704005; 437467, 3704012; 437470, 3704028; 437470, 3704028; 437482, 3704067; 437545, 3704204; 437563, 3704226; 437563, 3704216; 437562, 3704200; 437573, 3704190; 437591, 3704175; 437609, 3704173; 437626, 3704182; 437635, 3704186; 437654, 3704202; 437662, 3704209; 437665, 3704207; 437743, 3704259; 437901, 3704450; 437918, 3704480.

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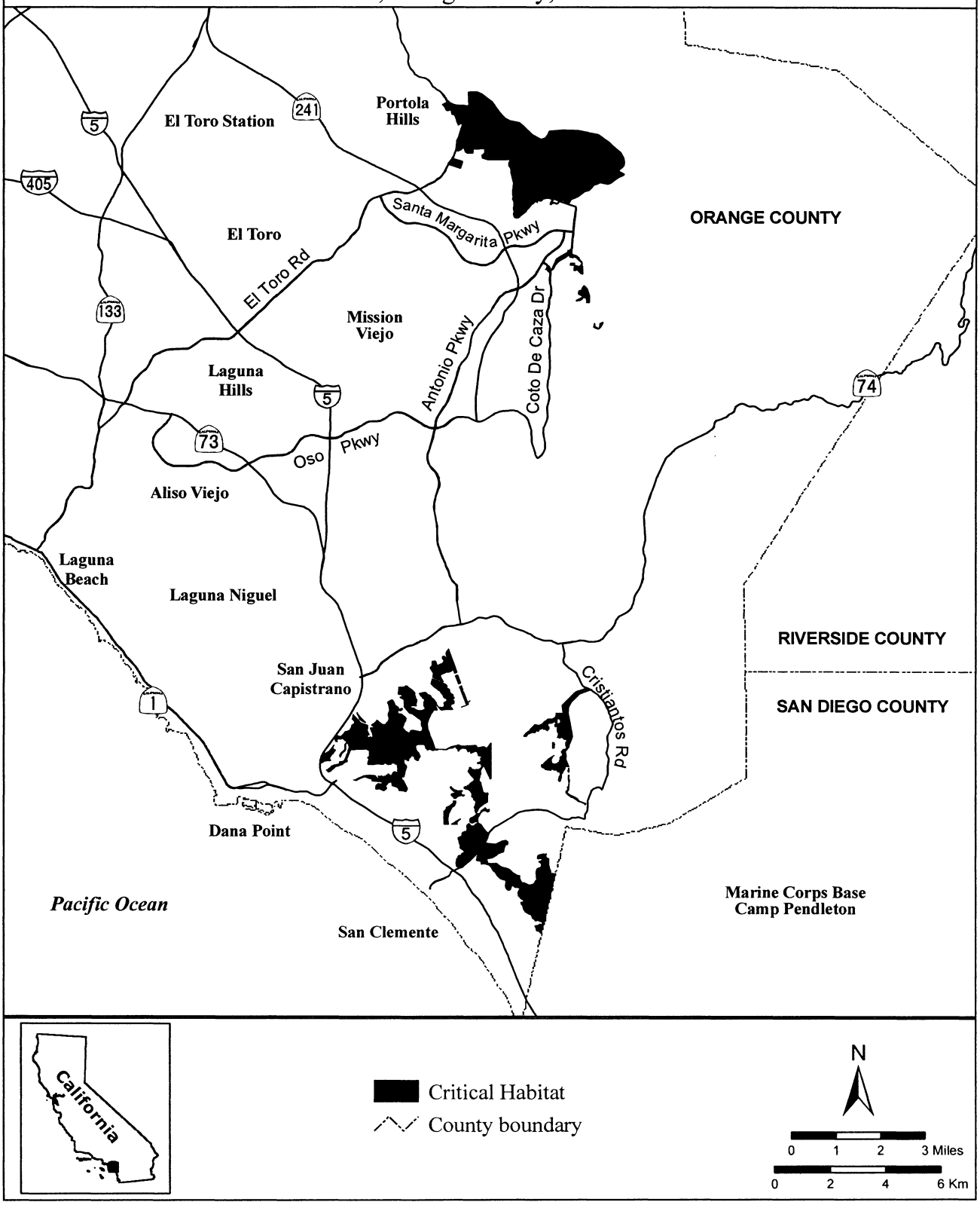
(ii) Note: Map of Unit 6—Southern NCCP Subregion of Orange County (Map 6) follows:

BILLING CODE 4310–55–P

Map 6
Critical Habitat for Coastal California Gnatcatcher (*Polioptila californica californica*), Unit 6, Orange County, California



BILLING CODE 4310–55–C

(11) Unit 7: Central-Coastal NCCP Subregions of Orange County (Central-Coastal NCCP), Orange County, California.

(i) From USGS 1:24,000 quadrangle maps Black Star Canyon, Dana Point, El Toro, Laguna Beach, Newport Beach, Orange, San Juan Capistrano, Santiago Peak, and Tustin. Land bounded by the following UTM NAD27 coordinates (E,N): 436568, 3747991; 436765, 3747883; 436875, 3747823; 436940, 3747787; 437069, 3747722; 437100, 3747710; 437220, 3747663; 437227, 3747661; 437327, 3747641; 437402, 3747631; 437515, 3747625; 437515, 3747625; 437627, 3747631; 437689, 3747640; 437718, 3747646; 437733, 3747649; 437734, 3747628; 437736, 3747611; 437737, 3747592; 437737, 3747592; 437782, 3746817; 437780, 3746817; 437770, 3747001; 437695, 3746975; 437549, 3746924; 437437, 3746913; 437393, 3746961; 437252, 3746950; 437226, 3746948; 437216, 3746899; 437210, 3746884; 437210, 3746884; 437210, 3746884; 437247, 3746844; 437289, 3746773; 437289, 3746772; 437158, 3746751; 437114, 3746796; 437028, 3746780; 437028, 3746780; 437028, 3746756; 437019, 3746754; 436993, 3746784; 436911, 3746795; 436920, 3746726; 436887, 3746684; 436877, 3746574; 436814, 3746551; 436809, 3746514; 436972, 3746483; 437058, 3746408; 437018, 3746340; 436834, 3746420; 436789, 3746366; 436764, 3746418; 436797, 3746506; 436800, 3746512; 436711, 3746552; 436711, 3746559; 436709, 3746574; 436705, 3746578; 436686, 3746572; 436672, 3746568; 436675, 3746578; 436671, 3746579; 436685, 3746601; 436689, 3746623; 436683, 3746668; 436653, 3746677; 436653, 3746677; 436594, 3746650; 436626, 3746706; 436649, 3746810; 436506, 3746798; 436542, 3746871; 436455, 3746907; 436389, 3746886; 436376, 3746711; 436437, 3746645; 436435, 3746633; 436426, 3746627; 436431, 3746616; 436422, 3746580; 436427, 3746535; 436414, 3746497; 436483, 3746467; 436605, 3746328; 436659, 3746129; 436660, 3746044; 436646, 3746039; 436606, 3746031; 436565, 3746044; 436477, 3745985; 436414, 3745961; 436325, 3745938; 436311, 3745937; 436271, 3745934; 436247, 3745932; 436129, 3745925; 436048, 3745831; 436085, 3745801; 436075, 3745790; 436073, 3745787; 435554, 3746238; 435551, 3746240; 435206, 3746539; 435535, 3746938; 436371, 3747954; 436409, 3748000; 436409, 3748000; 436454, 3748054; 436552, 3748000; 436552, 3748000.

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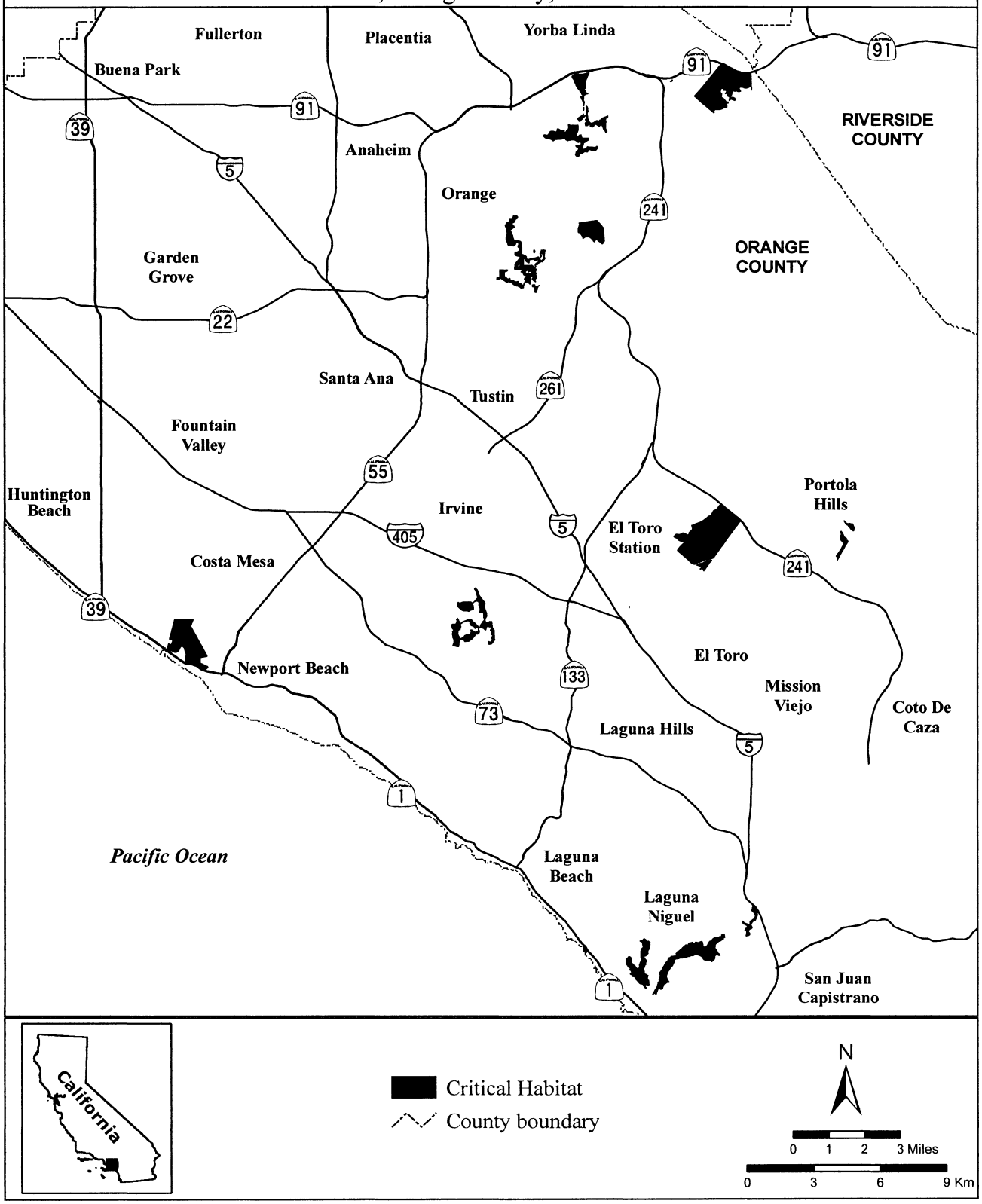
(ii) Note: Map of Unit 7—Central—Coastal NCCP Subregions of Orange County (Central—Coastal NCCP) (Map 7) follows:

BILLING CODE 4310–55–P

Map 7
Critical Habitat for Coastal California Gnatcatcher (*Polioptila californica californica*), Unit 7, Orange County, California



BILLING CODE 4310–55–C

(12) Unit 8: Palos Verdes Peninsula Subregion, Los Angeles County, Los Angeles County, California.

(i) From USGS 1:24,000 quadrangle maps Redondo Beach, San Pedro and Torrance. 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3735283; 374908, 3735232; 374819, 3735172; 374761, 3735163; 374714, 3735128; 374695, 3735086; 374650, 3735017; 374698, 3734966; 374673, 3734858; 374704, 3734829; 374730, 3734788; 374755, 3734731; 374723, 3734686; 374755, 3734645; 374812, 3734686; 374854, 3734683; 374923, 3734642; 374974, 3734683; 374949, 3734721; 374961, 3734766; 374987, 3734817; 374974, 3734845; 374923, 3734845; 374869, 3734877; 374812, 3734893; 374777, 3734918; 374736, 3734940; 374755, 3734978; 374777, 3735004; 374828, 3735061; 374869, 3735118; 374984, 3735163; 375019, 3735232; 375066, 3735290; 375146, 3735337; 375209, 3735252; 375273, 3735315; 375416, 3735242; 375412, 3735220; 375422, 3735156; 375498, 3735061; 375536, 3735112; 375577, 3735175; 375609, 3735258; 375623, 3735294. Excluding land bounded by the following UTM NAD27 coordinates (E,N): 375644, 3734531; 375644, 3734578; 375638, 3734613; 375609, 3734648; 375552, 3734683; 375504, 3734683; 375539, 3734712; 375568, 3734747; 375571, 3734798; 375568, 3734832; 375558, 3734883; 375543, 3734915; 375489, 3734893; 375419, 3734848; 375377, 3734810; 375339, 3734782; 375349, 3734699; 375381, 3734636; 375403, 3734597; 375485, 3734566; 375549, 3734499; 375620, 3734474. Excluding land bounded by the following UTM NAD27 coordinates (E,N): 375374, 3734293; 375381, 3734340; 375365, 3734378; 375336, 3734407; 375298, 3734455; 375292, 3734531; 375241, 3734585; 375177, 3734607; 375127, 3734607; 375108, 3734628; 375082, 3734601; 375025, 3734547; 375028, 3734521; 375050, 3734490; 375123, 3734448; 375193, 3734477; 375215, 3734394; 375273, 3734369; 375292, 3734328; 375317, 3734274. Excluding land bounded by the following UTM NAD27 coordinates (E,N): 372554, 3735106; 372468, 3735135; 372392, 3735150; 372332, 3735096; 372310, 3735030; 372316, 3734960; 372354, 3734912; 372430, 3734855; 372564, 3734734; 372665, 3734674; 372621, 3734601; 372541, 3734525; 372475, 3734519; 372465, 3734468; 372437, 3734430; 372399, 3734395; 372386, 3734353; 372370, 3734343; 372386, 3734334; 372433, 3734312; 372551, 3734299; 372621, 3734271; 372672, 3734242; 372726, 3734198; 372770, 3734157; 372853, 3734096; 372888, 3734125; 372921, 3734182; 372918, 3734230; 372918, 3734255; 372932, 3734265; 372957, 3734242; 372970, 3734230; 372989, 3734236; 373008, 3734258; 373015, 3734287; 373011, 3734331; 373049, 3734598; 373043, 3734785; 373053, 3734830; 373116, 3734792; 373124, 3734781; 373142, 3734754; 373142, 3734749; 373161, 3734668; 373170, 3734560; 373142, 3734461; 373113, 3734366; 373084, 3734319; 373075, 3734284; 373119, 3734246; 373170, 3734246; 373256, 3734252; 373264, 3734251; 373280, 3734234; 373300, 3734168; 373339, 3734141; 373342, 3734138; 373343, 3734138; 373363, 3734125; 373409, 3734151; 373419, 3734201; 373427, 3734201; 373434, 3734185; 373443, 3734172; 373462, 3734163; 373484, 3734166; 373494, 3734182; 373507, 3734182; 373510, 3734181; 373526, 3734176; 373545, 3734157; 373554, 3734157; 373570, 3734157; 373596, 3734166; 373602, 3734192; 373646, 3734195; 373665, 3734157; 373678, 3734144; 373686, 3734142; 373710, 3734138; 373723, 3734134; 373738, 3734138; 373780, 3734303; 373783, 3734372; 373757, 3734468; 373748, 3734531; 373773, 3734582; 373789, 3734607; 373792, 3734658; 373767, 3734706; 373742, 3734719; 373704, 3734719; 373653, 3734677; 373630, 3734658; 373608, 3734639; 373538, 3734709; 373599, 3734769; 373605, 3734807; 373332, 3734903; 373345, 3735014; 373338, 3735049; 373272, 3735071; 373262, 3735115; 373275, 3735176; 373249, 3735217; 373116, 3735296; 373024, 3735315; 373024, 3735582; 372964, 3735576; 372922, 3735554; 372884, 3735449; 372878, 3735357; 372872, 3735309; 372859, 3735281; 372884, 3735242; 372919, 3735227; 372961, 3735198; 372989, 3735150; 373015, 3735112; 373015, 3735100; 372983, 3735090; 372932, 3735112; 372853, 3735087; 372776, 3735074; 372729, 3735049; 372735, 3735011; 372741, 3734985; 372751, 3734969; 372618, 3734954; 372551, 3734944; 372551, 3734998; 372583, 3735033; 372586, 3735065; 372578, 3735075; 372578, 3735078; 372576, 3735078.

Land bounded by the following UTM NAD27 coordinates (E,N): 374262, 3739840; 374170, 3739875; 374186, 3739903; 374348, 3739897; 374431, 3739891; 374488, 3739897; 374551, 3739935; 374539, 3739964; 374469, 3740002; 374386, 3740033; 374246, 3740053; 374154, 3740072; 374104, 3740094; 374056, 3740107; 373980, 3740110; 373881, 3740119; 373878, 3740176; 373846, 3740240; 373783, 3740275; 373726, 3740272; 373653, 3740284; 373640, 3740297; 373656, 3740348; 373716, 3740341; 373770, 3740341; 373831, 3740319; 373894, 3740291; 373954, 3740275; 374011, 3740278; 374043, 3740294; 374088, 3740284; 374085, 3740268; 374078, 3740246; 374088, 3740214; 374154, 3740170; 374237, 3740148; 374319, 3740138; 374405, 3740135; 374462, 3740148; 374516, 3740119; 374558, 3740094; 374605, 3740081; 374656, 3740087; 374700, 3740132; 374713, 3740157; 374754, 3740164; 374821, 3740164; 374853, 3740173; 374872, 3740195; 374859, 3740224; 374818, 3740278; 374758, 3740376; 374780, 3740427; 374827, 3740459; 374878, 3740465; 374916, 3740456; 374958, 3740424; 374980, 3740414; 375002, 3740414; 375101, 3740265; 375142, 3740208; 375170, 3740119; 375170, 3740072; 375151, 3740030; 375112, 3739998; 375085, 3739995; 375040, 3740018; 374932, 3740053; 374843, 3740068; 374770, 3740056; 374742, 3740040; 374742, 3739992; 374751, 3739941; 374720, 3739900; 374624, 3739875; 374570, 3739849; 374519, 3739837; 374478, 3739824.

Land bounded by the following UTM NAD27 coordinates (E,N): 373367, 3739675; 373312, 3739587; 373308, 3739584; 373272, 3739599; 373240, 3739599; 373202, 3739564; 373154, 3739500; 373103, 3739446; 373053, 3739392; 373008, 3739335; 373006, 3739321; 372982, 3739319; 372956, 3739381; 372961, 3739392; 372967, 3739411; 373005, 3739452; 373049, 3739506; 373078, 3739545; 373113, 3739599; 373176, 3739662; 373332, 3739814; 373359, 3739850; 373379, 3739821; 373402, 3739797.

Land bounded by the following UTM NAD27 coordinates (E,N): 373743, 3738202; 373689, 3738205; 373645, 3738163; 373626, 3738128; 373588, 3738094; 373483, 3738040; 373407, 3737995; 373359, 3737979; 373353, 3737998; 373356, 3738027; 373397, 3738062; 373416, 3738084; 373442, 3738125; 373496, 3738151; 373537, 3738163; 373584, 3738211; 373610, 3738262; 373581, 3738271; 373565, 3738297; 373594, 3738332; 373629, 3738332; 373692, 3738306; 373772, 3738284; 373800, 3738286; 373810, 3738287; 373854, 3738309; 373908, 3738367; 373937, 3738433; 374000, 3738490; 374054, 3738522; 374073, 3738544; 374121, 3738554; 374175, 3738554; 374235, 3738589; 374327, 3738614; 374397, 3738624; 374416, 3738579; 374359, 3738538; 374277, 3738535; 374245, 3738516; 374235, 3738481; 374181, 3738471; 374121, 3738475; 374058, 3738443; 374016, 3738398; 374013, 3738363; 374058, 3738348; 374156, 3738303; 374219, 3738255; 374289, 3738202; 374318, 3738176; 374337, 3738173; 374366, 3738227; 374378, 3738249; 374416, 3738281; 374502, 3738281; 374610, 3738297; 374696, 3738335; 374731, 3738335; 374759, 3738297; 374740,

3738255; 374654, 3738214; 374578, 3738182; 374499, 3738157; 374432, 3738106; 374397, 3738043; 374343, 3737976; 374305, 3737887; 374267, 3737767; 374213, 3737668; 374194, 3737624; 374188, 3737576; 374178, 3737535; 374146, 3737494; 374134, 3737459; 374096, 3737430; 374067, 3737417; 374023, 3737392; 374007, 3737363; 373975, 3737325; 373931, 3737290; 373905, 3737255; 373886, 3737227; 373842, 3737201; 373807, 3737182; 373800, 3737184; 373800, 3737157; 373800, 3737100; 373815, 3737100; 373900, 3737100; 373965, 3737100; 374000, 3737100; 374100, 3737100; 374155, 3737100; 374210, 3737160; 374245, 3737192; 374280, 3737252; 374324, 3737300; 374378, 3737347; 374419, 3737386; 374502, 3737452; 374594, 3737525; 374689, 3737624; 374758, 3737678; 374802, 3737687; 374872, 3737782; 374923, 3737871; 374983, 3737935; 375104, 3738195; 375189, 3738338; 375221, 3738322; 375161, 3738211; 375101, 3738087; 375081, 3737982; 375034, 3737874; 374964, 3737808; 374926, 3737770; 374885, 3737652; 374878, 3737589; 374853, 3737471; 374786, 3737424; 374723, 3737389; 374697, 3737360; 374640, 3737208; 374615, 3737138; 374608, 3737100; 374561, 3737080; 374525, 3736994; 374511, 3736963; 374460, 3736839; 374429, 3736741; 374429, 3736652; 374403, 3736591; 374355, 3736531; 374298, 3736496; 374279, 3736382; 374184, 3736369; 374000, 3736455; 373806, 3736550; 373647, 3736636; 373673, 3736696; 373838, 3736658; 373926, 3736658; 373965, 3736658; 373949, 3736679; 373993, 3736718; 374022, 3736785; 374050, 3736972; 373955, 3736998; 373950, 3736994; 373900, 3736992; 373820, 3737052; 373706, 3736983; 373617, 3736960; 373576, 3736986; 373512, 3737005; 373430, 3737021; 373363, 3737052; 373293, 3737078; 373236, 3737075; 373195, 3737062; 373125, 3737008; 373052, 3736989; 373007, 3737011; 372931, 3737036; 372814, 3737056; 372614, 3737078; 372612, 3737078; 372609, 3737102; 372692, 3737268; 372670, 3737289; 372609, 3737289; 372573, 3737293; 372564, 3737311; 372571, 3737327; 372575, 3737333; 372579, 3737335; 372595, 3737354; 372585, 3737408; 372541, 3737449; 372455, 3737516; 372445, 3737560; 372506, 3737535; 372544, 3737538; 372525, 3737592; 372477, 3737706; 372436, 3737754; 372417, 3737779; 372385, 3737833; 372363, 3737884; 372322, 3737929; 372264, 3737960; 372299, 3738024; 372350, 3738014; 372388, 3738005; 372426, 3737967; 372499, 3737802; 372585, 3737637; 372668, 3737576; 372776, 3737491; 372953, 3737386; 373026, 3737332; 373087, 3737278; 373131, 3737268; 373169, 3737303; 373398, 3737195; 373449, 3737173; 373512, 3737148; 373576, 3737119; 373680, 3737113; 373738, 3737135; 373728, 3737173; 373704, 3737200; 373687, 3737221; 373639, 3737275; 373620, 3737297; 373582, 3737341; 373557, 3737376; 373512, 3737383; 373468, 3737383; 373411, 3737392; 373373, 3737405; 373309, 3737433; 373265, 3737452; 373236, 3737465; 373188, 3737500; 373144, 3737525; 373071, 3737595; 373020, 3737630; 372969, 3737697; 372925, 3737729; 372874, 3737760; 372880, 3737792; 372925, 3737811; 372985, 3737779; 373071, 3737697; 373179, 3737668; 373242, 3737640; 373328, 3737611; 373376, 3737576; 373433, 3737532; 373500, 3737494; 373579, 3737471; 373652, 3737437; 373741, 3737344; 373799, 3737365; 373805, 3737430; 373840, 3737465; 373878, 3737509; 373900, 3737535; 373945, 3737557; 374002, 3737560; 374037, 3737579; 374092, 3737687; 374096, 3737735; 374029, 3737763; 373950, 3737824; 373911, 3737884; 373908, 3737967; 373905, 3738062; 373870, 3738116; 373800, 3738179; 373800, 3738179. Excluding land bounded by the following UTM NAD27 coordinates (E,N): 374061, 3737786; 374013, 3737868; 373975, 3737938; 373972, 3737989; 374000, 3738087; 373975, 3738125; 373956, 3738170; 373937, 3738214; 373959, 3738240; 374004, 3738268; 374064, 3738278; 374124, 3738259; 374178, 3738221; 374219, 3738195; 374254, 3738154; 374267, 3738132; 374258, 3738100; 374216, 3738055; 374181, 3738011; 374159, 3737957; 374153, 3737903; 374145, 3737858; 374137, 3737846; 374115, 3737808; 374099, 3737786.

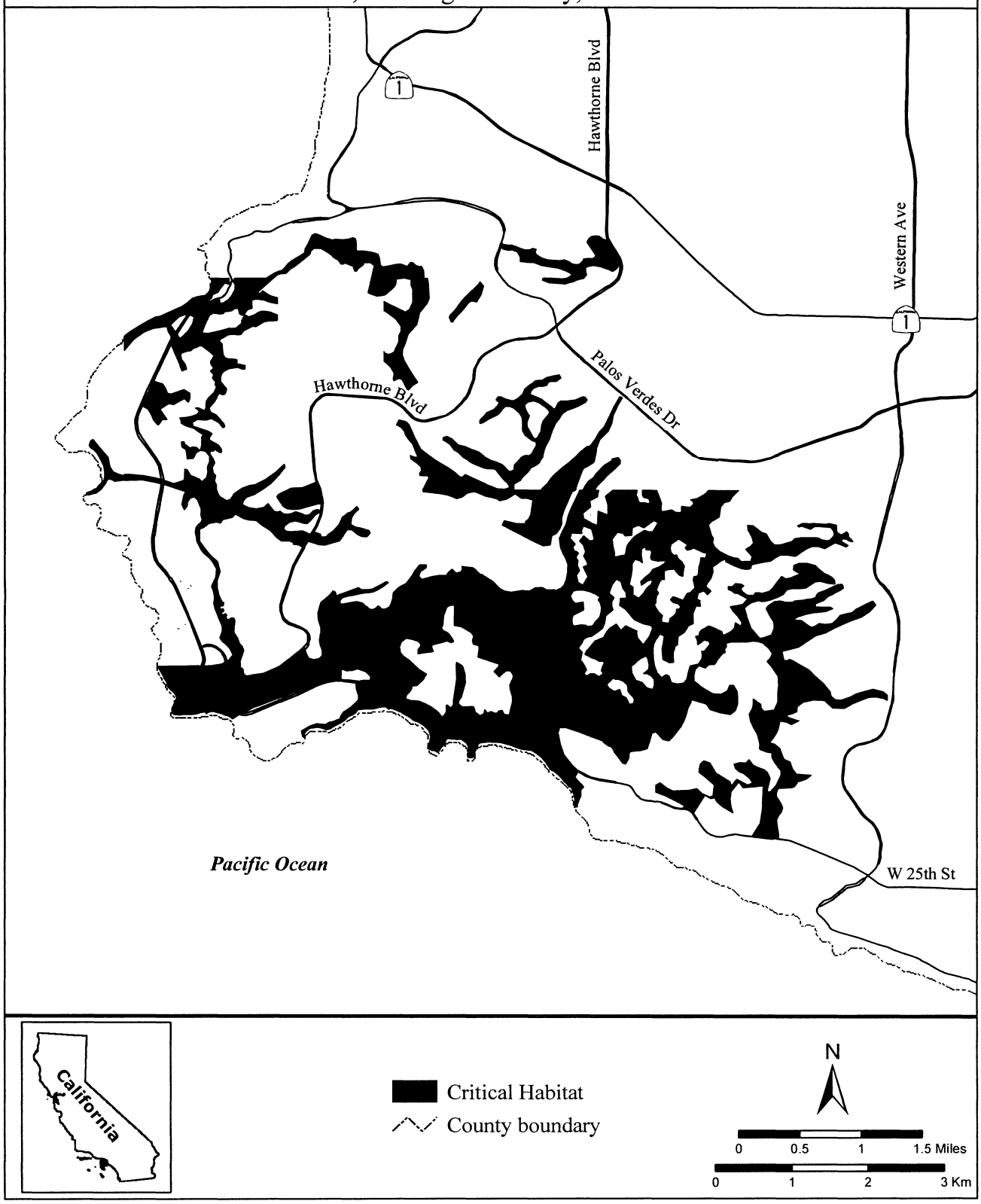
Land bounded by the following UTM NAD27 coordinates (E,N): 370826, 3736852; 370772, 3736887; 370696, 3737011; 370712, 3737036; 370785, 3737081; 370890, 3737129; 371033, 3737135; 371204, 3737202; 371226, 3737198; 371274, 3737084; 371293, 3736948; 371274, 3736919; 371236, 3736919; 371140, 3736890; 371004, 3736856; 370921, 3736843.

Land bounded by the following UTM NAD27 coordinates (E,N): 369129, 3737966; 369075, 3738033; 369053, 3738090; 369009, 3738166; 368929, 3738208; 369088, 3738535; 369199, 3738506; 369234, 3738446; 369263, 3738382; 369314, 3738369; 369409, 3738401; 369475, 3738430; 369517, 3738404; 369555, 3738379; 369558, 3738316; 369536, 3738255; 369485, 3738306; 369345, 3738230; 369279, 3738239; 369164, 3738163; 369256, 3738033; 369199, 3738033; 369152, 3737960.

(ii) Note: Map of Unit 8—Palos Verdes Peninsula Subregion, Los Angeles County (Map 8) follows:

BILLING CODE 4310–55–P

Map 8
Critical Habitat for Coastal California Gnatcatcher (*Polioptila californica californica*), Unit 8, Los Angeles County, California



BILLING CODE 4310–55–C

(13) Unit 9: East Los Angeles County—Matrix NCCP Subregion of Orange County, Los Angeles, San Bernardino, and Orange Counties, California.

(i) From USGS 1:24,000 quadrangle maps Black Star Canyon, El Monte, La Habra, Prado Dam, Whittier, and Yorba Linda. Land bounded by the following UTM NAD27 coordinates (E,N): 403340, 3765375; 403172, 3765242; 403058, 3765008; 402960, 3764796; 402892, 3764718; 402870, 3764713; 402780, 3764756; 402700, 3764804; 402594, 3764874; 402461, 3764892; 401804, 3764864; 401800, 3764870; 401167, 3764847; 401072, 3764853; 401072, 3764872; 401116, 3764923; 401202, 3765044; 401231, 3765105; 401240, 3765123; 401208, 3765164; 401161, 3765174; 401107, 3765171; 401050, 3765174; 400913, 3765183; 400856, 3765190; 400764, 3765212; 400700, 3765212; 400618, 3765202; 400529, 3765190; 400459, 3765193; 400380, 3765196; 400278, 3765196; 400199, 3765209; 400173, 3765234; 400081, 3765244; 400027, 3765234; 399957, 3765237; 399916, 3765210; 399913, 3765225; 399903, 3765263; 399891, 3765288; 399888, 3765314; 399900, 3765329; 399916, 3765352; 399935, 3765383; 399935, 3765418; 399900, 3765431; 399662, 3765450; 399418, 3765476; 399183, 3765491; 399094, 3765507; 398992, 3765476; 398824, 3765422; 398703, 3765374; 398600, 3765338; 398600, 3765340; 398409, 3765284; 398379, 3765296; 398376, 3765342; 398379, 3765410; 398379, 3765606; 398391, 3765676; 398419, 3765754; 398474, 3765825; 398600, 3765914; 398600, 3765919; 398780, 3766025; 398849, 3766066; 398900, 3766069; 398983, 3766072; 399116, 3766079; 399199, 3766117; 399281, 3766174; 399395, 3766263; 399507, 3766342; 399573, 3766361; 399630, 3766349; 399742, 3766330; 399875, 3766307; 399992, 3766285; 400078, 3766263; 400196, 3766269; 400281, 3766292; 400323, 3766241; 400354, 3766209; 400408, 3766199; 400491, 3766222; 400488, 3766196; 400500, 3766187; 400583, 3766203; 400665, 3766228; 400678, 3766250; 400646, 3766304; 400659, 3766320; 400719, 3766263; 400720, 3766263; 400728, 3766252; 400779, 3766197; 400837, 3766119; 400882, 3766086; 400932, 3766036; 400972, 3765976; 401005, 3765908; 401078, 3765860; 401146, 3765802; 401229, 3765749; 401327, 3765694; 401448, 3765631; 401513, 3765601; 401639, 3765566; 401694, 3765558; 401800, 3765604; 401800, 3765600; 401800, 3765599; 401826, 3765614; 402125, 3765687; 402470, 3765677; 402814, 3765742; 403114, 3765808; 403344, 3765858; 403623, 3765949; 403719, 3765954; 403842, 3765944; 403918, 3765926; 404146, 3766032; 403928, 3765820; 403812, 3765747; 403481, 3765659; 403388, 3765453.

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Land bounded by the following UTM NAD27 coordinates (E,N): 411456, 3752243; 411471, 3752144; 411545, 3752005; 411608, 3751903; 411672, 3751935; 411703, 3751967; 411710, 3751986; 411681, 3752030; 411802, 3752021; 411802, 3752001; 411840, 3751957; 411862, 3751960; 411916, 3751982; 411967, 3751979; 411983, 3751944; 411995, 3751909; 412046, 3751887; 412091, 3751859; 412129, 3751849; 412170, 3751862; 412233, 3751843; 412268, 3751849; 412278, 3751884; 412294, 3751951; 412300, 3751947; 412341, 3751846; 412421, 3751846; 412481, 3751846; 412529, 3751859; 412551, 3751928; 412580, 3751995; 412592, 3751995; 412691, 3751913; 412700, 3751887; 412745, 3751862; 412780, 3751859; 412853, 3751859; 412900, 3751843; 412900, 3751800; 412900, 3751700; 412900, 3751600; 412900, 3751500; 412900, 3751400; 412900, 3751300; 412900, 3751200; 412900, 3751100; 412900, 3751013; 412830, 3751055; 412786, 3751090; 412802, 3751163; 412783, 3751179; 412719, 3751189; 412643, 3751189; 412516, 3751182; 412494, 3751198; 412459, 3751249; 412437, 3751262; 412405, 3751287; 412345, 3751335; 412306, 3751370; 412253, 3751395; 412202, 3751389; 412132, 3751347; 412091, 3751300; 412030, 3751268; 411960, 3751290; 411878, 3751306; 411840, 3751347; 411754, 3751433; 411697, 3751452; 411605, 3751452; 411532, 3751443; 411475, 3751443; 411437, 3751443; 411332, 3751443; 411268, 3751443; 411243, 3751471; 411208, 3751493; 411160, 3751439; 411135, 3751411; 411075, 3751411; 410989, 3751395; 410887, 3751325; 410865, 3751312; 410830, 3751322; 410817, 3751351; 410808, 3751386; 410783, 3751408; 410729, 3751424; 410649, 3751411; 410624, 3751370; 410627, 3751338; 410646, 3751290; 410630, 3751278; 410582, 3751300; 410557, 3751306; 410481, 3751322; 410471, 3751306; 410436, 3751284; 410436, 3751262; 410427, 3751246; 410386, 3751217; 410363, 3751179; 410284, 3751001; 410205, 3750827; 409773, 3750830; 409770, 3750881; 409757, 3750919; 409716, 3750947; 409668, 3750966; 409614, 3750954; 409576, 3750935; 409551, 3750941; 409497, 3750963; 409459, 3750989; 409436, 3750989; 409382, 3750992; 409344, 3750979; 409347, 3750931; 409319, 3750916; 409284, 3750900; 409287, 3750922; 409293, 3750976; 409252, 3751001; 409236, 3751033; 409230, 3751078; 409141, 3751081; 409154, 3751154; 409192, 3751157; 409195, 3751217; 409084, 3751214; 409090, 3751265; 409043, 3751293; 409078, 3751398; 409182, 3751586; 409198, 3751605; 409275, 3751700; 409300, 3751700; 409400, 3751700; 409500, 3751700; 409600, 3751700; 409700, 3751700; 409700, 3751800; 409700, 3751900; 409700, 3752000; 409700, 3752100; 409700, 3752200; 409700, 3752224; 409793, 3752225.

Land bounded by the following UTM NAD27 coordinates (E,N): 427672, 3752072; 427712, 3752045; 427783, 3752048; 427827, 3752048; 427871, 3752048; 427867, 3752014; 427878, 3751984; 427844, 3751957; 427820, 3751910; 427840, 3751870; 427904, 3751860; 428002, 3751893; 427962, 3751836; 427941, 3751769; 428039, 3751748; 428030, 3751606; 427994, 3751600; 427857, 3751613; 427744, 3751584; 427675, 3751548; 427676, 3751618; 427674, 3751618; 427656, 3751635; 427667, 3751906; 427660, 3751906; 427663, 3752084.

Land bounded by the following UTM NAD27 coordinates (E,N): 426984, 3751865; 426962, 3751821; 426928, 3751761; 426909, 3751735; 426898, 3751727; 426861, 3751768; 426793, 3751822; 426714, 3751861; 426654, 3751882; 426642, 3751888; 426520, 3751886; 426508, 3751884; 426457, 3751870; 426425, 3751836; 426422, 3751817; 426410, 3751780; 426395, 3751757; 426367, 3751745; 426329, 3751756; 426306, 3751785; 426301, 3751810; 426299, 3751829; 426286, 3751838; 426237, 3751849; 426168, 3751849; 426169, 3751822; 426162, 3751750; 426109, 3751673; 426070, 3751640; 426055, 3751638; 426058, 3751886; 426060, 3751907; 426992, 3751890.

Land bounded by the following UTM NAD27 coordinates (E,N): 427422, 3751865; 427377, 3751844; 427331, 3751836; 427290, 3751838; 427261, 3751852; 427238, 3751873; 427229, 3751886; 427436, 3751882.

Land bounded by the following UTM NAD27 coordinates (E,N): 424934, 3751108; 424924, 3751512; 424930, 3751512; 425042, 3751512; 425044, 3751109.

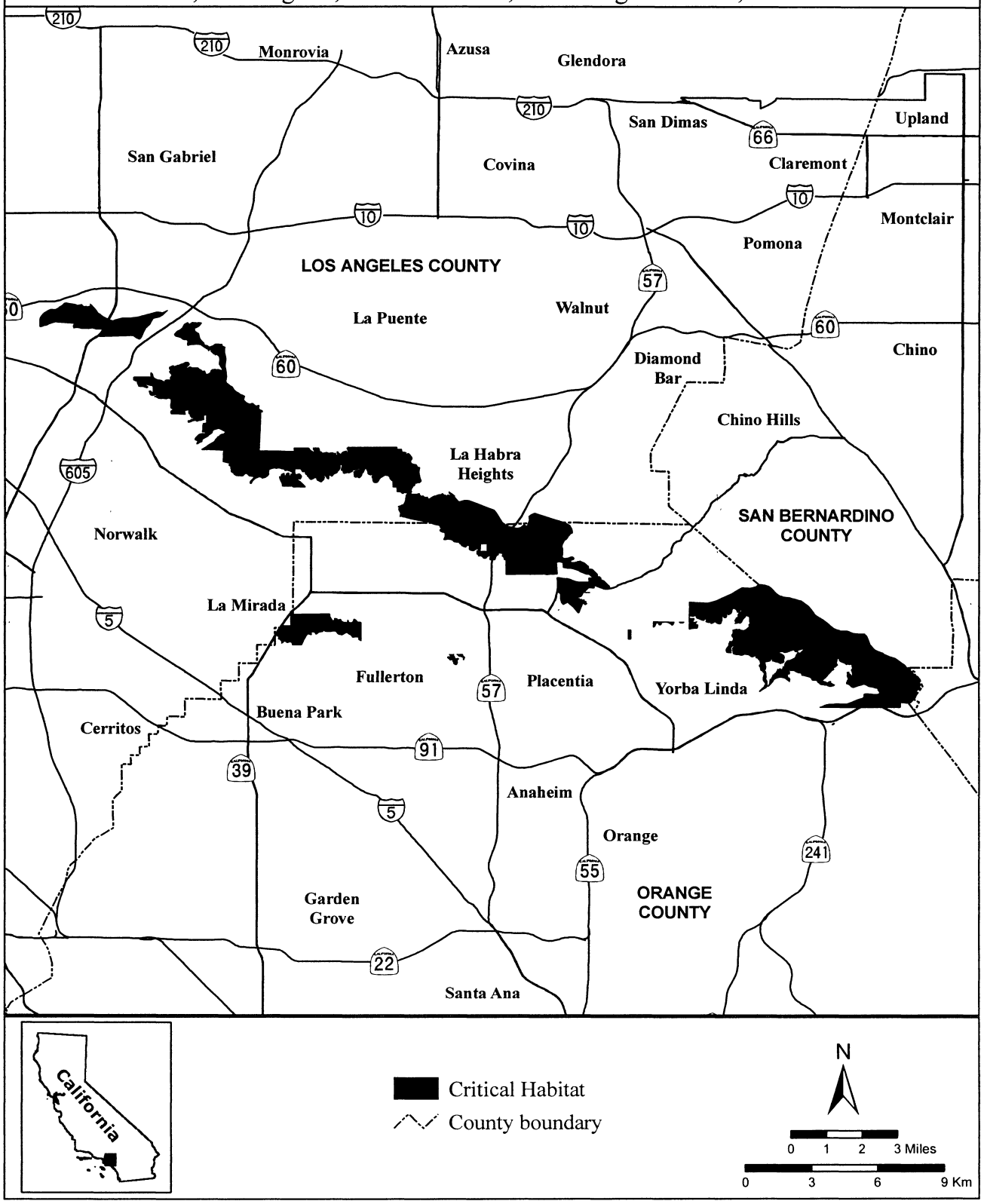
Land bounded by the following UTM NAD27 coordinates (E,N): 417464, 3750334; 417486, 3750308; 417540, 3750273; 417534, 3750239; 417556, 3750223; 417537, 3750210; 417518, 3750194; 417518, 3750166; 417512, 3750143; 417489, 3750166; 417486, 3750188; 417486, 3750210; 417480, 3750248; 417473, 3750258; 417467, 3750277; 417442, 3750283; 417423, 3750286; 417391, 3750286; 417375, 3750296; 417356, 3750305; 417331, 3750315; 417286, 3750315; 417264, 3750321; 417248, 3750353; 417202, 3750397; 417461, 3750397.

Land bounded by the following UTM NAD27 coordinates (E,N): 417054, 3750366; 417045, 3750343; 417051, 3750331; 417086, 3750302; 417086, 3750258; 417112, 3750223; 417124, 3750194; 417194, 3750197; 417210, 3750210; 417245, 3750216; 417270, 3750191; 417264, 3750175; 417223, 3750150; 417204, 3750124; 417223, 3750007; 417200, 3749981; 417194, 3749950; 417175, 3749927; 417121, 3749931; 417102, 3749950; 417083, 3749956; 417064, 3749969; 417054, 3749988; 417045, 3750016; 417054, 3750035; 417039, 3750058; 417010, 3750064; 417004, 3750083; 417013, 3750092; 417042, 3750102; 417032, 3750118; 417007, 3750143; 416981, 3750153; 416943, 3750156; 416892, 3750143; 416877, 3750162; 416816, 3750219; 416772, 3750251; 416769, 3750270; 416797, 3750286; 416870, 3750280; 416896, 3750264; 416918, 3750280; 416918, 3750315; 416896, 3750346; 416867, 3750375; 416863, 3750397; 417072, 3750397.

(ii) Note: Map of Unit 9—East Los Angeles County—Matrix NCCP Subregion of Orange County (Map 9) follows:

BILLING CODE 4310–55–P

Map 9
Critical Habitat for Coastal California Gnatcatcher (*Polioptila californica californica*), Unit 9, Los Angeles, San Bernardino, and Orange Counties, California



BILLING CODE 4310–55–C

(14) Unit 10: Western Riverside County Multiple Species Habitat Conservation Plan, San Bernardino and Riverside Counties, California.

(i) From USGS 1:24,000 quadrangle maps Aguanga, Alberhill, Bachelor Mountain, Black Star Canyon, Corona South, Fontana, Hemet, Lake Elsinore, Lake Mathews, Murrieta, Redlands, Romoland, Sage, San Bernardino South, Steele Peak, Temecula, Vail Lake, and Winchester. Land bounded by the following UTM NAD27 coordinates (E,N): 462288, 3766526; 462282, 3766242; 462304, 3766255; 462376, 3766383; 462438, 3766478; 462498, 3766500; 462500, 3766500; 462500, 3766501; 462523, 3766509; 462712, 3766507; 462869, 3766492; 462893, 3766483; 462971, 3766457; 463071, 3766405; 463202, 3766319; 463385, 3766235; 463459, 3766171; 463335, 3766105; 463207, 3766014; 463193, 3765962; 463309, 3765812; 463313, 3765811; 463118, 3765815; 463092, 3765816; 463051, 3765817; 462312, 3765832; 462121, 3765837; 461708, 3765845; 461574, 3765853; 461449, 3765860; 461125, 3765851; 460836, 3765844; 460656, 3765840; 460469, 3765835; 460128, 3765826; 460098, 3765825; 459359, 3765806; 459132, 3765800; 458973, 3765796; 458621, 3765794; 458135, 3765791; 458014, 3765790; 457882, 3765790; 457381, 3765786; 457412, 3765799; 457445, 3765856; 457460, 3765894; 457488, 3765939; 457512, 3765982; 457524, 3766030; 457536, 3766056; 457560, 3766070; 457600, 3766070; 457626, 3766077; 457650, 3766096; 457662, 3766122; 457657, 3766294; 457650, 3766415; 457645, 3766465; 457655, 3766501; 457688, 3766525; 457700, 3766558; 457700, 3766599; 457705, 3766625; 457726, 3766646; 457769, 3766677; 457807, 3766713; 457845, 3766784; 457893, 3766839; 457933, 3766873; 457974, 3766892; 458029, 3766892; 458076, 3766896; 458126, 3766920; 458160, 3766944; 458186, 3766977; 458198, 3766992; 458232, 3766974; 458342, 3766974; 458469, 3766872; 458539, 3766885; 458621, 3766949; 458996, 3766968; 459066, 3767018; 459083, 3767397; 459876, 3767400; 459876, 3767407; 459882, 3767403; 461490, 3767409; 461495, 3767409; 461857, 3767413; 462282, 3767417; 462294, 3767417.

Land bounded by the following UTM NAD27 coordinates (E,N): 477400, 3764800; 477401, 3764800; 477411, 3764789; 477406, 3764751; 477421, 3764687; 477461, 3764635; 477499, 3764568; 477499, 3764530; 477460, 3764478; 477460, 3764449; 477493, 3764408; 477500, 3764401; 477500, 3764400; 477501, 3764400; 477519, 3764380; 477531, 3764351; 477536, 3764323; 477558, 3764301; 477603, 3764306; 477638, 3764311; 477655, 3764287; 477653, 3764244; 477677, 3764182; 477700, 3764154; 477743, 3764104; 477775, 3764077; 477472, 3764079; 477239, 3764081; 476500, 3764085; 476476, 3764086; 475882, 3764089; 475879, 3764147; 475850, 3764152; 475788, 3764155; 475698, 3764124; 475629, 3764091; 475479, 3764092; 475392, 3764093; 475098, 3764093; 475093, 3764157; 475074, 3764195; 475019, 3764276; 475579, 3764388; 475931, 3764469; 475893, 3764516; 475910, 3764574; 475912, 3764593; 475862, 3764571; 475800, 3764571; 475736, 3764562; 475662, 3764536; 475636, 3764533; 475624, 3764619; 475581, 3764626; 475386, 3764619; 475329, 3764619; 475326, 3764586; 475305, 3764564; 475338, 3764476; 475303, 3764447; 475260, 3764440; 475248, 3764424; 475095, 3764443; 475079, 3764478; 475026, 3764466; 474969, 3764483; 474931, 3764462; 474900, 3764397; 474829, 3764481; 474791, 3764547; 474795, 3764566; 474833, 3764602; 474791, 3764645; 474895, 3764726; 474945, 3764769; 474995, 3764762; 475023, 3764800; 475028, 3764826; 475008, 3764847; 474970, 3764850; 474723, 3764847; 474708, 3765067; 474716, 3765126; 474689, 3765221; 474604, 3765226; 474504, 3765228; 474506, 3765167; 474420, 3765157; 474420, 3765112; 474375, 3765105; 474368, 3765062; 474304, 3765067; 474208, 3765267; 474039, 3765500; 473940, 3765688; 473990, 3765698; 473993, 3765774; 473957, 3765883; 474010, 3765945; 473995, 3766031; 473936, 3766076; 473895, 3766079; 473871, 3766212; 473914, 3766231; 473929, 3766271; 473933, 3766343; 474024, 3766345; 474071, 3766355; 474076, 3766400; 474105, 3766421; 474181, 3766424; 474245, 3766414; 474314, 3766407; 474360, 3766400; 474402, 3766391; 474462, 3766357; 474526, 3766293; 474617, 3766167; 474669, 3766107; 474717, 3766052; 474762, 3766019; 474810, 3765967; 474831, 3765910; 474876, 3765869; 474944, 3765852; 475113, 3765871; 475135, 3765936; 475142, 3766014; 475120, 3766055; 475078, 3766069; 475013, 3766067; 474966, 3766095; 474870, 3766231; 474832, 3766269; 474818, 3766276; 474844, 3766305; 474851, 3766364; 474818, 3766419; 474801, 3766522; 474749, 3766548; 474711, 3766536; 474682, 3766524; 474647, 3766529; 474635, 3766555; 474616, 3766569; 474463, 3766567; 474413, 3766574; 474406, 3766610; 474363, 3766607; 474339, 3766617; 474313, 3766643; 474289, 3766660; 474286, 3766738; 474231, 3766772; 474133, 3766760; 474040, 3766767; 473943, 3766795; 473943, 3766905; 473952, 3766953; 473969, 3766969; 474017, 3766983; 474024, 3767053; 473990, 3767095; 473960, 3767110; 473931, 3767105; 473890, 3767095; 473829, 3767100; 473790, 3767114; 473776, 3767143; 473762, 3767188; 473786, 3767207; 473860, 3767212; 473910, 3767255; 473964, 3767314; 474000, 3767364; 474036, 3767376; 474110, 3767343; 474129, 3767331; 474148, 3767303; 474148, 3767262; 474179, 3767231; 474212, 3767217; 474241, 3767219; 474267, 3767238; 474274, 3767262; 474302, 3767260; 474345, 3767226; 474398, 3767184; 474429, 3767172; 474467, 3767141; 474502, 3767141; 474524, 3767160; 474536, 3767184; 474533, 3767214; 474552, 3767231; 474572, 3767231; 474591, 3767262; 474607, 3767293; 474662, 3767272; 474791, 3767238; 474831, 3767195; 474860, 3767179; 474864, 3767281; 474888, 3767362; 475067, 3767357; 475086, 3767338; 475074, 3767186; 475143, 3767167; 475207, 3767153; 475243, 3767060; 475231, 3766948; 475231, 3766893; 475257, 3766812; 475274, 3766724; 475310, 3766681; 475324, 3766626; 475319, 3766588; 475350, 3766543; 475373, 3766548; 475394, 3766567; 475520, 3766569; 475544, 3766533; 475582, 3766524; 475599, 3766548; 475639, 3766560; 475759, 3766562; 475804, 3766591; 475835, 3766641; 475866, 3766657; 475909, 3766622; 475928, 3766600; 476025, 3766567; 476194, 3766562; 476416, 3766560; 476461, 3766557; 476465, 3766476; 476474, 3766369; 476672, 3766360; 476987, 3766357; 476991, 3766347; 476998, 3766294; 476957, 3766161; 476922, 3766059; 476891, 3766009; 476862, 3765961; 476848, 3765892; 476853, 3765840; 476879, 3765797; 476948, 3765737; 477024, 3765680; 477043, 3765649; 477022, 3765625; 477031, 3765582; 477072, 3765513; 477091, 3765466; 477072, 3765416; 477112, 3765342; 477131, 3765280; 477136, 3765235; 477117, 3765147; 477140, 3765009; 477156, 3764923; 477182, 3764880; 477242, 3764837; 477342, 3764818; 477392, 3764809; 477400, 3764801.

Land bounded by the following UTM NAD27 coordinates (E,N): 469028, 3767037; 469048, 3767011; 469102, 3766947; 469107, 3766901; 469074, 3766808; 469055, 3766756; 469026, 3766727; 469002, 3766725; 468914, 3766661; 468876, 3766618; 468845, 3766577; 468819, 3766266; 468998, 3766268; 469001, 3766120; 468987,

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Land bounded by the following UTM NAD27 coordinates (E,N): 472219, 3766984; 472384, 3766971; 472511, 3766984; 472575, 3767002; 472631, 3766959; 472708, 3766959; 472738, 3766926; 472791, 3766923; 472852, 3766923; 472951, 3766885; 473086, 3766801; 473160, 3766781; 473246, 3766697; 473322, 3766606; 473350, 3766570; 473378, 3766583; 473429, 3766580; 473533, 3766568; 473533, 3766502; 473597, 3766466; 473665, 3766375; 473668, 3766354; 473523, 3766352; 473459, 3766296; 473424, 3766260; 473383, 3766207; 473327, 3766182; 473233, 3766176; 473198, 3766169; 473185, 3766133; 473205, 3766011; 473243, 3765966; 473197, 3765882; 473219, 3765806; 473217, 3765762; 473214, 3765734; 473171, 3765722; 473161, 3765689; 473166, 3765638; 473120, 3765610; 473115, 3765552; 473115, 3765402; 473156, 3765392; 473181, 3765404; 473222, 3765295; 473179, 3765277; 473207, 3765221; 473257, 3765191; 473346, 3765191; 473410, 3765226; 473451, 3765257; 473710, 3765270; 473738, 3765259; 473872, 3765262; 473960, 3765155; 474046, 3765051; 474112, 3764985; 474178, 3764909; 474214, 3764851; 474224, 3764807; 474249, 3764772; 474313, 3764698; 474376, 3764602; 474447, 3764492; 474516, 3764434; 474651, 3764370; 474737, 3764310; 474879, 3764132; 474900, 3764101; 474900, 3764100; 474901, 3764100; 474905, 3764094; 474528, 3764094; 474482, 3764094; 474300, 3764094; 474284, 3764095; 473546, 3764129; 473487, 3764132; 472907, 3764159; 472808, 3764161; 472721, 3764163; 472491, 3764165; 472069, 3764168; 471891, 3764169; 471906, 3764201; 472004, 3764185; 472027, 3764230; 472029, 3764256; 471945, 3764276; 471900, 3764300; 471900, 3764300; 471899, 3764300; 471897, 3764301; 471933, 3764451; 471958, 3764548; 472016, 3764565; 472049, 3764626; 472062, 3764713; 472044, 3764852; 472027, 3764878; 471996, 3764865; 471960, 3764842; 471943, 3764837; 471917, 3764873; 471930, 3764896; 471935, 3764962; 471981, 3764967; 471976, 3764990; 471983, 3765015; 472062, 3765033; 472095, 3765114; 472131, 3765124; 472150, 3765175; 472221, 3765239; 472244, 3765307; 472307, 3765391; 472333, 3765409; 472345, 3765424; 472348, 3765754; 472409, 3765762; 472449, 3765777; 472500, 3765757; 472546, 3765759; 472551, 3765767; 472508, 3765841; 472490, 3765861; 472498, 3765980; 472538, 3766013; 472592, 3766011; 472670, 3765980; 472726, 3765942; 472775, 3765881; 472775, 3765828; 472762, 3765810; 472739, 3765790; 472772, 3765762; 472879, 3765757; 472968, 3765942; 472847, 3766031; 472771, 3766176; 472743, 3766331; 472745, 3766392; 472712, 3766465; 472662, 3766483; 472583, 3766488; 472544, 3766514; 472513, 3766560; 472407, 3766669; 472280, 3766773; 472181, 3766860; 472137, 3766883; 471975, 3766921; 471810, 3766951; 471711, 3766977; 471660, 3766982; 471660, 3766951; 471657, 3766921; 471619, 3766916; 471576, 3766916; 471540, 3766905; 471520, 3766885; 471510, 3766862; 471500, 3766850; 471424, 3766852; 471469, 3766878; 471479, 3766913; 471518, 3767007; 471551, 3767063; 471573, 3767091; 471609, 3767109; 471858, 3767043; 471947, 3767071; 471980, 3767109; 472008, 3767152; 472181, 3767060; 472196, 3767005; 472200, 3767001; 472200, 3767000; 472201, 3767000.

Land bounded by the following UTM NAD27 coordinates (E,N): 456608, 3766596; 456608, 3766527; 456627, 3766439; 456661, 3766375; 456677, 3766318; 456749, 3766234; 456768, 3766180; 456815, 3765908; 456851, 3765849; 456882, 3765830; 456937, 3765808; 456992, 3765794; 457001, 3765784; 457024, 3765784; 456868, 3765783; 456405, 3765786; 456357, 3765786; 456142, 3765788; 455924, 3765789; 456100, 3766028; 456050, 3766148; 455961, 3766167; 455840, 3766187; 455757, 3766225; 455662, 3766263; 455599, 3766326; 455548, 3766529; 455561, 3766669; 455586, 3766841; 455643, 3766974; 455694, 3767088; 455751, 3767076; 455789, 3766974; 456024, 3766879; 456240, 3766879; 456373, 3766783; 456456, 3766758; 456513, 3766758; 456589, 3766811; 456588, 3766768; 456588, 3766690; 456588, 3766622.

Land bounded by the following UTM NAD27 coordinates (E,N): 455027, 3765901; 455122, 3765933; 455186, 3765856; 455281, 3765818; 455333, 3765792; 455145, 3765793; 454954, 3765795; 454955, 3765883.

Land bounded by the following UTM NAD27 coordinates (E,N): 455367, 3764979; 455375, 3764979; 455459, 3764980; 455772, 3764981; 455786, 3764981; 455779, 3765348; 455778, 3765382; 455874, 3765383; 456182, 3765383; 456181, 3765781; 456195, 3765781; 456585, 3765780; 456598, 3765780; 456592, 3764970; 456589, 3764578; 456580, 3764578; 456372, 3764579; 456265, 3764580; 456185, 3764580; 456152, 3764580; 456083, 3764581; 456070, 3764581; 455872, 3764582; 455842, 3764582; 455812, 3764582; 455782, 3764582; 455781, 3764582; 455662, 3764583; 455543, 3764583; 455422, 3764582; 455409, 3764582; 455408, 3764593; 455384, 3764593; 455371, 3764594; 455366, 3764945; 455365, 3764977; 455365, 3764979.

Land bounded by the following UTM NAD27 coordinates (E,N): 455055, 3764977; 454963, 3764977; 454957, 3764977; 454957, 3764988; 454953, 3765344; 454953, 3765351; 454953, 3765365; 454953, 3765374; 455359,

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Land bounded by the following UTM NAD27 coordinates (E,N): 441213, 3746548; 441619, 3746547; 441616, 3746253; 441615, 3746052; 441611, 3745650; 442214, 3745645; 442211, 3745243; 442412, 3745241; 442614, 3745241; 442614, 3745257; 442614, 3745258; 442614, 3745442; 442629, 3745442; 442630, 3745442; 443013, 3745443; 443014, 3745450; 443014, 3745450; 443015, 3745645; 442616, 3745644; 442618, 3745844; 442417, 3745844; 442419, 3746045; 442434, 3746045; 442435, 3746045; 442821, 3746046; 442821, 3746058; 442821, 3746059; 442823, 3746257; 442823, 3746258; 442823, 3746290; 442437, 3746289; 442436, 3746289; 442421, 3746289; 442423, 3746545; 442438, 3746545; 442439, 3746545; 442796, 3746541; 442826, 3746540; 443006, 3746539; 443168, 3746537; 443201, 3746537; 443204, 3746537; 443228, 3746537; 443253, 3746537; 443339, 3746536; 443334, 3746502; 443310, 3746331; 443289, 3746187; 443285, 3746164; 443282, 3746140; 443269, 3746053; 443215, 3746052; 443211, 3745645; 443209, 3745645; 443206, 3745354; 443206, 3745354; 443206, 3745345; 443109, 3745344; 442833, 3745343; 442833, 3745343; 442811, 3745343; 442811, 3745243; 442809, 3745042; 442808, 3744851; 442808, 3744850; 442808, 3744840; 442425, 3744839; 442424, 3744839; 442410, 3744839; 442408, 3744840; 442400, 3744849; 442322, 3744927; 442201, 3744927; 442039, 3744881; 442003, 3744848; 441996, 3744842; 441873, 3744730; 441641, 3744558; 441549, 3744580; 441455, 3744650; 441537, 3744846; 441538, 3744850; 441566, 3744917; 441627, 3745098; 441605, 3745254; 441525, 3745435; 441385, 3745460; 441192, 3745444; 441144, 3745581; 441001, 3745822; 440881, 3745879; 440833, 3745901; 440812, 3745911; 440266, 3746403; 439866, 3746546; 439794, 3746570; 440420, 3746557; 440851, 3746549.

Land bounded by the following UTM NAD27 coordinates (E,N): 444001, 3745245; 444000, 3745043; 443807, 3745043; 443807, 3745043; 443804, 3745043; 443806, 3745245; 443813, 3745245; 443813, 3745245; 443967, 3745246; 444000, 3745246; 444001, 3745246; 444001, 3745246.

Land bounded by the following UTM NAD27 coordinates (E,N): 444384, 3744642; 444384, 3744638; 444323, 3744638; 444322, 3744638; 444296, 3744638; 444298, 3744714; 444383, 3744712; 444384, 3744642.

Land bounded by the following UTM NAD27 coordinates (E,N): 444828, 3744537; 445019, 3744323; 445017, 3744323; 445016, 3744316; 445008, 3744025; 445005, 3743922; 444811, 3743925; 444811, 3743932; 444811, 3743933; 444814, 3744028; 444827, 3744525; 444827, 3744526.

Land bounded by the following UTM NAD27 coordinates (E,N): 444001, 3744442; 444001, 3744442; 443988, 3744442; 443990, 3744504; 444001, 3744504; 444001, 3744504; 444097, 3744506; 444189, 3744507; 444293, 3744509; 444292, 3744443.

Land bounded by the following UTM NAD27 coordinates (E,N): 443978, 3744049; 443983, 3744238; 444288, 3744242; 444395, 3744243; 444395, 3744241; 444395, 3744236; 444395, 3744235; 444391, 3744039; 444391, 3744039; 444391, 3744032; 444355, 3744033; 444116, 3744038; 444106, 3744038; 444085, 3744039; 444084, 3744039; 443996, 3744040; 443995, 3744041; 443977, 3744041.

Land bounded by the following UTM NAD27 coordinates (E,N): 443977, 3744038; 443977, 3744038; 443978, 3744031; 443977, 3743999; 443948, 3743978; 443975, 3743943; 443974, 3743937; 443980, 3743937; 443981, 3743935; 443998, 3743935; 444028, 3743935; 444044, 3743935; 444049, 3743934; 444059, 3743933; 444059, 3743933; 444057, 3743836; 444099, 3743836; 444100, 3743836; 444370, 3743833; 444372, 3743830; 444396, 3743800; 444411, 3743830; 444413, 3743832; 444534, 3743831; 444535, 3743830; 444536, 3743829; 444536, 3743829; 444592, 3743824; 444594, 3743824; 444594, 3743818; 444585, 3743630; 444591, 3743630; 444593, 3743630; 444617, 3743629; 444665, 3743629; 444633, 3743563; 444642, 3743496; 444715, 3743390; 444728, 3743628; 444892, 3743626; 444893, 3743626; 444893, 3743626; 444892, 3743593; 444890, 3743546; 444889, 3743528; 445085, 3743524; 445174, 3743522; 445174, 3743522; 445182, 3743522; 445174, 3743330; 445174, 3743329; 445174, 3743327; 445469, 3743325; 445467, 3743230; 445468, 3743230; 445470, 3743186; 445471, 3743148; 445471, 3743127; 445471, 3743127; 445472, 3743118; 445567, 3743119; 445650, 3743119; 445651, 3743027; 445676, 3743027; 445676, 3743027; 445859, 3743028; 445857, 3743229; 445889, 3743229; 445993, 3743228; 445994, 3743228; 446002, 3743228; 446235, 3742970; 446234, 3742970; 446233, 3742970; 446169, 3742968; 446170, 3742559; 446178, 3742559; 446179, 3742559; 446370, 3742559; 446370, 3742552; 446370, 3742551; 446369, 3742435; 446369, 3742336; 446375, 3742336; 446376, 3742336; 446573, 3742332; 446574, 3742436; 446787, 3742436; 446800, 3742436; 447162, 3742213; 447389, 3742073; 447388, 3742067; 447387, 3742063; 447489, 3741981; 447551, 3741966; 447567, 3741962; 447627, 3741925; 447643, 3741909; 447711, 3741841; 447832, 3741784; 447848, 3741783; 447858, 3741782; 447968, 3741714; 448118, 3741621; 448110, 3741621; 448108, 3741621; 447967, 3741613; 447967, 3741595; 447965, 3741311; 447963, 3741114; 447739, 3741217; 447441, 3741010; 447310, 3740966; 447231, 3741061; 447318, 3741388; 447287, 3741594; 447271, 3741619; 447233, 3741677; 447163, 3741671; 447096, 3741664; 447034, 3741620; 446768, 3741620; 446826, 3741810; 446753, 3742001; 446575, 3741972; 446110, 3741622; 445565, 3741626; 445564, 3741374; 445564, 3741330; 445563, 3741311; 445563, 3741311; 445324, 3741201; 445280, 3741271; 445410, 3741498; 445531, 3741626; 445565, 3741663; 445575, 3741674; 445600, 3741700; 445600, 3741700; 445600, 3741700; 445807, 3741920; 445918, 3742333; 445784, 3742618; 445581, 3742664; 445564, 3742668; 445445, 3742695; 445365, 3742472; 445143, 3742301; 444959, 3742358; 444914, 3742660; 444711, 3742815; 444448, 3742822; 444311, 3742444; 444140, 3741907; 443975, 3741837; 443851, 3741783; 443711, 3741955; 443660, 3742136; 443841, 3742301; 443848, 3742510; 443551, 3742768; 443405, 3743091; 443449, 3743227; 443451, 3743233; 443463, 3743272; 443270, 3743453; 443193, 3743470; 442952, 3743520; 442482, 3743384; 442418, 3743350; 442398, 3743340; 442203, 3743241; 442162, 3743336; 442159, 3743593; 442251, 3743723; 442401, 3744028; 442407, 3744040; 442418, 3744040; 442419, 3744040; 442669, 3744039; 442733, 3744039; 443197, 3744036; 443578, 3744038; 443649, 3744039; 443977, 3744041.

Land bounded by the following UTM NAD27 coordinates (E,N): 458767, 3741492; 459313, 3741490; 459310, 3741140; 459310, 3741086; 459310, 3741086; 459309, 3740884; 459309, 3740884; 459308, 3740788; 459307, 3740684; 459179, 3740685; 458857, 3740688; 458634, 3740690; 458405, 3740690; 458364, 3740691; 458204, 3740692; 458204, 3740673; 458202, 3740495; 458102, 3740496; 458103, 3740675; 458103, 3740693; 458002, 3740694; 458003, 3740796; 458004, 3740896; 458005, 3740964; 458005, 3740995; 458006, 3741094; 458208, 3741092; 458361, 3741091; 458407, 3741091; 458407, 3741094; 458408, 3741235; 458409, 3741494.

Land bounded by the following UTM NAD27 coordinates (E,N): 460067, 3740678; 460446, 3740677; 460480, 3740677; 460480, 3740677; 460816, 3740676; 460817, 3740445; 460818, 3740275; 460820, 3739907; 460820, 3739873; 460820, 3739873; 460820, 3739873; 460823, 3739393; 460825, 3739074; 460869, 3739074; 460306, 3739076; 460113, 3739076; 460063, 3739077; 460061, 3739877; 460064, 3740272; 460067, 3740678; 460067, 3740678.

Land bounded by the following UTM NAD27 coordinates (E,N): 450336, 3739933; 450334, 3739465; 450250, 3739486; 449968, 3739172; 449931, 3739184; 449765, 3739239; 449631, 3739248; 449516, 3739121; 449482, 3739083; 449328, 3738667; 448931, 3738635; 448782, 3738482; 448709, 3738407; 448518, 3738395; 448419, 3738389; 448386, 3738391; 448380, 3738398; 447904, 3738867; 448380, 3738889; 448723, 3739232; 448457, 3739477; 448331, 3739810; 448433, 3739950; 448760, 3739924; 448791, 3739931; 448793, 3739932; 449130, 3739932; 449781, 3739932; 449934, 3739933.

Land bounded by the following UTM NAD27 coordinates (E,N): 451938, 3738764; 452341, 3738746; 452745, 3738728; 452744, 3738723; 452744, 3738722; 452743, 3738491; 452742, 3738430; 452742, 3738355; 452741, 3738315; 451961, 3738369; 451961, 3738369; 451935, 3738371.

Land bounded by the following UTM NAD27 coordinates (E,N): 451935, 3738325; 451935, 3738324; 451930, 3736705; 452734, 3736701; 452733, 3736524; 452730, 3736143; 452729, 3735902; 452729, 3735897; 452745, 3735897; 452746, 3735897; 452984, 3735898; 453129, 3735898; 453129, 3735884; 453129, 3735884; 453125, 3735517; 453124, 3735413; 453117, 3735409; 453124, 3735382; 453123, 3735297; 452729, 3735301; 452729, 3735092; 452746, 3735092; 452746, 3735092; 452940, 3735091; 452950, 3735078; 452976, 3735046; 452865, 3734835; 452822, 3734783; 452451, 3734441; 452420, 3734529; 452636, 3734734; 452689, 3734989; 452667, 3735092; 452638, 3735226; 452645, 3735490; 452617, 3735555; 452357, 3735496; 452224, 3735457; 452108, 3735202; 451959, 3735460; 452028, 3735640; 452314, 3735871; 452393, 3736103; 452352, 3736236; 452194, 3736411; 452099, 3736576; 451947, 3736515; 451929, 3736508; 451793, 3736452; 451875, 3736674; 451862, 3736706; 451856, 3736718; 451818, 3736810; 451638, 3736789; 451507, 3736723; 451487, 3736712; 451467, 3736708; 451101, 3736622; 450869, 3736612; 450641, 3736634; 450803, 3736711; 450844, 3736730; 451202, 3736901; 451663, 3737204; 451644, 3737399; 451494, 3737526; 451116, 3737440; 451138, 3737795; 451423, 3737852; 451550, 3738035; 451464, 3738159; 451116, 3738177; 450910, 3738335; 450913, 3738338; 450916, 3738341; 451133, 3738347; 451935, 3738371.

Land bounded by the following UTM NAD27 coordinates (E,N): 460484, 3738197; 460499, 3738197; 460385, 3737942; 460100, 3737974; 460101, 3738185; 460103, 3738185; 460479, 3738197.

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Land bounded by the following UTM NAD27 coordinates (E,N): 473321, 3725075; 473282, 3725076; 473249, 3725077; 473222, 3725077; 473198, 3725078; 473174, 3725078; 473155, 3725079; 473148, 3725079; 473127, 3725079; 473106, 3725080; 473082, 3725080; 473061, 3725081; 473040, 3725081; 473019, 3725082; 473015, 3725082; 472997, 3725082; 472984, 3725082; 472984, 3725145; 472985, 3725351; 472985, 3725489; 473086, 3725486; 473100, 3725486; 473115, 3725486; 473258, 3725482; 473378, 3725479; 473378, 3725458; 473380, 3725074.

Land bounded by the following UTM NAD27 coordinates (E,N): 501323, 3725256; 501447, 3725257; 501446, 3725286; 501446, 3725295; 501538, 3725296; 501540, 3725184; 501324, 3725182.

Land bounded by the following UTM NAD27 coordinates (E,N): 501966, 3723887; 501967, 3723762; 501966, 3723678; 501963, 3723555; 501960, 3723430; 501953, 3723085; 501706, 3723085; 501563, 3723086; 501369, 3722715; 501368, 3722716; 501361, 3722726; 501356, 3722736; 501351, 3722747; 501297, 3722884; 501292, 3722895; 501287, 3722906; 501280, 3722917; 501273, 3722927; 501264, 3722936; 501255, 3722945; 501246, 3722953; 501236, 3722960; 501225, 3722967; 501214, 3722973; 501206, 3722976; 501202, 3722978; 501198, 3722980; 501195, 3722983; 501192, 3722986; 501188, 3722989; 501186, 3722992; 501183, 3722996; 501181, 3723000; 501179, 3723004; 501178, 3723008; 501177, 3723012; 501176, 3723016; 501176, 3723021; 501176, 3723025; 501176, 3723029; 501177, 3723034; 501178, 3723038; 501180, 3723042; 501182, 3723046; 501202, 3723087; 501195, 3723087; 501181, 3723888.

Land bounded by the following UTM NAD27 coordinates (E,N): 500602, 3722286; 500610, 3722264; 500398, 3722261; 500398, 3722261; 500392, 3722194; 500389, 3722157; 500633, 3722207; 500633, 3722207; 500634, 3722203; 500639, 3722192; 500644, 3722180; 500647, 3722175; 500649, 3722169; 500656, 3722158; 500662, 3722147; 500666, 3722142; 500669, 3722137; 500675, 3722129; 500676, 3722127; 500680, 3722122; 500684, 3722117; 500692, 3722107; 500697, 3722101; 500700, 3722098; 500702, 3722096; 500709, 3722089; 500709, 3722082; 500533, 3721913; 500524, 3721904; 500515, 3721893; 500515, 3721893; 500508, 3721882; 500505, 3721876; 500501, 3721870; 500501, 3721870; 500496, 3721858; 500491, 3721846; 500471, 3721780; 500452, 3721720; 500448, 3721710; 500448, 3721710; 500443, 3721700; 500438, 3721691; 500436, 3721687; 500432, 3721682; 500426, 3721673; 500419, 3721664; 500412, 3721657; 500360, 3721609; 500358, 3721607; 500355, 3721605; 500351, 3721601; 500347, 3721598; 500346, 3721598; 500345, 3721597; 500341, 3721595; 500341, 3721595; 500341, 3721595; 500339, 3721572; 500334, 3721509; 500332, 3721489; 500332, 3721488; 500365, 3721096; 500365, 3721096; 500365, 3721096; 500848, 3721265; 500849, 3721264; 500853, 3721256; 500854, 3721255; 500858, 3721247; 500861, 3721238; 500863, 3721230; 500863, 3721228; 500864, 3721221; 500865, 3721214; 500865, 3721212; 500865, 3721212; 500865, 3721203; 500864, 3721195; 500864, 3721194; 500863, 3721186; 500861, 3721177; 500858, 3721169; 500858, 3721169; 500854, 3721160; 500814, 3721071; 500813, 3721070; 500810, 3721063; 500805, 3721057; 500800, 3721052; 500799, 3721051; 500798, 3721051; 500792, 3721047; 500786, 3721045; 500784, 3721044; 500779, 3721043; 500758, 3721036; 500755, 3721035; 500750, 3721033; 500743, 3721030; 500736,

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Land bounded by the following UTM NAD27 coordinates (E,N): 496718, 3722672; 497123, 3722675; 497137, 3722261; 496934, 3722263; 496733, 3722264; 496324, 3722268; 496307, 3722268; 496304, 3722667; 496304, 3722669.

Land bounded by the following UTM NAD27 coordinates (E,N): 500648, 3721664; 500649, 3721663; 500655, 3721657; 500663, 3721651; 500672, 3721646; 500675, 3721644; 500680, 3721642; 500752, 3721603; 500808, 3721573; 500812, 3721571; 500816, 3721569; 500820, 3721566; 500824, 3721563; 500828, 3721560; 500832, 3721557; 500839, 3721550; 500845, 3721543; 500850, 3721535; 500854, 3721529; 500855, 3721527; 500856, 3721525; 500859, 3721518; 500861, 3721515; 500863, 3721509; 500865, 3721500; 500866, 3721496; 500867, 3721491; 500868, 3721483; 500868, 3721481; 500868, 3721472; 500867, 3721462; 500865, 3721453; 500863, 3721443; 500860, 3721434; 500856, 3721426; 500855, 3721425; 500851, 3721418; 500845, 3721410; 500842, 3721406; 500839, 3721403; 500838, 3721402; 500835, 3721398; 500583, 3721390; 500542, 3721389; 500547, 3721756; 500547, 3721763; 500641, 3721671; 500647, 3721665; 500648, 3721664.

Land bounded by the following UTM NAD27 coordinates (E,N): 496746, 3721453; 496746, 3721453; 496753, 3721054; 496753, 3721046; 496350, 3721058; 496349, 3721101; 496346, 3721253; 496342, 3721463.

Land bounded by the following UTM NAD27 coordinates (E,N): 495959, 3720651; 495929, 3720653; 495776, 3720664; 495557, 3720679; 495558, 3720885; 495558, 3721041; 495558, 3721044; 495558, 3721081; 495919, 3721070; 495954, 3721069.

Land bounded by the following UTM NAD27 coordinates (E,N): 478136, 3719798; 477825, 3719796; 477756, 3719795; 477758, 3719998; 477759, 3720101; 477760, 3720253; 477761, 3720352; 477761, 3720405; 477762, 3720521; 477770, 3720521; 477801, 3720522; 477857, 3720470; 478140, 3720205; 478136, 3719806.

Land bounded by the following UTM NAD27 coordinates (E,N): 498720, 3720461; 498719, 3720061; 497912, 3720043; 497510, 3720030; 497509, 3720233; 497159, 3720221; 497159, 3720422; 497910, 3720453.

Land bounded by the following UTM NAD27 coordinates (E,N): 478940, 3719001; 478924, 3719001; 478670, 3719001; 478663, 3719001; 478536, 3719001; 478542, 3719404; 478679, 3719404; 478681, 3719404; 479354, 3719401; 479352, 3719001.

Land bounded by the following UTM NAD27 coordinates (E,N): 498718, 3719053; 498718, 3718949; 498718, 3718912; 498718, 3718671; 498718, 3718598; 498719, 3718490; 498723, 3718209; 498724, 3718159; 498727, 3717885; 498727, 3717884; 498728, 3717831; 498732, 3717692; 498732, 3717684; 498738, 3717439; 498738, 3717439; 498735, 3717282; 498730, 3717107; 499003, 3717172; 499101, 3717196; 499425, 3717194; 499425, 3717194; 499429, 3717238; 499429, 3717239; 499429, 3717239; 499429, 3717240; 499429, 3717240; 499429, 3717241; 499429, 3717242; 499429, 3717243; 499429, 3717244; 499429, 3717244; 499429, 3717245; 499429, 3717247; 499429, 3717247; 499429, 3717248; 499429, 3717249; 499429, 3717252; 499429, 3717252; 499429, 3717253; 499429, 3717254; 499429, 3717255; 499429, 3717256; 499429, 3717257; 499429, 3717259; 499429, 3717260; 499429, 3717261; 499429, 3717262; 499426, 3717318; 499426, 3717319; 499426, 3717320; 499425, 3717320; 499425, 3717321; 499425, 3717322; 499425, 3717322; 499425, 3717324; 499425, 3717325; 499425, 3717326; 499425, 3717326; 499424, 3717327; 499424, 3717328; 499424, 3717328; 499424, 3717329; 499424, 3717330; 499424, 3717331; 499423, 3717332; 499423, 3717332; 499423, 3717333; 499423, 3717333; 499423, 3717334; 499422, 3717334; 499422, 3717335; 499422, 3717336; 499422, 3717336; 499422, 3717336; 499421, 3717338; 499421, 3717339; 499420, 3717339; 499420, 3717340; 499420, 3717340; 499420, 3717341; 499419, 3717342; 499419, 3717343; 499418, 3717344; 499418, 3717344; 499418, 3717345; 499418, 3717345; 499417, 3717345; 499417, 3717346; 499416, 3717347; 499416, 3717347; 499416, 3717348; 499415, 3717348; 499415, 3717349; 499415, 3717350; 499414, 3717350; 499414, 3717350; 499414, 3717351; 499413, 3717351; 499413, 3717352; 499412, 3717353; 499412, 3717353; 499368, 3717406; 499352, 3717425; 499345, 3717433; 499347, 3717433; 499349, 3717433; 499441, 3717432; 499521, 3717431; 499559, 3717431; 499707, 3717430; 499722, 3717430; 499980, 3717428; 499982, 3717402; 499982, 3717402; 499998, 3717127; 500052, 3717127; 500056, 3716659; 500259, 3716573; 500259, 3716572; 500259, 3716571; 500259, 3716570; 500259, 3716569; 500260, 3716200; 500000, 3716211; 499963, 3716213; 499900, 3716215; 499893, 3716216; 499896, 3716660; 499830, 3716648; 499763, 3716635; 499739, 3716616; 499681, 3716572; 499644, 3716556; 499643, 3716556; 499642, 3716555; 499641, 3716555; 499639, 3716554; 499638, 3716554; 499638, 3716554; 499637, 3716553; 499636, 3716553; 499634, 3716553; 499633, 3716553; 499632, 3716552; 499631, 3716552; 499631, 3716552; 499630, 3716552; 499629, 3716552; 499628, 3716552; 499627, 3716552; 499626, 3716552; 499626, 3716552; 499625, 3716552; 499624, 3716552; 499623,

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Land bounded by the following UTM NAD27 coordinates (E,N): 501909, 3708054; 501909, 3708062; 501933, 3709158; 501943, 3709610; 501944, 3709666; 502706, 3709681; 502725, 3709681; 502723, 3709478; 502722, 3709269; 502721, 3709059; 502720, 3708891; 502720, 3708850; 502959, 3708845; 503116, 3708841; 503420, 3708834; 503508, 3708833; 503513, 3708832; 503513, 3708791; 503515, 3708529; 503515, 3708511; 503517, 3708017; 501908, 3708030.

Land bounded by the following UTM NAD27 coordinates (E,N): 500251, 3708054; 500165, 3708053; 499698, 3708050; 499579, 3708049; 499733, 3708396; 499805, 3708558; 499860, 3708679; 499874, 3708711; 499941, 3708862; 500001, 3708997; 500069, 3709150; 500110, 3709242; 500146, 3709321; 500159, 3709351; 500200, 3709443; 500210, 3709467; 500286, 3709638; 500287, 3709582; 500288, 3709520; 500292, 3709244; 500300, 3708672; 500309, 3708054.

Land bounded by the following UTM NAD27 coordinates (E,N): 501103, 3708053; 501521, 3708041; 501635, 3708038; 501817, 3708032; 501877, 3708031; 501908, 3708030; 501911, 3707648; 501914, 3707246; 501915, 3707121; 501833, 3707135; 501624, 3707168; 501509, 3707187; 501102, 3707252; 500696, 3707317; 500289, 3707382; 500289, 3707383; 500290, 3707386; 500306, 3707950; 500306, 3707960; 500309, 3708054.

Land bounded by the following UTM NAD27 coordinates (E,N): 510786, 3707197; 510786, 3707227; 510782, 3707584; 510675, 3707585; 509994, 3707592; 509992, 3707609; 509779, 3707611; 509631, 3707613; 509174, 3707620; 509172, 3707639; 509144, 3707978; 509140, 3708020; 509153, 3708020; 509440, 3708018; 509527, 3708017; 509638, 3708016; 509792, 3708014; 509950, 3708013; 510466, 3708009; 510769, 3708007; 511410, 3708002; 511500, 3708001; 511587, 3708001; 511587, 3708000; 511586, 3707869; 511586, 3707737; 511585, 3707588; 511584, 3707440; 511583, 3707307; 511582, 3707179; 511568, 3707179; 510824, 3707193; 510786, 3707194.

Land bounded by the following UTM NAD27 coordinates (E,N): 510794, 3706431; 510794, 3706429; 510114, 3706414; 510104, 3706513; 510095, 3706602; 510074, 3706811; 510053, 3707010; 510033, 3707208; 510047, 3707207; 510689, 3707196; 510786, 3707194.

Land bounded by the following UTM NAD27 coordinates (E,N): 515257, 3703983; 515275, 3703983; 515273, 3703640; 515273, 3703607; 516035, 3703623; 516088, 3703625; 516092, 3703219; 516078, 3703219; 516063, 3703218; 515863, 3703211; 515841, 3703210; 515647, 3703202; 515618, 3703203; 515388, 3703211; 515156, 3703218; 514926, 3703225; 514853, 3703228; 514853, 3703252; 514845, 3703968; 514848, 3703969; 514854, 3703969; 515246, 3703982; 515255, 3703983.

Land bounded by the following UTM NAD27 coordinates (E,N): 510976, 3703211; 510974, 3703215; 511637, 3703198; 511664, 3702694; 511678, 3702433; 511686, 3702270; 511719, 3701647; 511363, 3701649; 510930, 3701652; 510922, 3701777; 510918, 3701848; 510907, 3702041; 510903, 3702041; 510905, 3702055; 510997, 3702278; 510999, 3702300; 511000, 3702300; 511000, 3702308; 511035, 3702617; 511098, 3702878; 511052, 3703094; 510979, 3703207.

Land bounded by the following UTM NAD27 coordinates (E,N): 486608, 3703085; 486612, 3703080; 486614, 3703077; 486638, 3703046; 486705, 3702962; 486873, 3702746; 487022, 3702556; 487120, 3702430; 487239, 3702278; 487249, 3702265; 487096, 3702266; 486996, 3702267; 487001, 3701866; 487005, 3701468; 487389, 3701467; 487398, 3701438; 487406, 3701374; 487409, 3701327; 487409, 3701322; 487413, 3701270; 487412, 3701051; 487411, 3700948; 487410, 3700912; 487409, 3700889; 487406, 3700844; 487402, 3700804; 487397, 3700766; 487391, 3700739; 487377, 3700694; 487370, 3700673; 487019, 3700675; 486819, 3700676; 486661, 3700676; 486635, 3700676; 486619, 3700676; 486421, 3700677; 486419, 3700677; 486219, 3700678; 486019, 3700679; 486002, 3700679; 485831, 3700680; 485819, 3700680; 485807, 3701079; 485807, 3701092; 485775, 3702223; 485774, 3702277; 485771, 3702277; 485767, 3702277; 485597, 3702268; 485520, 3702264; 485499, 3702263; 485478, 3702262; 485435, 3702260; 485403, 3702258; 485400, 3702258; 485361, 3702256; 485360, 3702258; 485360, 3702281; 485347, 3702636; 485487, 3702642; 485763, 3702655; 485999, 3702680; 486589, 3702742; 486586, 3703113.

Land bounded by the following UTM NAD27 coordinates (E,N): 513144, 3701771; 513138, 3701804; 513135, 3701843; 513134, 3701875; 513136, 3701907; 513150, 3702008; 513153, 3702041; 513155, 3702102; 513153, 3702129; 513156, 3702164; 513161, 3702189; 513169, 3702217; 513175, 3702046; 513178, 3701948; 513181, 3701852; 513182, 3701827.

Land bounded by the following UTM NAD27 coordinates (E,N): 516307, 3702061; 516325, 3702061; 516506, 3702058; 516506, 3702060; 517038, 3702041; 517165, 3702037; 517164, 3702032; 517101, 3701785; 517008, 3701712; 516507, 3701831; 516416, 3701852; 515547, 3702074; 515910, 3702068; 516193, 3702063.

Land bounded by the following UTM NAD27 coordinates (E,N): 481969, 3700614; 482138, 3700611; 482132, 3700215; 482132, 3700213; 482184, 3700213; 482546, 3700209; 482534, 3699420; 482534, 3699416; 482207, 3699417; 482121, 3699417; 482127, 3699815; 481946, 3699817; 481713, 3699818; 481708, 3699419; 480886, 3699423; 480889, 3699828; 480892, 3700208; 480892, 3700226; 481718, 3700218; 481721, 3700402; 481724, 3700601; 481724, 3700617.

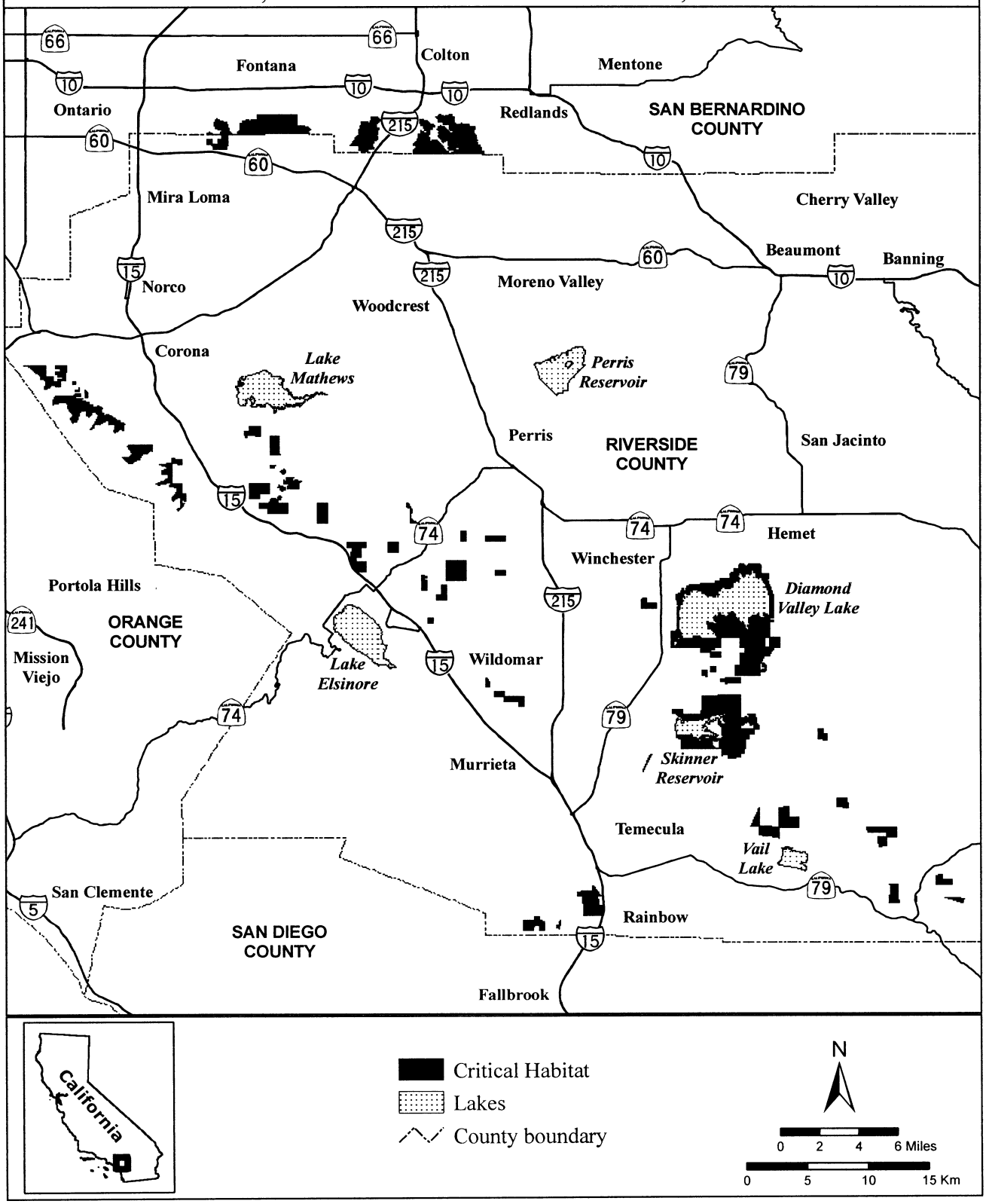
Land bounded by the following UTM NAD27 coordinates (E,N): 483946, 3700238; 483901, 3700054; 483873, 3699945; 483849, 3699851; 483801, 3699670; 483781, 3699609; 483769, 3699579; 483766, 3699571; 483746, 3699522; 483746, 3699615; 483699, 3699614; 483637, 3699614; 483636, 3699618; 483635, 3699816; 483657, 3699816; 483680, 3699817; 483745, 3699818; 483745, 3699800; 483745, 3699778; 483751, 3699803; 483760, 3699840; 483767, 3699867; 483786, 3699935; 483825, 3700072; 483867, 3700218; 483870, 3700230; 483872, 3700237.

Land bounded by the following UTM NAD27 coordinates (E,N): 487396, 3699050; 487369, 3699052; 487371, 3699111; 487375, 3699216; 487382, 3699457; 487384, 3699457; 487406, 3699455.

(ii) Note: Map of Unit 10—Western Riverside County Multiple Species Habitat Conservation Plan (Map 10) follows:

BILLING CODE 4310–55–P

Map 10
Critical Habitat for Coastal California Gnatcatcher (*Polioptila californica californica*), Unit 10, San Bernardino and Riverside Counties, California



BILLING CODE 4310–55–C

(15) Unit 12: East Los Angeles County, Los Angeles County, California.

(i) From USGS 1:24,000 quadrangle maps Baldwin Peak and San Dimas. Land bounded by the following UTM NAD27 coordinates (E,N): 425493, 3772912; 425451, 3772908; 425410, 3772889; 425359, 3772886; 425315, 3772886; 425277, 3772886; 425258, 3772902; 425229, 3772918; 425194, 3772912; 425169, 3772889; 425156, 3772851; 425172, 3772807; 425207, 3772756; 425245, 3772712; 425251, 3772645; 425207, 3772613; 425207, 3772588; 425245, 3772575; 425293, 3772566; 425337, 3772547; 425372, 3772518; 425429, 3772534; 425464, 3772553; 425502, 3772559; 425537, 3772531; 425578, 3772512; 425601, 3772502; 425655, 3772486; 425709, 3772477; 425770, 3772502; 425766, 3772420; 425794, 3772375; 425807, 3772334; 425801, 3772305; 425718, 3772286; 425616, 3772283; 425547, 3772293; 425512, 3772308; 425483, 3772350; 425455, 3772375; 425429, 3772404; 425401, 3772420; 425378, 3772407; 425378, 3772356; 425353, 3772327; 425293, 3772334; 425264, 3772343; 425216, 3772356; 425188, 3772375; 425181, 3772420; 425166, 3772448; 425137, 3772461; 425137, 3772429; 425131, 3772366; 425102, 3772340; 425102, 3772293; 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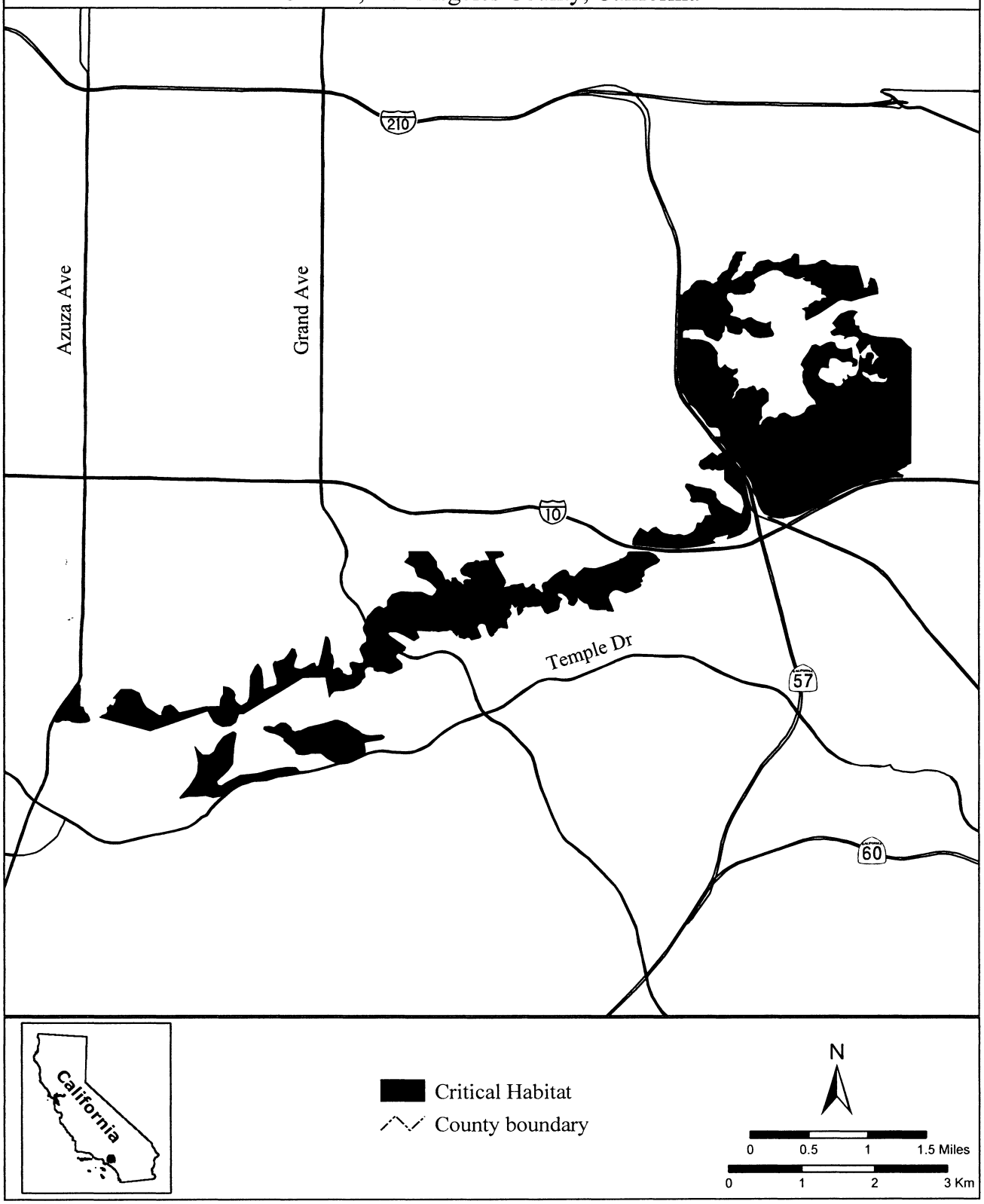
(ii) Note: Map of Unit 12—East Los Angeles County (Map 11) follows:

BILLING CODE 4310–55–P

Map 11
Critical Habitat for Coastal California Gnatcatcher (*Polioptila californica californica*), Unit 12, Los Angeles County, California



BILLING CODE 4310–55–C

(16) Unit 13: Western Los Angeles and Ventura Counties, Ventura and Los Angeles Counties, California.

(i) From USGS 1:24,000 quadrangle maps Mint Canyon, Moorpark, Simi Valley West, Simi Valley East, Oat Mountain, San Fernando, and Thousand Oaks. Land bounded by the following UTM NAD27 coordinates (E,N): 364605, 3804921; 364505, 3805021; 364205, 3805121; 363705, 3805121; 363564, 3805037; 363205, 3805121; 363605, 3805521; 363805, 3805621; 364005, 3805721; 364305, 3806021; 364405, 3806121; 364705, 3806221; 364905, 3806321; 365005, 3806421; 365105, 3806521; 365305, 3806621; 365405, 3806721; 365505, 3806821; 365644, 3806892; 365645, 3806568; 365724, 3806081; 365969, 3805652; 367229, 3805542; 367240, 3805877; 366577, 3806621; 367505, 3806621; 367505, 3807121; 367305, 3807121; 367397, 3807321; 368505, 3807321; 368405, 3807121; 368305, 3806821; 368305, 3806521; 368505, 3806421; 368705, 3806421; 368905, 3806521; 369149, 3806621; 369405, 3806621; 369405, 3806221; 369305, 3806121; 369305, 3805191; 369105, 3805121; 369005, 3805021; 368905, 3804721; 368605, 3804621; 368605, 3804321; 368505, 3804221; 368395, 3804001; 368205, 3803621; 368205, 3803521; 368005, 3803521; 367805, 3803621; 367705, 3803621; 367397, 3803519; 367105, 3803621; 367105, 3803627; 367105, 3803821; 366916, 3804011; 366905, 3804021; 366705, 3804121; 366105, 3804121; 366062, 3804078; 365905, 3803921; 365905, 3803721; 365705, 3803621; 365705, 3803521; 365805, 3803421; 365805, 3803321; 365605, 3803221; 365305, 3803221; 365005, 3803121; 364905, 3803221; 364805, 3803221; 364605, 3803121; 364605, 3802721; 364405, 3802421; 364405, 3802321; 364305, 3802221; 364205, 3802321; 364105, 3802321; 364005, 3802021; 363905, 3801721; 363805, 3801721; 363605, 3801121; 363493, 3801009; 363405, 3800921; 363405, 3800221; 363505, 3800021; 363505, 3799821; 363305, 3799621; 363305, 3799521; 362205, 3799521; 362205, 3799721; 362105, 3799821; 362005, 3800021; 361905, 3800021; 362005, 3801021; 362005, 3801221; 361805, 3802021; 361705, 3802421; 361705, 3802921; 361805, 3803121; 362005, 3803221; 362105, 3803321; 362505, 3803521; 362505, 3803721; 362105, 3803811; 362205, 3804021; 362305, 3804121; 362405, 3804321; 362605, 3804521; 362705, 3804621; 362829, 3804705; 362905, 3804621; 363005, 3804521; 363704, 3804521; 363895, 3804427; 363905, 3804421; 363985, 3804341; 363994, 3804333; 364005, 3804321; 364205, 3804321; 364205, 3804322; 364305, 3804421; 364407, 3804455; 364605, 3804521; 364705, 3804621; 364705, 3804624; 364705, 3804637; 364705, 3804821; 364700, 3804826.

Land bounded by the following UTM NAD27 coordinates (E,N): 347305, 3801521; 347505, 3801321; 347705, 3801221; 348005, 3801221; 348105, 3800921; 348205, 3800821; 348305, 3800821; 348605, 3800921; 348805, 3801021; 348905, 3801321; 349005, 3801321; 349005, 3801121; 348905, 3800821; 348805, 3800521; 348705, 3800321; 348705, 3800221; 348805, 3800221; 349105, 3800321; 349305, 3800521; 349505, 3800821; 349605, 3800821; 349805, 3801021; 350105, 3800921; 350105, 3800821; 350005, 3800721; 349905, 3800621; 349905, 3800521; 350005, 3800321; 350205, 3800221; 350105, 3800121; 350105, 3800021; 350305, 3799821; 350505, 3799821; 350605, 3799921; 350605, 3800121; 350805, 3800121; 350805, 3799821; 351005, 3799721; 351205, 3799621; 351305, 3799521; 351405, 3799421; 351105, 3799121; 351105, 3798921; 351205, 3798821; 351305, 3798521; 351505, 3798521; 351605, 3798621; 351705, 3798621; 351805, 3798521; 352105, 3798421; 352205, 3798221; 352305, 3798121; 352405, 3798121; 352605, 3798221; 352705, 3798521; 353005, 3798521; 353105, 3798621; 353305, 3798721; 353305, 3798821; 353705, 3798821; 353705, 3798621; 353805, 3798521; 353805, 3798021; 354005, 3797821; 354105, 3797821; 354305, 3797921; 354305, 3798221; 354805, 3798121; 355005, 3798021; 355105, 3797821; 355305, 3797621; 355405, 3797421; 355705, 3797321; 355805, 3797221; 355905, 3797221; 356005, 3797421; 356105, 3797321; 356305, 3797321; 356405, 3797221; 356705, 3797221; 356705, 3797321; 356605, 3797664; 356605, 3798021; 357105, 3798021; 357205, 3798121; 357205, 3798421; 357705, 3798421; 357705, 3798821; 357905, 3798821; 357905, 3798721; 357905, 3798621; 357905, 3798421; 358105, 3798421; 358205, 3798321; 358205, 3798221; 358305, 3798121; 358505, 3798021; 358605, 3797921; 358805, 3797821; 358905, 3797821; 358905, 3797621; 358805, 3797621; 358705, 3797521; 358605, 3797321; 358605, 3797221; 359005, 3797221; 359305, 3797321; 359305, 3797421; 359205, 3797521; 359205, 3797921; 359105, 3798121; 359005, 3798221; 358905, 3798321; 358605, 3798321; 358605, 3798521; 358505, 3798621; 358505, 3798921; 358205, 3799021; 357945, 3799076; 357939, 3799219; 358105, 3799221; 358105, 3799321; 358005, 3799421; 358105, 3799421; 358405, 3799321; 358505, 3799321; 358505, 3799421; 358405, 3799521; 358105, 3799521; 358105, 3799721; 358005, 3800021; 357905, 3800021; 357905, 3799621; 357805, 3799621; 357705, 3799521; 357605, 3799521; 357505, 3799421; 357405, 3799321; 357305, 3799321; 357305, 3799121; 357005, 3799121; 357005, 3799221; 356905, 3799421; 356805, 3799521; 356805, 3799721; 356605, 3799821; 356405, 3799821; 356305, 3799821; 356063, 3799821; 356005, 3799721; 355905, 3799621; 355805, 3799821; 355805, 3800021; 355905, 3800121; 355905, 3800221; 355805, 3800321; 355705, 3800421; 355736, 3800462; 355802, 3800513; 355905, 3800521; 355905, 3800621; 356605, 3800521; 356805, 3800521; 356805, 3800621; 356605, 3800721; 355805, 3800748; 355805, 3800821; 355605, 3801021; 355505, 3801121; 355505, 3801521; 355405, 3801521; 355305, 3801321; 355305, 3801021; 355405, 3800921; 355505, 3800821; 355605, 3800621; 355705, 3800521; 355665, 3800443; 355654, 3800421; 355605, 3800421; 355505, 3800321; 355464, 3800156; 355305, 3800198; 355305, 3800521; 355105, 3800521; 355105, 3800321; 354905, 3800421; 354875, 3800459; 354805, 3800421; 354766, 3800262; 354662, 3800229; 354624, 3800359; 354505, 3800321; 354452, 3800240; 354421, 3800305; 354405, 3800521; 354105, 3800521; 354105, 3800404; 354026, 3800330; 354005, 3800521; 353905, 3800521; 353759, 3800421; 353705, 3800721; 353505, 3800721; 353505, 3800821; 354205, 3800821; 354205, 3800921; 353905, 3800921; 353905, 3801021; 353805, 3801121; 353705, 3801221; 353505, 3801321; 353350, 3801326; 353305, 3801521; 353105, 3801521; 352932, 3801556; 352805, 3801521; 352735, 3801439; 352650, 3801448; 352805, 3801621; 352905, 3801721; 352905, 3801821; 352805, 3801921; 352705, 3802121; 352605, 3802221; 352505, 3802321; 352405, 3802376; 352405, 3802538; 352505, 3802521; 352605, 3802421; 352705, 3802421; 352755, 3802496; 352712, 3802545; 352705, 3802621; 353005, 3802621; 353005, 3802521; 353205, 3802421; 353305, 3802421; 353405, 3802421; 353505, 3802321; 353612, 3802203; 353783, 3802218; 353804, 3802119; 353905, 3802021; 354005, 3802021; 354005, 3802121; 353905, 3802219; 353905, 3802509; 353905, 3802613; 353905, 3802776; 353923, 3802821; 354005, 3802821; 354069, 3803001; 354205, 3803021; 354305,

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361405, 3797624; 361405, 3797421; 361105, 3797421; 361005, 3797221; 360905, 3797121; 360705, 3797021; 360505, 3796921; 360405, 3796821; 359805, 3796721; 359605, 3796621; 359505, 3796521; 359405, 3796421; 359405, 3796221; 357905, 3796221; 357505, 3796121; 357105, 3796121; 356705, 3796221; 356505, 3796321; 356405, 3796321; 356205, 3796221; 356105, 3796121; 356005, 3796021; 355805, 3795921; 355805, 3795821; 355505, 3795821; 355505, 3796021; 355405, 3796121; 355305, 3796321; 355105, 3796421; 354805, 3796521; 354605, 3796521; 354505, 3796421; 354405, 3795821; 354405, 3795621; 354505, 3795421; 354605, 3795321; 354905, 3795221; 355205, 3795221; 355005, 3794621; 354805, 3794721; 354105, 3794721; 353705, 3794521; 353605, 3794421; 353574, 3793544; 353405, 3793621; 353205, 3793821; 353105, 3794021; 353005, 3794121; 352805, 3794221; 352305, 3794721; 352105, 3794821; 351805, 3795121; 351605, 3795221; 351505, 3795221; 350805, 3795121; 350605, 3794921; 350505, 3794521; 350405, 3794421; 350305, 3794221; 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343905, 3796621; 341605, 3796621; 341305, 3796521; 341105, 3796421; 340305, 3796221; 340005, 3796121; 339605, 3796021; 339405, 3795921; 339005, 3795721; 338005, 3795521; 338005, 3795821; 338105, 3795821; 338205, 3795921; 338205, 3796121; 338405, 3796121; 338405, 3796021; 338605, 3795921; 338705, 3795921; 338905, 3796121; 339005, 3797221; 339005, 3797721; 338805, 3797921; 338705, 3797921; 338405, 3797621; 338305, 3797521; 338205, 3797321; 338105, 3797221; 338005, 3797021; 337705, 3796721; 337605, 3796521; 337505, 3796221; 337305, 3795421; 337305, 3795121; 335805, 3795121; 335805, 3795321; 335605, 3795521; 335405, 3795521; 335105, 3795221; 334705, 3795221; 334705, 3795421; 334805, 3795421; 334905, 3795621; 335105, 3795821; 335205, 3796021; 335205, 3796721; 334805, 3796721; 334705, 3796621; 334705, 3796321; 334505, 3796321; 334205, 3796221; 334105, 3796121; 334005, 3795721; 333605, 3795821; 333305, 3795821; 332305, 3795921; 331405, 3796021; 331305, 3796121; 331405, 3796321; 331705, 3796621; 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341205, 3802721; 341205, 3802321; 341705, 3802321; 342005, 3802021; 342105, 3802021; 342305, 3802121; 342505, 3802121; 342605, 3802221; 342705, 3802521; 342705, 3802921; 342805, 3803121; 342905, 3803221; 343105, 3803321; 343205, 3803421; 343505, 3803421; 343705, 3803321; 343905, 3803321; 344105, 3803421; 344205, 3803521; 344405, 3803521; 344905, 3803021; 345105, 3802921; 345305, 3802821; 345405, 3802821; 345605, 3802721; 345705, 3802221; 345905, 3802221; 345905, 3802421; 346305, 3802521; 346405, 3802521; 346505, 3802321; 346705, 3802221; 346805, 3802021; 346905, 3801821; 346905, 3801721; 347005, 3801621; 347106, 3801588. Excluding land bounded by the following UTM NAD27 coordinates (E,N): 349305, 3798421; 349605, 3798121; 349805, 3798021; 349905, 3797921; 350005, 3797921; 350005, 3798221; 349905, 3798321; 349705, 3798421; 349605, 3798521; 349305, 3798521. Excluding land bounded by the following UTM

NAD27 coordinates (E,N): 349005, 3797921; 349005, 3798221; 348805, 3798421; 348505, 3798521; 348293, 3798521; 348005, 3798521; 347705, 3798421; 347705, 3798221; 347305, 3798121; 347305, 3798021; 347805, 3798021; 348005, 3798121; 348405, 3797921; 348526, 3797921. Excluding land bounded by the following UTM NAD27 coordinates (E,N): 348405, 3796321; 348205, 3796221; 348205, 3796121; 348405, 3795921; 348605, 3795621; 348705, 3795521; 348905, 3795421; 349005, 3795321; 349405, 3795321; 349466, 3795382; 349505, 3795421; 349505, 3795621; 349407, 3795646; 349105, 3795721; 349105, 3796121; 349005, 3796221; 348905, 3796421; 349050, 3796567; 349105, 3796621; 349105, 3796721; 348978, 3796753; 348705, 3796821; 348505, 3796921; 348405, 3796921. Excluding land bounded by the following UTM NAD27 coordinates (E,N): 342505, 3798721; 342705, 3798821; 342805, 3798921; 343105, 3799021; 343105, 3799421; 343805, 3799421; 343905, 3799621; 343905, 3799721; 343605, 3799721; 343505, 3799821; 343605, 3799921; 343705, 3800121; 343705, 3800721; 343605, 3801021; 342705, 3801021; 342505, 3800921; 342405, 3800821; 342105, 3800821; 341905, 3800921; 341505, 3800921; 341305, 3800821; 341205, 3800721; 340705, 3800621; 340405, 3800521; 340005, 3800421; 339805, 3800321; 339605, 3800221; 339505, 3800121; 339505, 3799621; 339605, 3799521; 340005, 3799521; 340105, 3799721; 340305, 3799921; 341605, 3800021; 341605, 3799821; 341705, 3799621; 341805, 3799321; 342005, 3799321; 342605, 3799921; 342805, 3799821; 342805, 3799521; 342605, 3799221; 342305, 3799121; 342105, 3799021; 342005, 3798921; 341905, 3798721; 341905, 3798521; 342005, 3798421; 342205, 3798421.

Land bounded by the following UTM NAD27 coordinates (E,N): 361105, 3800521; 360905, 3800621; 360605, 3800721; 360505, 3800821; 360305, 3800921; 359905, 3801021; 359605, 3801121; 359505, 3801221; 359405, 3801421; 359305, 3801521; 359205, 3801621; 359105, 3801721; 358805, 3801821; 358705, 3801821; 358705, 3802121; 358505, 3802221; 358405, 3802221; 358351, 3802021; 358088, 3802021; 358005, 3802121; 357905, 3802221; 357705, 3802321; 357605, 3802421; 357505, 3802621; 357405, 3802721; 357305, 3802821; 357248, 3802861; 357243, 3803119; 357405, 3803021; 357605, 3802921; 357905, 3802821; 358205, 3802721; 358405, 3802721; 358505, 3802921; 358605, 3803421; 358605, 3803521; 358805, 3803521; 358805, 3803421; 358905, 3803321; 359005, 3803221; 359105, 3803121; 359205, 3802921; 359346, 3802863; 359405, 3802921; 359505, 3803021; 359605, 3803121; 359705, 3803221; 359741, 3803321; 359942, 3803321; 360005, 3803021; 360105, 3802921; 360305, 3802921; 360336, 3802976; 360310, 3803652; 360405, 3803721; 360405, 3803821; 360647, 3803821; 360705, 3803721; 360805, 3803621; 360905, 3803521; 360996, 3803339; 360885, 3803336; 360905, 3803021; 361005, 3802621; 361105, 3802221; 361172, 3802137; 361205, 3802121; 361305, 3802072; 361305, 3801648; 361205, 3801521; 361105, 3801421; 361105, 3801121; 361205, 3800621; 361274, 3800621; 361305, 3800520; 361272, 3800438.

Land bounded by the following UTM NAD27 coordinates (E,N): 333205, 3795621; 333805, 3795521; 334005, 3795421; 334207, 3795310; 334105, 3795221; 334005, 3795121; 333905, 3795121; 333705, 3795221; 333305, 3795321; 332896, 3795359; 332302, 3795413; 332205, 3795421; 331905, 3795521; 331605, 3795621; 331505, 3795721; 331305, 3795821; 331652, 3795821; 331805, 3795721; 332005, 3795621; 332105, 3795621; 332309, 3795659; 332667, 3795726; 332890, 3795683.

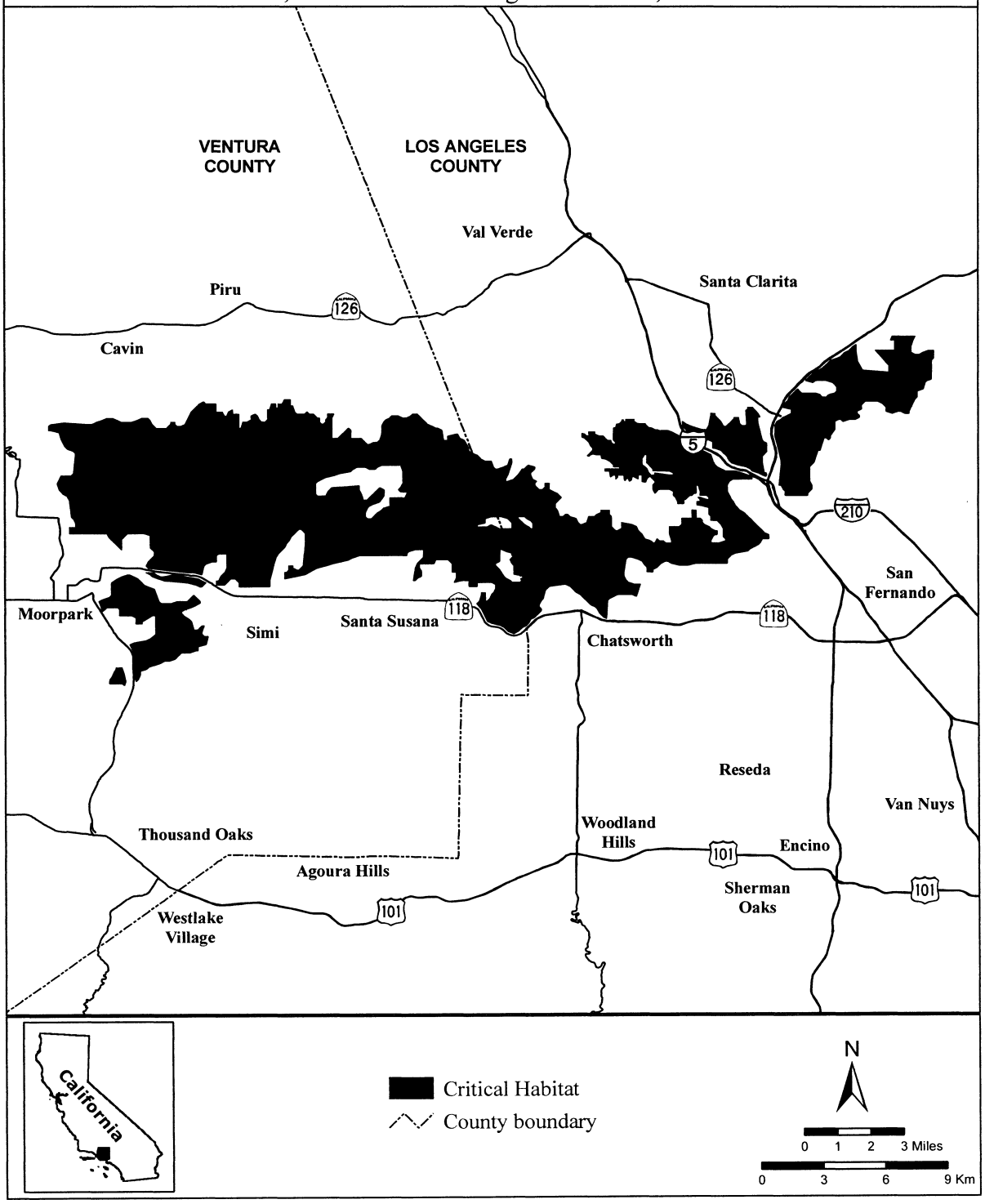
Land bounded by the following UTM NAD27 coordinates (E,N): 331305, 3791121; 331005, 3791021; 331005, 3790834; 331005, 3790821; 330905, 3790621; 330805, 3790521; 330703, 3790815; 330704, 3791122; 330704, 3791160; 330705, 3791821; 330605, 3792121; 330505, 3792321; 330705, 3792421; 331305, 3792521; 331505, 3792621; 331761, 3792820; 331749, 3793722; 331605, 3793721; 331105, 3793421; 331105, 3793321; 330805, 3793321; 330805, 3793621; 330605, 3793721; 330005, 3793721; 330005, 3794021; 329905, 3794121; 329405, 3794121; 329305, 3794021; 329175, 3793921; 329105, 3794121; 329005, 3794421; 329205, 3794521; 329505, 3794621; 329605, 3794721; 329605, 3795321; 329905, 3795521; 330105, 3795621; 330405, 3795721; 330505, 3795721; 330705, 3795621; 330905, 3795521; 331205, 3795221; 331405, 3795121; 331705, 3795021; 331905, 3794421; 332005, 3794321; 332505, 3794321; 332805, 3794421; 333305, 3794421; 333405, 3794521; 333605, 3794721; 333905, 3794421; 333905, 3794321; 333705, 3794221; 333505, 3794121; 333205, 3794021; 333005, 3793921; 333005, 3793821; 333105, 3793721; 333405, 3793521; 333505, 3793421; 333605, 3793021; 333805, 3793021; 333905, 3793121; 334005, 3793221; 334105, 3793221; 334005, 3792921; 334005, 3792821; 334105, 3792721; 334305, 3792721; 334205, 3792321; 333805, 3792221; 333805, 3792021; 333705, 3792021; 333405, 3791921; 333005, 3791921; 332705, 3791621; 332405, 3791521; 332205, 3791521; 332005, 3791421; 331405, 3791221; 331369, 3791186.

Land bounded by the following UTM NAD27 coordinates (E,N): 330105, 3790421; 329505, 3790421; 329530, 3790607; 329605, 3790721; 329705, 3790921; 329805, 3791121; 329830, 3791198; 330099, 3791198; 330253, 3790806; 330305, 3790521; 330236, 3790321.

(ii) Note: Map of Unit 13—Western Los Angeles and Ventura Counties (Map 12) follows:

BILLING CODE 4310–55–P

Map 12
Critical Habitat for Coastal California Gnatcatcher (*Polioptila californica californica*), Unit 13, Ventura and Los Angeles Counties, California



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Dated: December 4, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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Federal Register

Wednesday,
December 19, 2007

Part III

Postal Service

39 CFR Parts 121 and 122

Modern Service Standards for Market-Dominant Products; Final Rule

POSTAL SERVICE

39 CFR Parts 121 and 122

Modern Service Standards for Market-Dominant Products

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service™ establishes modern service standards for its market-dominant products. Section 301 of the Postal Accountability and Enhancement Act, Public Law 109–435, 120 Stat 3198 et seq. (December 20, 2006) requires the Postal Service, after consultation with the Postal Regulatory Commission (PRC), to establish by regulation within a year of its enactment, a set of modern service standards for its market-dominant products. This notice responds to that requirement by establishing the required regulations.

DATES: *Effective date:* December 19, 2007. For information on implementation, see the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Williamson, Manager, Network Development and Support, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260, tel: 202–268–2065, e-mail: *service.standards1@usps.gov.*

SUPPLEMENTARY INFORMATION: Within 6 months of today's date, the Postal Service, after consultation with the PRC, is required by section 302 of the Act to submit to Congress a plan that, *inter alia,* establishes service performance goals for its market-dominant products; describes changes to its processing, transportation, delivery and retail networks necessary to allow achievement of those goals; and describes its long-term vision for rationalizing its infrastructure and workforce. Publication of these regulations today is a first step that allows the Postal Service to turn its attention to the requirements of section 302 (120 Stat. 3219–21). The full extent of any realignment of the postal mail processing and transportation network to achieve these standards cannot be known until the Postal Service develops the plan required by Postal Accountability and Enhancement Act (PAEA) section 302. Thus, there will be a lag between the publication of these service standards and implementation of the related operational changes necessary to support them.

Regulatory history: 72 FR 58946 (October 17, 2007).

The remainder of this notice is divided into four sections. Section I highlights the general legal and procedural background for the establishment of market-dominant product service standard regulations. Section II summarizes and explains revisions that the Postal Service has made to the regulations proposed in its October 17, 2007, **Federal Register** solicitation in response to the PRC's subsequent market-dominant postal products designations. Section III summarizes the Postal Service's establishment of service standards for special services that the PRC recently has designated as market-dominant, and explains corrections and clarifications to its originally proposed regulations. Section IV summarizes and discusses many of the comments received in response to the October 17, 2007, solicitation, and any resulting amendments, clarifications or corrections to the proposed regulations. Section V contains the final regulations and explains how those regulations achieve the objectives of 39 U.S.C. 3691(b)(1), and reflect consideration of the factors of 39 U.S.C. 3691(c).

I. Background

The establishment of modern service standards for market-dominant postal products is the first in a series of related mandates in sections 301 and 302 of the Postal Accountability and Enhancement Act (hereinafter, the ''PAEA'' or ''Postal Law of 2006'' or the ''Act''). Section 301 requires the Postal Service to establish modern service standards for its market-dominant products within a year of the law's December 20, 2006, enactment. Section 302 mandates that, 6 months after the establishment of those modern service standards, the Postal Service must submit to Congress a plan that reflects the establishment of performance goals and includes a description of the changes to its networks deemed necessary to meet those goals.

As codified in 39 U.S.C. 3691(a), PAEA section 301 requires the Postal Service to consult with the PRC before establishing modern service standards for its market-dominant products.[1] The extensive service standard consultations that took place between the two agencies earlier this year are summarized at 72 FR 58948 (October 17, 2007). Based upon subsequent consultations with the PRC regarding service performance measurement under PAEA section 301 (as codified in 39 U.S.C. 3691(b)(1)(D) and (b)(2)), the Postal Service also has requested the PRC's approval of proposed systems for the measurement of service standard achievement for its market-dominant products.[2]

II. New Service Standard Determinations Resulting From Subsequent PRC Administrative Rulings

Under the terms of 39 U.S.C. 3621(a), 39 U.S.C. 3691(a) requires the establishment of modern service standards for the following: First-Class Mail® letters and sealed parcels, First-Class Mail cards, Periodicals, Standard Mail®, Single-Piece Parcel Post®, Media Mail®, Bound Printed Matter, Library Mail, Special Services and Single Piece First-Class Mail International.[3] The Postal Service's October 17, 2007, solicitation of public comment on its proposed market-dominant product service standards reflected this list.

On November 9, 2007, the PRC clarified the market-dominant status of certain postal services. See 72 FR 63662 et seq. (November 9, 2007). The PRC's ruling designates the following as market-dominant: Inbound Single-Piece First-Class Mail International, Inbound Surface Parcel Post (at Universal Postal Union rates), International Certificate of Mailing, International Registered Mail, International Restricted Delivery, and International Return Receipt. See 72 FR 63682–85. As demonstrated below, the final market-dominant service standard regulations established today reflect the Postal Service's careful consideration of the PRC's more recent market-dominant product designations.

A. Outbound and Inbound Single-Piece First-Class Mail International

The PRC's ruling at 72 FR 63682–85 (November 9, 2007) clarified that any service standard for Outbound Single-Piece First-Class Mail International should apply to parcel-shaped pieces, and designated Inbound Single-Piece First-Class Mail as a separate market-

[1] By operation of 39 U.S.C 410(a), the Postal Service is exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rule makings. Nevertheless, the Postal Service invited public comment on its proposed market-dominant product service standard regulations. See 72 FR 58946 et seq. (October 17, 2007).

[2] The Postal Regulatory Commission has initiated a docket to solicit public comments regarding the details of the measurement systems proposed by the Postal Service. See PRC Docket No. PI2008–1, Notice of Request for Comments on Service Performance Measurement Systems for Market Dominant Products (December 4, 2007) at *http://www.prc.gov.*

[3] Single-Piece Parcel Post, Media Mail, Bound Printed Matter, and Library Mail are separate under the terms of section 3621(a). The service standards for these types of mail, historically, have been the same. For as long as that remains the case, and for purposes of this notice and the service standards established below, these types of mail are collectively referred to as ''Package Services'' mail.

dominant product. Accordingly, service standards for Outbound Single-Piece First-Class Mail International and Inbound Single-Piece International are being published in 39 CFR 121.1(f) and 39 CFR 121.1(g), respectively. Both standards contain the same day ranges and business rules as domestic First-Class Mail in transit between the 3-digit ZIP Code™ area of the designated inbound International Service Center (ISC) to the 3-digit ZIP Code of the delivery address.

B. Inbound Surface Parcel Post (at UPU Rates)

The PRC's ruling at 72 FR 63685 (November 9, 2007) designated Inbound Surface Parcel Post tendered at Universal Postal Union rates as a market-dominant product. Upon clearance through the Postal Service International Bulk Mail Center or International Service Center (ISC) and U.S. Customs, this inbound mail is processed, transported and delivered to its U.S. state or territorial delivery address in the same manner as domestic Parcel Post. Accordingly, the service standard day ranges and business rules for Inbound Surface Parcel Post (at UPU rates) established below in 39 CFR 121.4(a)(6) are the same as for domestic Parcel Post or other Package Services mail from the 3-digit ZIP Code area of the International Bulk Mail Center or ISC to the 3-digit ZIP Code of the delivery address.

C. International Market Dominant Special Services

At 72 FR 58964, the Postal Service explained why the establishment of a service standard for certain domestic market-dominant special services would be unnecessary, redundant or infeasible. The same logic holds for most of the international special services designated by the PRC as market-dominant at 72 FR 63699–700. It should be noted that certain international ancillary special services can be used with both market-dominant and competitive mail. The following discussion relates solely to international ancillary services used with market-dominant mail. Under the circumstances, the Postal Service interprets 39 U.S.C. 3691(a) as not requiring the establishment of service standards for the following international special services, based upon their present characteristics.

1. International Certificate of Mailing

At 72 FR 58964, the Postal Service explained the basis for not proposing a service standard for the completion of the issuance of Certificate of Mailing for domestic mail. The same reasoning applies to an International Certificate of Mailing purchased in connection with outbound international mail. The international certificate is provided to the sender by the Postal Service as an intrinsic element of the acceptance of the mailpiece for which it is purchased. The purchase of the certificate is ancillary to sending an Outbound Single-Piece First-Class Mail International letter, flat or parcel, and does not affect the service standards otherwise applicable to the transit of those pieces from their domestic points of origin to their designated International Service Centers. Provision of the certificate at the time of mailing at acceptance completes the special service. Accordingly, the Postal Service sees no means or need for a standard measuring the timely completion of the provision of International Certificate of Mailing service.

2. International Registered Mail

International Registry service provides added security for a mailpiece from acceptance to delivery, and indemnity in case of loss or damage in transit. This ancillary service, however, does not affect the in-transit service standard of a mailpiece for which it is purchased. Thus, from its origin to its designated International Service Center, Registered Outbound Single-Piece First-Class Mail International is subject to the same service standard as that same mail without Registry service. Likewise, from its designated International Service Center to its delivery by the Postal Service, Registered Inbound Single-Piece First-Class Mail International is subject to the same service standard as that same mail without Registry service. Accordingly, as with domestic market-dominant mail for which Registry service is purchased, the Postal Service has determined that there is no need to establish a separate service standard for the transit of International Registered Mail in the U.S. postal system.

At 72 FR 58961–62, the Postal Service proposed a 24-hour service standard for online availability of domestic market-dominant product Registered Mail delivery scan data at *http://www.usps.com.* The Postal Service performs the same scanning in relation to the delivery of inbound international mail for which the sender has purchased Registry service from a foreign postal administration. Accordingly, for inbound international Registered Mail, the Postal Service is establishing the same 24-hour standard for the availability of delivery scan data.

The Postal Service does not offer a tracking feature for Outbound Single-Piece First-Class Mail International. On this basis, the Postal Service finds it infeasible at this time to establish the same delivery scan data availability for these items.

3. International Return Receipt

When international outbound or inbound hard-copy Return Receipts, which have been signed upon delivery, are in transit for any portion of their journey in the Postal Service mailstream, they travel though the U.S. postal network as First-Class Mail cards, subject to the same processing and delivery standards as other Single-Piece First-Class Mail International. Therefore, outbound international Return Receipts would have the same service standards as Outbound Single-Piece First-Class Mail International; and inbound international Return Receipts would have the same service standards as Inbound Single-Piece First-Class Mail International. The Postal Service explained why no independent service standards should be developed for the hard-copy Return Receipt portion of the domestic First-Class Mail. 72 FR 58964. Because hard-copy International Return Receipts are processed along with other Outbound and Inbound Single-Piece First-Class Mail International, the same logic applies to justify a determination that independent service standards need not be established for hard-copy International Return Receipts.

At 72 FR 58963, the Postal Service explained the basis for its proposed establishment of a service standard for domestic electronic Return Receipt service in 39 CFR 122.1(a)(1), as reflected at 72 FR 58970. That standard is based upon the Postal Service's ability to scan mailpieces during the delivery process and upload delivery information to its website for access by the sender. However, there is no equivalent electronic International Return Receipt service offering. Accordingly, there is no basis for establishing an international equivalent service standard.

4. International Restricted Delivery

Like its domestic counterpart, International Restricted Delivery service is purchased subject to the explicit understanding that the requested delivery restriction is subject to availability. See 72 FR 58964. At the time when Restricted Delivery service is purchased from the Postal Service for Outbound Single-Piece First-Class Mail, it cannot be known whether some delivery policy exception or limitation applicable to the delivery address in the jurisdiction of the destination foreign postal administration overrides the requested delivery restriction. Likewise,

if the service is purchased from a foreign postal administration on inbound international mail, it cannot be known whether some Postal Service delivery policy exception may override the requested delivery restriction. Accordingly, as is the case with domestic Restricted Delivery service, the establishment of service standards for international Restricted Delivery service is unwarranted.

5. International Reply Coupon

International Reply Coupon service (outbound and inbound) allows the sender to prepay a reply by purchasing reply coupons that are exchangeable for postage stamps by postal administrations in member countries of the Universal Postal Union. One coupon is exchangeable for a stamp or stamps representing the member country's minimum postage of an unregistered letter. Because the transaction is complete at the time of purchase of the coupon for outbound and at the time of redemption of the coupon for inbound, and no additional service is required, the Postal Service sees no means or need for a standard measuring the timely completion of this service. If mail for which the postage has been paid by means of an International Reply Coupon is processed by the Postal Service as an inbound or outbound market-dominant product, the postage payment method does not affect the service standard otherwise applicable to the transit of that mail.

6. International Business Reply Mail

International Business Reply Mail service is an alternate postage payment method established for high-volume mail recipients who assume responsibility for the payment of postage on specially preprinted mailpieces that are delivered to them. It is similar to domestic Business Reply Mail in that the postage payment method does not affect the transit of such mail from its origin to its destination. From its point of entry into the United States Postal Service mailstream at an International Service Center (ISC) until it is delivered, inbound International Business Reply Mail has the same service standards as a comparable international mailpiece for which the postage is prepaid. As there is no justification for establishing independent service standards for domestic Business Reply Mail beyond those for domestic First-Class Mail,[4] there also is no need to establish a separate service standard for international mail for which the Business Reply Mail postage payment method is employed.

III. Service Standard Proposals or Amendments Resulting From Subsequent Postal Service Administrative Determinations

After publication of its October 17, 2007, **Federal Register** notice, the Postal Service continued to review the feasibility of its proposed service standards regulations. As explained below, the Postal Service has unilaterally determined that some substantive revisions to its proposed regulations are appropriate. The Postal Service also has made minor organizational changes or clarifications to the wording of the regulations.

A. Substantive Changes to Proposed Service Standards for Non-Contiguous States and Territories

1. The Alaska 995 Intra-SCF First-Class Mail Overnight Split

As reflected in proposed 39 CFR 121.1, the Postal Service originally proposed that intra-Sectional Facility (SCF) First-Class Mail for all 3-digit ZIP Code areas of the state of Alaska would have a 2-day service standard, with the exception of the 995 3-digit ZIP Code area, which would have an overnight standard. See 72 FR 58967. Further review has led the Postal Service to modify this proposal and retain a 2-day First-Class Mail standard for part of the 995 3-digit ZIP Code area.

To an extreme degree, the population and logistical infrastructure of the 995 3-digit ZIP Code intra-SCF area in the state of Alaska are heavily concentrated in the subordinate 5-digit ZIP Code service areas that include the city of Anchorage. An overnight service standard for all intra-SCF First-Class Mail in the 995 3-digit ZIP Code area would require the Postal Service to undertake extraordinary logistical obligations for the intra-SCF volume that is not either to or from the city of Anchorage, in order to meet that standard in every isolated corner of a vast service area in which roads and pockets of population often do not co-exist. For these reasons, 39 CFR 121.1(a) now reflects an operational split of the 995 3-digit ZIP Code service area that preserves the overnight standard where the intra-SCF mail is concentrated.

2. Reductions in other proposed day ranges.

A comparison of the service standard day ranges originally proposed for origin-destination 3-digit ZIP Code pairs that include the states of Alaska or Hawaii, or the territories of Guam, Puerto Rico, or the U.S. Virgin Islands to the day ranges established today reveals that the Postal Service has reduced some service standard day ranges.[5] These reductions result from additional refinements in logistical mapping for mail to and from these origins and destinations.

B. Inclusion of a Service Standard for Money Order Inquiry Service

Money Order Inquiry service is important to postal customers seeking to determine whether money orders they have purchased from the Postal Service have been cashed. Subsequent to the purchase of a money order, customers may complete an inquiry form and pay the appropriate fee. At a centralized processing center, data from each form are computerized and transmitted to the inquiry data system. There, they are matched by the Postal Service against electronic banking transaction records obtained from the Federal Reserve System in order to determine whether the money order has been cashed and to provide the customer with a status report on the money order. Correspondence is sent to the customer with the status of the money order. If the money order has been cashed, a copy of the record of the banking transaction is included. As a modern service standard, the Postal Service proposes that the response to a Money Order Inquiry should be transmitted from its electronic inquiry system and dispatched no later than 15 business days (excluding designated postal holidays) after the date on which the Postal Service accepts the completed inquiry form and payment from the customer.

C. Additional Postal Designation of Market-Dominant Products

Since the publication of its October 17, 2007, **Federal Register** notice, the Postal Service has proposed that the following two international special services also be designated as market-dominant, when used with market-dominant mail: Inbound International Insurance, and Customs Clearance and Delivery. PRC Docket No. RM2007–1, United States Postal Service Submission of Additional Mail Classification Schedule Information in Response to Order No. 43 (November 20, 2007).

1. Inbound International Surface Parcel Insurance Claims

Inbound International Insurance is available for Inbound Surface Parcels tendered at Universal Postal Union

[4] See 72 FR 58964.

[5] Compare the tables at 72 FR 58591–92 to 39 CFR part 121, Appendix A below in section IV.E.

rates. Purchase of this ancillary service for such parcels does not affect their transit in the U.S. mailstream. Accordingly, there is no need to establish in-transit service standards for Insured Inbound International Surface Parcels that are independent of the standards for uninsured pieces discussed above in section II.B.

Under current Universal Postal Union procedures, an inquiry must be filed prior to any claims processing. The Universal Postal Union establishes time limits for inquiry and claims processing, but compliance with these time limits depends upon the exchange of information between postal administrations. The number of insured Inbound Surface Parcels at UPU rates is relatively small. The Postal Service has no control over the claims processing and information exchange response times of foreign posts, which vary. Therefore, under present circumstances, the Postal Service does not believe it feasible to establish an independent service standard for inbound international insurance claims processing.

2. Customs Clearance and Delivery Fee

This service consists of the Postal Service collecting a fee from the recipient on each inbound package on which a customs duty or Internal Revenue Service tax is assessed. The Postal Service fee is accounted for by affixing postage-due stamps to the packages or to a postage-due bill and canceling. From the ISC or exchange office to the delivery unit, such mail has the same transit as other inbound international mail. Accordingly, there is no basis for establishing a separate service standard from the ISC or exchange office for the transit of pieces on which the Postal Service collects these fees or taxes. The fee or tax collection transaction at delivery is similar to the transactions at delivery that result in Collect on Delivery payment. Once the duty or tax is collected, no further service is required of the Postal Service. The Postal Service thus does not see any means or need for a standard measuring the speed with which the fee or tax is collected.

D. Minor Changes and Clarifications

As originally proposed, the Postal Service's regulations divided the mail products and the special services products into parts 121 and 122, respectively. Within part 121, all domestic products were addressed sequentially, followed by international mail. However, in the concurrent rulemaking through which the Postal Mail Classification Schedule is being reorganized, market-dominant domestic and international First-Class Mail products are grouped together, as are the market-dominant domestic and international Parcel Post products. See 72 FR 63699. To conform to the organization of the Mail Classification Schedule, proposed § 121.5, which addressed Outbound Single-Piece First-Class Mail International, is being eliminated. Instead, the service standards for Outbound and Inbound Single-Piece First-Class Mail International, respectively, are now included as subsections (f) and (g) of § 121.1, First-Class Mail. Likewise, a new subpart (c) is being added to § 121.4, to address the PRC's recent designation of Inbound Surface Parcel Post (at UPU rates) as a market-dominant product.

The Postal Service also is making clarifying changes in wording that are not prompted by the PRC's recent market-dominant product designations, nor the comments submitted in response to its October 17, 2007, **Federal Register** notice. As an example, the service standard for the resolution of domestic Insurance Claims in proposed 39 CFR 122.1(b) is that the final agency decision be transmitted no later than 30 days after the claim is deemed to be complete. See 72 FR 58970. The Postal Service is amending that section to specify that the standard is 30 *calendar* days. This clarification is made to avoid any misunderstanding that may result from the establishment of the 15 *business* day standard applicable to Money Order Inquiry service in 39 CFR 122.2(d). To further minimize any misunderstanding, the service standard for Address List Services in 39 CFR 122.2(b) is being amended to incorporate the use of the term *business day* instead of *workday*, with the understanding that Mondays through Fridays are counted as business days, excluding designated postal holidays.

IV. Comments

The Postal Service received comments from 27 sources in response to its October 17, 2007 solicitation. They came from an individual mailer, commercial mail advertisers and printers, periodicals publishers and mailers, parcel shippers, nonprofit mailers, users of various postal special services, mailer trade associations, the Postal Regulatory Commission, and a United States Senator. Many of the comments expressed appreciation for the Postal Service's outreach process and its consideration of the various mailer proposals and concerns communicated during the comprehensive review of market-dominant product service standards that led to the publication of its October 17, 2007, **Federal Register** notice.[6] The Postal Service, likewise, expresses its gratitude here to all who took the time and effort to constructively express their views and concerns, both before and in response to the **Federal Register** notice.

The Postal Service has carefully considered all of the aforementioned comments. As will be demonstrated below, in some instances these comments have resulted in amendments, clarifications or corrections to the proposed regulations. Below, the Postal Service summarizes and discusses a number of the comments.

Clarification of Terminology. One commenter sought an explanation of the term ''properly accepted,'' as used in the proposed regulations. The term is intended to refer to properly addressed mail that meets the requirements for acceptance at the time that the Postal Service either assumes custody or control of it from the mailer (i.e., at a postal bulk mail entry unit) before the applicable Critical Entry Time, or, where permitted, when it is dropped in an authorized depository (i.e., street corner collection box) before the posted daily last pickup time.

Annual Review Process. At 72 FR 58967, the Postal Service indicated its intention to place a high priority on annual internal review of its market-dominant product service standard day ranges and business rules. There, the Postal Service indicated that it would use its discretion to determine if, when and how it might solicit public input as a part of such internal review. A number of commenters responded to the Postal Service's October 17, 2007, solicitation by requesting that the Postal Service commit to the establishment of formal procedures that would ensure mailer input during each annual service standard review process.

The Postal Service greatly values customer input, and routinely solicits information through a variety of venues, including, but not limited to, mailer industry workgroups, customer surveys, and market research. Additionally, solicited or otherwise, postal customer service and operations managers routinely receive numerous comments that originate from market-dominant product mail senders and receivers, and users of special services, regarding their experiences and expectations. The Postal Service is committed to the review of such information during its

[6] See 72 FR 58946 *et seq.* The Postal Service's customer outreach efforts are summarized at 72 FR 58947–58948.

internal service standards review process. However, the Postal Service intends to reserve the right to exercise its discretion on a case-by-case basis in determining if, how, and when to engage in either an informal dialogue with some customers or a formal solicitation of comments from all customers as part of that annual internal review process.

Of course, when the Postal Service plans to pursue implementation of a change in a postal service that is at least substantially nationwide in scope, it will request an advisory opinion from the PRC under 39 U.S.C. 3661. In proceedings conducted under that section, the public is permitted to intervene, to request a hearing, to conduct discovery, and to file comments and testimony.

Concerns about the Downgrading of Service. A large number of comments suggested that the proposed new service standards downgraded service in comparison to that received under the current standards. Some of these comments requested that the Postal Service continue to maintain the current standard where the expected number of days is less than what is proposed in the new service standards.

The proposed modern service standards reflect the Postal Service's careful consideration and balancing of a number of important factors, which included customer wants and needs. The customer outreach conducted during the development of the modern service standards revealed that customers wanted standards that are reliable, consistent, realistic, and attainable, and that any proposed changes reflect sensitivity to the impact of increased postal costs on the rates that they pay.

Current service standards for Periodicals, Standard Mail, and Package Services are based primarily on mail processing technology, transportation availability, and logistical assumptions of the early 1970s, mapped to destination zones based on rudimentary ''great circle mile'' determinations; First-Class Mail standards are based on mail transportation availability and logistical planning tools that existed in the early 1990s. These standards reflect implementing criteria or ''business rules'' [7] that, to a very significant degree, are based upon mailing practices and postal operational and costing considerations that no longer reflect current realities. For some market-dominant products, even in the absence of any comprehensive system of service performance measurement, it is undisputed that the current standards create customer expectations that have long ceased to be consistent with the manner in which mail is being processed and transported between many origin-destination 3-digit ZIP Code pairs.

To develop modern service standards, the Postal Service carefully studied such factors as present-day mail transportation availability, actual highway mileage between facilities, and changes in mail entry practices and mailflows that reflect current mail processing facility functions, technology, economies and capabilities. A painstaking and comprehensive review process reasonably matched operational capabilities across the entire postal network with the wants and needs of the greatest number of postal customers. As is to be expected, in some cases, this resulted in different service standards than previously existed. The claim of one commenter that service standards have been lowered solely or primarily to save costs is without foundation.

Another commenter suggested that the outer limit of service standards for Periodicals within the contiguous 48 states could be reduced from 9 to 7 days if other methods of transportation and more expedited mail dispatch protocols were implemented. More expeditious service standards tend to be more favorably received by mailers than standards that are less expeditious. Some of the changes established by the Postal Service today will raise customer expectations, by reducing the number of days in transit for some mail between specific 3-digit ZIP Code pairs. Likewise, some of the changes established today will lower customer expectations, by increasing the number of days for certain mail in transit between specific 3-digit ZIP Code pairs. The Postal Service understands the appeal of preserving existing service standards that are intended to reflect the availability of faster service. And, the Postal Service was cognizant of the current service standards as it contemplated making comprehensive, modernizing changes. However, the Postal Service also had to consider the impact that the wholesale preservation of ''faster'' standards for particular 3-digit ZIP Code pairs—in effect, the ''grand-fathering in'' of service standard day ranges and business rules adopted on the basis of criteria that are no longer useful—would have on its ability to fulfill the mandate that it achieve the objectives of subsection (b)(1) and consider the factors of subsection (c) of 39 U.S.C. 3691.

The Postal Service is confident that its modern business rules and resultant service standard day ranges more accurately reflect current network capability and reasonably respond to the needs of all postal customers, even if it is impossible to satisfy each customer.

Concerns About Service Consistency/ ''Tail of the Mail.'' Several commenters requested the establishment of service standards for mail that reaches its destination after its published service standard (otherwise known as ''tail of the mail''). The Postal Service's modern business rules and resultant service standards day ranges have been designed to reflect realistic operational capability across the entire postal network. Under these new standards, the Postal Service expects that the number of pieces reaching destinations after the prescribed service standard will be reduced. However, there will always be a small number of pieces that are not delivered within their service standard. Rather than establish additional benchmarks for mail not meeting its standard, the Postal Service prefers that its service standards reflect one goal for all mail within a market-dominant product designation, and that the degree to which mail is late be measured and reported to the PRC. This preference is reflected on pages 25, 41, 48, and 55 of the USPS Service Performance Measurement proposal referenced in the Notice of Request for Comments on Service Performance Measurement Systems for Market Dominant Products, PRC Order No. 48, Docket No. PI2008–1 (December 4, 2007). As indicated in that proposal, the Postal Service plans to report data to the PRC regarding the late arrival of mail for each market-dominant mail product on a quarterly basis.

Service Standards for Caller Service. Some commenters requested that standards be established for Caller Service. Caller Service provides an alternative means of receiving properly addressed mail at a postal facility call window or loading dock. See 72 FR 58962. As explained previously, the specific details and arrangements of Caller Service are individually negotiated between the customer and postal facility and can vary greatly among mail recipients at the same facility. Id. at 58964. The Postal Service has reviewed this matter in response to the comments filed. However, that review affirms the conclusion that, given the current flexible nature of the service, the desires expressed by customers could be better fulfilled

[7] Business rules are the implementing criteria which determine the number of days-to-delivery between each of the approximately 851,000 origin-destination 3-digit ZIP Code pair combinations in the postal network for each market-dominant mail class.

through individually negotiated arrangements, rather than a uniform service standard.

Service Standards for Forwarded Mail and Change-of-Address. A number of commenters urge the establishment of service standards for mail that is forwarded to a new address for delivery. The Postal Service does not interpret 39 U.S.C. 3691 as requiring the establishment of standards for the completion of the numerous discrete operational functions associated with the transmission of mail within a particular market-dominant product designation from its origin to its destination. Accordingly, the Postal Service does not consider utilization of specific mail processing operations in forwarding market-dominant mail to constitute a distinct market-dominant product for which section 3691 requires consideration of the establishment of a service standard.[8]

That being said, the Postal Service's longstanding operational goal is for forwarded mail to travel from its intercept point in the mailstream to the new address in accordance with the service standard applicable from that intercept point's 3-digit ZIP Code area to the 3-digit ZIP Code area of the new delivery address. The Postal Service has long recognized the importance of reducing the volume of undeliverable-as-addressed mail that it processes. For that reason, the Postal Service has expended considerable resources over several decades to improve mail recipient access to change-of-address tools. At the same time, it also has invested even greater resources in a variety of mailer address quality improvement programs, and provided bulk mailers with resources and incentives to reduce the volume of undeliverable-as-addressed mail that needs to be forwarded. Several tools and products are available to mailers to correct addresses or barcodes, and to update mailing lists that contain addresses of mail recipients who have moved. To improve address list quality, the Postal Service is upgrading Coding Accuracy Support System certification requirements. Customers can then correct non-matching addresses using Address Element Correction software. More frequent mailing list updates by bulk mailers is a vital component of any program to reduce undeliverable mail and the need for forwarding. New postal MoveUpdate policies requiring mailers to update customer information within 95 days of mailing will be effective for all classes of mail in November 2008.

Once mail is in the postal system, new processes are available with the implementation of the Intelligent Mail® barcode, such as OneCode ACS™, to provide efficient feedback to mailers regarding their undeliverable or forwarded mail, so that addresses can be corrected before the next mailing. Current innovative pricing for this electronic service encourages mailers to use Address Correction Service to improve the quality of their mailing lists, which can result in more effective mailings and less forwarded mail. These initiatives can improve automation performance, and will drive important changes in list management practices to increase address quality and reduce forwarded mail.

On a networkwide basis, the Postal Service has recently deployed its Postal Automated Redirection System (PARS) technology, which can automatically intercept mailpieces addressed to recipients who have filed change-of-address information, and cause those pieces to be forwarded mid-stream to the recipient's new address. This should expedite the forwarding process, reduce the percentage of mail that reaches the original delivery unit before being forwarded, and reduce forwarding costs. The PARS infrastructure has also enabled more efficient processing of change-of-address forms submitted by customers. With nationwide deployment of the Change-of-Address Forms Processing System (CFPS), all change-of-address forms are now scanned through the CFPS and the images sent to three remote encoding centers for automated processing. PARS has automated the labor-intensive Address Change Service process. Now images are electronically sent to the National Customer Service Center where more than 360,000 address change notification cards are printed daily. To achieve more accurate and faster processing of address change service requests, customers are encouraged to use electronic change-of-address procedures that validate address data at the time it is entered.

Notwithstanding the potential benefits of these programs and technologies, the Postal Service and mailers must work together more aggressively to improve address hygiene and reduce the volume of forwarded mail resulting from an increasingly mobile society. The volume of mail that requires forwarding is significant, as are the associated costs. And, under the new price cap ratemaking regime, reducing these volumes and costs will become an even more important matter of mutual interest for the Postal Service and mailers. Accordingly, there is more incentive than ever for the Postal Service and its customers to work together to drive the volume and costs of forwarded mail downward. The Postal Service looks forward to an even greater level of cooperation from those who bear the costs of this mail. The Postal Service will also continue to devote resources to reducing transit times for mail subject to forwarding.

Requests for Different Standards Within a Class. Some commenters proposed the establishment of distinct service standards for different types of mail within existing market-dominant classes: For example, remittance mail, as distinguished from other First-Class Mail; parcels, as distinguished from flats, within Standard Mail; or in-county Periodicals, as distinguished from outside-county Periodicals. Still other commenters proposed that mailpieces of the same shape, but in different classes (Standard Mail vs. Package Services) be assigned the same service standards, even if that results in different service standards within a mixed-shape class.

The Postal Service does not interpret 39 U.S.C. 3691 as necessarily prohibiting the establishment of different service standards for different types of mail within a particular market-dominant class. Nevertheless, the modern service standards established below reflect a continuation of the Postal Service's preference for a consistent set of service standards within a particular class for mail with the same origin-destination pattern, without additional intra-class service distinctions based on such factors as shape, content, or whether additional mail preparation is performed beyond the minimum required to qualify for a particular rate category, or to qualify for an exception to a local Critical Entry Time deadline. The comments reflect a disagreement among mailers who use the same market-dominant mail product regarding whether the Postal Service should reconsider that approach.

The Postal Service considers it important to emphasize that there are finite limits in the level of service standard differentiation that can be effectively managed on the workroom floors of a complex logistical network. Proposals seeking to establish some of the suggested intra-class service standard distinctions would require the exploration of a host of mail processing operational issues and could potentially raise threshold classification and rate issues that are beyond the scope of the exercise mandated by 39 U.S.C. 3691(a). Accordingly, such proposals are not responded to or acted upon here.

[8] This is not to suggest that the Postal Service is averse to capturing additional operational data that would help it to better monitor its ability to efficiently and expeditiously forward and/or return undeliverable-as-addressed mail.

No matter how broad or narrow some inter-class service features or mailflow differences may be, mailers are expected to consider all inter-class differences, including service standards, in choosing whether to pay for a more or less expensive service. Mail classification and rate differences persist, however subtle any differences between the processing of Standard Mail flats and Bound Printed Matter flats, or the processing of Standard Mail parcels and Package Services parcels may be. Accordingly, the Postal Service is continuing the long-standing practice of applying the same standard to all mail within a particular market-dominant class, regardless of mailpiece shape, content, or preparation, and is establishing modern service standards that continue that practice.

Service Standard for DBMC Containerized Rate Periodicals. One commenter observed that the proposed Periodicals service standards did not explicitly address the standards applicable to mail which qualifies for Destination Bulk Mail Center (DBMC) containerized rates. That oversight has been corrected in the final regulations.

Availability of Delivery Scan Information. For a variety of market-dominant special services, the Postal Service proposes that delivery scan data be available to customers online within 24 hours of the delivery scan. See 72 FR 58963. A few commenters requested that the standard for delivery scan data availability be reduced to less than 24 hours. A 24-hour service standard was proposed because of variations in time zones and their impact on scanning, and data uploading and availability.

Standard Mail Service Standard Day Ranges and ''In-Home'' Delivery Days. Some comments reflect concern that the proposed service standards for Standard Mail are too broad. For example, one commenter observes that, under the proposed modern standards, mail that receives a destination entry discount and is dropped at a destination BMC could have a service standard of up to 5 days. For the sake of clarity, the Postal Service emphasizes that the proposed standard for such mail is not ''up to'' 5 days, but exactly five days, taking into account the deferrable nature of such mail.

Standard Mail users wishing to more specifically influence the exact date on which such mail is delivered routinely request that the Postal Service honor specific ''in-home'' delivery days or ''in-home'' delivery day ranges, regardless of the applicable standard. Local postal mail processing and delivery managers do attempt to honor requested ''in-home'' dates, but only as local mail processing and delivery plans permit. Several commenters requested that, as an alternative to its long-standing ''day-specific'' targets (such as, ''4 days'' or ''5 days'') the Postal Service adopt Standard Mail ''day range'' service standard targets (such as, ''3-to-5 days'' or ''4-to-6 days'').

Such proposals are not being adopted here. They raise a variety of complicated postal mail processing and delivery issues, not to mention considerations of service performance measurement and accountability. Whether or not any differences among mailers or between mailers and the Postal Service on these issues are reconcilable requires further dialogue. In advance of the publication of its October 17, 2007, **Federal Register** notice, the Postal Service indicated that it was willing to engage with a mailing industry working group for that purpose. That willingness has not abated. Through appropriate media, the Postal Service will organize such an undertaking.

Seasonal Adjustments for Destination-Entered Standard Mail Pieces. A few commenters requested seasonal adjustments in the service standards for destination-entered Standard Mail pieces. The Postal Service acknowledges that there are significant challenges inherent in trying to maintain high service levels when mail volumes surge, typically from the months of September to December. Nevertheless, the Postal Service continues to be persuaded that it is better to manage its operations on the basis of a consistent, year-round set of service standards, rather than to temporarily vary those service standards at different times of the year. A consistent standard helps to reinforce the applicable goal among all postal managers and employees engaged in processing, transportation and delivery. The transitioning of operational performance from one set of standards to another could result in less consistent service than desired. Accordingly, the Postal Service intends to preserve the long-standing practice, reflected in its proposed regulations, of maintaining year-round service standards. As indicated at 72 FR 58966, the Postal Service considers that seasonal adjustments of performance goals would seem to be more appropriate for consideration, in the context of establishing such goals under PAEA section 302, and will meet with customers to further discuss this issue.

Service Standards by Specific 3-Digit ZIP Code. Some commenters requested that service standards applicable to parcels, whether they be Package Services or Standard Mail pieces, differ by specific 3-digit ZIP Code. Such proposals are not being adopted here, as this type of customization runs contrary to the application of standardized business rules to calculate consistent service standards.

Service Standards to Non-Contiguous States and Territories. Several commenters expressed concern about the proposed service standards for mail to and from states and territories beyond the contiguous 48 states.

One commenter appears to express the concern that the proposed service standards for mail moving to and from non-contiguous states and territories reflects a lesser effort on the part of the Postal Service to procure transportation to move that mail than for mail in the 48 contiguous states. To the contrary, mail to and from the non-contiguous states and territories reflect the stark differences between the availability of economical resources for the movement of mail to and from the non-contiguous states and territories than for mail moving among the contiguous 48 states.

Rational operating plans that take into account the numerous logistical variables beyond the Postal Service's control will result in unavoidable differences between levels of service. In the contiguous states, the next truck is often available in a matter of hours. To and from the non-contiguous states and territories, the next appropriate cargo ship may not be available for several days or even a week. The establishment of longer service standard day ranges for mail to and from the non-contiguous states and territories reflects an attempt to better match the service standards to the operational realities of surface and air transportation.

The same commenter expressed recognition of the challenges faced by the Postal Service, sometimes the carrier of only resort, in providing economical service beyond the contiguous 48 states. The Postal Service appreciates that recognition and is committed to using its annual internal service standards review process, as circumstances warrant, to explore opportunities to economically improve its use of available transportation to minimize service standard day ranges for mail to, from and within the non-contiguous states and territories.

The commenter also expressed concern that the service standards for mail between the contiguous 48 states and the separate destinations of the state of Hawaii and the territory of Guam appear to be aggregated in a manner that has the result of substantially increasing the time in transit between Hawaii and the contiguous states. To the contrary, the standards for mail between the

contiguous 48 states and Guam (through Hawaii) are longer than the standards between Hawaii and the contiguous 48 states. In this area, the Postal Service opted for arguably over-aggressive standards between the contiguous 48 states and Guam to ensure a higher level of urgency in the handling of such mail than might be the case if a longer standard were established.

The commenter also astutely observes several inadvertent omissions of references to the territory of Guam in the table at 72 FR 58591. A corrected table is being incorporated into the final service standard regulations.

Critical Entry Times (CETs). A Critical Entry Time is the latest time a particular type of mail can be accepted by the Postal Service in order for it to undergo the processing and/or dispatch in downstream operations necessary for delivery within the service standard for that mail. This is more of a measurement issue than a standards issue, for the CET affects the start time for performance, not the length of the standard itself.

Several commenters requested information on how local changes in CETs would be communicated to the mailer; how mailers can access CET data; how CETs are established; and how the Postal Service takes customer needs into account in said establishment. Commenters also expressed their opinions on how CETs should be set. The Postal Service is currently meeting with customers to discuss these and other issues, and is committed to developing a communications process.

P.O. Box™ Uptimes. As indicated in proposed 39 CFR 122.2, the proposed service standard for P.O. Box service is that mail be available for pickup no later than the daily ''uptime'' publicly posted at corresponding Post Office locations. See 72 FR 58970. One commenter requests that the proposed service standard regulation be amended to explain how ''uptimes'' are determined. As explained in the original **Federal Register** notice, ''uptimes'' are determined on the basis of local mail processing plans and standard operating procedures. See 72 FR 58963. It is not reasonable to expect the service standard regulations to contain details of mail acceptance, processing and delivery operations, or the criteria that determine their application.

Standards for the Improvement of Retail Access. A few commenters propose the establishment of service standards for certain aspects of postal transactions related to the entry of mail into the postal system, such as the acquisition of postage, calculation of correct postage for a given piece, the location and number of collection boxes and the last collection time of these boxes, and for time spent by customers waiting in line or otherwise waiting for window service at Post Office locations.

The Postal Service strives to enhance retail access by providing prompt, efficient and economical service in a variety of ways. For example, to maximize the availability of postal window personnel for more complicated transactions or for the acceptance of accountable mail pieces, the Postal Service offers its customers alternative outlets for postage purchase transactions (by mail, phone or online at *www.usps.com,* via Automated Postal Centers in Post Office lobbies, and through non-postal commercial retail outlets). A wealth of retail customer service information also is available through *www.usps.com* and the Postal Service will continue to educate customers to take advantage of that resource.

Purchasing postage stamps, philatelic items, or money orders, or requesting information from a knowledgeable window clerk, submitting a passport application, or waiting in line at a Post Office™ location—in and of themselves—do not constitute market-dominant products for which the Postal Service is required to consider establishment of a service standard under 39 U.S.C. 3691. Accordingly, no nationwide standards are being established as a part of this rulemaking.

The Postal Service will continue to invest resources in the management, optimal deployment, and training of its personnel, as well as the accessibility of information online, so as to minimize the length of time that customers spend in line at Post Office locations and to enhance general retail access. The Postal Service will continue to analyze customer comments and market research performed for the purpose of assessing and improving its customers' postal transaction experiences.

In the same vein, in response to another commenter, the Postal Service also recognizes that local compliance with policies regarding the last pickup times for collection boxes maximizes the ability of household and small business customers to enter mail in a manner that gives it the best chance of being delivered within the applicable origin-destination service standard. The Postal Service takes customers concerns about such compliance seriously and will continue to monitor compliance with applicable operational policies.

The Postal Service observes that section PAEA 302(d)(2) requires it to consult with the PRC and submit to Congress within six months from today a plan regarding the expansion and marketing of retail access to postal services. The Postal Service looks forward to those consultations and the development of that plan. However, such matters are beyond the scope of this rulemaking.

Other Comments. While many of the comments addressed the substance of the proposed service standard regulations, others discussed matters that the Postal Service deems to be outside the scope of the proposed regulations, even if related to other aspects of sections 301 and 302 of the PAEA generally. Such matters included the communication of the new standards (such as requests to publish the service standards on the Postal Service's public Web site, *www.usps.com*); service performance measurement, service performance goals, and reporting; and specific product requests and inquiries (such as a request that Delivery Confirmation™ service be included on every parcel for no additional charge, a request for a change in handling hard-copy Return Receipts, the purpose of taggant ink on Certified Mail™, and the proposed development of a CONFIRM® service system that alerts customers to system issues). Although these issues are not within the scope of the establishment of service standard regulations, all of these matters are important to the Postal Service. The Postal Service's decision not to acknowledge and or respond to a specific comment, or incorporate any particular suggestion into its service standard regulations, or to respond specifically to each such comment here should only be interpreted as a judgment that such matters are beyond the scope of its October 17, 2007 **Federal Register** solicitation and the task of establishing modern service standard regulations. This is not to imply that the above-referenced suggestions or inquiries lack merit, or that they are not currently being acted upon or will be acted upon.

As indicated earlier, the full extent of any realignment of the postal mail processing and transportation network to achieve these standards cannot be known until the Postal Service, after consultation with the PRC, submits to Congress no later than 6 months from today its performance goals and the facilities plan required by PAEA section 302. Thus, there will be a lag between the establishment of these service standards and implementation of related operational changes that may be necessary to support them. In the meantime, the Postal Service is exploring numerous options regarding

the hardcopy and electronic publication and dissemination of information regarding the service standards established today.

In conjunction with its October 17, 2007, **Federal Register** notice, the Postal Service made available online an electronic file detailing the modern service standards originally proposed for each origin-destination 3-digit ZIP Code pair for First-Class Mail, Periodicals, Standard Mail and Package Services. As a first step in the dissemination of information about the modern service standards established today, the Postal Service has created an updated version of that electronic file based on the service standard day ranges and business rules changes adopted today. The file is now accessible online at *http://ribbs.usps.gov/modernservicestandards.*

V. The Proposed Modern Service Standards Reflect Consideration of Relevant Statutory Objectives and Factors

A. The Statutory Objectives

In establishing modern market-dominant product service standards, the Postal Service is directed by 39 U.S.C. 3691(b)(1) to:

— Enhance the value of postal services to both senders and recipients;

— Preserve regular and effective access to postal services in all communities including those in rural areas or where Post Offices are not self-sustaining; and

— Reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.

120 Stat. 3218. Careful consideration was given to these objectives in the establishment of the service standard proposals listed below, as demonstrated in 72 FR 58964–58965.

39 U.S.C. 3691(b) requires that market-dominant product service standard performance be measured by some objective external system, or by internal methods approved by the PRC under 39 U.S.C. 3691(b)(2). As indicated above, the Postal Service has submitted a plan for service performance measurement to the PRC for review. On December 4, 2007, the PRC initiated an administrative public inquiry docket for the purpose of soliciting comment on the details of that plan and declared its intent to publish a corresponding **Federal Register** notice.

B. The Statutory Factors

As demonstrated at 72 FR 58965–67, the market-dominant product modern service standards proposed on October 17, 2007, reflect thorough consideration of the enumerated factors in subsection 3691(c):

(1) The actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section;

(2) The degree of customer satisfaction with Postal Service performance in the acceptance, processing, and delivery of mail;

(3) The needs of Postal Service customers, including those with physical impairments;

(4) Mail volume and revenues projected for future years;

(5) The projected growth in the number of addresses the Postal Service will be required to serve in future years;

(6) The current and projected future cost of serving Postal Service customers;

(7) The effect of changes in technology, demographics, and population distribution on the efficient and reliable operation of the Postal Service delivery system; and

(8) The policies of this title and such other factors as the Postal Service determines appropriate.

120 Stat. 3218–19. Although exempt by 39 U.S.C. 410(a) from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b) and (c)) regarding proposed rulemaking, the Postal Service invited public comments on its proposed regulations. The Postal Service carefully reviewed each party's comments in determining whether to deviate from its proposed regulations and in establishing service standards for the market-dominant products discussed above that were not addressed in its October 17, 2007 **Federal Register** notice. The comments reflected many thoughtful observations and some have resulted in changes and improvements to the originally proposed regulations, which are reflected below.

In addition to reviewing these comments, the Postal Service also re-examined the aforementioned statutory factors, with an emphasis on customer satisfaction and customer needs. These factors were influential in the Postal Service's determination to adjust some of its proposed service standards.

C. Format of Final Regulations

In its October 17, 2007 **Federal Register** notice, the Postal Service included two sets of tables that were intended to serve as graphic representations of the regulations proposed in 39 CFR Parts 121 and 122. The first set of tables on 72 FR 58950–52 depicted the proposed service standard day ranges for each of the following: First-Class Mail, Periodicals, Standard Mail and Package Services. The second set of tables summarized the corresponding business rules for those standards, and the service standards for special services that were being proposed. See 72 FR 58953–61.

As indicated above in section IV, the Postal Service is adopting the suggestion that the first set of tables be incorporated into the final service standard regulations published in the *Code of Federal Regulations.* Because the second set of tables merely present the narrative regulations in a different format, these tables will not be included in the regulations. However, as this second set of tables can be of value to readers trying to familiarize themselves with the Postal Service's inaugural set of market-dominant product service standard regulations, revised versions of these tables are incorporated below as a summary guide.

D. Guide to Modern Market-Dominant Service Standard Regulations

The following is a summary of the proposed modern service standard day ranges and underlying business rules for market-dominant mail. It bears repeating that, where the application of a particular business rule for a particular mail product indicates a range of possible delivery days, only a single day within that range applies to a particular 3-digit ZIP Code origin-destination pair.

1. First-Class Mail

Domestic First-Class Mail pieces are sealed against inspection and typically consist of such matter as bills, statements of account, solicitations, personal correspondence and greetings, or other personal information that is wholly or partially handwritten or typewritten. The modern First-Class Mail service standard day range appears below. First-Class Mail service utilizes both air and surface transportation. The expected delivery day after the Critical Entry Time for any origin-destination 3-digit ZIP Code pair depends on mail processing operating plans, the distance between origin and destination, and transportation times between processing plants.

FIRST-CLASS MAIL

End to End

Standard (days)	Business rule
1	Overnight delivery is provided to the entire intra-Sectional Center Facility (SCF) area for mail entered prior to the established and published Critical Entry Time (CET), except for mail between Puerto Rico and the U.S. Virgin Islands and intra-SCF mail originating and destinating in the following 3-digit ZIP Code areas in Alaska or designated portions thereof: 995 (5-digit ZIP Codes 99540 through 99591), 996, 997, 998 and 999. Other 3-digit ZIP Code areas may be considered for overnight delivery from an origin Processing & Distribution Center/Facility (OP&DC/F) if sufficient customer need exists (destination receives at least 1.5% of the total annual First-Class Mail volume originating from the OPDC/F) and operational and transportation feasibility permit.
2	All remaining origin-destination 3-digit ZIP Code pairs that are not overnight and for which the OPDC/F to Area Distribution Center (ADC) surface transportation drive time is within 12 hours, unless the origin and destination are in Alaska, and the mail is entered prior to the established and published CET. All mail between Puerto Rico and the U.S. Virgin Islands that is entered prior to the established and published CET. All Alaska intra-SCF mail that is not overnight and that is entered prior to the established and published CET.
3	Mail between all remaining origin-destination 3-digit ZIP Code pairs located wholly within the 48 contiguous states that is entered prior to the established and published CET. All mail originating within the 48 contiguous states and destinating in the following 3-digit ZIP Code areas: 995 (including Anchorage AK); 968 (including Honolulu HI); or 006, 007, or 009 (Puerto Rico) that is entered prior to the established and published CET. All mail originating in 3-digit ZIP Code areas 006, 007, or 009 (Puerto Rico) and destinating within the 48 contiguous states that is entered prior to the established and published CET. All mail between Hawaii and Guam that is entered prior to the established and published CET. All remaining intra-Alaska mail that is entered prior to the established and published CET.
4	All mail originating within the 48 contiguous states, entered prior to the established and published CET, and destinating in (a) that portion of the state of Alaska not in the 995 3-digit ZIP Code area; or (b) that portion of the state of Hawaii not in the 968 3-digit ZIP Code area; or (c) the U.S. Virgin Islands. All mail originating in the states of Alaska or Hawaii, or in the territory of the U.S. Virgin Islands, entered prior to the established and published CET and destinating within the 48 contiguous states. All mail, entered prior to the established and published CET, that both originates and destinates outside of the 48 contiguous states, where the origin and destination are in different states or territories, excluding mail to or from Guam, or between Puerto Rico and the U.S. Virgin Islands.
5	All mail entered prior to the established and published CET that originates in Guam and destinates outside of Guam, other than in Hawaii; or that destinates in Guam and originates outside of Guam, other than in Hawaii.

An estimated 99.7 percent of First-Class Mail pieces will have a service standard in the 1- to 3-day range, and 0.3 percent will have a 4- to 5-day service standard.

2. Periodicals

This domestic mail typically consists of qualified newspapers, magazines, and other similar publications. The modern Periodicals service standard day range appears below. Periodicals Mail utilizes surface transportation. The expected delivery day after the Critical Entry Time for any origin-destination 3-digit ZIP Code pair depends on the level of destination entry, mail processing operating plans, distance between origin and destination, and transportation times between processing plants.

PERIODICALS

End to End

Standard (days)	Business rule
1	SCF turnaround mail only where the origin PDC/F and SCF are the same building and the mail is entered prior to the established and published Critical Entry Time (CET), except for mail between Puerto Rico and the U.S. Virgin Islands, and mail originating or destinating in the following 3-digit ZIP Code areas in Alaska or designated portions thereof: 995 (5-digit ZIP Codes 99540 through 99591), 996, 997, 998 and 999.
2–4	All 3-digit ZIP Code origin-destination pairs where Periodicals are entered prior to the established and published CET and merged with First-Class Mail for surface transportation (as defined by the Periodicals Origin Split and First-Class Mail mixed ADC/Automated Area Distribution Center (AADC) DMM label list (L201)) will take on the First-Class Mail service standard plus one day (2 to 4 days, based on First Class Mail standard plus 1 day). All mail between Puerto Rico and the U.S. Virgin Islands that is entered prior to the established and published CET (3 days). All mail between Hawaii and Guam that is entered prior to the established and published CET (4 days). All remaining intra-Alaska mail that is entered prior to the established and published CET (2 to 4 days).
5–9	All remaining 3-digit ZIP Code origin-destination pairs within the 48 contiguous states where Periodicals are entered prior to the established and published CET: 4 to 5 days, plus the number of days required for surface transportation (1 to 4 days).
8–20	All remaining 3-digit ZIP Code origin-destination pairs outside the 48 contiguous states where Periodicals are is entered prior to the established and published CET: 4 to 5 days, plus the number of days required for intermodal (surface, boat, air-taxi) transportation (4 to 15 days).

Destination Entry

1	All mail that receives a Destination Delivery Unit (DDU) entry discount and is dropped at the appropriate DDU. All mail that receives a Destination Sectional Center Facility (DSCF) entry discount and is dropped at the appropriate DSCF prior to the established and published CET, except for mail dropped at the San Juan SCF and destined for the U.S. Virgin Islands, and mail destined for the following 3-digit ZIP Codes areas in Alaska or designated portions thereof: 995 (5-digit ZIP Codes 99540 through 99591), 996, 997, 998 and 999.

PERIODICALS—Continued

End to End

Standard (days)	Business rule
2	All mail that receives a Destination Area Distribution Center (DADC) entry discount and is dropped at the appropriate DADC (except for mail destined to Alaska ZIP Code 997) where the DADC and the DSCF are not in the same building prior to the established and published CET, unless the ADC is located with the 48 contiguous states and the destination is not. All mail that receives a destination entry discount and is dropped at the San Juan SCF/ADC and destined for the U.S. Virgin Islands. All Alaska intra-SCF mail in the following 3-digit ZIP Codes areas in Alaska or portions thereof: 995 (5-digit ZIP Codes 99540–99591), 996, 997, 998 and 999.
3	All remaining DADC entered mail destined for Alaska 997.
1–2	All mail that receives a Destination Bulk Mail Center (DBMC) containerized rate and is dropped at the appropriate DBMC within the 48 contiguous states prior to the established dock CET will receive the appropriate ADC service standard with the exception of mail destined for Alaska, Hawaii, Guam, Puerto Rico, or the U.S. Virgin Islands. The standard depends on whether the ADC and SCF are in the same building.
7	All mail that receives a DADC entry discount and is dropped at the appropriate DADC located within the 48 contiguous states prior to the established and published CET, but destinates in Alaska or Guam.
5–8	All mail that receives a DBMC containerized rate and is dropped at the appropriate DBMC within the 48 contiguous states prior to the established dock CET, but destinates in Alaska, Hawaii, Guam, Puerto Rico, or the U.S. Virgin Islands. The standard depends on the number of days required for transportation outside of the 48 contiguous states and whether the ADC and SCF are the same building.

An estimated 92.3 percent of Periodicals will have a service standard in the 1-to 4-day range; 7.4 percent will have a service standard in the 5-to 9-day range; and 0.4 percent will have a service standard greater than 9 days.

3. Standard Mail

Any mailable matter weighing less than 16 ounces may be mailed domestically as Standard Mail (except matter that is required to be mailed as First-Class Mail or copies of a publication that is required to be entered as Periodicals Mail). The modern Standard Mail service standard day range appears below. Standard Mail service utilizes surface transportation. The expected delivery day after the Critical Entry Time for any origin-destination 3-digit ZIP Code pair depends on the level of destination entry, mail processing operating plans, distance between origin and destination, transportation times between processing plants, and consideration of the deferrable nature of the product. The proposed business rules incorporate determinations defining specifically where in the mail flow Standard Mail may be deferred for up to one day. For origin-entry mail, this occurs at the Postal Service mail processing facility designated as the origin consolidation site; for destination-entry mail, this occurs at the destination delivery unit.

STANDARD MAIL

End to End

Standard (days)	Business rule
3	All SCF turnaround mail where the OPDC/F and SCF are the same building, and the mail is entered prior to the established and published Critical Entry Time (CET), except for mail between Puerto Rico and the U.S. Virgin Islands.
4	All remaining 3-digit ZIP Code origin-destination pairs that are ADC-turnaround, where the OPDC/F and the ADC are the same building, and the mail is entered prior to the established and published CET, unless the ADC is in the 48 contiguous states and the destination is not. All mail between Puerto Rico and the U.S. Virgin Islands that is entered prior to the established and published CET.
5	All remaining 3-digit ZIP Code origin-destination pairs that are part of the intra-Bulk Mail Center (BMC) area, and the mail is entered prior to the established and published CET, and the mail originates and destinates within the 48 contiguous states. All mail between Guam and Hawaii that is entered prior to the established and published CET. All remaining intra-Alaska mail (with the exception of bypass mail) that is entered prior to the established and published CET.
6–10	All mail entered prior to the established and published CET for remaining 3-digit ZIP Code origin-destination pairs: 6 days plus the number of days required for surface transportation (up to 4 days) within the 48 contiguous states.
9–22	All remaining mail entered prior to the established and published CET: 5 to 6 days, plus the number of days required for intermodal (surface, boat, air-taxi) transportation outside the 48 contiguous states (4 to 16 days).
Destination Entry	
2	All mail that receives a DDU entry discount and is dropped at the appropriate DDU prior to the established and published Critical Entry Time (CET).
3	All mail that receives a DSCF entry discount and is dropped at the appropriate DSCF prior to the established and published CET, except for mail dropped at the San Juan SCF and destined for the U.S. Virgin Islands.
4	All mail that receives a DSCF entry discount and is dropped at the San Juan SCF prior to the established and published CET and destined for the U.S. Virgin Islands.
5	All mail that receives a DBMC entry discount and is dropped at the appropriate DBMC prior to the established and published CET, and originates and destinates within the 48 contiguous states.
9–10	All mail that receives a Bulk Mail Center (BMC) entry discount and is dropped at the appropriate BMC located within the 48 contiguous states prior to the established and published CET, but destinates in Alaska, Hawaii, Guam, Puerto Rico or the U.S. Virgin Islands. Depends on the number of days required for transportation outside of the 48 contiguous states.

An estimated 80.8 percent of Standard Mail pieces will have a service standard in the 2-to 5-day range, 19.0 percent will have a service standard in the 6-to 10-day range, and 0.2 percent will have a service standard greater than 10 days.

4. Package Services

Any domestic mailable matter may be entered as Package Services mail, except for matter required to be entered as First-Class Mail, Periodicals, or Standard Mail, as specified by the Postal Service. The modern Package Services (Single-Piece Parcel Post, Media Mail, Bound Printed Matter and Library Mail) service standard day range appears below. Package Services Mail utilizes surface transportation. The expected delivery day after the Critical Entry Time for any origin-destination 3-digit ZIP Code pair depends on the level of destination entry, mail processing operating plans, Bulk Mail Center/Auxiliary Service Facility (BMC/ASF) processing relationships, distance between origin and destination, and inter-BMC/ASF transportation times.

PACKAGE SERVOCES

Standard (days)	Business rule
End to End	
2	All SCF turnaround mail where the OPDC/F and SCF are the same building, and the mail is entered prior to the established and published Critical Entry Time (CET), except for mail between Puerto Rico and the U.S. Virgin Islands.
3	All remaining 3-digit origin-destination ZIP Code pairs that are part of the intra-BMC area and the destination is not serviced by an ASF, and the mail is entered prior to the established and published CET, and originates and destinates within the 48 contiguous states. All mail between Puerto Rico and the U.S. Virgin Islands that is entered prior to the established and published CET.
4	All remaining 3-digit origin-destination ZIP Code pairs that are part of the intra-BMC area and the destination is serviced by an ASF, and the mail is entered prior to the established and published CET and originates and destinates within the 48 contiguous states. All remaining intra-Alaska mail that is entered prior to the established and published CET. All mail between Hawaii and Guam that is entered prior to the established and published CET.
5–8	All remaining 3-digit origin-destination ZIP Code pairs where the mail is entered prior to the established and published CET will require 4 days plus the number of days required for surface transportation (1 to 4 days) within the 48 contiguous states. An additional day is required if the destination is serviced by an ASF.
7–20	All remaining 3-digit origin-destination ZIP Code pairs and the mail is entered prior to the established and published CET: 3 or 4 days plus the number of days required for intermodal (surface, boat, air-taxi) transportation outside the 48 contiguous states (4 to 16 days).
Destination Entry	
1	All mail that receives a DDU entry discount and is dropped at the appropriate DDU prior to the established and published CET.
2	All mail that receives a DSCF entry discount and is dropped at the appropriate DSCF prior to the established and published CET, except for mail dropped at the San Juan SCF and destined for the U.S. Virgin Islands.
3	All mail that receives a DBMC entry discount and is dropped at the appropriate DBMC or Destination Auxiliary Service Facility prior to the established and published CET, and that originates and destinates in the contiguous 48 states. All mail that receives a DSCF entry discount and is dropped at the San Juan SCF and destined for the U.S. Virgin Islands.
7–8	All mail that receives a DBMC entry discount and is dropped at the appropriate DBMC located within the 48 contiguous states prior to the established and published CET, but destinates in Alaska, Hawaii, Guam, Puerto Rico, or the U.S. Virgin Islands.

An estimated 72.8 percent of Package Services mail will have a service standard in the 1-to 4-day range, 26.9 percent will have a service standard in the 5-to 8-day range, and 0.3 percent will have a service standard greater than 8 days.

5. Special Services

The table below summarizes the modern service standards established for market-dominant special services.

Special services	Service standard
Delivery Confirmation™	Availability of delivery information within 24 hours of scan for domestic mail.
Signature Confirmation™	Availability of delivery information within 24 hours of scan for domestic mail.
Certified Mail™	Availability of delivery information within 24 hours of scan for domestic mail.
Electronic Return Receipt	Availability of delivery information within 24 hours of scan for domestic mail.
Registered Mail	Availability of delivery information within 24 hours of scan for domestic mail and inbound international mail.
Collect on Delivery	Availability of delivery information within 24 hours of scan for domestic mail.
CONFIRM®	Availability of information within 24 hours of scan for domestic mail.
Address Correction (electronic)	Availability of address change data within 24 hours of scan for domestic mail.
Insurance	Resolution within 30 calendar days of submission of claim on domestic mail.
Money Order Inquiry Service	Response within 15 business days of submission of completed inquiry form for domestic money order.
Address List Services	Availability of information within 15 business days of request (except between November 16 and January 1).

E. Final Postal Service Market Dominant Product Service Standard Regulations

List of Subjects in 39 CFR Parts 121 and 122

Mail, Postal service.

■ For the reasons stated in the preamble, the Postal Service amends 39 CFR Chapter I, Subchapter C, as follows:

■ 1. The heading of subchapter C is revised to read as follows:

Subchapter C—General Information on Postal Products

■ 2. Parts 121 and 122 are added are added to read as follows:

PART 121—SERVICE STANDARDS FOR MARKET-DOMINANT MAIL PRODUCTS

Sec.
121.1 First-class mail.
121.2 Periodicals.
121.3 Standard mail.
121.4 Package services.

Appendix A to Part 121—Service Standard Day Range Tables

Authority: 39 U.S.C., 101, 401, 403, 404, 1001, 3691.

§ 121.1 First-class mail.

(a) For all intra-Sectional Center Facility (SCF) domestic First-Class Mail® pieces properly accepted before the day-zero Critical Entry Time at origin, the service standard is 1-day (overnight), except for mail between the territories of Puerto Rico and the U.S. Virgin Islands, and intra-SCF mail originating and destinating in the following 3-digit ZIP Code™ areas in the state of Alaska or designated portions thereof: 995 (5-digit ZIP Code areas 99540 through 99591) 996, 997, 998, and 999. First-Class Mail pieces addressed to a destination 3-digit ZIP Code area outside of an origin intra-SCF service area may be considered for overnight delivery from that origin SCF, if that mail is accepted before the day-zero Critical Entry Time at origin, if sufficient customer need exists [the destination SCF receives at least 1.5 percent of the total annual First-Class Mail volume originating from the origin Processing & Distribution Center/ Facility (OPDC/F)], and if operational and transportation feasibility permit.

(b) A 2-day service standard is established for all domestic First-Class Mail pieces properly accepted before the day-zero Critical Entry Time at origin if a 1-day service standard is not required, and if the origin PDC/F to Area Distribution Center surface transportation drive time is 12 hours or less, unless the origin and destination are within the state of Alaska; or if the origin and delivery address are separately in the territories of Puerto Rico and the U.S. Virgin Islands; or if the mail is intra-SCF and originating from or destinating to one of the following 3-digit ZIP Code areas in Alaska or designated portions thereof: 995 (5-digit ZIP Code areas 99540 through 99591), 996, 997, 998, and 999.

(c) A 3-day service standard is established for all remaining domestic First-Class Mail pieces properly accepted before the day-zero Critical Entry Time at origin, if neither a 1-day nor a 2-day service standard is required and

(1) Both the origin SCF and the delivery address are within the contiguous 48 states;

(2) The origin SCF is in the contiguous 48 states, and the delivery address is in either of the following: the 995 3-digit ZIP Code area in the state of Alaska, or the 968 3-digit ZIP Code area in the state of Hawaii, or in the 006, 007, or 009 3-digit ZIP Code areas of the territory of Puerto Rico;

(3) The origin is in the 006, 007 or 009 3-digit ZIP Code areas of the territory of Puerto Rico and the delivery address is in the contiguous 48 states;

(4) The origin SCF is in the state of Hawaii and the delivery address is in the territory of Guam; the origin is in the territory of Guam and the delivery address is in the state of Hawaii; or

(5) Both the origin SCF and the delivery address are within the state of Alaska.

(d) A 4-day service standard is established for all remaining First-Class Mail pieces properly accepted before the day-zero Critical Entry Time at origin, if either a 1-day, 2-day, or 3-day service standard is not required, and if:

(1) The origin SCF is in the contiguous 48 states and the delivery address is in either of the following: any portion of the state of Alaska not in the 995 3-digit ZIP Code area; or any portion of the state of Hawaii not in the 968 3-digit ZIP Code area; or the territory of the U.S. Virgin Islands.

(2) The delivery address is in the contiguous 48 states and the origin is in either of the following: the state of Alaska, the state of Hawaii, or the territory of the U.S. Virgin Islands;

(3) The origin and delivery address are in different states or territories, excluding mail to and from the territory of Guam and mail between the territories of Puerto Rico and the U.S. Virgin Islands.

(e) A 5-day service standard is established for all remaining domestic First-Class Mail pieces properly accepted before the day-zero Critical Entry Time at origin, if those pieces originate in the territory of Guam but are not destined for Guam or the state of Hawaii, or if those pieces originate other than in Guam or Hawaii and are destined for Guam.

(f) The service standard for Outbound Single-Piece First-Class Mail International™ pieces properly accepted before the day-zero Critical Entry Time at origin is equivalent to the service standard for domestic First-Class Mail from the same origin 3-digit ZIP Code to the 3-digit ZIP Code area in which that origin's designated International Service Center is located.

(g) The service standard for Inbound Single-Piece First-Class Mail International is equivalent to the service standard for domestic First-Class Mail pieces from the 3-digit ZIP Code area in which that inbound mail's designated International Service Center is located to the 3-digit ZIP Code of the delivery address.

§ 121.2 Periodicals.

(a) *End-to-End.* (1) For all SCF turnaround Periodicals properly accepted before the established and published day-zero Critical Entry Time at origin, where the origin P&DC/F and SCF are in the same building, the service standard is 1-day (overnight), except for mail between the territories of Puerto Rico and the U.S. Virgin Islands, and mail originating or destinating in the following 3-digit ZIP Code areas within the state of Alaska or designated portions thereof: 995 (5-digit ZIP Code areas 99540 through 99591), 996, 997, 998, and 999.

(2) The Periodicals service standard is the sum of the applicable (1-to-3-day) First-Class Mail service standard plus one day, for each 3-digit ZIP Code origin-destination pair for which Periodicals are accepted before the day zero Critical Entry Time at origin and merged with First-Class Mail pieces for surface transportation (as defined by the Periodicals Origin Split and First-Class Mail mixed Area Distribution Center/ Automated Area Distribution Center (ADC/AADC) Domestic Mail Manual (incorporated by reference; see § 111.2) label list L201).

(3) The Periodicals service standard for mail between the territories of Puerto Rico and the U.S. Virgin Islands is 3 days.

(4) The Periodicals service standard for mail between the state of Hawaii and the territory of Guam is 4 days.

(5) The Periodicals service standard for intra-Alaska mail that is not overnight is 2 to 4 days for the following 3-digit ZIP Code areas or designated portions thereof: 995 (5-digit ZIP Code

areas 99540 through 99591), 996, 997, 998, and 999.

(6) The Periodicals service standard for each remaining 3-digit ZIP Code origin-destination pair within the 48 contiguous states, for which Periodicals are accepted before the day zero Critical Entry Time at origin, is the sum of 4 or 5 days, plus the number of additional days (from 1 to 4) required for surface transportation between each 3-digit ZIP Code origin-destination pair.

(7) The Periodicals service standard for each remaining 3-digit ZIP Code origin-destination pair, for which Periodicals are accepted before the day zero Critical Entry Time at origin, is the sum of 4 or 5 days, plus the number of additional days (from 4 to 15) required for intermodal (highway, boat, air-taxi) transportation outside of the 48 contiguous states for each 3-digit ZIP Code origin-destination pair.

(b) *Destination Entry.* (1) Periodicals that qualify for a Destination Delivery Unit (DDU) or Destination Sectional Center Facility (DSCF) rate, and that are accepted before the day-zero Critical Entry Time at the proper DDU or DSCF, have a 1-day (overnight) service standard, except for mail dropped at the SCF in the territory of Puerto Rico and destined for the territory of the U.S. Virgin Islands, and intra SCF mail in the following 3-digit ZIP Code areas in the state of Alaska or designated portions thereof: 995 (5-digit ZIP Code areas 99540 through 99591), 996, 997, 998 and 999.

(2) Periodicals that qualify for a Destination Area Distribution Center (DADC) rate, and that are accepted before the day zero Critical Entry Time at the proper DADC, unless the ADC is located with the 48 contiguous states and the destination is not, and where the DADC and DSCF are not the same building, have a 2-day service standard, unless the destination is the Alaska 997 3-digit ZIP Code area. Mail that qualifies for a Destination Sectional Center Facility (DSCF) rate has a 2-day service standard, if it is accepted before the day-zero Critical Entry Time, and the mail is dropped at the SCF in the territory of Puerto Rico and is destined for the territory of the U.S. Virgin Islands; or if the mail is intra-SCF in the following 3-digit ZIP Code areas of the state of Alaska: 996, 998 and 999. Periodicals that qualify for a DADC rate, and that are accepted before the day zero Critical Entry Time at the Alaska 997 DADC have a 3-day service standard.

(3) Periodicals that qualify for a Destination Bulk Mail Center containerized rate, that are accepted before the day-zero Critical Entry Time at the proper destination BMC in the contiguous 48 states, and that are addressed for delivery in the contiguous 48 states, have a service standard of 1 or 2 days, corresponding to the standard for mail qualifying for the destination ADC rate, based on whether the destination ADC and SCF are the same building.

(4) Periodicals that qualify for a Destination Bulk Mail Center containerized rate, that are accepted before the day-zero Critical Entry Time at the proper destination BMC in the 48 contiguous states, and that are addressed for delivery in the states of Alaska or Hawaii, or the territories of Guam, Puerto Rico, or the U.S. Virgin Islands, have a service standard of 5 to 8 days, corresponding to the standard for mail qualifying for the destination ADC rate, which is based on the number of days required for transportation outside of the 48 contiguous states and whether the destination ADC and SCF are the same building.

(5) Periodicals that qualify for a Destination Area Distribution Center (DADC) rate and that are accepted before the day zero Critical Entry Time at the proper DADC in the contiguous 48 states for delivery to addresses in the state of Alaska, or the territories of Guam or the U.S. Virgin Islands, have a service standard of 7 days.

§ 121.3 Standard Mail.

(a) *End-to-End.* (1) The service standard for Sectional Center Facility (SCF) turnaround Standard Mail® pieces accepted at origin before the day zero Critical Entry Time is 3 days when the origin Processing & Distribution Center/Facility (OPD&C/F) and the SCF are the same building, except for mail between the territories of Puerto Rico and the U.S. Virgin Islands.

(2) The service standard for Area Distribution Center (ADC) turnaround Standard Mail pieces accepted at origin before the day zero Critical Entry Time is 4 days when the OPD&C/F and the ADC are the same building, unless the ADC is in the contiguous 48 states and the delivery address is not, or when the mail is between the territories of Puerto Rico and the U.S. Virgin Islands.

(3) The service standard for intra-Bulk Mail Center (BMC) Standard Mail pieces accepted at origin before the day zero Critical Entry Time is 5 days for each remaining 3-digit ZIP Code origin-destination pair within the same Bulk Mail Center service area if the origin and destination are within the contiguous 48 states; the same standard applies to mail that is intra-Alaska, intra-Hawaii, or between the state of Hawaii and the territory of Guam.

(4) For each remaining 3-digit ZIP Code origin-destination pair within the 48 contiguous states, the service standard for Standard Mail pieces accepted at origin before the day zero Critical Entry Time is the sum of 6 days plus the number of additional days (from 1 to 4) required for surface transportation between each 3-digit ZIP Code origin-destination pair.

(5) For each remaining 3-digit ZIP Code origin-destination pair, the service standard for Standard Mail pieces accepted at origin before the day zero Critical Entry Time is the sum of 5 or 6 days plus the number of additional days (from 4 to 16) required for intermodal (highway, boat, air-taxi) transportation outside of the 48 contiguous states for each 3-digit ZIP Code origin-destination pair.

(b) *Destination Entry.* (1) Standard Mail pieces that qualify for a Destination Delivery Unit (DDU) rate and that are accepted before the day zero Critical Entry Time at the proper DDU have a 2-day service standard.

(2) Standard Mail pieces that qualify for a Destination Sectional Center Facility (DSCF) rate and that are accepted before the day zero Critical Entry Time at the proper DSCF have a 3-day service standard, except for mail dropped at the SCF in the territory of Puerto Rico and destined for the territory of the U.S. Virgin Islands.

(3) Standard Mail pieces that qualify for a Destination Sectional Center Facility (DSCF) rate, and that are accepted before the day zero Critical Entry Time at the SCF in the territory of Puerto Rico, have a 4-day service standard if destined for the territory of the U.S. Virgin Islands.

(4) Standard Mail pieces that qualify for a Destination Bulk Mail Center (DBMC) rate, and that are accepted before the day zero Critical Entry Time at the proper DBMC have a 5-day service standard, if both the origin and the destination are in the 48 contiguous states.

(5) Standard Mail pieces that qualify for a Destination Bulk Mail Center (DBMC) rate, and that are accepted before the day zero Critical Entry Time at the proper DBMC in the contiguous 48 states for delivery to addresses in the states of Alaska or Hawaii or the territories of Guam, Puerto Rico, or the U.S. Virgin Islands, have a service standard of either 9 or 10 days, depending on the 3-digit origin-destination ZIP Code pair. For each such pair, the applicable day within the range is based on the number of days required for transportation outside of the 48 contiguous states.

§ 121.4 Package Services.

(a) *End-to-End.* (1) The service standard for Sectional Center Facility (SCF) turnaround Package Services mail accepted at the origin SCF before the day zero Critical Entry Time is 2 days when the origin Processing & Distribution Center/Facility and the SCF are the same building, except for mail between the territories of Puerto Rico and the U.S. Virgin Islands.

(2) The service standard for intra-Bulk Mail Center (BMC) Package Services mail accepted at origin before the day zero Critical Entry Time is 3 days, for each remaining (non-intra-SCF) 3-digit ZIP Code origin-destination pair within a Bulk Mail Center service area, where the origin and destination are within the contiguous 48 states and are not served by an Auxiliary Service Facility; and for mail between the territories of Puerto Rico and the U.S. Virgin Islands.

(3) The service standard for intra-Bulk Mail Center (BMC) Package Services mail accepted at origin before the day zero Critical Entry Time is 4 days for each remaining 3-digit ZIP Code origin-destination pair within a Bulk Mail Center service area, where the destination delivery address is served by an Auxiliary Service Facility; the same standard applies to all remaining intra-Alaska mail and mail between the state of Hawaii and the territory of Guam.

(4) For each remaining 3-digit ZIP Code origin-destination pair within the 48 contiguous states, the service standard for Package Services mail accepted at origin before the day zero Critical Entry Time is between 5 and 8 days. For each such 3-digit ZIP Code origin-destination pair, this is the sum of 4 days, plus the number of additional days (from 1 to 4) required for surface transportation between each 3-digit ZIP Code origin-destination pair, plus an additional day if the destination delivery address is served by an Auxiliary Service Facility.

(5) For each remaining 3-digit ZIP Code origin-destination pair for which either the origin or the destination is outside of the 48 contiguous states, the service standard for Package Services mail accepted at origin before the day zero Critical Entry Time is between 7 and 20 days. For each such 3-digit ZIP Code origin-destination pair, this represents the sum of 3 to 4 days, plus the number of days (ranging from 4 to 16) required for intermodal (highway, boat, air-taxi) transportation between each 3-digit ZIP Code origin-destination pair.

(6) The service standard for Inbound Surface Parcel Post® pieces (subject to Universal Postal Union rates) is the same as the service standard for domestic Package Services mail from the 3-digit ZIP Code area in which the International Bulk Mail Center is located to the 3-digit ZIP Code in which the delivery address is located.

(b) *Destination Entry.* (1) Package Services mail that qualifies for a Destination Delivery Unit (DDU) rate, and that is accepted before the day zero Critical Entry Time at the proper DDU, has a 1-day (overnight) service standard.

(2) Package Services mail that qualifies for a Destination Sectional Center Facility (DSCF) rate, and that is accepted before the day zero Critical Entry Time at the proper DSCF, has a 2-day service standard, except for mail dropped at the SCF in the territory of Puerto Rico and destined for the territory of the U.S. Virgin Islands.

(3) Package Services mail that qualifies for a Destination Bulk Mail Center (DBMC) rate, which is accepted before the day zero Critical Entry Time at the proper DBMC or Destination Auxiliary Service Facility, and that originates and destinates in the contiguous 48 states, has a 3-day service standard. Mail that qualifies for a Destination Sectional Center Facility (DSCF) discount, and that is accepted before the day zero Critical Entry Time at the SCF in the territory of Puerto Rico, has a 3-day service standard if it is destined for the territory of the U.S. Virgin Islands.

(4) Package Services mail that qualifies for a Destination Bulk Mail Center (DBMC) rate, and that is accepted before the day zero Critical Entry Time at the proper DBMC in the contiguous 48 states for delivery to addresses in the states of Alaska or Hawaii, or the territories of Guam, Puerto Rico, or the U.S. Virgin Islands has a service standard of either 7 or 8 days, depending on the 3-digit ZIP Code origin-destination pair. For each such pair, the applicable day within the range is based on the number of days required for transportation outside of the 48 contiguous states.

Appendix A To Part 121—Tables Depicting Service Standard Day Ranges

The following tables reflect the service standard day ranges resulting from the application of the business rules applicable to the market-dominant mail products referenced in §§ 121.1 through 121.4:

Table 1. End-to-end service standard day ranges for mail originating and destinating within the 48 contiguous states and the District of Columbia.

CONTIGUOUS UNITED STATES

Mail class	End-to-end range (days)
First-Class Mail	1–3
Periodicals	1–9
Standard Mail	3–10
Package Services	2–8

Table 2. End-to-end service standard day ranges for mail originating and/or destinating within the states of Alaska and Hawaii, and the territories of Guam, Puerto Rico and the U.S. Virgin Islands.

ALASKA, HAWAII & GUAM, PUERTO RICO & USVI

Mail class	End-to-End								
	Intra state / territory			To / From 48 contiguous states			To / from states of Alaska and Hawaii, and the Territories of Guam, Puerto Rico and the U.S. Virgin Islands		
	Alaska	Hawaii & Guam	Puerto Rico & USVI	Alaska	Hawaii & Guam	Puerto Rico & USVI	Alaska	Hawaii & Guam	Puerto Rico & USVI
First-Class Mail	1–3	1–3	1–2	3–4	3–5	3–4	4–5	4–5	4–5
Periodicals	1–4	1–4	1–3	9–15	9–16	8–12	17–20	17–20	17–20
Standard Mail	3–5*	3–5	3–4	10–16	10–18	9–13	19–21	18–22	18–22
Package Services	2–4	2–4	2–3	8–14	8–15	7–12	16–20	16–20	16–18

Excluding bypass mail.

Table 3. Destination entry service standard day ranges for mail to the 48 contiguous states and the District of Columbia.

CONTIGUOUS UNITED STATES

Mail class	Destination Entry (at appropriate facility)			
	DDU (days)	SCF (days)	ADC (days)	BMC (days)
Periodicals	1	1	1–2	1–2
Standard Mail	2	3	.....	5
Package Services	1	2	.....	3

Table 4. Destination entry service standard day ranges for mail to the states of Alaska and Hawaii, and the territories of Guam, Puerto Rico and the U.S. Virgin Islands.

ALASKA, HAWAII & GUAM, PUERTO RICO & USVI

Mail class	Destination entry (at appropriate facility)									
	DDU (days)	SCF (days)			ADC (days)			BMC (days)		
		Alaska	Hawaii & Guam	Puerto Rico & USVI	Alaska	Hawaii & Guam	Puerto Rico & USVI	Alaska	Hawaii & Guam	Puerto Rico & USVI
Periodicals	1	1–2	1	1–2	1–3 (AK) 7 (JNU) 7 (KTN)	1 (HI) 7 (GU)	1–2	6–8	6–7	5–6
Standard Mail	2	3	3	3–4	.....	.....	.....	10	10	9
Package Services	1	2	2	2–3	.....	.....	.....	8	8	7

AK = Alaska 3-digit ZIP Codes 995–997; JNU = Juneau AK 3-digit ZIP Code 998; KTN = Ketchikan AK 3-digit ZIP Code 999; HI = Hawaii 3-digit ZIP Codes 967 and 968; GU = Guam 3-digit ZIP Code 969.

PART 122—SERVICE STANDARDS FOR MARKET-DOMINANT SPECIAL SERVICES PRODUCTS

Sec.
122.1 Ancillary special services.
122.2 Stand-alone special services.

Authority: 39 U.S.C. 101, 401, 403, 404, 1001, 3691.

§ 122.1 Ancillary special services.

(a) For the market-dominant mail products identified above in part 121, mailers may purchase various ancillary special services products, which are designed to provide electronic access to information regarding delivery-related events or forwarding addresses for individual mailpieces.

(1) For the following special services, the service standard for the electronic provision of delivery-related information is that it be made available to the sender no later than 24 hours after the time of the recorded delivery-related scan performed by the Postal Service on mail for which the following special services have been purchased: Domestic Certified Mail™ service, domestic Delivery Confirmation™ service, domestic and inbound international Registered Mail™ service, domestic Collect On Delivery, domestic electronic Return Receipt, and domestic Signature Confirmation™ scans.

(2) For domestic electronic Address Correction Service, the service standard for the electronic provision of address change information is that it be made available to the sender no later than 24 hours after the time of the scan of the mailpiece by the Postal Automated Redirection System.

(b) For the market-dominant mail products identified above in part 121, mailers may purchase insurance from the Postal Service™ to provide indemnity against loss or damage to the contents of a mailpiece. The service standard for the administrative resolution of domestic insurance claims is that a final agency decision must be transmitted to the claimant no later than 30 calendar days after the date on which the Postal Service has received all information from the claimant necessary for analysis of the claim.

§ 122.2 Stand-alone special services.

(a) The service standard for P. O. Box™ service is that mail be available for pickup at the box each delivery day no later than the daily ''up-time'' publicly posted at the Post Office™ location that includes the box section.

(b) The service standard for completion of Address List Services (change-of-address information for election boards and registration commissions, correction and ZIP Code placement of mailing lists, and address sequencing) is transmission of the corrected addresses within 15 business days of receipt to the requester, except for the period from November 16 through January 1.

(c) For the domestic market-dominant mail products identified above in part 121, CONFIRM® service allows subscribing customers to obtain electronic information regarding when and where mailpieces undergo barcode scans in mail processing operations. The service standard for the electronic provision of CONFIRM service scan information is that it be made available to the sender no later than 24 hours after the recorded time of the CONFIRM scan performed by the Postal Service.

(d) The service standard for Postal Money Order Inquiry service is transmission of a response to the customer's completed inquiry within 15 business days of receipt of the inquiry by the Postal Service, excluding designated postal holidays.

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Chief Counsel, Legislative.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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