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Presidential Documents

Title 3—

The President

Notice of March 8, 2007

Continuation of the National Emergency With Respect to Iran

On March 15, 1995, by Executive Order 12957, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran. On May 6, 1995, the President issued Executive Order 12959 imposing more comprehensive sanctions to further respond to this threat, and on August 19, 1997, the President issued Executive Order 13059 consolidating and clarifying the previous orders.

Because the actions and policies of the Government of Iran continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on March 15, 1995, must continue in effect beyond March 15, 2007. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran. Because the emergency declared by Executive Order 12957 constitutes an emergency separate from that declared on November 14, 1979, by Executive Order 12170, this renewal is distinct from the emergency renewal of November 2006.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
March 8, 2007.

[FR Doc. 07–1174
Filed 3–9–07; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 72, No. 47
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 225, 226, and 245

RIN 0584–AC95

Disclosure of Children's Free and Reduced Price Meals and Free Milk Eligibility Information in the Child Nutrition Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes requirements for the disclosure of children's free and reduced price meals or free milk eligibility information under the Child Nutrition Programs. The Child Nutrition Programs include the National School Lunch Program, School Breakfast Program, Special Milk Program, Summer Food Service Program, and Child and Adult Care Food Program. Within certain limitations, children's free and reduced price meal or free milk eligibility information may be disclosed, without parental/guardian consent, to persons directly connected to certain education programs, health programs, means-tested nutrition programs, the Comptroller General of the United States, and some law enforcement officials. Additionally, officials also may disclose children's free and reduced price meal or free milk eligibility information to persons directly connected with State Medicaid (Medicaid) and the State Children's Health Insurance Program (SCHIP) when parents/guardians do not decline to have their information disclosed. These regulations affect State agencies and local program operators that administer the Child Nutrition Programs and households which apply for and/or are approved for free and reduced price meals or free milk. The final rule reflects the disclosure provisions of the Healthy Meals for Healthy Americans Act of 1994 and comments received on the proposed rule published in anticipation of implementing those provisions. Additionally, this final rule includes the regulatory disclosure provisions implementing the Agricultural Risk Protection Act of 2000 and comments received on the interim rule issued to implement those provisions. This final rule also implements nondiscretionary provisions of the Child Nutrition and WIC Reauthorization Act of 2004, allowing certain third party contractors access to children's eligibility status and will allow school officials to communicate with Medicaid and SCHIP officials to verify that children are eligible for free and reduced price school meals or free milk. The disclosure provisions are intended to reduce paperwork for administrators of certain programs that target low-income households and for low-income households which may benefit from those programs by allowing some sharing of household's free and reduced price meal eligibility information. This rule also includes several technical amendments.

DATES: This rule is effective April 11, 2007.

FOR FURTHER INFORMATION CONTACT: Address any questions to Robert Eadie, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302 or by telephone at 703–305–2590.

SUPPLEMENTARY INFORMATION:

Background

Chronological History of Legislation and Regulations Concerning the Confidentiality of Children's Free and Reduced Price Eligibility Information

November 2, 1994—Public Law 103–448, the Healthy Meals for Healthy Americans Act of 1994, amended Section 9 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1758, to statutorily provide for the first time, some disclosure of children's eligibility information, without parental consent, to specified programs, such as Federal and State education programs and to certain individuals. The provisions of Public Law 103–448 specifically exclude disclosures of children's eligibility information to Medicaid but did not address disclosures to the State Children's Health Insurance Program (SCHIP), which was nonexistent at that time.

June 20, 2000—Public Law 106–224, the Agricultural Risk Protection Act of 2000, amended the NSLA to allow disclosure of children's eligibility information to Medicaid and SCHIP, provided that parents/guardians not decline to have their information disclosed to those health insurance programs. Congress directed the Secretary to promulgate regulations without regard to the provisions of Administrative Procedure Act, the Statement of Policy of the Secretary of Agriculture, effective July 24, 1971 (36 FR 13804) and the Paperwork Reduction Act.

July 25, 2000—A proposed rule, with a request for comments, was published in the **Federal Register** (65 FR 45725).

January 11, 2001—An interim rule, with a request for comments, amended a number of program regulations to implement the Medicaid and SCHIP disclosure provisions of Public Law 106–224. The regulatory provisions were effective October 1, 2000, in accordance with Public Law 106–224.

June 30, 2004—Public Law 108–265, Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265) further amended the NSLA to specify that Medicaid and SCHIP officials may request that determining officials for the Child Nutrition Programs verify children's eligibility for free and reduced price meal and free milk benefits.

This final rule—Finalizes the current regulations codified by the interim rule, which only addressed disclosures to Medicaid and SCHIP, and amends the current regulations to add the provisions from the July 25, 2000 proposed rule and the confidentiality provision from Public Law 108–265.

A detailed discussion of the confidentiality provisions of the public laws and the actions taken to address the provisions follows.

Public Law 103–448

The Healthy Meals for Healthy Americans Act of 1994, Public Law 103–448, enacted on November 2, 1994, amended section 9(b)(2)(C) of the Richard B. Russell National School

Lunch Act (NSLA) (42 U.S.C. 1758(b)(2)(C)) to allow limited access to children's free and reduced price meal information, without parental/guardian consent. In general, the statute included the following provisions:

1. Authorized disclosure of children's eligibility status only (whether children are eligible for free meals or reduced price meals) to:

• Persons who are directly connected with the administration or enforcement of programs under the NSLA or the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1771 *et seq.*) or a regulation issued under either of those Acts;

• Persons who are directly connected with the administration or enforcement of a Federal education program;

• Persons who are directly connected with the administration or enforcement of a State health or education program (other than Medicaid) administered by the State or local education agency; and

• Persons who are directly connected with the administration or enforcement of a Federal, State or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (NSLP).

2. Authorized disclosure of all eligibility information for children that is obtained through the free and reduced price meal application process or through the direct certification process (determining children eligible based on information obtained from certain other agencies) to:

• The Comptroller General of the United States for audit and examination; and

• Certain law enforcement officials investigating alleged program violations.

3. Specified penalties for unauthorized disclosure or misuse of children's eligibility information of a fine of not more than $1000 or imprisonment of not more than 1 year, or both.

Public Law 103–448 specifically excluded disclosure of children's eligibility information, without consent, to a program under title XIX of the Social Security Act, *i.e.*, Medicaid (42 U.S.C. 1396 *et seq.*), and did not address disclosure of children's eligibility information to SCHIP, which was established in later Federal legislation. The Department issued a proposed rule, which would have extended the provisions to all the Child Nutrition Programs, (65 FR 45725, July 25, 2000) with a 90-day public comment period to implement the disclosure provisions of Public Law 103–448.

Public Law 106–224

The Agricultural Risk Protection Act of 2000, Public Law 106–224, enacted on June 20, 2000, further amended the disclosure provisions in section 9(b)(2)(C) of the NSLA (42 U.S.C. 1758(b)(2)(C)). In general, Public Law 106–224 included the following provisions:

1. Authorized disclosure of children's eligibility information to Medicaid and SCHIP provided that the following conditions are met:

• Both the State agency and school food authority must elect to disclose eligibility information to these health insurance programs;

• School and health insurance program officials must have a written agreement that requires the health insurance program to use the information to seek to enroll children in Medicaid and SCHIP; and

• Parents/guardians must be notified that their eligibility information may be disclosed to Medicaid or SCHIP and given an opportunity to decline to have their children's eligibility information disclosed.

2. Directed the Department to promptly promulgate regulations to implement the disclosure provisions of Public Law 106–224 without regard to the Administrative Procedure Act's notice and comment provisions, the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) or the Paperwork Reduction Act facilitated making health insurance benefits available to low-income children as quickly as possible.

In implementing the provisions of Public Law 106–224, the Department issued an interim rule with a request for comments (66 FR 2195, January 11, 2001). The Department sought comments on the disclosure of eligibility information to Medicaid and SCHIP due to the sensitivity of household privacy issues and also to gain insights on operational experience prior to issuing a final regulation. Additionally, at the time, the Department was reviewing comments received on its proposed rule to implement the disclosure provisions of Public Law 103–448 (discussed above) which would allow the disclosure of eligibility information to education and several other programs and individuals. The interim rule became effective on October 1, 2000, and amended 7 CFR Parts 215, 225, 226, and 245 to allow determining agencies (agencies responsible for the determination of free and reduced price meals or free milk) to disclose children's eligibility information to Medicaid and SCHIP under the conditions mandated by Public Law 106–224, as listed above. Issuance of an interim rule allowed the Department to comply with the Congressional mandate to promulgate regulations regarding disclosures to Medicaid and SCHIP, and to collect public comment on these important requirements. As stated in the Preamble to the interim rule, it was our clear intent to then publish a final rule, incorporating the comments received.

Public Law 108–265

The Child Nutrition and WIC Reauthorization Act of 2004, enacted June 30, 2004, (Pub. L. 108–265) amended the Richard B. Russell National School Lunch Act in a number of ways. First, it redesignated section 9(b)(2)(C)(iii), which contains the disclosure provisions, to section 9(b)(6) and second, titled the section ''Use or Disclosure of Information.'' Third, Public Law 108–265 added a provision allowing school officials to provide third party contractors access to children's free and reduced price meal eligibility status when the contractors are assisting school food authorities with contacting households which do not respond to the school's verification efforts. The amendments were nondiscretionary and are codified in this final rule at 7 CFR 215.13a(g)(1), 225.15(g)(1), 226.23(i)(1) and 245.6(k)(1). Finally, the NSLA now allows Medicaid and SCHIP officials to use the eligibility information to verify children's eligibility for programs under the NSLA or CNA. Previously, determining officials could disclose children's eligibility information to Medicaid and SCHIP solely for the purpose of identifying and enrolling eligible children in a health insurance program. These statutory provisions were also non-discretionary and are codified in this final rule at 7 CFR 215.13a (h)(2), 225.15(h)(2), 226.23(j)(2), and 245.6(g)(2).

Summary of Current Disclosure Regulations

Regulations for the Child Nutrition Programs, as amended by the interim rule to implement Public Law 106–224, in general allow the disclosure of children's free and reduced price meal eligibility information to Medicaid and SCHIP officials when both the State agency and school food authority elect to disclose eligibility information to these health insurance programs; when determining agencies and health insurance program officials have a written agreement that requires the health insurance program agency to use the information to seek to enroll eligible children in Medicaid and SCHIP; and when parents/guardians are given an opportunity to decline to have their children's eligibility information

disclosed. Sections 215.2, 225.2, 226.2 and 245.2 include definitions for the terms ''Disclosure,'' ''Medicaid'' and ''SCHIP.''

Current 7 CFR Part 215, as amended by the interim rule, requires that the free milk application used in child care centers include a Privacy Act notice/statement. Note that schools that participate in the SMP follow the provisions contained in 7 CFR Part 245, which includes requirements for a Privacy Act notice/statement. Section 215.13a provides a prototype Privacy Act notice/statement for the milk application and the prototype Privacy Act notices/statements provided in 7 CFR Parts 225, 226 and 245 were revised to be consistent with the simplified notice/statement added to 7 CFR Part 215.

Summary of Disclosure Provisions Implemented Through Guidance

Guidance was issued December 1998, to explain the disclosure provisions of Public Law 103–448 contained in the proposed rule. The proposed rule was published in 2000. Determining agencies are operating under that guidance for disclosures to education and certain other programs and activities specified in Public Law 103–448. Additionally, the Department issued guidance on disclosing eligibility information in cases when parents/guardians authorize the disclosure. Parents/guardians may provide consent for the disclosure of information that goes beyond that authorized by the statute.

General Comments on the Proposed and Interim Rules

We received twelve comments on the proposed rule and eight comments on the interim rule. Commenters generally were supportive of the proposed and interim rules in that they believe that the provisions are in accordance with the statute. Several commenters view the sharing of free and reduced price eligibility information as helpful in streamlining the enrollment process for other programs that also serve low-income individuals. Other commenters oppose any sharing of households' free and reduced price meal or free milk eligibility information. They cite privacy concerns, the potential for deterring participation in the Child Nutrition Programs and additional burdens on school food service staff due to requests for children's free and reduced price eligibility information. This preamble discusses the specific provisions and comments received.

Changes Being Made to Current Regulations in This Final Rule

In general, no major changes are being made to the current regulations relating to the disclosure of children's eligibility information to Medicaid and SCHIP. However, Section 104 (b)(i) of Public Law 108–265 amended the disclosure provisions contained in the NSLA. As a result, Medicaid and SCHIP officials are now allowed to verify children's eligibility for a program under the NSLA or Child Nutrition Act of 1966. An amendment to current regulations to accommodate this nondiscretionary provision is included in this rule.

Additionally, because this rule adds the disclosure provisions of Public Law 103–448 and Public Law 108–265 to the current disclosure provisions, the section numbers for many of the provisions are changed from the current or proposed designations and obsolete references are deleted. Further, several commenters did not like the section headings in question format. Because of their concerns, the section headings are revised to a statement format consistent with most of the sections headings currently in the regulations. For a detailed explanation of the provisions, the reader may refer to the interim and proposed rules published at 65 FR 45725 and 66 FR 2195, respectively. A discussion of the major provisions follows.

Discussion of the Proposed Current Regulations and How the Major Provisions Are Being Addressed

1. Applicability to all the Child Nutrition Programs—Although the NSLA addresses the disclosure of children's free and reduced price school lunch eligibility information, the interim rule extended the provisions to all the Child Nutrition Programs to provide consistency among the programs. This was consistent with Food and Nutrition Service's (FNS) practices and policies as discussed in the interim rule. The proposed rule also would have extended the disclosure provisions to all the Child Nutrition Programs. Commenters did not address this issue.

Final rule—The disclosure provisions continue to apply to all the Child Nutrition Programs.

2. Definitions—The interim rule added the terms, ''disclosure,'' ''Medicaid'' and ''State Children's Health Insurance Program (SCHIP)'' to current §§ 215.2, 225.2, 226.2, and 245.2 in the alphabetical lists of definitions. One commenter addressed the definitions and that commenter concurred with the meanings ascribed to the terms. The proposed rule did not include any definitions.

Final Rule— In §§ 215.2, 225.2, 226.2, and 245.2, the definitions ''Medicaid'' and ''State Children's Health Insurance Program (SCHIP)'' are adopted without change. The definition ''Disclosure'' is revised in this final rule to improve readability. No substantial changes are made to the definition.

3. Prototype Privacy Act Notice/Statement—The interim rule revised the programs' previous regulatory prototype Privacy Act notice/statement to make the notice/statement more understandable by simplifying the wording. The Privacy Act notice/statement must inform households whether the information being requested is mandatory or voluntary; the authority for the request; how the information may be used; and the consequence of not providing the information. Sections 215.13a(f), 225.15(f)(4)(iv), 226.23(e)(1)(ii)(F) and 245.6(a)(1) currently provide a prototype statement. Additionally, §§ 215.13a(g)(6), 225.15(g)(6), 226.23(i)(6), and 245.6(f)(6) require schools and institutions intending to disclose social security numbers to include additional information in their Privacy Act notices/statements that inform households of the potential disclosures and the planned uses of the numbers. The NSLA permits the disclosure of all eligibility information to some entities. This disclosure may include the social security number of the adult household member who signs the application. Social security numbers also may be disclosed with prior notice and parental/guardian consent.

One commenter addressed the Privacy Act notice/statement and expressed agreement with the Department that households should be made aware of potential uses of the information. The Department reminds readers that State agencies and school food authorities are responsible for ensuring that the Privacy Act notice/statement included on their applications comply with section 7(b) of the Privacy Act.

Final Rule—Sections 215.13a(f), 215.13a(i), 225.15(f)(4)(iv), 225.15(i)(1), 226.23(e)(1)(ii)(F), 226.23(k), and 245.6(a)(1) and 245.6(h) provide a prototype Privacy Act notice/statement and require that households be given adequate notice regarding the request for free and reduced price eligibility information and how the information, including social security numbers, will be used.

4. Responsibility for deciding whether to disclose eligibility information—Currently, §§ 215.13a(g)(1), 225.15(g)(1), 226.23(i)(1), and 245.6(f)(1) require that

both the State agency and local agency that determines free and reduced price meal or free milk eligibility must agree on whether to disclose eligibility information to Medicaid and SCHIP officials. This shared responsibility for determining whether to disclose information to Medicaid and SCHIP is mandated by the NSLA as amended by Public Law 106–224 and was included in the interim regulations.

Unlike with disclosures to Medicaid and SCHIP, the NSLA does not address who has the responsibility for deciding whether to disclose eligibility information to education and other programs authorized to receive eligibility information under Public Law 103–448. The proposed rule and this final rule place this responsibility on the determining agency. As noted in the preamble to the interim rule, the determining agency may be the State agency, when that agency makes the eligibility determination, or it may be a school within the school food authority, a child care institution, or a Summer Food Service Program sponsor who makes the free and reduced price meal or free milk eligibility determinations. No comments were received on this provision.

Two individuals commenting on the proposed rule expressed concern that it would be difficult to refuse requests for eligibility information. We agree that there often is pressure to disclose eligibility information. Determining agencies must evaluate each request for information to ensure that, at a minimum, the disclosure is in accordance with statutory and regulatory provisions. Additionally, determining agencies should consider, along with the agency requesting the information, whether aggregate data is sufficient.

Although currently the National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP), Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP) regulations do not address the disclosure of aggregate information, the disclosure of aggregate data is allowed because individuals cannot be personally identified. This is consistent with longstanding FNS policy and practices. As proposed at §§ 215.13a(g)(2), 225.15(g)(2), 226.23(i)(2), and 245.6(f)(2), we would codify this policy. A commenter stated that the disclosure of aggregate information could result in the disclosure of personal information. The Department acknowledges that it might be possible for a determining agency to improperly disclose information making a person's identity recognizable. Determining officials should be aware of the possibility of inadvertently disclosing personally identifiable information when releasing aggregate information, carefully reviewing the data to ensure that the identities of children or their households are masked or cannot be identified by the combining of information or by deduction. This is essential in every disclosure.

Final Rule—Sections 215.13a(g), 225.15(g), 226.23(i), and 245.6(f) specify that determining agencies may release aggregate data, without parental/guardian consent, provided children cannot be identified through disclosure of the data or by deduction and that determining agencies are responsible for deciding whether to disclose eligibility information; and that, for disclosures to individuals and programs other than to Medicaid and SCHIP, determining agencies are responsible for deciding whether or not to disclose individual children's eligibility. Readers are reminded that State agencies may prohibit the disclosure of free and reduced price eligibility information in schools and institutions under their jurisdiction at their discretion. For disclosures to Medicaid and SCHIP, §§ 215.13a(h), 225.15(h), 226.23(j) and 245.6(g) of this final rule continue to require that both the State agency and local determining agency must agree to disclose eligibility information to Medicaid and SCHIP.

5. Notice to parents about potential disclosures—Currently, once the joint decision is made by State agencies and local determining agencies to release information to Medicaid and SCHIP, the regulations at §§ 215.13a(g)(5), 225.15(g)(5), 226.23(i)(5), and 245.6(f)(5) require that parents are notified of the upcoming disclosure and given opportunity to decline the disclosure, as mandated by the NSLA. For disclosures to education and other programs and individuals permitted access to eligibility information by the NSLA permits the disclosure without parental/guardian consent and does not include a requirement for parental/guardian notification prior to the disclosure. The proposed rule would not have required notification to parents/guardians of potential disclosures to education and other programs and individuals, as long as the disclosure was in accordance with the NSLA, *i.e.*, disclosure of names and eligibility status. However, the preamble to the proposed rule suggested that officials notify parents of how their information will be used. It was suggested that officials include the notification in the letter/notice to parents that accompanies the free and reduced price meal and free milk application; on the application; or in the case of direct certification, on the document informing households of their eligibility. One commenter addressed this provision. The commenter believes that parents should be informed of all disclosures. The Department agrees.

Final Rule—Sections 215.13a(i), 225.15(i), 226.23(k) and 245.6(h) require determining agencies to notify parents/guardians of potential disclosure of their eligibility information at the time of application or when the household is directly certified.

6. Parental consent/declination to the disclosure of the household's eligibility information—As mentioned above, prior to any disclosure to Medicaid or SCHIP, parents/guardians must be given the opportunity to decline to have their information disclosed to those health insurance agencies; *i.e.*, opt out. This opt out provision was mandated by a provision in Public Law 106–224 amending the NSLA and is currently codified at §§ 215.13a(g)(5), 225.15(g)(5), 226.23(i)(5), and 245.6(f)(5). No specific timeframe for households to respond was specified in the NSLA or the rule. Rather the regulations require that households be informed that their information may be disclosed to Medicaid and SCHIP unless they notify the determining agency by a date, chosen by the determining agency, if they do not want their information disclosed to those health insurance agencies. No response from the parent/guardian by the date specified is considered consent, (*i.e.*, passive consent) and allows the determining agency to disclose children's eligibility information to Medicaid and SCHIP.

Previously, amendments to the NSLA by Public Law 103–448 authorized determining agencies to disclose certain limited information to educational and certain other programs and individuals without parental/guardian consent. Therefore, §§ 215.13a(g)(8) and (g)(9), 225.15(g)(8) and(g)(9), 226.23(i)(8) and (g)(9), and 245.6(f)(8) and (f)(9) of the proposed rule would have, without requiring parental/guardian consent, permitted determining agencies to make disclosure consistent with the NSLA.

An indication of parental/guardian consent, however, would be required when the disclosure would go beyond the scope of the statute, such as a disclosure to a program or individual not authorized by the statute to receive eligibility information or the disclosure of information goes beyond the information allowed by the statute to be disclosed to a particular entity. For example, a Federal education program is

authorized to have information regarding a student's eligibility status but no other information on the application. If an education program wanted names of household members, the determining agency must obtain parental/guardian consent prior to disclosing that information. Additionally, some determining agencies include on the free and reduced price meal application a list of other benefits, such as programs or services for which a household may be eligible; *i.e.*, free or reduced cost bus transportation, text books, eye exams, or other school related fees. In those cases, to obtain a listed benefit, the parent/guardian must take action, (*i.e.*, check a box to indicate consent (opt in)), before their information may be disclosed.

One individual commenting on the interim rule suggested that the parents be given, by regulation, a specified length of time to respond before consent to disclose information to Medicaid or SCHIP is assumed. Currently, §§ 215.13a(g)(5), 245.6(f)(5), 225.15(g)(5) and 226.23(i)(5) require that parents must be given adequate time to respond before information is disclosed, but leaves it to local agencies to determine how much time is adequate. The Department has determined that local officials are in a better position to assess what constitutes adequate time to respond.

Additionally, a commenter took the position that requiring the parent to actively provide consent is preferable to passive consent; *i.e.*, assuming consent when the parent/guardian does not notify/indicate that they do not want their information disclosed. The former is the case with disclosures to Medicaid and SCHIP. The commenter stated that most other disclosures require the parents to take action by providing a check mark, for example, to indicate that their information may be disclosed. The commenter believes that consistency would be less confusing for parents/guardians. Public Law 106–224 mandates that disclosures to Medicaid and SCHIP be allowed to occur unless parents/guardians decline to have their information disclosed to the health insurance programs, (*i.e.*, opt out). Also, it has been the Department's long-standing policy and practice to require that determining agencies provide parents/guardians the opportunity to opt in when the determining agency provides parents/guardians a choice on whether they want their free and reduced price eligibility information used for other purposes. Providing parents/guardians with the opportunity to agree to have their information used for purposes other than for the purpose for which the information was originally provided, (*i.e.*, for determining eligibility for free and reduced price meals), gives parents/guardians greater control over their personal information than the opt out approach.

Final rule—For the reasons cited above, §§ 215.13a(i)(2), 225.15(i)(2), 226.23(k)(2) and 245.6(h)(2) continue to require that determining agencies which have decided to disclose information to Medicaid and SCHIP provide parents/guardians the opportunity to decline to have their information disclosed to those health insurance agencies (opt out). Sections 215.13a(j), 225.15(j), 226.23(l) and 245.6(i) require that determining agencies that want to use free and reduced price meal eligibility information for other purposes or that want to disclose the information to programs and individuals who are not authorized to have access to household information by the statute must provide parents/guardians with the opportunity to consent to having their information disclosed. Additionally, no consent is required for disclosure to education and other programs permitted access to children's eligibility status as provided in the statute.

7. Disclosure of information obtained through the verification of eligibility process—The proposed rule included a provision to allow, without parental/guardian consent, the disclosure of household information obtained from sources other than the free and reduced price application or through direct certification, such as information obtained through the verification process. The interim rule did not include a similar provision and, therefore, it is not included in current regulations. Five commenters to the proposed rule opposed the disclosure of information obtained through the verification process stating that this went beyond the disclosure provisions in the NSLA. The Department agrees that the disclosure of eligibility information should be limited to information provided by households on the application or obtained through direct certification, as specified in the statute and should not include information obtained through the verification process.

Final rule: For the reasons cited above, this final rule does not include authority for determining agencies to disclose information obtained through the verification of eligibility process.

8. Persons authorized to receive children's eligibility information and how the information must be used—The NSLA specifies that individuals authorized access to children's eligibility information for health insurance purposes must be directly connected with the administration of the Medicaid Program or SCHIP. Additionally, the NSLA requires that, for education and the other specified programs or activities listed, the individuals must be either directly connected with administration of the specified program or activity or directly connected to its enforcement. The Department has also specified in guidance that these authorized individuals also must have a need to know children's eligibility information to carry out their duties, since the information must be used for program purposes.

As mandated by the statute, current regulations specify that persons directly connected to the administration of Medicaid or SCHIP are permitted access to children's eligibility information to identify children eligible for enrollment in Medicaid or SCHIP, provided that parents/guardians have not declined to have their information disclosed to those health insurance programs. Public Law 108–265 further allows determining agencies to communicate with Medicaid and SCHIP officials to verify children's eligibility for a Child Nutrition Program. This provision is nondiscretionary and is being added to this final rule. Currently, §§ 215.13a(g)(3), 225.15(g)(3), 226.23(i)(3), and 245.6(f)(3) define a person directly connected with Medicaid and SCHIP as State employees and persons authorized under Federal requirements to carry out initial processing of Medicaid or SCHIP applications or to make eligibility determinations. Please refer to the interim rule for a detailed discussion.

Persons directly connected with the administration or enforcement of Federal and State education programs and several of the other programs authorized access to children's eligibility information under Public Law 103–448 are not as clearly defined. Also, whereas Public Law 106–224 had mandated that children's free and reduced price meal information must be used specifically to identify and enroll eligible children in Medicaid or SCHIP, Public Law 103–448 did not include a clear directive that the information must be used for a specific purpose. The Department has specified the information must be used for a legitimate program purpose of the receiving program.

In 2002 and 2003, joint memoranda were issued by the Department of Education and the Department of Agriculture (USDA) regarding the use of free and reduced price meal eligibility in implementing the No Child Left

Behind provisions. The memorandum, Guidance on Implementing the No Child Left Behind Act (NCLB), December 17, 2002, can be found on the USDA Food and Nutrition Service Web site at *http://www.fns.usda.gov/cnd/lunch/* and then click on ''Policy.'' A follow-up memorandum on implementing NCLB in Provision 2 and 3 schools was later issued on February 20, 2003. However, there remains some confusion regarding the Department of Education's requirements under the No Child Left Behind Act of 2001 (NCLB) and the relationship to children's free and reduced price eligibility information. (NCLB reauthorized Title I, Part A of the Elementary and Secondary Education Act.)

Title I, Part A, as amended by NCLB, requires schools to disaggregate information about children, such as by limited English proficiency, gender, socio-economic status, etc. Certain educational services, such as priority in school choice and remedial programs, are required under NCLB to be provided to disadvantaged students.

Schools tend to use certification for free and reduced price school meals to determine that children are economically disadvantaged. The question has arisen whether each teacher in a school, because they are providing educational services under NCLB, is considered directly connected to NCLB administration, a Federal education program. The disclosure of meal eligibility information must be limited to as few individuals as possible to protect the confidential nature of the information. All teachers in the school do not need to know the names of all children eligible for free and reduced price meals. Rather, most teachers only need to know which children need the additional services. A list of children needing services, without identifying the children as eligible for free or reduced price meals, may be provided to the teachers by someone who was associated with the free and reduced price meal eligibility process, such as a determining official.

Several commenters to the proposed rule requested that the final rule clearly define who are persons directly connected with program administration or enforcement. Additionally several other commenters believe that the need to know criteria are too broad. We acknowledge commenters concerns that often it is difficult to determine who are the persons directly connected with a program and whether they have a legitimate need to know. With that in mind, determining agencies will need to make careful and well informed judgments.

Public Law 108–265 added certain third party contractors as eligible recipients of children's free or reduced price eligibility status only. These contractors must be assisting in contacting households who have not responded to the schools' verification of eligibility efforts. Contracts providing for such assistance services must include confidentiality assurances, binding contractors to follow the provisions of the NSLA and program regulations.

Final rule—The description of persons directly connected to the administration of Medicaid and SCHIP remains as stated in current regulations. The description and how the information may be used are included in §§ 215.13a(h), 225.15(h), 226.23(j) and 245.6(g). For persons directly connected to education and other programs and activities authorized by Public Law 103–448, the proposed rule is adopted in this final rule. These descriptions and how children's eligibility information may be used are included at §§ 215.13a(g), 225.15(g), 226.23(i) and 245.6(f).

9. Agreement/Memorandum of Understanding—Sections 215.13a(g)(7), 225.15(g)(7), 226.23(i)(7), and 245.6(f)(7) currently require determining agencies that choose to disclose children's eligibility information to Medicaid and SCHIP to have an agreement or Memorandum of Understanding (MOU) with the receiving agency. In the case of disclosures to Medicaid or SCHIP, an agreement/MOU is mandated by the NSLA and is, therefore, nondiscretionary. The agreement/MOU would include such provisions as who will receive the information, how the information will be used, how it will be protected from unauthorized uses and third party disclosures, and acknowledgement of the penalties for misuse of the information. The NSLA does not require or address an agreement or MOU between the determining agency and other individuals or agencies to which children's eligibility status or other information is disclosed. However, in the preamble to the proposed rule, we strongly recommended that determining agencies consider using an agreement.

Two commenters advised that an agreement/MOU should be required for all disclosures of confidential information. The Department agrees and expects that the determining agency should have a written record of individuals and programs that are provided children's eligibility status and/or all eligibility information. An agreement/MOU or other type of written record would serve to advise recipients of their responsibilities to maintain the confidential nature of the information, guard against its misuse, and put the recipient on notice of the penalties for misuse of the information. The Department will let determining agencies decide whether a formal or other type of agreement is necessary, such as a list of persons and programs granted access to eligibility information. Except for disclosure to Medicaid and SCHIP, the regulations will continue to recommend, rather than require, that determining agencies use an agreement/MOU when disclosing children's eligibility information to other individuals or agencies.

Final rule—Sections 215.13a(k), 225.15(k), 226.23(m), and 245.6 (j) require that determining agencies have an agreement/MOU for disclosures to Medicaid and SCHIP and recommend that the determining agency and other recipient agencies enter into an agreement/MOU prior to the disclosure of children's free and reduced price eligibility information for other purposes.

10. Penalties—The NSLA specifies a fine of not more than $1000 and imprisonment for up to 1 year for unauthorized disclosures and misuse of children's eligibility information. This provision is nondiscretionary. The provision was included in both the proposed and interim rules.

Final rule—This final rule retains the penalties stated above at §§ 215.13a(l), 225.15(l), 226.23(n) and 245.6(k).

11. Technical Amendments—This rule also makes several technical amendments to correct or remove obsolete references or provisions. Section 210.19(c)(6)(ii) is revised to replace the acronym AFDC (Aid to Families with Dependent Children) with the acronym TANF (Temporary Assistance for Needy Families), the acronym for the program that replaced AFDC, and adding the words ''other FDPIR identifier'' in §§ 210.19(c)(6)(ii) and 245.2(a-4)(ii) to clarify that in some cases households participating in FDPIR do not have a case number, but instead are issued another type of identifier. Additionally, corrections are made to the definitions ''School'' in § 215.2 and ''Children'' in §§ 210.2 and 220.2 to remove incorrect citations or references.

Procedural Matters

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Impact Analysis

Need for Action

This final rule provides for the statutory limitations under which children's free and reduced price meal or free milk eligibility information may be disclosed, without parental/guardian consent. This final rule provides State agencies and local program operators that administer the Child Nutrition Programs, as well as households which apply for and/or are approved for free and reduced price meals or free milk the specifics on how and when information may be disclosed. This final rule reflects the disclosure provisions of the Healthy Meals for Healthy Americans Act of 1994 as well as the disclosure provisions of the Agricultural Risk Protection Act of 2000. Additionally, in accordance with the mandates of the Child Nutrition and WIC Reauthorization Act of 2004, this final rule will allow certain third party contractors access to children's eligibility status and will allow school officials to communicate with Medicaid and SCHIP officials to verify that children are eligible for free and reduced price school meals or free milk.

Benefits

Potential benefits from the sharing of meal benefit eligibility data include reducing redundant means testing, increasing the number of needy families being reached by assistance programs, improving targeting of U.S. Department of Education's programs for needy children, and increasing the integrity of certain assistance programs. The disclosure provisions are intended to reduce paperwork for administrators of certain programs that target low-income households and for low-income households who may benefit from those programs by allowing some sharing of household's free and reduced price meal eligibility information.

Costs

Potential costs include an additional administrative burden imposed on school food authorities, privacy infringement on some families, and an increase in program costs for programs that acquire meal benefit eligibility data through this rule. These costs are not expected to be significant. Based on the regulatory impact analysis as well as comments received on the proposed rule, the potential benefits of the final rule are expected to outweigh the potential costs.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Nancy Montanez Johner, Under Secretary for Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. While a regulatory impact analysis was conducted to determine the costs and benefits of the rule, the potential costs and benefits are too diverse and too uncertain to be quantified. The parents and guardians of children applying for free or reduced price meal benefits or free milk will be impacted by the disclosure provisions as well as school districts required to maintain confidentiality.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes a requirement for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally prepares a written statement, including a cost-benefit analysis. This is done for proposed and final rules that have ''Federal mandates'' which may result in expenditures of $100 million or more in any one year by State, local, or tribal governments, in the aggregate, or by the private sector. When this statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives. It must then adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates of $100 million or more in any one year (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The School Breakfast Program, National School Lunch Program, Special Milk Program, the Summer Food Service Program, and the Child and Adult Care Food Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.553, 10.555, 10.556, 10.559, and 10.558 respectively. These programs are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice at 48 FR 29115, June 24, 1983).

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have ''federalism implications,'' agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency's considerations in terms of the three categories called for under section (6)(a)(B) of Executive Order 13132:

Prior Consultation With State Officials

Prior to drafting this final rule, we received input from State and local agencies at various times. The Child Nutrition Programs (CNP) are State administered, federally funded programs. Food and Nutrition Service headquarters and regional staff have informal and formal discussions with State and local officials on an ongoing basis regarding program implementation and performance. This arrangement allows State and local agencies to provide feedback that forms the basis for any discretionary decisions in this and other CNP rules. The provisions in this rule are primarily non-discretionary in response to Public Law 103–448, Public Law 106–224 and Public Law 108–265. However, we received comments to the proposed and interim rules from State agencies and school food authorities which were taken into consideration in developing this final rule.

Nature of Concerns and the Need To Issue This Rule

State and local agencies are generally concerned about protecting the confidentiality of children's eligibility information. They are also concerned about the paperwork and financial burdens placed on food service to provide eligibility information to Medicaid and SCHIP officials and the numerous Federal and State education and other programs that request the information throughout the year.

The issuance of this regulation is required by amendments made to the Richard B. Russell National School Lunch Act by Public Law 103–448, Public Law 106–224 and Public Law 108–265. Prior to those amendments, program official could only disclose children's eligibility information with parental consent. This rule establishes and codifies the requirements for any disclosure of children's eligibility information.

Extent to Which We Meet These Concerns

We believe that we adequately address the issue of State and local flexibility. We clarify (consistent with

the requirements of this rule) that the disclosures of children's eligibility information for use other than to determine and verify eligibility for free and reduced price meals or free milk is a State and local decision. Officials are not required to disclose children's eligibility information. When an exchange of information is agreed upon, we encourage State and local agencies to work with the receiving agency officials to make the exchange of eligibility information as streamlined as possible. Additionally, we have issued prototype materials, such as a prototype agreement between program operators and an agency receiving eligibility information and a prototype notification to parents/guardians a school may use to explain to parents that their children's eligibility information may be disclosed. Additionally, we have clarified through guidance that the school food service may require reimbursement for administrative costs of providing free and reduced price eligibility information to other programs.

Federal and State education programs are the most frequent users of children's free and reduced price meal eligibility information. We encourage food service and the education community to work together to minimize the burdens on food service to limit requests for free and reduced price meal eligibility information to the extent possible. In this regard, Department of Education and Food and Nutrition Service officials have issued joint memoranda on the issue of disclosure of children's free and reduced price eligibility information. These memoranda may be viewed at *http://www.fns.usda.gov/cnd/lunch/* and then click on ''Policy.''

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would impede its full implementation. This rule is not intended to have retroactive effect unless that is specified in the Effective Date section of the preamble of the final rule. Before any judicial challenge to the provisions of this rule or the application of its provisions, all administrative procedures that apply must be followed. The only administrative appeal procedures relevant to this rule are the hearings that FNS must provide for decisions relating to eligibility for free and reduced price meals and free milk (§ 245.7 for the NSLP, SBP, and SMP in schools; § 225.13 for the SFSP, and § 226.23(e)(5) for the CACFP).

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on children on the basis of race, color, national origin, sex, age or disability. After a careful review of the rule's intent and provisions, FNS has determined that it does not affect the participation of protected individuals in the Child Nutrition Programs.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Information collections in this final rule have been approved by OMB under OMB control numbers 0584–0005, 0584–0280, 0584–0055, and 0584–0026.

E-Government Act Compliance

FNS is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes.

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs-social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Grant programs-education, Grant programs-health, Infants and children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Children, Food assistance programs, Grants programs-social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

7 CFR Part 225

Food assistance programs, Grant programs-health, Infants and children, Labeling, Reporting and recordkeeping requirements.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs-health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 245

Civil rights, Food assistance programs, Grant programs-education, Grant programs-health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

■ Accordingly, 7 CFR Parts 210, 215, 220, 225, 226, and 245 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for Part 210 continues to read as follows:

Authority: 42 U.S.C. 1751—1760, 1779.

§ 210.2 [Amended]

■ 2. In § 210.2, remove the phrase ''and (d)'' in paragraph (b) of the definition Child in the alphabetical listing.

■ 3. In § 210.19, revise paragraph (c)(6)(ii) to read as follows:

§ 210.19 Additional responsibilities.

* * * * *

(c) * * *

(6) * * *

(ii) When any review or audit reveals that a school food authority is approving applications which indicate that the households' incomes are within the Income Eligibility Guidelines issued by the Department or the applications contain food stamp or TANF case numbers or FDPIR case numbers or other FDPIR identifiers but the applications are missing the documentation specified under § 245.2(a–4)(1)(ii); or

* * * * *

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 1. The authority citation for part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

■ 2. In § 215.2, amend paragraph (e–1) by removing the phrase ''and 4'' and revise paragraph (i–1) to read as follows:

§ 215.2 Definitions.

* * * * *

(i–1) *Disclosure* means reveal or use individual children's program eligibility information obtained through the free

milk eligibility process for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means.

* * * * *

■ 3. In § 215.13a, revise paragraphs (f) and (g) and add new paragraphs (h) through (l) to read as follows:

§ 215.13a Determining eligibility for free milk in child-care institutions.

* * * * *

(f) *Privacy Act notice requirements.* The free milk application provided to households must include a Privacy Act notice/statement informing households of how the social security number and other information provided on the application will be used. Each free milk application must include substantially the following statement, ''The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free milk. You must include the social security number of the adult household member who signs the application. The social security number is not required when you apply on behalf of a foster child or you list a Food Stamp, Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number for your child or other FDPIR identifier or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if your child is eligible for free milk, and for administration and enforcement of the Program.'' When the State agency or child care institution, as appropriate, plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (i) of this section must be added to the Privacy Act notice/statement. State agencies and child care institutions are responsible for drafting the appropriate notice and ensuring that the notice complies with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note (Disclosure of Social Security Number)).

(g) *Disclosure of children's free milk eligibility information to certain programs and individuals without parental consent.* The State agency or child care institution, as appropriate, may disclose aggregate information about children eligible for free milk to any party without parental notification and consent when children cannot be identified through release of the aggregate data or by means of deduction. Additionally, the State agency or child care institution may disclose information that identifies children eligible for free milk to the programs and the individuals specified in this paragraph (g) without parent/guardian consent. The State agency or child care institution that makes the free milk eligibility determination is responsible for deciding whether to disclose program eligibility information.

(1) *Persons authorized to receive eligibility information.* Only persons directly connected with the administration or enforcement of a program or activity listed in paragraphs (g)(2) or (g)(3) of this section may have access to children's free milk eligibility information, without parental consent. Persons considered directly connected with administration or enforcement of a program or activity listed in paragraphs (g)(2) or (g)(3) of this section are Federal, State, or local program operators responsible for the ongoing operation of the program or activity or persons responsible for program compliance. Program operators may include persons responsible for carrying out program requirements and monitoring, reviewing, auditing, or investigating the program. Program operators may include contractors, to the extent those persons have a need to know the information for program administration or enforcement. Contractors may include evaluators, auditors, and others with whom Federal or State agencies and program operators contract with to assist in the administration or enforcement of their program on their behalf.

(2) *Disclosure of children's names and free milk eligibility status.* The State agency or child care institution, as appropriate, may disclose, without parental consent, only children's names and eligibility status (whether they are eligible for free milk) to persons directly connected with the administration or enforcement of:

(i) A Federal education program;

(ii) A State health program or State education program administered by the State or local education agency;

(iii) A Federal, State, or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (i.e., food assistance programs for households with incomes at or below 185 percent of the Federal poverty level); or

(iv) A third party contractor assisting in verification of eligibility efforts by contacting households who fail to respond to requests for verification of their eligibility.

(3) *Disclosure of all eligibility information.* In addition to children's names and eligibility status, the State agency or child care institution, as appropriate, may disclose, without parental consent, all eligibility information obtained through the free milk eligibility process (including all information on the application or obtained through direct certification) to:

(i) Persons directly connected with the administration or enforcement of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966. This means that all eligibility information obtained for the Special Milk Program may be disclosed to persons directly connected with administering or enforcing regulations under the National School Lunch Program, School Breakfast Program, Child and Adult Care Food Program, Summer Food Service Program and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (Parts 210, 220, 226, 225, and 246, respectively, of this chapter);

(ii) The Comptroller General of the United States for purposes of audit and examination; and

(iii) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in paragraphs (g)(2) and (g)(3) of this section.

(4) *Use of free milk eligibility information by programs other than Medicaid or the State Children's Health Insurance Program (SCHIP).* State agencies and child care institutions may use children's free milk eligibility information for administering or enforcing the Special Milk Program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the Special Milk Program may use the information for that purpose. Individuals and programs to which children's free milk eligibility information has been disclosed under this section may use the information only in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(h) *Disclosure of children's free milk eligibility information to Medicaid and/or SCHIP, unless parents decline.* Children's free milk eligibility information only may be disclosed to Medicaid or SCHIP when both the State agency and the child care institution so elect, the parent/guardian does not decline to have their eligibility information disclosed and the other provisions described in paragraph (h)(1)

of this section are met. The State agency or child care institution, as appropriate, may disclose children's names, eligibility status (whether they are eligible for free milk), and any other eligibility information obtained through the free milk application or obtained through direct certification to persons directly connected with the administration of Medicaid or SCHIP. Persons directly connected to the administration of Medicaid and SCHIP are State employees and persons authorized under Federal and State Medicaid and SCHIP requirements to carry out initial processing of Medicaid or SCHIP applications or to make eligibility determinations for Medicaid or SCHIP.

(1) The State agency must ensure that:

(i) The child care institution and health insurance program officials have a written agreement that requires the health insurance program agency to use the eligibility information to seek to enroll children in Medicaid and SCHIP; and

(ii) Parents/guardians are notified that their eligibility information may be disclosed to Medicaid or SCHIP and given an opportunity to decline to have their children's eligibility information disclosed, prior to any disclosure.

(2) *Use of children's free milk eligibility information by Medicaid/SCHIP.* Medicaid and SCHIP agencies and health insurance program operators receiving children's free milk eligibility information must use the information to identify eligible children and enroll them in Medicaid or SCHIP. The Medicaid and SCHIP enrollment process may include targeting and identifying children from low-income households who are potentially eligible for Medicaid or SCHIP for the purpose of seeking to enroll them in Medicaid or SCHIP. No further disclosure of the information may be made. Medicaid and SCHIP agencies and health insurance program operators also may verify children's eligibility in a program under the Child Nutrition Act of 1966 or the Richard B. Russell National School Lunch Act.

(i) *Notifying households of potential uses and disclosures of children's free milk eligibility information.* Households must be informed that the information they provide on the free milk application will be used to determine eligibility for free milk and that their eligibility information may be disclosed to other programs.

(1) For disclosures to programs, other than Medicaid or SCHIP, that are permitted access to children's eligibility information without parent/guardian consent, the State agency or child care institution, as appropriate, must notify parents/guardians at the time of application that their children's free milk eligibility information may be disclosed. The State agency or child care institution, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (f) of this section, ''We may share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs; auditors for program reviews; and law enforcement officials to help them look into violations of program rules.'' For children determined eligible for free milk through direct certification, the notice of potential disclosure may be included in the document informing parents/guardians of their children's eligibility for free milk through direct certification process.

(2) For disclosure to Medicaid or SCHIP, the State agency or child care institution, as appropriate, must notify parents/guardians that their children's free milk eligibility information will be disclosed to Medicaid and/or SCHIP unless the parent/guardian elects not to have their information disclosed and notifies the State agency or child care institution, as appropriate, by a date specified by the State agency or child care institution, as appropriate. Only the parent or guardian who is a member of the household or family for purposes of the free milk application may decline the disclosure of eligibility information to Medicaid or SCHIP. The notification must inform parents/guardians that they are not required to consent to the disclosure, that the information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP, and that their decision will not affect their children's eligibility for free milk. The notification may be included in the letter/notice to parents/guardians that accompanies the free milk application, on the application itself or in a separate notice provided to parents/guardians. The notice must give parents/guardians adequate time to respond if they do not want their information disclosed. The State agency or child care institution, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (f) of this section, ''We may share your information with Medicaid or the State Children's Health Insurance Program, unless you tell us not to. The information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP.'' For children determined eligible for free milk through direct certification, the notice of potential disclosure and opportunity to decline the disclosure may be included in the document informing parents/guardians of their children's eligibility for free milk through direct certification.

(j) *Other disclosures.* State agencies and child care institutions that plan to use or disclose identifying information about children eligible for free milk to programs or individuals not specified in this section must obtain written consent from children's parents or guardians prior to the use or disclosure.

(1) The consent must identify the information that will be shared and how the information will be used.

(2) There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free milk and that the individuals or programs receiving the information will not share the information with any other entity or program.

(3) Parents/guardians must be permitted to limit the consent only to those programs with which they wish to share information.

(4) The consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free milk application.

(k) *Agreements with programs/individuals receiving children's free milk eligibility information.* Agreements or Memoranda of Understanding (MOU) are recommended or required as follows:

(1) The State agency or child care institution, as appropriate, should have a written agreement or MOU with programs or individuals receiving eligibility information, prior to disclosing children's free milk eligibility information. The agreement or MOU should include information similar to that required for disclosures to Medicaid and SCHIP specified in paragraph (k)(2) of this section.

(2) For disclosures to Medicaid or SCHIP, the State agency or child care institution, as appropriate, must have a written agreement with the State or local agency or agencies administering Medicaid or SCHIP prior to disclosing children's free milk eligibility information to those agencies. At a minimum, the agreement must:

(i) Identify the health insurance program or health agency receiving children's eligibility information;

(ii) Describe the information that will be disclosed;

(iii) Require that the Medicaid or SCHIP agency use the information

obtained and specify that the information must be used to seek to enroll children in Medicaid or SCHIP;

(iv) Require that the Medicaid or SCHIP agency describe how they will use the information obtained;

(v) Describe how the information will be protected from unauthorized uses and disclosures;

(vi) Describe the penalties for unauthorized disclosure; and

(vii) Be signed by both the Medicaid or SCHIP program or agency and the State agency or child care institution, as appropriate.

(l) *Penalties for unauthorized disclosure or misuse of children's free milk eligibility information.* In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than $1,000 or imprisoned for up to 1 year, or both.

PART 220—SCHOOL BREAKFAST PROGRAM

■ 1. The authority citation for Part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

§ 220.2 [Amended]

■ 2. In § 220.2, amend paragraph (c) by removing phrase ''and (4)''.

PART 225—SUMMER FOOD SERVICE PROGRAM

■ 1. The authority citation for Part 225 is amended to read as follows:

Authority: Secs. 9, 13, and 14, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

■ 2. In § 225.2, revise the definition Disclosure in the alphabetical list to read as follows:

§ 225.2 Definitions.

* * * * *

Disclosure means reveal or use individual children's program eligibility information obtained through the free and reduced price meal eligibility process for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means.

* * * * *

§ 225.6 [Amended]

■ 3. In § 225.6:

■ a. Amend paragraph (c)(2)(ii)(C) by removing the reference ''§ 225.15(g)'' and adding the reference ''§ 225.15(h)'' in its place;

■ b. Amend paragraph (h)(1) by removing the references ''§§ 225.15(g) and 225.17'' and adding the references ''§§ 225.15(h) and 225.17'' in their place;

■ c. Amend paragraph (h)(2) (xvi) by removing the reference ''§ 225.15(g)(6)—(8)'' and adding the reference ''§ 225.15 (h)(6) through (h)(8)'' in its place; and

■ d. Amend paragraph (h)(7) by removing the reference ''§ 225.15(g)(1)'' and adding the reference ''§ 225.15(h)(1)'' in its place.

■ 4. In § 225.15:

■ a. Revise paragraphs (f)(4)(iv) and (g); and

■ b. Redesignate paragraphs (h) and (i) as paragraphs (m) and (n), respectively, and add new paragraphs (h) through (l).

The revisions and additions read as follows:

§ 225.15 Management responsibilities of sponsors.

* * * * *

(f) * * *

(4) * * *

(iv) A Privacy Act notice informing households of how the social security number and other information provided on the application will be used. Each free and reduced price meal application must include substantially the following statement, ''The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free or reduced price meals. You must include the social security number of the adult household member who signs the application. The social security number is not required when you apply on behalf of a foster child or you list a Food Stamp, Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number for your child or other (FDPIR) identifier or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if your child is eligible for free or reduced price meals, and for administration and enforcement of the Program.'' When the State agency or sponsor, as appropriate, plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (i) of this section, must be added to the Privacy Act notice/statement. State agencies and sponsors are responsible for drafting the appropriate notice and ensuring that the notice complies with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note (Disclosure of Social Security Number)).

* * * * *

(g) *Disclosure of children's free and reduced price meal eligibility information to certain programs and individuals without parental consent.* The State agency or sponsor, as appropriate, may disclose aggregate information about children eligible for free and reduced price meals to any party without parental notification and consent when children cannot be identified through release of the aggregate data or by means of deduction. Additionally, the State agency or sponsor may disclose information that identifies children eligible for free and reduced price meals to the programs and the individuals specified in this paragraph (g) without parent/guardian consent. The State agency or sponsor that makes the free and reduced price meal eligibility determination is responsible for deciding whether to disclose program eligibility information.

(1) *Persons authorized to receive eligibility information.* Only persons directly connected with the administration or enforcement of a program or activity listed in paragraphs (g)(2) or (g)(3) of this section may have access to children's free and reduced price meal eligibility information, without parental consent. Persons considered directly connected with administration or enforcement of a program or activity listed in paragraphs (g)(2) or (g)(3) of this section are Federal, State, or local program operators responsible for the ongoing operation of the program or activity or persons responsible for program compliance. Program operators may include persons responsible for carrying out program requirements and monitoring, reviewing, auditing, or investigating the program. Program operators may include contractors, to the extent those persons have a need to know the information for program administration or enforcement. Contractors may include evaluators, auditors, and others with whom Federal or State agencies and program operators contract with to assist in the administration or enforcement of their program in their behalf.

(2) *Disclosure of children's names and free or reduced price meal eligibility status.* The State agency or sponsor, as appropriate, may disclose, without parental consent, only children's names

and eligibility status (whether they are eligible for free meals or reduced price meals) to persons directly connected with the administration or enforcement of:

(i) A Federal education program;

(ii) A State health program or State education program administered by the State or local education agency;

(iii) A Federal, State, or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (i.e., food assistance programs for households with incomes at or below 185 percent of the Federal poverty level); or

(3) *Disclosure of all eligibility information.* In addition to children's names and eligibility status, the State agency or sponsor, as appropriate, may disclose, without parental consent, all eligibility information obtained through the free and reduced price meal eligibility process (including all information on the application or obtained through direct certification) to:

(i) Persons directly connected with the administration or enforcement of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966. This means that all eligibility information obtained for the Summer Food Service Program may be disclosed to persons directly connected with administering or enforcing regulations under the National School Lunch Program, Special Milk Program, School Breakfast Program, Child and Adult Care Food Program, and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (parts 210, 215, 220, 226 and 246, respectively, of this chapter);

(ii) The Comptroller General of the United States for purposes of audit and examination; and

(iii) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in paragraphs (g)(2) and (g)(3) of this section.

(4) *Use of free and reduced price meals eligibility information by programs other than Medicaid or the State Children's Health Insurance Program (SCHIP).* State agencies and sponsors may use children's free and reduced price meal eligibility information for administering or enforcing the Summer Food Service Program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the Summer Food Service Program may use the information for that purpose. Individuals and programs to which children's free or reduced price meal eligibility information has been disclosed under this section may use the information only in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(h) *Disclosure of children's free or reduced price meal eligibility information to Medicaid and/or SCHIP, unless parents decline.* Children's free or reduced price meal eligibility information only may be disclosed to Medicaid or SCHIP when both the State agency and the sponsor so elect, the parental/guardian does not decline to have their eligibility information disclosed and the other provisions described in paragraph (h)(1) of this section are met. The State agency or sponsor, as appropriate, may disclose children's names, eligibility status (whether they are eligible for free or reduced price meals), and any other eligibility information obtained through the free and reduced price meal applications or obtained through direct certification to persons directly connected with the administration of Medicaid or SCHIP. Persons directly connected to the administration of Medicaid and SCHIP are State employees and persons authorized under Federal and State Medicaid and SCHIP requirements to carry out initial processing of Medicaid or SCHIP applications or to make eligibility determinations for Medicaid or SCHIP.

(1) The State agency must ensure that:

(i) The sponsors and health insurance program officials have a written agreement that requires the health insurance program agency to use the eligibility information to seek to enroll children in Medicaid and SCHIP; and

(ii) Parents/guardians are notified that their eligibility information may be disclosed to Medicaid or SCHIP and given an opportunity to decline to have their children's eligibility information disclosed, prior to any disclosure.

(2) *Use of children's free and reduced price meal eligibility information by Medicaid/SCHIP.* Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal eligibility information must use the information to seek to enroll children in Medicaid or SCHIP. The Medicaid and SCHIP enrollment process may include targeting and identifying children from low-income households who are potentially eligible for Medicaid or SCHIP for the purpose of seeking to enroll them in Medicaid or SCHIP. No further disclosure of the information may be made. Medicaid and SCHIP agencies and health insurance program operators also may verify children's eligibility in a program under the Child Nutrition Act of 1966 or the Richard B. Russell National School Lunch Act.

(i) *Notifying households of potential uses and disclosures of children's free and reduced price meal eligibility information.* Households must be informed that the information they provide on the free and reduced price meal application will be used to determine eligibility for free or reduced price meals and that their eligibility information may be disclosed to other programs.

(1) For disclosures to programs, other than Medicaid or the State Children's Health Insurance Program (SCHIP), that are permitted access to children's eligibility information, without parental/guardian consent, the State agency or sponsor, as appropriate, must notify parents/guardians at the time of application that their children's free or reduced price meal eligibility information may be disclosed. The State agency or sponsor, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (f)(4)(iv) of this section, ''We may share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs; auditors for program reviews; and law enforcement officials to help them look into violations of program rules.'' For children determined eligible for free meals through the direct certification, the notice of potential disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals through direct certification.

(2) For disclosure to Medicaid or SCHIP, the State agency or sponsor, as appropriate, must notify parents/guardians that their children's free or reduced price meal eligibility information will be disclosed to Medicaid and/or SCHIP unless the parent/guardian elects not to have their information disclosed and notifies the State agency or sponsor, as appropriate, by a date specified by the State agency or sponsor, as appropriate. Only the parent or guardian who is a member of the household or family for purposes of the free and reduced price meal application may decline the disclosure of eligibility information to Medicaid or SCHIP. The notification must inform parents/guardians that they are not required to consent to the disclosure, that the information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP, and that their decision will not affect their children's eligibility for free or reduced price meals. The notification

may be included in the letter/notice to parents/guardians that accompanies the free and reduced price meal application, on the application itself or in a separate notice provided to parents/guardians. The notice must give parents/guardians adequate time to respond if they do not want their information disclosed. The State agency or sponsor, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (f) of this section, ''We may share your information with Medicaid or the State Children's Health Insurance Program, unless you tell us not to. The information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP.'' For children determined eligible for free meals through direct certification, the notice of potential disclosure and opportunity to decline the disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals through direct certification process.

(j) *Other disclosures.* State agencies and sponsors that plan to use or disclose information about children eligible for free and reduced price meals in ways not specified in this section must obtain written consent from children's parents or guardians prior to the use or disclosure.

(1) The consent must identify the information that will be shared and how the information will be used.

(2) There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free meals and that the individuals or programs receiving the information will not share the information with any other entity or program.

(3) Parents/guardians must be permitted to limit the consent only to those programs with which they wish to share information.

(4) The consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free and reduced price meal application.

(k) *Agreements with programs/individuals receiving children's free or reduced price meal eligibility information.* Agreements or Memoranda of Understanding (MOU) are recommended or required as follows:

(1) The State agency or sponsor, as appropriate, should have a written agreement or MOU with programs or individuals receiving eligibility information, prior to disclosing children's free and reduced price meal eligibility information. The agreement or MOU should include information similar to that required for disclosures to Medicaid and SCHIP specified in paragraph (k)(2) of this section.

(2) For disclosures to Medicaid or SCHIP, the State agency or sponsor, as appropriate, must have a written agreement with the State or local agency or agencies administering Medicaid or SCHIP prior to disclosing children's free or reduced price meal eligibility information to those agencies. At a minimum, the agreement must:

(i) Identify the health insurance program or health agency receiving children's eligibility information;

(ii) Describe the information that will be disclosed;

(iii) Require that the Medicaid or SCHIP agency use the information obtained and specify that the information must be used to seek to enroll children in Medicaid or SCHIP;

(iv) Require that the Medicaid or SCHIP agency describe how they will use the information obtained;

(v) Describe how the information will be protected from unauthorized uses and disclosures;

(vi) Describe the penalties for unauthorized disclosure; and

(vii) Be signed by both the Medicaid or SCHIP program or agency and the State agency or sponsor, as appropriate.

(l) *Penalties for unauthorized disclosure or misuse of children's free and reduced price meal eligibility information.* In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than $1,000 or imprisoned for up to 1 year, or both.

* * * * *

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 1. The authority citation for part 226 continues to read as follows:

Authority: SECS. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 2. In § 226.2, revise the definition Disclosure in the alphabetical list to read as follows:

§ 226.2 Definitions.

* * * * *

Disclosure means reveal or use individual children's program eligibility information obtained through the free and reduced price meal eligibility process for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means.

* * * * *

■ 3. In § 226.23, revise paragraphs (e)(1)(ii) (F) and (i) and add new paragraphs (j) through (n) at the end to read as follows:

§ 226.23 Free and reduced-price meals.

* * * * *

(e)(1) * * *

(ii) * * *

(F) A statement that includes substantially the following information, ''The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free or reduced price meals. You must include the social security number of the adult household member who signs the application. The social security number is not required when you apply on behalf of a foster child or you list a Food Stamp, Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number for your child or other (FDPIR) identifier or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if your child is eligible for free or reduced price meals, and for administration and enforcement of the Program.'' When the State agency or child care institution, as appropriate, plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (k) of this section, must be added to the Privacy Act notice/statement. State agencies and child care institutions are responsible for drafting the appropriate notice and ensuring that the notice complies with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note (Disclosure of Social Security Number)); and

* * * * *

(i) *Disclosure of children's free and reduced price meal eligibility information to certain programs and individuals without parental consent.* The State agency or child care institution, as appropriate, may disclose aggregate information about children eligible for free and reduced price meals to any party without parental notification and consent when children cannot be identified through release of

the aggregate data or by means of deduction. Additionally, the State agency or institution may disclose information that identifies children eligible for free and reduced price meals to the programs and the individuals specified in this paragraph (i) without parental/guardian consent. The State agency or child care institution that makes the free and reduced price meal eligibility determination is responsible for deciding whether to disclose program eligibility information.

(1) *Persons authorized to receive eligibility information.* Only persons directly connected with the administration or enforcement of a program or activity listed in paragraphs (i)(2) or (i)(3) of this section may have access to children's free milk eligibility information, without parental consent. Persons considered directly connected with administration or enforcement of a program or activity listed in paragraphs (i)(2) or (i)(3) of this section are Federal, State, or local program operators responsible for the ongoing operation of the program or activity or persons responsible for program compliance. Program operators may include persons responsible for carrying out program requirements and monitoring, reviewing, auditing, or investigating the program. Program operators may include contractors, to the extent those persons have a need to know the information for program administration or enforcement. Contractors may include evaluators, auditors, and others with whom Federal or State agencies and program operators contract with to assist in the administration or enforcement of their program in their behalf.

(2) *Disclosure of children's names and free or reduced price meal eligibility status.* The State agency or child care institution, as appropriate, may disclose, without parental consent, only children's names and eligibility status (whether they are eligible for free meals or reduced price meals) to persons directly connected with the administration or enforcement of:

(i) A Federal education program;

(ii) A State health program or State education program administered by the State or local education agency;

(iii) A Federal, State, or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (*i.e.*, food assistance programs for households with incomes at or below 185 percent of the Federal poverty level); or

(iv) A third party contractor assisting in verification of eligibility efforts by contacting households who fail to respond to requests for verification of their eligibility.

(3) *Disclosure of all eligibility information.* In addition to children's names and eligibility status, the State agency or child care institution, as appropriate, may disclose, without parental/guardian consent, all eligibility information obtained through the free and reduced price meal eligibility process (including all information on the application or obtained through direct certification) to:

(i) Persons directly connected with the administration or enforcement of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966. This means that all eligibility information obtained for the Child and Adult Care Food Program may be disclosed to persons directly connected with administering or enforcing regulations under the National School Lunch Program, Special Milk Program, School Breakfast Program, Summer Food Service Program, and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (Parts 210, 215, 220, 225 and 246, respectively, of this chapter);

(ii) The Comptroller General of the United States for purposes of audit and examination; and

(iii) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in paragraphs (i)(2) and (i)(3) of this section.

(4) *Use of free and reduced price meals eligibility information by programs other than Medicaid or the State Children's Health Insurance Program (SCHIP).* State agencies and child care institutions may use children's free milk eligibility information for administering or enforcing the Child and Adult Care Food Program. Additionally, any other Federal, State, or local agency charged with administering or enforcing the Child and Adult Care Food Program may use the information for that purpose. Individuals and programs to which children's free or reduced price meal eligibility information has been disclosed under this section may use the information only in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(j) *Disclosure of children's free or reduced price meal eligibility information to Medicaid and/or SCHIP, unless parents decline.* Children's free or reduced price meal eligibility information only may be disclosed to Medicaid or SCHIP when both the State agency and the child care institution so elect, the parent/guardian does not decline to have their eligibility information disclosed and the other provisions described in paragraph (j)(1) of this section are met. The State agency or child care institution, as appropriate, may disclose children's names, eligibility status (whether they are eligible for free or reduced price meals), and any other eligibility information obtained through the free and reduced price meal application or obtained through direct certification to persons directly connected with the administration of Medicaid or SCHIP. Persons directly connected to the administration of Medicaid and SCHIP are State employees and persons authorized under Federal and State Medicaid and SCHIP requirements to carry out initial processing of Medicaid or SCHIP applications or to make eligibility determinations for Medicaid or SCHIP.

(1) The State agency must ensure that:

(i) The child care institution and health insurance program officials have a written agreement that requires the health insurance program agency to use the eligibility information to seek to enroll children in Medicaid and SCHIP; and

(ii) Parents/guardians are notified that their eligibility information may be disclosed to Medicaid or SCHIP and given an opportunity to decline to have their children's eligibility information disclosed, prior to any disclosure.

(2) *Use of children's free and reduced price meal eligibility information by Medicaid/SCHIP.* Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal eligibility information must use the information to seek to enroll children in Medicaid or SCHIP. The Medicaid and SCHIP enrollment process may include targeting and identifying children from low-income households who are potentially eligible for Medicaid or SCHIP for the purpose of seeking to enroll them in Medicaid or SCHIP. No further disclosure of the information may be made. Medicaid and SCHIP agencies and health insurance program operators also may verify children's eligibility in a program under the Child Nutrition Act of 1966 or the Richard B. Russell National School Lunch Act.

(k) *Notifying households of potential uses and disclosures of children's free and reduced price meal eligibility information.* Households must be informed that the information they provide on the free and reduced price meal application will be used to determine eligibility for free or reduced price meals and that their eligibility

information may be disclosed to other programs.

(1) For disclosures to programs, other than Medicaid or SCHIP, that are permitted access to children's eligibility information, without parent/guardian consent, the State agency or child care institution, as appropriate, must notify parents/guardians at the time of application that their children's free or reduced price meal eligibility information may be disclosed. The State agency or child care institution, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (e)(1)(ii)(F) of this section, ''We may share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs; auditors for program reviews; and law enforcement officials to help them look into violations of program rules.'' For children determined eligible for free meals through direct certification, the notice of potential disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals through direct certification.

(2) For disclosure to Medicaid or SCHIP, the State agency or child care institution, as appropriate, must notify parents/guardians that their children's free or reduced price meal eligibility information will be disclosed to Medicaid and/or SCHIP unless the parent/guardian elects not to have their information disclosed and notifies the State agency or child care institution, as appropriate, by a date specified by the State agency or child care institution, as appropriate. Only the parent or guardian who is a member of the household or family for purposes of the free and reduced price meal application may decline the disclosure of eligibility information to Medicaid or SCHIP. The notification must inform parents/guardians that they are not required to consent to the disclosure, that the information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP, and that their decision will not affect their children's eligibility for free or reduced price meals. The notification may be included in the letter/notice to parents/guardians that accompanies the free and reduced price meal application, on the application itself or in a separate notice provided to parents/guardians. The notice must give parents/guardians adequate time to respond if they do not want their information disclosed. The State agency or child care institution, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (e)(1)(ii)(F) of this section, ''We may share your information with Medicaid or the State Children's Health Insurance Program, unless you tell us not to. The information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP.'' For children determined eligible for free meals through direct certification, the notice of potential disclosure and opportunity to decline the disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals through direct certification process.

(l) *Other disclosures.* State agencies and child care institutions that plan to use or disclose information about children eligible for free and reduced price meals in ways not specified in this section must obtain written consent from children's parents or guardians prior to the use or disclosure.

(1) The consent must identify the information that will be shared and how the information will be used.

(2) There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free or reduced price meals and that the individuals or programs receiving the information will not share the information with any other entity or program.

(3) Parents/guardians must be permitted to limit the consent only to those programs with which they wish to share information.

(4) The consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free and reduced price meal application.

(m) *Agreements with programs/individuals receiving children's free or reduced price meal eligibility information.* Agreements or Memoranda of Understanding (MOU) are recommended or required as follows:

(1) The State agency or child care institution, as appropriate, should have a written agreement or MOU with programs or individuals receiving eligibility information, prior to disclosing children's free and reduced price meal eligibility information. The agreement or MOU should include information similar to that required for disclosures to Medicaid and SCHIP specified in paragraph (m)(2) of this section.

(2) For disclosures to Medicaid or SCHIP, the State agency or child care institution, as appropriate, must have a written agreement with the State or local agency or agencies administering Medicaid or SCHIP prior to disclosing children's free or reduced price meal eligibility information to those agencies. At a minimum, the agreement must:

(i) Identify the health insurance program or health agency receiving children's eligibility information;

(ii) Describe the information that will be disclosed;

(iii) Require that the Medicaid or SCHIP agency use the information obtained and specify that the information must be used to seek to enroll children in Medicaid or SCHIP;

(iv) Require that the Medicaid or SCHIP agency describe how they will use the information obtained;

(v) Describe how the information will be protected from unauthorized uses and disclosures;

(vi) Describe the penalties for unauthorized disclosure; and

(vii) Be signed by both the Medicaid or SCHIP program or agency and the State agency or child care institution, as appropriate.

(n) *Penalties for unauthorized disclosure or misuse of children's free and reduced price meal eligibility information.* In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than $1,000 or imprisoned for up to 1 year, or both.

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

■ 1. The authority citation for Part 245 continues to read as follows:

Authority: 42 U.S.C. 1752, 1758, 1759a, 1772, 1773 and 1779.

■ 2. In § 245.2, revise paragraph (a–3) to read as follows and amend paragraph (a–4)(1)(ii) by adding the word ''FDPIR'' between the word ''other'' and the word ''identifier'':

§ 245.2 Definitions.

* * * * *

(a-3) *Disclosure* means reveal or use individual children's program eligibility information obtained through the free and reduced price meal or free milk eligibility process for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche,

electronic communication or any other means.

* * * * *

§ 245.5 [Amended]

■ 3. In § 245.5, amend paragraphs (a)(1)(iii) and (a)(1)(iv) by removing the references ''§ 245.2(a-4)(1)(i)'' and ''§ 245.2(a-4)(1)(ii)'', respectively, and by adding in their place the reference ''§ 245.2(a-4)''.

■ 4. In § 245.6:

■ a. Revise paragraph (a)(1);

■ b. Revise paragraph (f) and add new paragraphs (g) through (k) at the end.

The revisions and additions read as follows:

§ 245.6 Certification of children for free and reduced price meals and free milk.

(a) * * *

(1) ''The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free or reduced price meals. You must include the social security number of the adult household member who signs the application. The social security number is not required when you apply on behalf of a foster child or you list a Food Stamp, Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number for your child or other FDPIR identifier or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if your child is eligible for free or reduced price meals, and for administration and enforcement of the lunch and breakfast programs.'' When the State agency or school food authority, as appropriate, plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (h) of this section, must be added to the Privacy Act notice/statement. State agencies and school food authorities are responsible for drafting the appropriate notice and ensuring that the notice complies with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note (Disclosure of Social Security Number)).

* * * * *

(f) *Disclosure of children's free and reduced price meal or free milk eligibility information to education and certain other programs and individuals without parental consent.* The State agency or school food authority, as appropriate, may disclose aggregate information about children eligible for free and reduced price meals or free milk to any party without parental notification and consent when children cannot be identified through release of the aggregate data or by means of deduction. Additionally, the State agency or school food authority also may disclose information that identifies children eligible for free and reduced price meals or free milk to persons directly connected with the administration or enforcement of the programs and the individuals specified in this paragraph (f) without parent/guardian consent. The State agency or school food authority that makes the free and reduced price meal or free milk eligibility determination is responsible for deciding whether to disclose children's free and reduced price meal or free milk eligibility information.

(1) *Persons authorized to receive eligibility information.* Only persons directly connected with the administration or enforcement of a program or activity listed in paragraphs (f)(2) or (f)(3) of this section may have access to children's eligibility information, without parental consent. Persons considered directly connected with administration or enforcement of a program or activity listed in paragraphs (f)(2) or (f)(3) of this section are Federal, State, or local program operators responsible for the ongoing operation of the program or activity or responsible for program compliance. Program operators may include persons responsible for carrying out program requirements and monitoring, reviewing, auditing, or investigating the program. Program operators may include contractors, to the extent those persons have a need to know the information for program administration or enforcement. Contractors may include evaluators, auditors, and others with whom Federal or State agencies and program operators contract with to assist in the administration or enforcement of their program in their behalf.

(2) *Disclosure of children's names and eligibility status only.* The State agency or school food authority, as appropriate, may disclose, without parental consent, children's names and eligibility status (whether they are eligible for free or reduced price meals or free milk) to persons directly connected with the administration or enforcement of:

(i) A Federal education program;

(ii) A State health program or State education program administered by the State or local education agency;

(iii) A Federal, State, or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (i.e., food assistance programs for households with incomes at or below 185 percent of the Federal poverty level); or

(iv) A third party contractor assisting in verification of eligibility efforts by contacting households who fail to respond to requests for verification of their eligibility.

(3) *Disclosure of all eligibility information in addition to eligibility status.* In addition to children's names and eligibility status, the State agency or school food authority, as appropriate, may disclose, without parental consent, all eligibility information obtained through the free and reduced price meals or free milk eligibility process (including all information on the application or obtained through direct certification) to:

(i) Persons directly connected with the administration or enforcement of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966. This means that all eligibility information obtained for the National School Lunch Program, School Breakfast Program or Special Milk Program may be disclosed to persons directly connected with administering or enforcing regulations under the National School Lunch or School Breakfast Programs (Parts 210 and 220, respectively, of this chapter), Child and Adult Care Food Program (Part 226 of this chapter), Summer Food Service Program (Part 225 of this chapter) and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (Part 246 of this chapter);

(ii) The Comptroller General of the United States for purposes of audit and examination; and

(iii) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in paragraphs (g)(3) and (g)(4) of this section.

(4) *Use of free and reduced price meal or free milk eligibility information by other programs other than Medicaid or the State Children's Health Insurance Program (SCHIP).* State agencies and school food authorities may use free and reduced price meal or free milk eligibility information for administering or enforcing the National School Lunch, Special Milk or School Breakfast Programs (Parts 210, 215 and 220, respectively, of this chapter). Additionally, any other Federal, State, or local agency charged with administering or enforcing these programs may use the information for that purpose. Individuals and programs to which children's free and reduced price meal eligibility information has been disclosed under this section may

use the information only in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(g) *Disclosure of children's eligibility information to Medicaid and/or SCHIP, unless parents decline.* Children's free or reduced price meal or free milk eligibility information only may be disclosed to Medicaid or SCHIP when both the State agency and the school food authority so elect, the parent/guardian does not decline to have their eligibility information disclosed and the other provisions described in paragraph (i) of this section are met. Provided that both the State agency and school food authority opt to allow the disclosure of eligibility information to Medicaid and/or SCHIP, the State agency or school food authority, as appropriate, may disclose children's names, eligibility status (whether they are eligible for free or reduced price meals or free milk), and any other eligibility information obtained through the free and reduced price meal or free milk application or obtained through direct certification to persons directly connected with the administration of Medicaid or SCHIP. Persons directly connected to the administration of Medicaid and SCHIP are State employees and persons authorized under Federal and State Medicaid and SCHIP requirements to carry out initial processing of Medicaid or SCHIP applications or to make eligibility determinations for Medicaid or SCHIP.

(1) The State agency must ensure that:

(i) The child care institution and health insurance program officials have a written agreement that requires the health insurance program agency to use the eligibility information to seek to enroll children in Medicaid and SCHIP; and

(ii) Parents/guardians are notified that their eligibility information may be disclosed to Medicaid or SCHIP and given an opportunity to decline to have their children's eligibility information disclosed, prior to any disclosure.

(2) *Use of children's free and reduced price meal eligibility information by Medicaid/SCHIP.* Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal or free milk eligibility information may use the information to seek to enroll children in Medicaid or SCHIP. The Medicaid and SCHIP enrollment process may include targeting and identifying children from low-income households who are potentially eligible for Medicaid or SCHIP for the purpose of seeking to enroll them in Medicaid or SCHIP. No further disclosure of the information may be made. Medicaid and SCHIP agencies and health insurance program operators also may verify children's eligibility in a program under the Child Nutrition Act of 1966 or the Richard B. Russell National School Lunch Act.

(h) *Notifying households of potential uses and disclosures of children's eligibility information.* Households must be informed that the information they provide on the free and reduced price meal or free milk application will be used to determine eligibility for free and reduced price meals or free milk and that eligibility information may be disclosed to other programs.

(1) For disclosures to programs, other than Medicaid or SCHIP, that are permitted access to children's eligibility information, without parent/guardian consent, the State agency or school food authority, as appropriate, must notify parents/guardians at the time of application that their children's free and reduced price meal or free milk eligibility information may be disclosed. The State agency or school food authority, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (a)(1) of this section, ''We may share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs; auditors for program reviews; and law enforcement officials to help them look into violations of program rules.'' For children determined eligible through direct certification, the notice of potential disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals or free milk through direct certification.

(2) For disclosure to Medicaid or SCHIP, the State agency or school food authority, as appropriate, must notify parents/guardians that their children's free and reduced price meal or free milk eligibility information will be disclosed to Medicaid and/or SCHIP unless the parent/guardian elects not to have their information disclosed. Additionally, the State agency or school food authority, as appropriate, must give parents/guardians an opportunity to elect not to have their information disclosed to Medicaid or SCHIP. Only the parent or guardian who is a member of the household or family for purposes of the free and reduced price meal or free milk application may decline the disclosure of eligibility information to Medicaid or SCHIP. The notification must inform parents/guardians that they are not required to consent to the disclosure, that the information, if disclosed, will be used to identify children eligible for and to seek to enroll children in a health insurance program, and that their decision will not affect their children's eligibility for free and reduced price meals or free milk. The notification may be included in the letter/notice to parents/guardians that accompanies the free and reduced price meal or free milk application, on the application itself or in a separate notice provided to parents/guardians. The notice must give parents/guardians adequate time to respond. The State agency or school food authority, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (a)(1) of this section, ''We may share your information with Medicaid or the State Children's Health Insurance Program, unless you tell us not to. The information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP.'' For children determined eligible through direct certification, the notice of potential disclosure and opportunity to decline the disclosure may be included in the document informing parents/guardians of their children's eligibility for free meal or free milk through direct certification.

(i) *Other disclosures.* State agencies and school food authorities that plan to use or disclose information about children eligible for free or reduced price meals or free milk in ways not specified in this section must obtain written consent from the child's parent or guardian prior to the use or disclosure. Only a parent or guardian who is a member of the child's household for purposes of the free and reduced price meal or free milk application may give consent to the disclosure of free and reduced price meal eligibility information.

(1) The consent must identify the information that will be shared and how the information will be used.

(2) The consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free and reduced price meal or free milk application.

(3) There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free or reduced price meals or free milk and that the individuals or programs receiving the information will not share the information with any other entity or program.

(4) Parents/guardians must be permitted to limit the consent only to

those programs with which they wish to share information.

(j) *Agreements with programs/individuals receiving children's free and reduced price meal or free milk eligibility information.*

(1) An agreement with programs or individuals receiving free and reduced price meal or free milk eligibility information is recommended for programs other than Medicaid or SCHIP. The agreement or MOU should include information similar to that required for disclosures to Medicaid and SCHIP specified in paragraph (j)(2) of this section.

(2) The State agency or school food authorities, as appropriate, must have a written agreement with the State or local agency or agencies administering Medicaid or SCHIP prior to disclosing children's free and reduced price meal or free milk eligibility information. At a minimum, the agreement must:

(i) Identify the health insurance program or health agency receiving children's eligibility information;

(ii) Describe the information that will be disclosed;

(iii) Require that the Medicaid or SCHIP agency use the information obtained and specify that the information must be used to seek to enroll children in Medicaid or SCHIP;

(iv) Require that the Medicaid or SCHIP agency describe how they will use the information obtained;

(v) Describe how the information will be protected from unauthorized uses and disclosures;

(vi) Describe the penalties for unauthorized disclosure; and

(vii) Be signed by both the Medicaid or SCHIP program or agency and the State agency or child care institution, as appropriate.

(k) *Penalties for unauthorized disclosure or misuse of information.* In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than $1,000 or imprisoned for up to 1 year, or both.

Dated: March 1, 2007.

Nancy Montanez Johner,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. E7–4268 Filed 3–9–07; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. APHIS–2006–0121]

RIN 0579–AC19

Importation of Mangoes From India

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation into the continental United States of mangoes from India under certain conditions. As a condition of entry, the mangoes must undergo irradiation treatment and be accompanied by a phytosanitary certificate with additional declarations providing specific information regarding the treatment and inspection of the mangoes and the orchards in which they were grown. In addition, the mangoes will be subject to inspection at the port of first arrival. This action allows for the importation of mangoes from India into the continental United States while continuing to provide protection against the introduction of quarantine pests.

EFFECTIVE DATE: March 12, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

On November 17, 2006, we published in the **Federal Register** (71 FR 66881–66888, Docket No. APHIS–2006–0121) a proposal [1] to allow the importation into the continental United States of mangoes from India under certain conditions. As a condition of entry, we proposed that the mangoes would have to be treated with a minimum absorbed dose of 400 gray of irradiation and be accompanied by a phytosanitary certificate certifying that the fruit received the required irradiation treatment. In addition, because the required irradiation treatment would not mitigate the risks posed by the fungi *Cytosphaera mangiferae* and *Macrophoma mangiferae* or the bacterium *Xanthomonas campestris* pv. *mangiferaeindicae,* which we consider to be of medium risk of introduction and dissemination within the continental United States, we proposed additional safeguarding measures. For the two fungi; we proposed three options: (1) The mangoes be treated with a broad-spectrum post-harvest fungicidal dip, (2) the orchard of origin be inspected at a time prior to the beginning of harvest as determined by the mutual agreement between the Animal and Plant Health Inspection Service (APHIS) and the national plant protection organization (NPPO) of India and be found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae,* or (3) the orchard of origin be treated with a broad-spectrum fungicidal application during the growing season, be inspected at a time prior to the beginning of harvest as determined by the mutual agreement between APHIS and the NPPO of India, and the fruit found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae.* For the bacterium *X. campestris* pv. *mangiferaeindicae,* we proposed that the shipment be inspected during preclearance activities and found free of *X. campestris* pv. *mangiferaeindicae.* The required phytosanitary certificate would have to confirm that one of the three measures described above for the fungi and the inspection for the bacterium had been carried out.

We solicited comments concerning our proposal for 60 days, ending January 16, 2007. We received three comments by that date. The first comment was from a private citizen who requested that American businesses be allowed to import fruit from wherever they like without being subject to regulations. Such an approach would present an unacceptable level of risk. As The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) states, the unregulated movement of plant pests, noxious weeds, plants, certain biological control organisms, plant products, and articles capable of harboring plant pests or noxious weeds could present an unacceptable risk of introducing or spreading plant pests or noxious weeds, which is contrary to

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov,* click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0121, then click ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

APHIS' mission to protect American agriculture. Therefore, the PPA authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States or the dissemination of a plant pest or noxious weed within the United States. The Secretary of Agriculture has delegated this authority to APHIS.

The second comment was from an industry group that offered a correction to the statement in the proposed rule that India contains only one irradiation facility. The commenter stated that there are multiple food irradiation facilities in India, although the commenter did not know of the APHIS certification status of these additional facilities. To our knowledge, India is currently making the necessary adjustments to only one facility to meet the requirements outlined in 7 CFR part 305. Additional irradiation facilities can be evaluated for APHIS certification, if requested by the Government of India.

The third comment was from a representative of the NPPO of India. The commenter asked that APHIS work with the NPPO of India to reduce the cost of the trust fund required by the regulations to pay for the cost of preclearance activities. APHIS acknowledges, and has considered, India's concerns about the cost of the preclearance program and we will work with the NPPO to explore ways to minimize costs.

The commenter also asked that APHIS recognize a secondary government agency, The Agricultural and Processed Food Products Export Development Authority, working on behalf of the NPPO of India to implement the requirement for the registration of packinghouses and orchards within India. This request is consistent with the terms of the operational workplan, which allows the NPPO of an importing country or its designee to conduct inspections, registration, etc.

The commenter also requested that APHIS forward guidelines for the labeling of mango shipments from other countries to the NPPO of India in order to develop its own guidelines. Due to the irradiation requirement for mangoes from India, labeling requirements for shipments of Indian mangoes will be different than mangoes imported from other countries. The use of irradiation on Indian mangoes also means that, in addition to APHIS labeling requirements, Indian mangoes must also meet Food and Drug Administration labeling requirements. Requirements for the labeling of shipments of mangoes from India will be provided in the operational workplan.

The commenter also suggested limiting the additional declarations on the phytosanitary certificate to a statement regarding the broad spectrum fungicidal dip and pest freedom of shipments. The commenter stated that the additional declarations in the proposed rule were needless due to preclearance activities already requiring pre-export inspection by APHIS. Additional declarations are common on phytosanitary certificates for fruit and vegetable imports and serve to alert APHIS inspectors at the port of entry to specific pests of concern or specific operational procedures that were required to be met before import. While we do not agree with the statement that the additional declarations are needless, we agree that the text of the requirement could be simplified. Therefore, in this final rule, paragraph (e) of § 319.56–2tt requires, with respect to the additional declaration, that the NPPO confirm that (1) The mangoes were subjected to one of the pre- or post-harvest mitigation options described in § 319.56–2tt(b) and (2) the mangoes were inspected during preclearance activities and found free of *Cytosphaera mangiferae, Macrophoma mangiferae,* and *Xanthomonas campestris* pv. *mangiferaeindicae.*

The commenter indicated that producers in India may wish to export mango varieties other than, or in addition to, the three varieties mentioned in the proposed rule. We mentioned specific varieties in the proposed rule's economic analysis, but the regulatory text of the proposed rule and this final rule contains no limitations on the varieties of mangoes that will be eligible for importation into the continental United States from India.

The economic analysis in the proposed rule stated that the mango harvest season in India usually begins in April or May and lasts about 2 months. The commenter stated that the harvest season stretches from March to July. The economic analysis in this final rule has been updated to reflect the timeframe provided by the commenter. That change does not affect the conclusions of our analysis.

Finally, the commenter stated that the wrapping of pallet-loads of cartons with polyethylene prior to leaving the treatment facility will not be practical for shipments to the United States because the final palletization of air shipments would be conducted at the airport. As an alternative, the commenter suggested the use of individual, pest-proof boxes with less than 1.6 mm netting to protect against pests entering the boxes through ventilation holes. The regulations in § 305.31(g)(3)(i)(A) provide for the use of the individual pest-proof boxes suggested by the commenter as a means of protecting treated fruit from reinfestation. However, the wrapping or strapping of pallet-loads of cartons referred to by the commenter is required under regulations in § 305.31(g)(3)(ii) in order to preserve the identity of treated lots, which is something that the commenter's suggestion does not address. We are willing to work with the Indian NPPO to explore alternative ways to preserve the identity of treated lots in accordance with the applicable regulations.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The harvest season for mangoes from India begins in March. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

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.

We are amending the fruits and vegetables regulations to allow the importation into the continental United States of mangoes from India under certain conditions. As a condition of entry, the mangoes must undergo irradiation treatment and be accompanied by a phytosanitary certificate with additional declarations providing specific information regarding

the treatment and inspection of the mangoes and the orchards in which they were grown. In addition, the mangoes will be subject to inspection at the port of first arrival. This action allows for the importation of mangoes from India into the continental United States while continuing to provide protection against the introduction of quarantine pests.

Production of mangoes in the United States is limited to three States: Florida, California, and Hawaii. Due to climatic conditions and expanding urbanization in areas of production, mango-producing acreage is small and production minimal. We rely heavily on imports of fresh mangoes in order to meet consumer demand. The majority of mangoes produced in Florida, California, and Hawaii are destined for local markets, with very limited larger-scale commercial production. The Small Business Administration's (SBA) size standard for mango farming is $750,000 or less in annual receipts.[2] According to the 2002 Census of Agriculture, there were a total of 623 farms (400 in Florida, 11 in California, and 212 in Hawaii) engaged in mango production. Census data did not include annual sale valuation statistics for mango-producing farms. The exact number of mango farms that would be considered small by SBA standards is unknown. However, based on the small bearing acreage, production principally for local markets, and our dependence on imports to meet domestic demand for mangoes, we would expect the majority of these operations to be classified as small. Below we examine recent production in the three mango-producing States, followed by a discussion of foreign supply.

Florida

Over 80 percent of mango acreage in Florida is located in Miami-Dade County, and the remaining acreage is located in surrounding areas. Mango cultivars commonly grown in Florida, which also make up the majority of varieties currently exported to the United States, are 'Tommy Atkins,' 'Keitt,' 'Haden,' and 'Kent.' The 2002 Census of Agriculture states that Florida had 400 mango-producing farms with 1,373 acres.[3] By 2003, the most recent year for which statistics are available, the number of acres had dropped to 1,300, a 24 percent decline in 3 years. Recent estimates indicate that the acreage has decreased still further, to a modest 1,000 acres in 2005.[4] Only two new acres of mangoes have been planted in Florida since 2000. In a 1997 production report, the last year these statistics were gathered, a mango crop of 100,000 bushels (5.5 million pounds) was harvested, with a price of $14.50 per bushel, yielding a total value of $1.45 million.[5] Due to declining acreage, and consequently reduced harvest yield, production and value statistics are no longer maintained. The majority of mangoes produced in Florida are destined for local farmers' and specialty markets, or sold as green fruit for processing. We are unaware of any larger-scale commercial shipments of fresh mangoes by Florida producers.

California

According to the 2002 Census of Agriculture, there were 11 mango-producing farms in California, with an unknown amount of acreage.[6] Until recently, mangoes produced in California were thought to be sold only in local markets. However, recent news reports indicate that there are two commercial mango operations in the Coachella Valley of California that sell their fruit through the Corona College Heights Orange & Lemon Association in Corona, CA.[7] According to the article, the two operations have a combined total of 210 bearing acres, yielding about 275,000 cartons of mangoes (approximately 3.8 million pounds), with a little less than half being certified organic.[8] In addition, one of the growers expects to have an additional 48 acres bearing fruit in 2007. Commercial mango production in California is a relatively new venture, and is expected to grow only gradually. As the article points out, the availability of suitable land for mangoes is limited due to the fruits' susceptibility to frost. For those areas that are not prone to frost, producers are reluctant to switch to mango production from profitable crops such as grapes and citrus because of the heavy initial investments and the long period between first investment and return. The time period between first planting and first production is 5 years for mango trees, so it is not surprising that producers are reluctant to enter into this industry.

Hawaii

In 2002, the Census of Agriculture recorded 212 mango-producing farms in Hawaii, but withheld production acreage to avoid disclosing information for individual operations. In 2004, the Hawaiian field office of the National Agricultural Statistics Service (NASS) reported there were 140 farms, with a total of 275 acres of crops, of which 200 acres yielded utilized production of 380,000 pounds, with a sales value of $350,000. Preliminary reports for 2005 indicate a decrease of 28.5 percent in the number of mango farms to 100, but an increase in total crop acreage to 295. The amount of harvested acres in 2005 was 190, which represents a slight decrease. However, there was a 39.4 percent increase in utilized production, which, combined with a higher farm price per pound, yielded a 40.2 percent increase in total sales value to $586,000.[9] The amount of commercial production of mangoes in Hawaii is unknown at this time; however, we believe the majority of production is funneled into local markets.

As is evident, U.S. mango production is limited, with most of the fruit sold locally. In fact, official supply and utilization data maintained by USDA's Economic Research Service (ERS) have not recorded domestic production figures since 1998. U.S. consumers are almost entirely dependent on imports to meet domestic demand. Table 1 presents ERS data on the supply and utilization of fresh mangoes, 2002–2005.[10]

[2] Table of Size Standards based on NAICS 2002 [Other Noncitrus Fruit Farming: NAICS code 111339]. Washington, DC: U.S. Small Business Administration, effective July 31, 2006.

[3] USDA-NASS. 2002 Census of Agriculture, Table 31. Fruits and Nuts: 2002 and 1997. Washington, DC: National Agricultural Statistics Service, 2002.

[4] Richard J. Campbell, Ph.D. Senior Curator of Tropical Fruit, ''International Mango Festival 2005 Curator's Choice Cultivars.'' Coral Gables, FL: Fairchild Tropical Botanic Garden, page updated May 31, 2005. (*http://www.fairchildgarden.org/horticulture/mangocurators.html*.)

[5] USDA–NASS–FL. Tropical Fruit Acres and Trees. Orlando, FL: Florida Agricultural Statistics Service, December 11, 2002, and May 12, 2003.

[6] The production acreage was withheld to avoid disclosing confidential business information for individual farms.

[7] ''Organic Mangos Now Coming Out of California'' by Tim Linden. Web site: *http://theproducenews.com/storydetail.cfm?ID=6216,* August 18, 2006.

[8] **Note:** According to a source describing the harvesting and packing of Florida mangoes, a carton can hold 8 to 20 mangoes depending on the size of the fruit, and have a capacity of 14 lbs (6.35 kg) of fruit (*http://www.hort.purdue.edu/newcrop/morton/mango_ars.html*).

[9] USDA–NASS–HI. Hawaii Tropical Specialty Fruits. Honolulu, Hawaii: National Agricultural Statistics Service USDA, Hawaii Field Office, 2004 and 2005 edition.

Note: Utilized production may include fresh and processed utilization.

[10] USDA–ERS. Table F–8 Fresh Mangoes: Supply and Utilization, 1980 to date. Washington, DC: Economic Research Service, October 2006.

TABLE 1.—FRESH MANGOES SUPPLY AND UTILIZATION

Year	Utilization				
	Imports	Total supply	Exports	Consumption	
				Total	Per capita
	Million pounds				Pounds
2002	580.6	580.6	11.8	568.8	1.97
2003	613.8	613.8	14.5	599.4	2.06
2004	609.2	609.2	17.1	592.1	2.01
2005	575.1	575.1	18.3	556.7	1.88

As is evident from the data, annual consumption of fresh mangoes in 2005 was 1.88 pounds per person, down slightly from a historic high of a little over 2 pounds per person reached in 2003. Industry experts correlate this decline with lower imports, and believe the downward trend in consumption will be reversed as preliminary data indicates imports were higher in 2006.[11] In 2005, 575.1 million pounds of fresh mangoes were imported into the United States, which was a decline from the previous year when imports totaled 609.2 million pounds. Table 2 highlights the volume of fresh mango imports for the calendar year 2005 from the top five countries.

TABLE 2.—FRESH MANGO IMPORTS, VOLUME AND VALUE, JANUARY–DECEMBER 2005

Country	Imports 9/1–5/31	Imports 6/1–8/31	Total yearly imports	Value 9/1–5/31	Value 6/1–8/31	Total yearly value
	Million pounds			1,000 dollars		
Mexico	169.7	180.7	350.4	$51,707	$51,603	$103,310
Peru	65.8	.....	65.8	21,522	.....	21,522
Brazil	56.0	1.6	57.6	17,638	585	18,223
Ecuador	53.1	.....	53.1	13,476	.....	13,476
Haiti	11.4	9.2	20.7	3,886	3,457	7,343
World total	382.9	192.1	575.0	113,309	55,808	169,117

Data source: Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics.
Note: HS Codes used were 0804504040 (mangoes fresh, entered 9/1–5/31) and 0804506040 (mangoes fresh, entered 6/1–8/31).

The 2005 trade statistics indicate fresh mangoes were imported from 13 countries, with the overwhelming majority originating from countries in Central and South America. Although the United States imports mangoes from many countries, Mexico is the major supplier, with a market share of more than 60 percent of the annual import volume, and therefore, essentially 60 percent of the U.S. supply of mangoes. Interestingly, though, Mexico is only the fourth leading producer of mangoes, trailing behind India, China, and Thailand. Its proximity to the United States and participation in the North American Free Trade Agreement (NAFTA) provide advantages over other exporting countries of lower transport costs and reduced or no tariffs.[12]

Although this final rule will allow imports of all mango varieties, according to comments received on the proposed rule, producers in India are currently interested in exporting six varieties of mangoes to the United States—'Kesar,' 'Alfonse,'[13] 'Banganpalli,' 'Lagra,' 'Dussehry,' and 'Neelam'—from four States: Andhra Pradesh, Gujarat, Maharashtra, and Uttar Pradesh. Based on a site visit conducted by APHIS officials, we believe the majority of exports would originate from Gujarat and Maharashtra, where there are two and six production areas, respectively, producing 'Kesar' and 'Alfonse' varieties. Comments received on the proposed rule indicate that the harvest season in India stretches from March to July. According to the request from the Government of India, the quantity of mangoes exported to the United States would be about 100 sea containers per year.[14] With India being the world leader in mango production, and a typical export packinghouse having a shipping capacity of 40–50 metric tons (over 88,000 lbs.) per day for 45–50 days of the harvest season, the amount imported into the United States would likely only be limited by U.S. market forces. Entry of Indian mangoes into the domestic market would provide increased variety and greater selection for consumers in the continental United States.

The overwhelming majority of mangoes produced domestically are sold in local markets. Even though this final rule will result in an overall increase in fresh mango imports, and thus, an increase in domestic supply, we do not anticipate the price impacts on domestic mango producers to be large. Indian mangoes would primarily compete for market share against other imported mangoes. Based on the higher transportation costs alone, we would expect the price of Indian mangoes to be higher than mangoes coming from countries currently exporting to the United States. Statistics show that in 2004, the export price of Indian mangoes ($595.95/metric tonne) was 16 percent higher than the export price of

[11] USDA–ERS. Fruit and Tree Nuts Outlook. May 25, 2006.

[12] USDA–ERS. Fruit and Tree Nuts Briefing Room. Updated: October 8, 2004.

[13] This mango variety is also known as 'Alfonso'.

[14] Source: A Qualitative, Pathway-Initiated Pest Risk Assessment, prepared June 2006 (APHIS). **Note:** The average container used to ship mangoes from South America is a 44-foot container, having an average capacity of 22 pallets. Each pallet holds an average 200 boxes. The average weight of each box is 5.0 kilogram (kg). Thus, the total weight of each container is 200 boxes × 5.0 kg × 22 pallet = 22,000 kg (48,501.70 lbs.). Source: Adly Ibrahim (APHIS).

mangoes from Mexico ($511.96/metric tonne), our primary supplier.[15]

In order to compete with other countries importing mangoes into the United States, India expects to first target niche and gourmet markets by promoting the mangoes as premium quality fruit. Producers indicated to the APHIS site visit team that initially, the mangoes are expected to be sold through premium catalog sales and/or in specialty and ethnic grocers, after which the mangoes would then be sold in the regular retail sector. Additionally, we expect that India would initially target those geographic areas and markets with high concentrations of Asian and South-Asian persons. According to the United States Census in 2000, 11.9 million people, or 4.2 percent of the population, identified themselves as Asian. The 10 states with the largest Asian demographic in 2000 were California, New York, Hawaii, Texas, New Jersey, Illinois, Washington, Florida, Virginia, and Massachusetts, which combined represent 75 percent of the Asian population in the United States. Regionally, the West and the Northeast have the largest concentrations of Asians. Asian Indians represented the third largest specified Asian group, with a total of 1.9 million people who reported Asian Indian alone or in combination with at least one other race or Asian group.[16]

Usually, economic theory dictates that an overall increase in supply of a particular commodity would trigger downward pressure on price and result in reduced market share for domestic producers of that commodity. However, we believe the effects on domestic producers of this final rule would be minimal, in light of the predominance of imports and the specialty markets that India is expected to target. Other industries that may be affected by this final rule, as categorized in the North American Industry Classification System (NAICS), are Fresh Fruit and Vegetable Merchant Wholesalers (NAICS 424480), Fruit and Vegetable Markets (NAICS 445230), and Mail-Order Houses (NAICS 454113).[17] All of these industries are primarily comprised of small entities. There were 4,644 fruit and vegetable merchant establishments that operated for the entire year, with 4,436 of them, or 95.5 percent, operating with fewer than 100 employees. Of the 2,257 fruit and vegetable market establishments that operated for the entire year, only 84 of them had sales of over $5 million, leaving over 96 percent of these establishments with sales less than $5 million. Lastly, there were 8,224 establishments classified under the NAICS code for mail-order houses, of which 7,319 of them, or about 89 percent, had annual sales of less than $10 million.[18] All of the above industries may benefit from this final rule by having access to Indian mangoes, which could bolster sales volume and annual revenue. Based on the research we have conducted and the lack of comments on the proposed rule that would suggest otherwise, we expect the benefits of opening the market to Indian mangoes would outweigh any expected costs to domestic producers.

The final rule will only allow the importation of commercial shipments of fresh mangoes from India provided they meet specific phytosanitary requirements. The requirements in this final rule include treatment in India of mango fruit with irradiation using a minimum absorbed dose of 400 gray, and preclearance inspection for those pests not targeted by the irradiation treatment. The NPPO of India will enter into a trust fund agreement with APHIS to provide for all expenses incurred by APHIS while performing preclearance activities, including salaries and administrative, travel, and other incidental expenses. Costs, if any, not covered by the trust fund will be minimal. In addition to irradiation and other preclearance activities, current regulations set out a course of action if, on inspection at the port of arrival, any actionable pest or pathogen is identified. We believe these risk-mitigating phytosanitary measures are sufficient to protect against the introduction of quarantine plant pests into the continental United States associated with the importation of mangoes from India.

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 12988

This final rule allows mangoes to be imported into the United States from India. State and local laws and regulations regarding mangoes imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment was prepared for, and made available for public comment through, the proposed rule for this rulemaking. No comments regarding the environmental assessment were received during the comment period for the proposed rule. The environmental assessment provides a basis for the conclusion that the importation of mangoes under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[19] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through

[15] FAOSTAT–TradeSTAT. Food and Agriculture Organization of the United Nations Trade Databases. (*http://faostat.fao.org.*)

[16] The Asian Population: 2000, Census 2000 Brief. Washington, DC: U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, issued February 2002.

[17] SBA size standards are as follows: NAICS code 424480: 100 employees or less; NAICS code 445230: $6.5 million or less in annual receipts; NAICS code 454113 (**Note:** includes those operations that engage in direct catalog sales): $23 million or less in annual receipts.

[18] *Establishment and Firm Size based on 2002 Economic Census.* Washington, DC: U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, issued December 2005 (wholesale trade) and November 2005 (retail trade).

[19] Go to *http://www.regulations.gov,* click on the ''Advanced Search'' tab and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0121, click on ''Submit,'' then click on the Docket ID link in the search results page. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0312.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR parts 305 and 319 as follows:

PART 305—PHYTOSANITARY TREATMENTS

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 305.2, the table in paragraph (h)(2)(i) is amended by adding, under India, an entry for mango to read as follows:

§ 305.2 Approved treatments.

* * * * *

(h) * * *

(2) * * *

(i) * * *

Location	Commodity	Pest	Treatment schedule
*	*	*	*
India			
*	*	*	*
	Mango	Plant pests of the class Insecta except pupae and adults of the order Lepidoptera.	IR
*	*	*	*

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

■ 3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 4. A new § 319.56–2tt is added to read as follows:

§ 319.56–2tt Conditions governing the entry of mangoes from India.

Mangoes (*Mangifera indica*) may be imported into the continental United States from India only under the following conditions:

(a) The mangoes must be treated in India with irradiation by receiving a minimum absorbed dose of 400 Gy in accordance with § 305.31 of this chapter.

(b) The risks presented by *Cytosphaera mangiferae* and *Macrophoma mangiferae* must be addressed in one of the following ways:

(1) The mangoes are treated with a broad-spectrum post-harvest fungicidal dip; or

(2) The orchard of origin is inspected prior to the beginning of harvest as determined by the mutual agreement between APHIS and the national plant protection organization (NPPO) of India and the orchard is found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae;* or

(3) The orchard of origin is treated with a broad-spectrum fungicide during the growing season and is inspected prior to the beginning of harvest as determined by the mutual agreement between APHIS and the NPPO of India and the fruit found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae.*

(c) Each consignment of mangoes must be inspected jointly by APHIS and the NPPO of India as part of the required preclearance inspection activities at a time and in a manner determined by mutual agreement between APHIS and the NPPO of India.

(d) The risks presented by *Cytosphaera mangiferae, Macrophoma mangiferae,* and *Xanthomonas campestris* pv. *mangiferaeindicae* must be addressed by inspection during preclearance activities.

(e) Each consignment of fruit must be inspected jointly by APHIS and the NPPO of India and accompanied by a phytosanitary certificate issued by the NPPO of India certifying that the fruit received the required irradiation treatment. The phytosanitary certificate must also bear two additional declarations confirming that:

(1) The mangoes were subjected to one of the pre- or post-harvest mitigation options described in § 319.56–2tt(b) and

(2) The mangoes were inspected during preclearance activities and found free of *Cytosphaera mangiferae, Macrophoma mangiferae,* and *Xanthomonas campestris* pv. *mangiferaeindicae.*

(f) The mangoes may be imported in commercial consignments only. Approved by the Office of Management and Budget under control number 0579–0312)

Done in Washington, DC, this 7th day of March 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–4444 Filed 3–9–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC08

Common Crop Insurance Regulations; Walnut Crop Insurance Provisions; Almond Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations; Walnut Crop Insurance Provisions and Almond Crop Insurance Provisions. The intended effect of this action is to change the insurable age requirements for almonds and walnuts.

EFFECTIVE DATE: April 11, 2007.

FOR FURTHER INFORMATION CONTACT: John McDonald, Risk Management Specialist, Deputy Administrator for Product Management, Product Administrator and Standards Division, Risk Management Agency, at the Kansas City, MO, address listed above; telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through November 30, 2007.

Government Paperwork Elimination Act (GPEA) Compliance

FCIC is committed to compliance with the GPEA, which requires Government agencies, in general, to provide the public with the option of submitting information or transacting business electronically to the maximum extent possible. FCIC requires that all reinsured companies be in compliance with the Freedom to E-File Act and section 508 of the Rehabilitation Act.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Written agreement requirements for the Federal crop insurance program are the same for all producers regardless of the size of their operations. For instance, all producers requesting this type of written agreement must submit actual yields for at least the most recent three crop years in which the crop was planted during the base period. Any producer who did not produce the crop for at least three years, for which the written agreement is requested, must submit actual yields for a similar crop, or a combination of actual yields for the crop and a similar crop in the county for which the written agreement is being requested. Whether a producer has 10 acres or 100 acres there is no difference in the kind of information required for requesting a written agreement. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this change helps ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Tuesday, March 21, 2006, FCIC published a notice of proposed rulemaking in the **Federal Register** at 71 FR 6016–6021 to amend 7 CFR 457.122 Walnut crop insurance provisions and 7 CFR 457.123 Almond crop insurance provisions effective for the 2008 and succeeding crop years.

The public was afforded 60 days to submit written comments and opinions. The commenters were an insurance services organization and an insurance provider. The comments received and FCIC's response is as follows:

Comment: Two commenters recommended changing the language in section 6(d) of the Walnut Crop Provisions and section 6(e) of the Almond Crop Provisions from ''unless otherwise provided in the Special Provisions or by written agreement'' to read; ''unless otherwise provided in the Special Provisions or we agree in writing''.

The commenters concerns with issuing written agreements to insure production from underage trees would require approved insurance providers to submit all policies to the Regional Office for written agreement consideration. Currently, insureds have the ability to insure production from

underage almond and walnut trees at all coverage levels by ''we agree in writing'' under the current Crop Provisions.

The commenters state that approved insurance providers would be faced with a difficult and costly task to abide by all documentation requirements for written agreement submissions within the standard 15 business days after the sales closing date and thus result in the insured potentially not getting insurance coverage timely. As a result, the use of the written agreements as a means to provide coverage for production from underage almond and walnut trees would be burdensome to the producer.

The commenters also state that producers now have the ability to insure production from underage almond and walnut trees at the catastrophic risk protection (CAT) level. They claim the current proposal would make CAT policies ineligible for this insurance coverage under the written agreement criteria, since written agreements are not available under CAT coverage.

The commenters state that the use of ''we agree in writing'' language allows the approved insurance providers and RO's to efficiently process the request to insure production from underage almond and walnut trees. Any deviation from this process would be resisted by the AIPs, Regional Office, agents and insureds.

Response: FCIC realized that the proposed language would have needlessly imposed a heavy burden on producers, agents, AIPs and ROs. However, the preamble of the policy only allows deviation from the policy terms if allowed by written agreement. Therefore, use of the term ''agree in writing'' is not a viable solution. Instead, FCIC has amended the language to state coverage on production from under-aged trees is allowed if provided for in the Special Provisions. This change will provide insurance coverage for production from under-aged trees without the need to have a written agreement. This will also allow coverage to be available at all buy-up coverage levels and at the CAT level of coverage.

List of Subjects in 7 CFR Part 457

Crop insurance, Walnut and Almond, Reporting and record keeping requirements.

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457, Common Crop Insurance Regulations, for the 2008 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

■ 2. Amend § 457.122 as follows:

■ A. Revise the first sentence of the introductory text.

■ B. Revise paragraph 6(d).

The revisions to § 457.122 read as follows:

§ 457.122 Walnut crop insurance provisions.

The Walnut Crop Insurance Provisions for the 2008 and succeeding crop years are as follows:

* * * * *

6. Insured Crop

* * * * *

(d) On acreage where at least 90 percent of the trees have reached at least the seventh growing season after being set out, unless otherwise provided in the Special Provisions.

* * * * *

■ 3. Amend § 457.123 as follows:

■ A. Revise the first sentence of the introductory text.

■ B. Revise paragraph 6(e).

The revisions to § 457.123 read as follows:

§ 457.123 Almond crop insurance provisions.

The Almond Crop Insurance Provisions for the 2008 and succeeding crop years are as follows:

* * * * *

6. Insured Crop

* * * * *

(e) On acreage where at least 90 percent of the trees have reached at least the sixth growing season after being set out, unless otherwise provided in the Special Provisions.

* * * * *

Signed in Washington, DC, on March 6, 2007.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E7–4333 Filed 3–9–07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25105; Directorate Identifier 2006–CE–33–AD; Amendment 39–14982; AD 2007–06–01]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) that supersedes AD 62–24–01, which applies to all Raytheon Aircraft Company (RAC) Beech Models 45 (YT–34), A45 (T–34A, B45), and D45 (T–34B) airplanes. AD 62–24–01 currently requires you to repetitively inspect, using the dye penetrant method, the front and rear horizontal stabilizer spars for cracks and replace any cracked stabilizer. Since we issued AD 62–24–01, we determined that using the dye penetrant inspection method may not detect cracks before the crack grows to a critical length and causes failure of the horizontal stabilizer spars. Therefore, we are requiring the surface eddy current inspection method to detect cracks in the horizontal stabilizer spars. Consequently, this AD retains the actions required in AD 62–24–01 and changes the required inspection method from dye penetrant to surface eddy current. We are issuing this AD to prevent failure of the front and/or rear horizontal stabilizer spars caused by fatigue cracks. This failure could result in stabilizer separation and loss of control of the airplane.

DATES: This AD becomes effective on April 16, 2007.

ADDRESSES: To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2006–25105; Directorate Identifier 2006–CE–33–AD.

FOR FURTHER INFORMATION CONTACT: T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

On July 24, 2006, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all RAC Beech Models 45 (YT–34), A45 (T–34A, B45), and D45 (T–34B) airplanes. That proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 31, 2006 (71 FR 43075). The NPRM proposed to supersede AD 62–24–01 with a new AD that would retain the actions required in AD 62–24–01 and only change the inspection procedure from the dye penetrant method to the surface eddy current method.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Change the Compliance Time for the Initial Inspection

Larry Bierma, Joe Enzminger, John Aldous, Michael Vadeboncoeur, John Rippinger, William E. Mayher, Dan Thomas, and Victor Barrett state that the inspection compliance in the proposed AD is a duplication of the inspection for those who have done the eddy current inspection recently as part of compliance with an alternative method of compliance (AMOC) to AD 2004–25–51.

The commenters state that requiring another eddy current inspection within 6 months after the effective date of this AD would be unnecessary and economically burdensome for those who have already done it. The commenters request credit for the last inspection done in compliance with an AMOC to AD 2004–25–51 as compliance for the initial inspection required in the proposed AD.

We have rewritten the compliance time to give full credit for previously accomplished eddy current inspections done in the area affected by this AD.

Comment Issue No. 2: AD Is Not Necessary

Michael Vadeboncoeur, John Aldous, Mike Talbot, Eric Evans, Earle Parks, Floyd Stilwell, Dan Thomas, Stephen Baksa, William Beitler, and Terrance Brennan state that, since the time AD 62–24–01 was issued, there have not been any accidents as a result of cracks in the horizontal stabilizer. The commenters request the proposed AD be withdrawn.

The commenters also request that stabilizer spars modified by Parks Industries supplemental type certificate (STC) either be exempt from the inspections or the inspection interval be increased to 1,000 hours TIS.

We do not agree with the commenters. In 2005, 148 of the affected airplanes were eddy current inspected. Cracks in the stabilizer spars and/or spar webs were found on 6 of these airplanes, which required the spars to be replaced. If no eddy current inspections had been done, those cracks may have grown and reached critical crack lengths, which could have compromised the integrity of the spar structure.

In order to increase the inspection interval or eliminate the spar inspections, we need supporting engineering analysis data regarding fatigue life, crack growth rate, etc. We have not received such data for the spars modified by the Parks Industries STC.

If we receive engineering analysis data that supports increasing the inspection intervals or eliminating the inspections, we may take additional rulemaking action at that time.

We are not changing the final rule AD action based on these comments.

Comment Issue No. 3: Retain the Dye Penetrant Inspection From AD 62–24–01

Floyd Stilwell, Earle Parks, and Terrance Brennan state that the surface eddy current inspection is expensive and inconvenient. Qualified technicians to do the surface eddy current inspections have to be brought to the repair station from other parts of the country, which contributes to the expense of doing the eddy current inspection. The commenters request retaining the dye penetrant inspection.

We do not agree with the commenters. AD 2001–13–18 R1 currently requires owners/operators of all Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes to do repetitive 80-hour TIS eddy current inspections of the wing spar assemblies and other components following Raytheon Aircraft Mandatory Service Bulletin No. SB 57–3329, Part II, Page 3/65, Issued: February, 2000. If the wing spar and stabilizer spar inspections are properly planned, these two inspections could be done at the same time. This planning would eliminate any extra expenses.

We have reason to believe that damage tolerance analysis of the stabilizer spar is being conducted by some owners. This may result in additional rulemaking action that could eliminate the inspection or increase the inspection interval. Until that time, AMOCs for this AD may be approved, if requested using the procedures found in 14 CFR 39.19.

We are not changing the final rule AD action based on these comments.

Comment Issue No. 4: Surface Eddy Current Inspection Method Unwarranted

Dan Thomas, William Beitler, Floyd Stilwell, William Mayher, and Mike Talbot state that the eddy current inspection method is no better than the dye penetrant method for detecting cracks. The level of safety will not be enhanced by changing the inspection methods. Further, the eddy current method could produce false positives and the frequent inspections could also incur damage to the stabilizer spar. The commenters request the method of inspection be at the owner's/operator's option.

We do not agree with the commenters. The eddy current inspection method is a more sensitive inspection process. The dye penetrant inspection method at times could completely miss detecting the cracks.

All inspection methods have some inherent drawbacks. Eddy current inspection methods detect small surface cracks better than dye penetrant methods, and eddy current inspection methods are also capable of detecting subsurface cracks. Detection of cracks early is a definite advantage. Eddy current inspection methods could occasionally produce false positives; however, this could be avoided if cracks are confirmed by repeatable flaw indications.

If the inspections required by this AD are carefully done by qualified technicians, any damage to the spars could be prevented.

The 500-hour TIS repetitive inspection interval is a long interval between inspections for this type of airplane, which normally will take place once in 5 years or longer in most cases; therefore, we do not consider this inspection requirement as frequent.

We are not changing the final rule AD action based on this comment.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 475 airplanes in the U.S. registry.

We estimate the following costs to accomplish each inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 work-hours × $80 per hour = $640	Not applicable	$640	$304,000

We estimate the following costs to do any necessary horizontal stabilizer replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
4 work-hours × $80 per hour = $320	$3,500	$3,820

Cost Difference Between This AD and AD 62–24–01

The only difference between this AD and AD 62–24–01 is the change of inspection method. There may be some minimal additional cost involved in doing the eddy current inspection because of possible equipment rentals necessary. No additional actions are being required. We have determined that this AD action does not increase the cost impact over that already required by AD 62–24–01.

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 AD.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2006–25105; Directorate Identifier 2006–CE–33–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 62–24–01, Amendment 39–508, and adding the following new AD:

2007–06–01 Raytheon Aircraft Company: Amendment 39–14982; Docket No. FAA–2006–25105; Directorate Identifier 2006–CE–33–AD.

Effective Date

(a) This AD becomes effective on April 16, 2007.

Affected ADs

(b) This AD supersedes AD 62–24–01, Amendment 39–508.

Applicability

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

Model	Serial numbers
Beech 45 (YT–34)	All
Beech A45 (T34A, B–45)	All
Beech D45 (T–34B)	All

Unsafe Condition

(d) This AD results from our determination that the surface eddy current inspection method should be used in place of the dye penetrant inspection method currently required in AD 62–24–01. We are issuing this AD to prevent failure of the front and/or rear horizontal stabilizer spars caused by fatigue cracks. This failure could result in stabilizer separation and loss of control of the airplane.

Compliance

(e) Using the surface eddy current inspection procedures outlined in the appendix of this AD, inspect the front and rear horizontal stabilizer spars between the butt rib and the inboard end for cracks, unless already done, as follows:

(1) *If the last inspection of the front and rear horizontal stabilizer spars was done using the surface eddy current method (or FAA-approved equivalent method) to show compliance with*

AD 62–24–01 and/or to show compliance with the alternative method of compliance (AMOC) to AD 2004–25–51: Repetitively inspect thereafter at intervals not to exceed 500 hours time-in-service (TIS).

(2) *If the last inspection of the front and rear horizontal stabilizer spars required by AD 62–24–01 was done using the dye penetrant method:* Inspect initially as presented in the table below and repetitively thereafter at intervals not to exceed 500 hours TIS:

If	*Then*
(i) Less than 200 hours TIS have passed since the last inspection required by AD 62–24–01:	Inspect at whichever of the following occurs later: (A) Upon accumulating 200 hours TIS since the last inspection required by AD 62–24–01; or (B) Within the next 6 months after April 16, 2007. (the effective date of this AD).
(ii) If 200 hours TIS or more have passed since the last inspection required by AD–24–01:	Inspect at whichever of the following occurs first, unless paragraph (e)(2)(iii) of this AD applies, as specified below: (A) At the next repetitive inspection required by AD 62–24–01; or (B) Within the next 6 months after April 16, 2007 (the effective date of this AD).
(iii) If paragraph (e)(2)(ii) results in the initial surface eddy current inspection becoming mandatory within 30 days after the effective date of this AD:	Inspect within the next 30 days after April 16, 2007. (the effective date of this AD).

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office, FAA, ATTN: T.N. Baktha, Aerospace Engineer, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; *telephone:* (316) 946–4155; *fax:* (316) 946–4107, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(g) AMOCs approved for AD 62–24–01 are approved for this AD.

Appendix to AD 2007–06–01

Surface Eddy Current Inspection Procedure

Note: This surface eddy current inspection procedure is based on T–34 Spar Corporation TSC 3506, Rev C, dated May 10, 2005. The T–34 Spar Corporation is allowing the use of this procedure to be included in this Airworthiness Directive. Alternative methods of compliance procedures will be allowed, if approved by the Wichita Aircraft Certification Office and requested using the procedures found in 14 CFR 39.19.

Purpose: This procedure is to be used to detect cracks in the inner and outer spars of the front and rear spar assemblies of Raytheon Aircraft Company Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplane stabilizers outside of the steel bushings in the attach holes.

Area To Be Inspected: To access the area of inspection, remove the stabilizer from the airplane. The areas to be inspected include the forward and aft surfaces of the inner and outer front and rear spars of the horizontal stabilizers in the areas surrounding each of the attach holes.

Preparing the Area for Inspection: Thoroughly clean area to be inspected with solvent (acetone or equivalent) as required until no signs of dirt, grime, or oil remain on the front and rear spars from the closeout former inboard on the forward and aft surfaces of the spars.

Surfaces to be inspected should be smooth and corrosion-free. Any loss of thickness due to corrosion below material thickness tolerance is cause for rejection of the structure. An ultrasonic tester may be used to determine if material thickness has been compromised.

Equipment Requirements: Nortec Stavely 2000D Eddy Current Tester or equivalent.

Probe: 50–500 KHz, shielded, absolute, 0.071'' diameter (0.090 max. diameter), right angle, pencil style, surface probe, 5 long, ½″ drop or equivalent. Use 0.025″ notch (beyond head) for calibration

Personal Requirements: Technicians with Eddy Current, Level II or Level III per one of the following specifications: ATA specification 105, SNT–TC–1A, or NAS–410 (MIL–std 410E).

Methods: Typical Set-up Parameters:

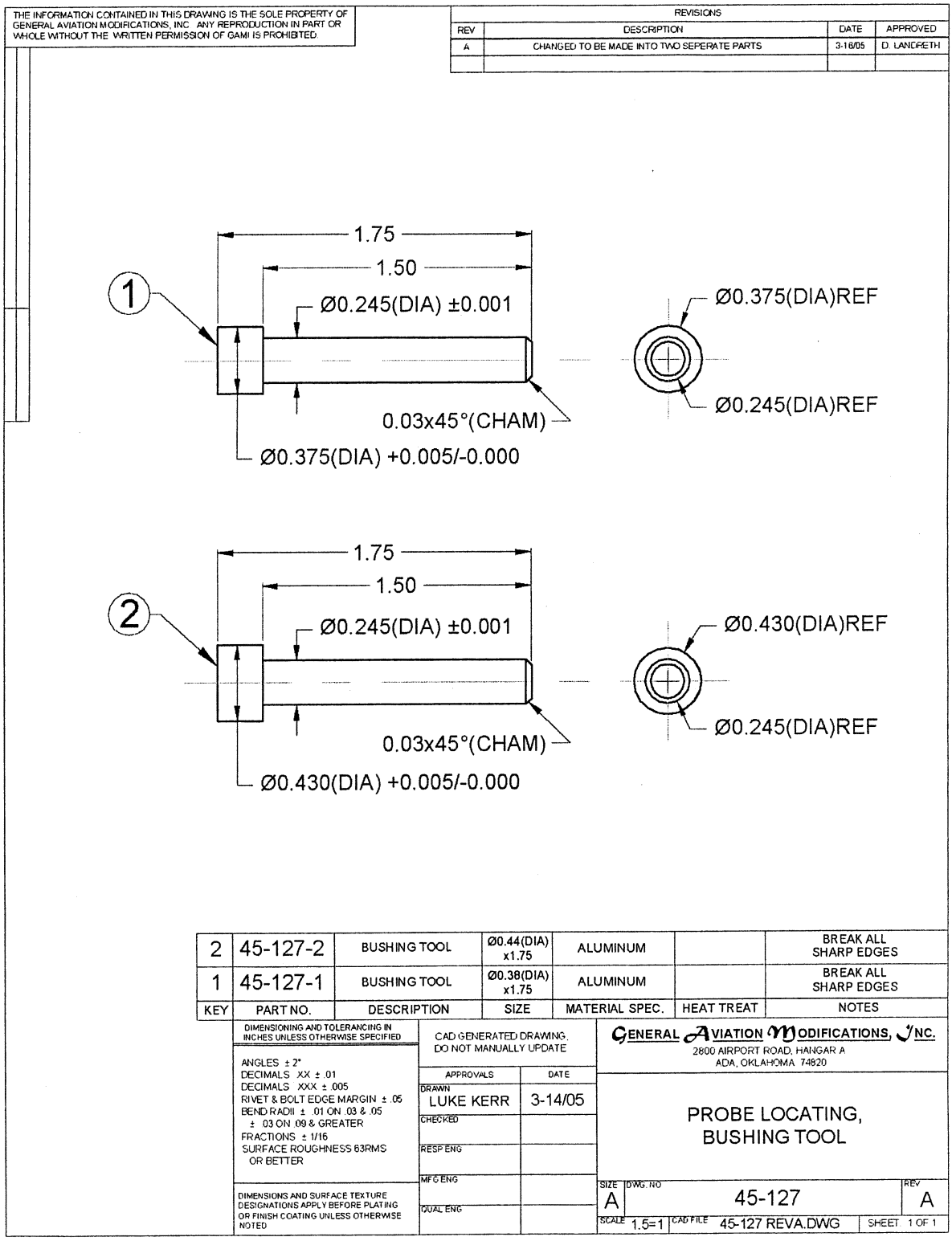
Frequency–350 KHz, Gain Vertical–75 dB, Horizontal–69 dB, Drive-Mid, Filters– Lo Pass–30, Hi Pass–0, Lift off-Horizontal to the left, adjust as required. The most reliable indication (minimum of 1½ to 2 graticules) of the smallest observable flaw in the coupon (see the attached Figures) occurs from the notch extending 0.025″ past the edge of the nominal fastener head (total notch length of 0.100″ from the edge of the nominal hole). Install appropriate aluminum guide pin into bushing such that the edge of the guide pin is flush with the edge of the bushing. Using the pin (see the attached Figures) as a guide, circle the area surrounding the steel bushing with the probe and adjacent area (approximately ¼'') to inspect for cracks. Inspect forward and aft surfaces surrounding bushings of each spar.

Note: T–34 Spar Corporation, 2800 Airport Road, Hanger A, Ada, Oklahoma, 74820 is a source for these coupons and pin.

Accept/Reject Criteria: Any repeatable flaw indication is cause for rejection in accordance with the procedure. In the event that any crack is detected, describe the flaw in detail providing sketch as needed and send the information to the Wichita ACO.

Documentation Requirements: Record inspection findings in the aircraft logbook.

BILLING CODE 4910–13–P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REVISIONS
REV | DESCRIPTION | DATE | APPROVED
A | CHANGED TO BE MADE INTO TWO SEPERATE PARTS | 3-16/05 | D. LANDRETH
1
1.75
1.50
Ø0.245(DIA) ±0.001
Ø0.375(DIA)REF
Ø0.245(DIA)REF
0.03x45°(CHAM)
Ø0.375(DIA) +0.005/-0.000
2
1.75
1.50
Ø0.245(DIA) ±0.001
Ø0.430(DIA)REF
Ø0.245(DIA)REF
0.03x45°(CHAM)
Ø0.430(DIA) +0.005/-0.000
2 | 45-127-2 | BUSHING TOOL | Ø0.44(DIA) x1.75 | ALUMINUM | | BREAK ALL SHARP EDGES
1 | 45-127-1 | BUSHING TOOL | Ø0.38(DIA) x1.75 | ALUMINUM | | BREAK ALL SHARP EDGES
KEY | PART NO. | DESCRIPTION | SIZE | MATERIAL SPEC. | HEAT TREAT | NOTES
DIMENSIONING AND TOLERANCING IN INCHES UNLESS OTHERWISE SPECIFIED
ANGLES ± 2°
DECIMALS .XX ± .01
DECIMALS .XXX ± .005
RIVET & BOLT EDGE MARGIN ± .05
BEND RADII ± .01 ON .03 & .05
± .03 ON .09 & GREATER
FRACTIONS ± 1/16
SURFACE ROUGHNESS 63RMS OR BETTER
DIMENSIONS AND SURFACE TEXTURE DESIGNATIONS APPLY BEFORE PLATING OR FINISH COATING UNLESS OTHERWISE NOTED
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GENERAL AVIATION MODIFICATIONS, INC.
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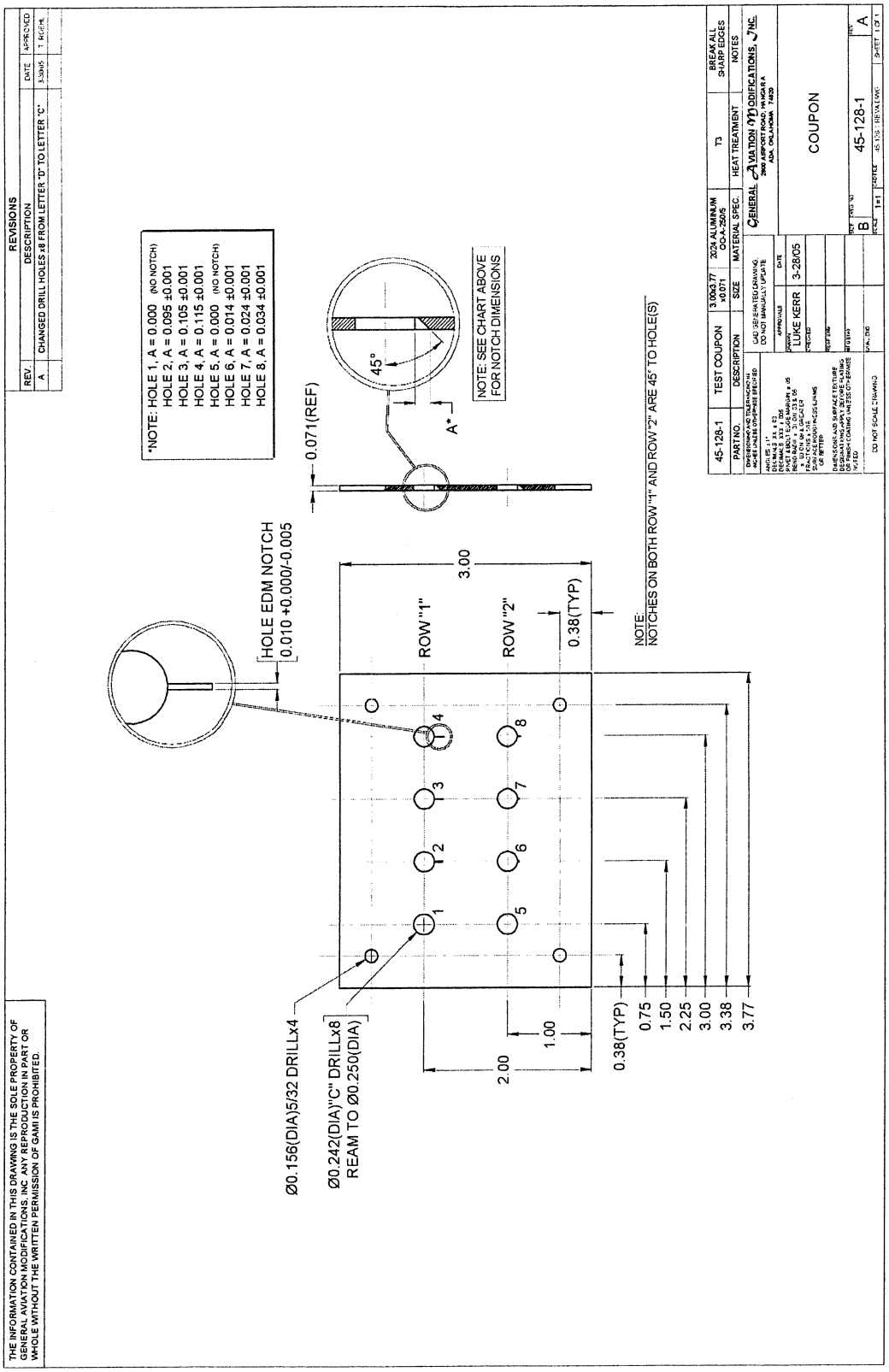
ADA, OKLAHOMA 74820
PROBE LOCATING, BUSHING TOOL
SIZE A | DWG. NO 45-127 | REV A
SCALE 1.5=1 | CAD FILE 45-127 REVA.DWG | SHEET 1 OF 1

Figure 1


REVISIONS
REV.
DESCRIPTION
DATE
APPROVED
A
CHANGED DRILL HOLES #8 FROM LETTER "D" TO LETTER "C"
3-28/05
T. KERR
*NOTE: HOLE 1, A = 0.000 (NO NOTCH)
HOLE 2, A = 0.095 ±0.001
HOLE 3, A = 0.105 ±0.001
HOLE 4, A = 0.115 ±0.001
HOLE 5, A = 0.000 (NO NOTCH)
HOLE 6, A = 0.014 ±0.001
HOLE 7, A = 0.024 ±0.001
HOLE 8, A = 0.034 ±0.001
0.071(REF)
45°
A*
NOTE: SEE CHART ABOVE FOR NOTCH DIMENSIONS
HOLE EDM NOTCH
0.010 +0.000/-0.005
3.00
ROW "1"
ROW "2"
0.38(TYP)
NOTE:
NOTCHES ON BOTH ROW "1" AND ROW "2" ARE 45° TO HOLE(S)
Ø0.156(DIA)5/32 DRILLx4
Ø0.242(DIA)"C" DRILLx8
REAM TO Ø0.250(DIA)
2.00
1.00
0.38(TYP)
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1.50
2.25
3.00
3.38
3.77
45-128-1
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3.00x3.77
x0.071
2024 ALUMINUM
QQ-A-250/5
T3
BREAK ALL
SHARP EDGES
PART NO.
DESCRIPTION
SIZE
MATERIAL SPEC.
HEAT TREATMENT
NOTES
CAD REPRESENTED DRAWING.
DO NOT MANUALLY UPDATE
APPROVALS
DATE
LUKE KERR
3-28/05
GENERAL AVIATION MODIFICATIONS, INC.
2600 S.E. 29th STREET
OKC, OKLAHOMA 73129
COUPON
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A
B
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SHEET 1 OF 1
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Figure 2

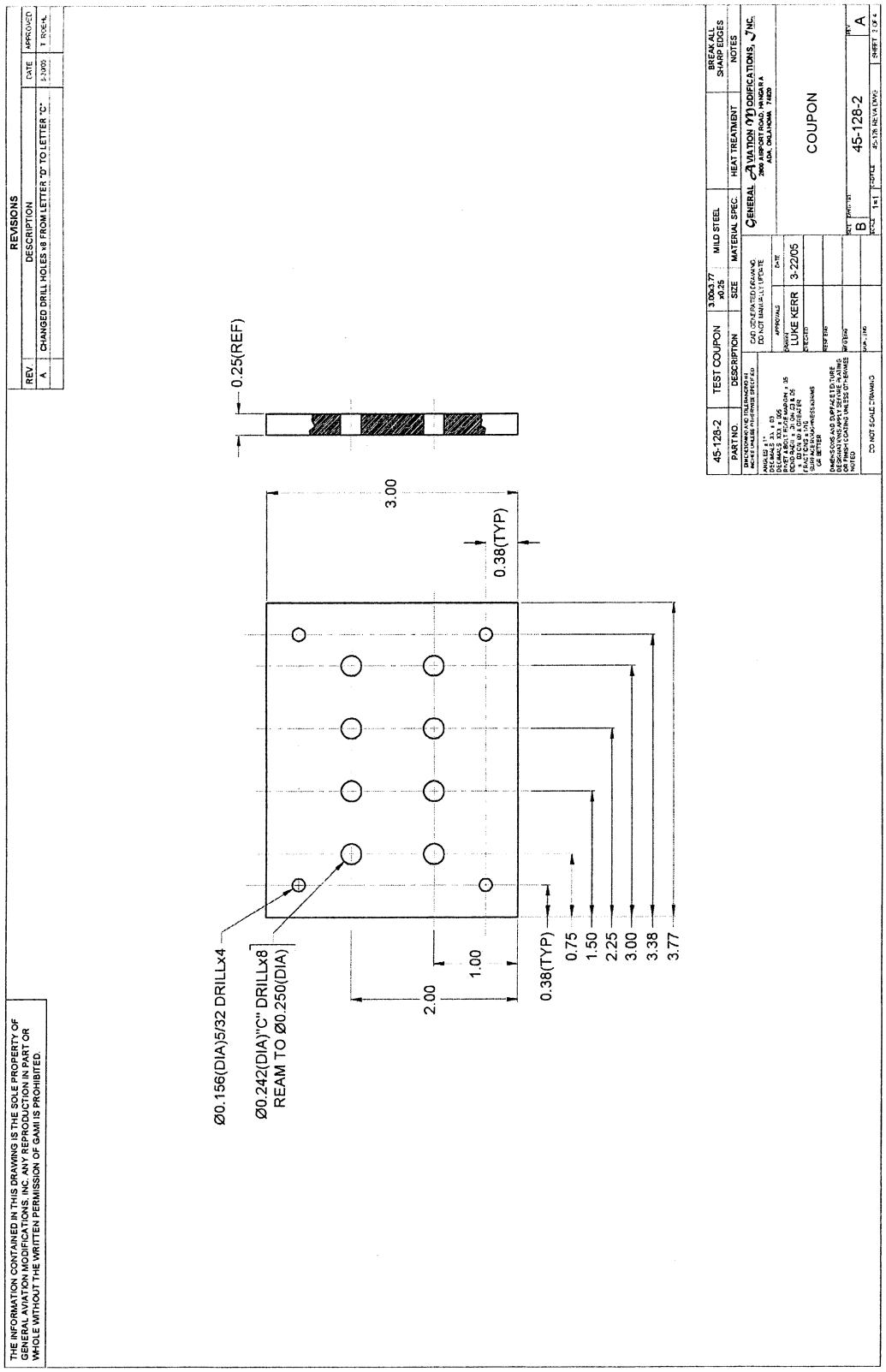
REVISIONS
REV.
DESCRIPTION
DATE
APPROVED
A
CHANGED DRILL HOLES +B FROM LETTER "D" TO LETTER "C"
0.25(REF)
3.00
0.38(TYP)
Ø0.156(DIA)5/32 DRILLx4
Ø0.242(DIA)"C" DRILLx8
REAM TO Ø0.250(DIA)
2.00
1.00
0.38(TYP)
0.75
1.50
2.25
3.00
3.38
3.77
45-128-2
TEST COUPON
3.00x3.77 ±0.25
MILD STEEL
BREAK ALL SHARP EDGES
PART NO.
DESCRIPTION
SIZE
MATERIAL SPEC.
HEAT TREATMENT
NOTES
GENERAL AVIATION MODIFICATIONS, INC.
COUPON
45-128-2
A
B
DO NOT SCALE DRAWING
THE INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF GENERAL AVIATION MODIFICATIONS, INC. ANY REPRODUCTION IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF GAMI IS PROHIBITED.

Figure 3

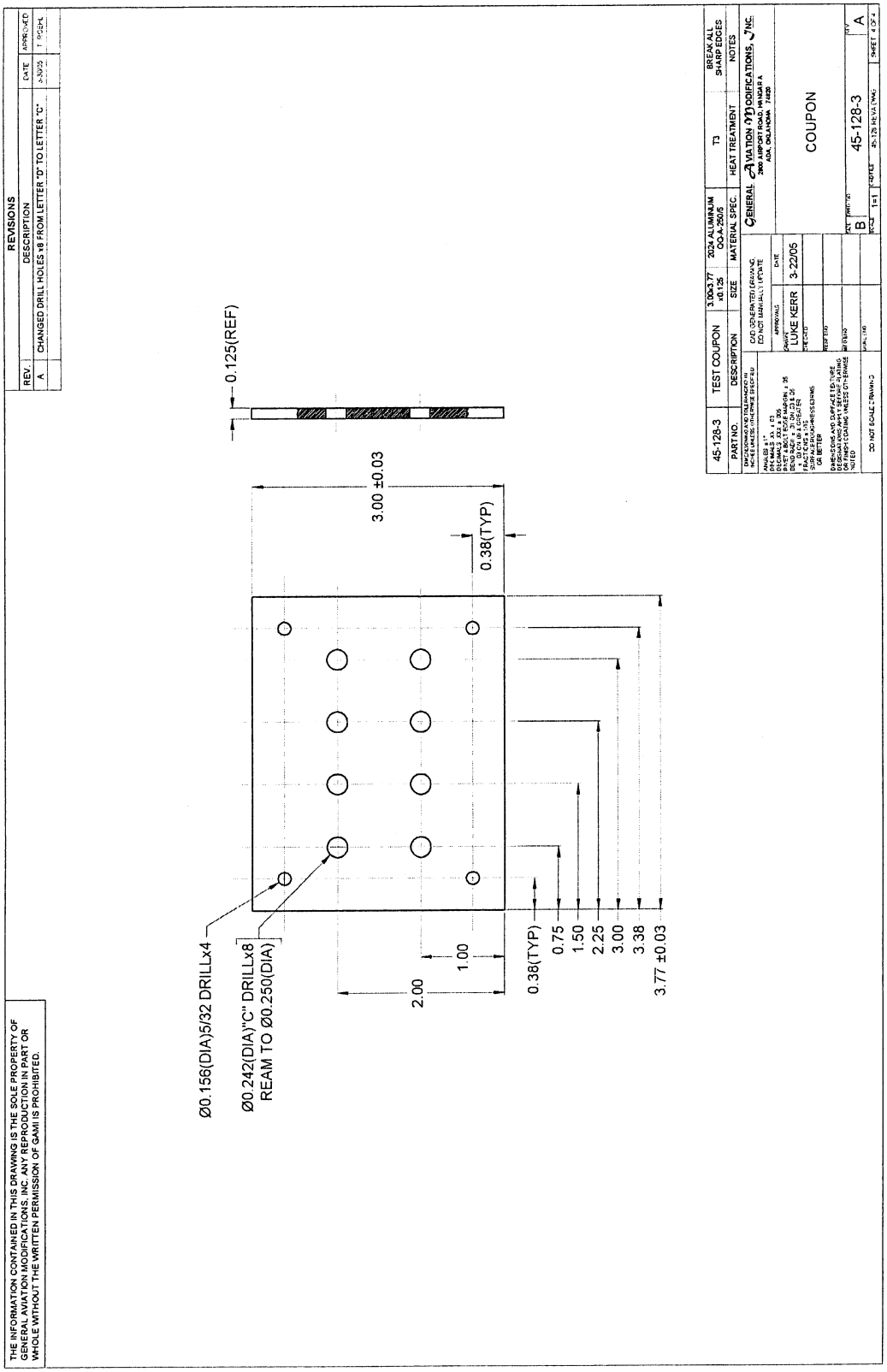
REVISIONS
REV.
DESCRIPTION
DATE
APPROVED
A
CHANGED DRILL HOLES +8 FROM LETTER "D" TO LETTER "C"
0.125(REF)
3.00 ±0.03
0.38(TYP)
Ø0.156(DIA)5/32 DRILLx4
Ø0.242(DIA)"C" DRILLx8
REAM TO Ø0.250(DIA)
2.00
1.00
0.38(TYP)
0.75
1.50
2.25
3.00
3.38
3.77 ±0.03
45-128-3
TEST COUPON
3.00x3.77 x0.125
2024 ALUMINUM QQ-A-250/5
T3
BREAK ALL SHARP EDGES
PART NO.
DESCRIPTION
SIZE
MATERIAL SPEC.
HEAT TREATMENT
NOTES
GENERAL AVIATION MODIFICATIONS, INC.
3800 AIRPORT ROAD, HANGAR A
ADA, OKLAHOMA 74820
COUPON
LUKE KERR
3-22/05
45-128-3
A
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Figure 4

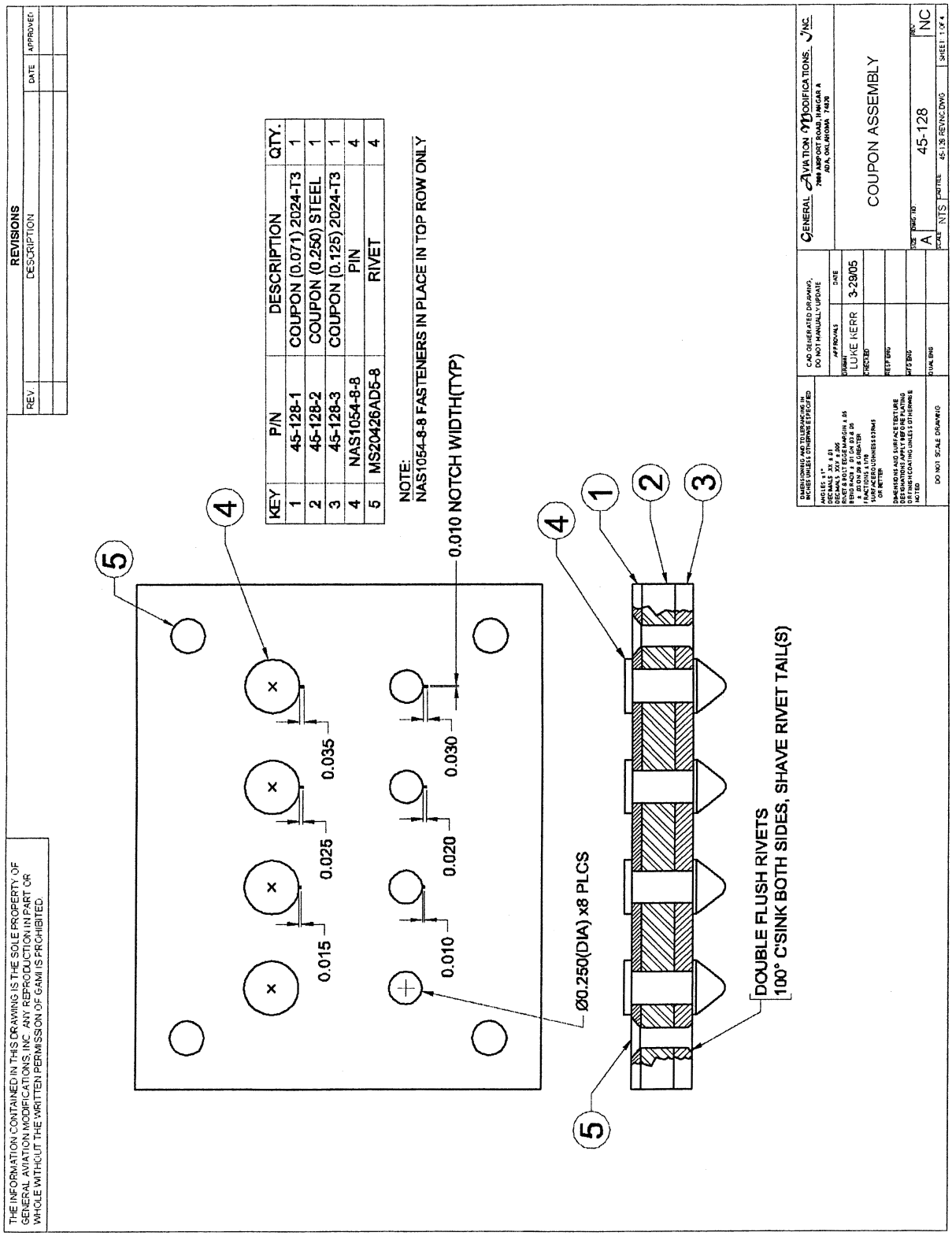
REVISIONS
REV.
DESCRIPTION
DATE
APPROVED
KEY P/N DESCRIPTION QTY.
1 45-128-1 COUPON (0.071) 2024-T3 1
2 45-128-2 COUPON (0.250) STEEL 1
3 45-128-3 COUPON (0.125) 2024-T3 1
4 NAS1054-8-8 PIN 4
5 MS20426AD5-8 RIVET 4
NOTE:
NAS1054-8-8 FASTENERS IN PLACE IN TOP ROW ONLY
0.010 NOTCH WIDTH(TYP)
0.015
0.025
0.035
0.010
0.020
0.030
Ø0.250(DIA) x8 PLCS
DOUBLE FLUSH RIVETS
100° C'SINK BOTH SIDES, SHAVE RIVET TAIL(S)
1
2
3
4
5
THE INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF GENERAL AVIATION MODIFICATIONS, INC. ANY REPRODUCTION IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF GAMI IS PROHIBITED.
GENERAL AVIATION MODIFICATIONS, INC.
7000 AIRPORT ROAD HANGAR A
ADA, OKLAHOMA 74820
COUPON ASSEMBLY
45-128
NC
SHEET 1 OF 4
LUKE KERR
3-29/05
DO NOT SCALE DRAWING

Figure 5

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

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 07–1106 Filed 3–9–07; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20850; Directorate Identifier 2005–NE–05–AD; Amendment 39–14976; AD 2007–05–15]

RIN 2120–AA64

Airworthiness Directives; Teledyne Continental Motors GTSIO–520 Series Reciprocating Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Teledyne Continental Motors (TCM) GTSIO–520 series reciprocating engines. That AD currently requires initial and repetitive visual inspections of the starter adapter assembly and crankshaft gear and unscheduled visual inspections of the starter adapter assembly and crankshaft gear due to a rough-running engine. That AD also requires replacement of the starter adapter shaft gear needle bearing with a certain bushing and installation of a certain TCM service kit at the next engine overhaul, or at the next starter adapter replacement, whichever occurs first. This AD requires performing the inspection ordered in paragraph (h) of this AD every 100 hours time-in-service (TIS), or annually. This proposed AD results from an error discovered in AD 2005–20–04. We are issuing this AD to failure of the starter adapter assembly and or crankshaft gear, resulting in failure of the engine and possible forced landing.

DATES: This AD becomes effective April 16, 2007. The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the regulations as of April 16, 2007.

ADDRESSES: You can get the service information identified in this AD from Teledyne Continental Motors, Inc., PO Box 90, Mobile, AL 36601; telephone (251) 438–3411.

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

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Senior Engineer, Propulsion, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349; telephone: (770) 703–6096, fax: (770) 703–6097.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to TCM GTSIO–520 series reciprocating engines. We published the proposed AD in the **Federal Register** on October 26, 2006, (71 FR 62570). That action proposed to require performing the inspection ordered in paragraph (h) of AD 2005–20–04 every 100 hours time-in-service (TIS), or annually to correct an error that required the inspection at every 100-hour inspection.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment[s] received.

Remove the Requirement for a Placard

Two commenters propose dropping the placard from the requirements of the proposed AD. The commenters do not believe the placard is necessary. We agree. It appears the commenters are basing their comment on the original notice of proposed rulemaking (NPRM) that we issued on April 6, 2005, not the current NPRM. We received comments to the original NPRM similar to these comments and removed the requirement to add a placard before we issued AD 2005–20–05. We didn't change this AD.

Request to Change the Required Inspection

The same two commenters request we mandate a more detailed inspection for the components. The commenters state that a visual inspection might not be sufficient. We don't agree. The commenters didn't specify any additional inspections. We consider a visual inspection the best method to detect abnormal surface wear. We don't have any requirement for nondestructive testing because we have no indication of subsurface deterioration. We didn't change the AD.

Request To Perform Additional Economic Assessment

One commenter asks us to perform additional economic assessment. The commenter states we didn't consider the economic effects on other small entities. We don't agree. We used our current procedures to consider the economic effects of this action. We didn't change the AD.

Editorial Changes To Improve Clarity and Correct an Omission

We changed paragraph (f) of this AD from ''If, during an inspection * * * crankcase, replace it with a serviceable bushing before reassembling components'' to ''(f) If, during an inspection required by paragraph (g), (h), (i), or (j) of this AD, you find needle bearing, part number (P/N) 537721, installed in the crankcase, replace it with a serviceable bushing, P/N 654472 or equivalent FAA approved bearing, before reassembling components'' to clarify the intent of that requirement.

We also added paragraph (h)(3) to make the compliance times in that requirement consistent with paragraph (i)(3).

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 4,240 engines installed on airplanes of U.S. registry. We also estimate that it will take about one work-hour per engine to perform the inspection, about one work-hour per engine to perform the proposed bushing installation and about six work-hours per engine to install the TCM service kit. The average labor rate is $80 per work-hour. We estimate that about 25 percent of the engines will require an unscheduled (rough-running engine) inspection and about half of the engines will require the bushing and TCM service kit. Required bushings would cost about $16 per engine and service kits about $800 per engine. Based on these figures, we

estimate the total cost of the AD to U.S. operators to be $6,393,432.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14297 (70 FR 56355, September 27, 2005) and by adding a new airworthiness directive, Amendment 39–14976, to read as follows:

2007–05–15 Teledyne Continental Motors: Amendment 39–14976. Docket No. FAA–2005–20850; Directorate Identifier 2005–NE–05–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 16, 2007.

Affected ADs

(b) This AD supersedes AD 2005–20–04, Amendment 39–14297.

Applicability

(c) This AD applies to Teledyne Continental Motors (TCM) GTSIO–520 series reciprocating engines. These engines are installed on, but not limited to, Twin Commander (formerly Aero Commander) model 685, Cessna model 404, 411 series, and 421 series, British Aerospace, Aircraft Group, Scottish Division model B.206 series 2 and Aeronautica Macchi model AM–3 airplanes.

Unsafe Condition

(d) This AD results from an error discovered in AD 2005–20–04. We are issuing this AD to prevent failure of the starter adapter assembly and or crankshaft gear, resulting in failure of the engine and possible forced landing.

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.

Starter Adapter Shaft Gear Needle Bearing Replacement

(f) If, during an inspection required by paragraph (g), (h), (i), or (j) of this AD, you find needle bearing, part number (P/N) 537721, installed in the crankcase, replace it with a serviceable bushing, P/N 654472 or equivalent FAA approved bearing, before reassembling components. Use the bushing installation procedure specified in Part 4 of TCM Mandatory Service Bulletin (MSB) No. MSB94–4G, dated October 31, 2005.

Unscheduled Inspections for Rough-Running Engines

(g) For any engine that experiences rough running conditions regardless of time-in-service (TIS), do the following:

(1) Before further flight, perform the inspection procedures specified in Part 1 and Part 3 of TCM MSB No. MSB94–4G, dated October 31, 2005, and replace components as necessary.

(2) An engine is considered rough-running if there is a sudden increase in the perceived vibration levels that cannot be cleared by adjustment of the engine controls; particularly the fuel mixture setting. Information on rough running engines can be found in the aircraft manufacturer's Airplane Flight Manual, Pilot's Operating Handbook, or Aircraft Owners Manual.

100-Hour and Annual Inspections

(h) For any engine that has been inspected using paragraph (h) of AD 2005–20–04 and the 100-hour inspection procedures or 100 hour TIS intervals or annual inspection procedures, continue the inspections as follows:

(1) Perform the inspection procedures specified in Part 2 of TCM MSB No. MSB94–4G, dated October 31, 2005 and replace components as necessary at each 100 hour TIS interval (plus or minus 10 hours TIS) or annual inspection, whichever occurs first.

(2) Thereafter, at each 100 hour TIS interval (plus or minus 10 hours TIS) perform repetitive inspections and component replacements as specified in paragraph (h)(1) of this AD.

(3) If the inspection is performed at more than 100 hour intervals, subtract the additional hours from the next scheduled 100 hour inspection.

(i) For any engine that has not been inspected using paragraph (h) of AD 2005–20–04, within 25 hours TIS or at the annual inspection, whichever occurs first, do the following:

(1) Perform the inspection procedures specified in Part 2 of TCM MSB No. MSB94–4G, dated October 31, 2005 and replace components as necessary.

(2) Thereafter, at each 100-hour TIS interval (plus or minus 10 hours TIS) perform repetitive inspections and component replacements as specified in paragraph (i)(1) of this AD.

(3) If the inspection is performed at more than 100 hour intervals, subtract the additional hours from the next scheduled 100 hour inspection.

Starter Adapters With 400 Hours or More Time-In-Service (TIS) or Unknown TIS

(j) For any starter adapter with 400 hours or more TIS or unknown TIS on the effective date of this AD, do the following:

(1) Within 25 hours TIS, perform the inspection procedures specified in Part 3 of TCM MSB No. MSB94–4G, dated October 31, 2005, and replace components as necessary.

(2) Thereafter, at 400-hour TIS intervals, (plus or minus 10 hours TIS), perform repetitive inspections and component replacements specified in Part 3 of TCM MSB No. MSB94–4G, dated October 31, 2005, and replace components as necessary.

Starter Adapters With Fewer Than 400 Hours TIS

(k) For any starter adapter with fewer than 400 hours TIS on the effective date of this AD, do the following:

(1) Upon accumulation of 400 hours TIS, (plus or minus 10 hours TIS), perform the inspection procedures specified in Part 3 of TCM MSB No. MSB94–4G, dated October 31, 2005, and replace components as necessary.

(2) Thereafter, at 400-hour TIS intervals, (plus or minus 10 hours TIS), perform repetitive inspections and component replacements, as specified in Part 3 of TCM MSB No. MSB94–4G, dated October 31, 2005, and replace components as necessary.

Installation of TCM Service Kit, EQ6642 or EQ6642R

(l) At the next engine overhaul or starter adapter replacement after the effective date of this AD, whichever occurs first, do the following:

(1) Install TCM service kit, P/N EQ6642 (new) or EQ6642R (rebuilt). Use the service kit installation procedures specified in Part 5 of TCM MSB No. MSB94–4G, dated October 31, 2005.

(2) Continue performing the inspections and component replacements specified in paragraphs (g), (h), (i), (j) and (k) of this AD.

Prohibition of Special Flight Permits for Rough-Running Engines

(m) Special flight permits are prohibited for rough-running engines described in paragraph (g)(2) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(o) None.

Material Incorporated by Reference

(p) You must use TCM MSB No. MSB94–4G, dated October 31, 2005, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Teledyne Continental Motors, Inc., PO Box 90, Mobile, AL 36601; telephone (251) 438–3411 for a copy of this service information. For the Teledyne Continental Motors Web site: Go to *http://www.TCMLINK.com.* You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on February 26, 2007.

Peter A. White,

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

[FR Doc. E7–3832 Filed 3–9–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24846; Directorate Identifier 2006–NE–21–AD; Amendment 39–14981; AD 2007–05–20]

RIN 2120–AA64

Airworthiness Directives; Microturbo Saphir 20 Models 095 Auxiliary Power Units (APU)

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

ACTION: Final rule.

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

It has been reported that with the existing configuration, a certain failure could cause overspeed of the gas generator rotor resulting in uncontained burst of the turbine liberating high-energy fragments.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 16, 2007. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 16, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tracy Murphy, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate; 12 New England Executive Park, Burlington, MA 01803; telephone 781–238–7172; fax 781–238–7170.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 18, 2006 (71 FR 75684). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

It has been reported that with the existing configuration, a certain failure could cause overspeed of the gas generator rotor resulting in uncontained burst of the turbine liberating high-energy fragments. The occurrence that the high-energy fragments would be uncontained is considered a potentially dangerous situation which requires imperative corrective action. The purpose of the modification, which has been made mandatory, is to limit gas generator speed during an acceleration towards overspeed by installation of a modified Electronic Control Unit (ECU) and Drain Valve. In addition, the modification also renders the exhaust gas temperature (EGT) control function compliant with the certificated specifications. In operation, if EGT exceeds the certificated limit value, turbine blade shedding could occur.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are described in a separate paragraph of the AD, and take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 3 products of U.S. registry. We also estimate that it will take about 10 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $1,000 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 AD on U.S. operators to be $5,400 or $1,800 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–05–20 Microturbo: Amendment 39–14981. Docket No. FAA–2006–24846; Directorate Identifier 2006–NE–21–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 16, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Microturbo Saphir 20 Models 095 Auxiliary Power Units (APU) installed on, but not limited to, Eurocopter AS 332C, AS 332L, AS 332L1, and AS 332L2 helicopters.

Reason

(d) Direction Generale De l'Aviation Civile Airworthiness Directive F–2005–146, dated August 17, 2005, states:

It has been reported that with the existing configuration, a certain failure could cause overspeed of the gas generator rotor resulting in uncontained burst of the turbine liberating high-energy fragments. The occurrence that the high-energy fragments would be uncontained is considered a potentially dangerous situation which requires imperative corrective action. The purpose of the modification, which has been made mandatory, is to limit gas generator speed during an acceleration towards overspeed by installation of a modified Electronic Control Unit (ECU) and Drain Valve. In addition, the modification also renders the exhaust gas temperature (EGT) control function compliant with the certificated specifications. In operation, if EGT exceeds the certificated limit value, turbine blade shedding could occur.

Actions and Compliance

(e) Unless already done, do the following actions except as stated in paragraph (f) below.

(1) Within 60 days after the effective date of this AD, replace the existing ECU and drain valve.

(2) Follow paragraph 2. of Accomplishment Instructions of Microturbo Alert Service Bulletin (ASB) No. 095–49A11, Edition 2, dated October 7, 2005, to do these actions.

FAA AD Differences

(f) This AD differs from the mandatory continuing airworthiness information (MCAI) and/ or service information as follows:

(1) The MCAI issued by an airworthiness authority of another country refers to Microturbo ASB No. 095–49A11, dated July 27, 2005.

(2) This AD refers to Edition 2 of that ASB, dated October 7, 2005, which contains revised torque values.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Boston Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(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:* None.

Related Information

(h) France AD No. F–2005–146, dated August 17, 2005, also pertains to the subject of this AD.

(i) Contact Tracy Murphy, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7172; fax (781) 238–7170, for more information about this AD.

Material Incorporated by Reference

(j) You must use Microturbo Alert Service Bulletin No. 095–49A11, Edition 2, dated October 7, 2005 to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Microturbo SA; Technical Publications Department; 8 Chemin du pont de Rupe, BP 62089; 31019 Toulouse Cedex 2, France; telephone 33 0 5 61 37 55 00; fax 33 0 5 61 70 74 45.

(3) You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on March 2, 2007.

Robert J. Ganley,

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

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. 2006N–0051]

RIN 0910–AF65

Health Resources and Services Administration

42 CFR Part 121

Blood Vessels Recovered With Organs and Intended for Use in Organ Transplantation

AGENCIES: Food and Drug Administration, Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) and the Health Resources and Services Administration (HRSA) are amending their regulations to include as part of an organ those blood vessels recovered with the organ that are intended for use in organ transplantation (HRSA regulation); and to exclude such blood vessels from the definition of human cells, tissues, or cellular or tissue-based products (HCT/Ps) (FDA regulation). The purpose of this final rule is to amend the regulations so that blood vessels recovered with organs and intended for use in organ transplantation, and labeled as such, are governed by the regulations pertaining to organs. The regulation of other recovered blood vessels remains unchanged. We (HRSA and FDA) believe that this change will eliminate the burden resulting from an organ procurement organization's efforts to comply with both FDA and HRSA rules with respect to blood vessels (FDA jurisdiction) and organs (HRSA jurisdiction).

DATES: This rule is effective on April 11, 2007.

FOR FURTHER INFORMATION CONTACT:

For information regarding FDA's rule: Denise Sánchez, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

For information regarding HRSA's rule: Jim Burdick, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration (HRSA), 5600 Fishers Lane, rm. 12C–06, Rockville, MD 20857, 301–443–7577.

SUPPLEMENTARY INFORMATION:

I. Introduction

HRSA oversees transplantation of organs through the Organ Procurement and Transplantation Network (OPTN), which sets policies related to the procurement, transplantation, and allocation of human organs (see 42 CFR part 121). FDA currently regulates blood vessels. However, FDA does not regulate vascularized human organs (see 21 CFR 1270.3(j)(4) and 1271.3(d)(1)). FDA's jurisdiction over blood vessels intended for use in organ transplantation overlaps with HRSA's oversight of the OPTN.

There is a routine practice of recovering blood vessels intended for use in organ transplantation during organ procurement and using such blood vessels to connect donor organ and recipient vessels. Blood vessels intended for use in organ transplantation are recovered with human organs by Organ Procurement Organizations (OPOs) and stored for use at transplant centers. Both OPOs and transplant centers are already subject to HRSA oversight because of their organ procurement and transplantation activities. The application of both HRSA and FDA regulatory requirements to these facilities in relation to organs and blood vessels procured for use in organ transplantation is not supported by a need for such dual oversight. In order to avoid the duplication of efforts and reduce the burden on affected facilities, this final rule transfers from FDA to HRSA jurisdiction over blood vessels intended and labeled for use in organ transplantation. This final rule does not affect the regulation of blood vessels intended for transplantation that do not involve organ transplantation. Jurisdiction over such blood vessels remains with FDA.

Under this final rule, blood vessels labeled and intended solely for use in organ transplantation will be subject to HRSA requirements in 42 CFR part 121 and any enforceable OPTN policies established under 42 CFR part 121. To be regulated under HRSA requirements, such blood vessels intended for use in organ transplantation must be labeled ''For use in organ transplantation only.'' However, they are not required to be attached to the organ(s), transplanted simultaneously with such organ(s) to the same recipient, or transplanted with the organ(s) from the same donor. For example, occasionally blood vessels not used immediately for the transplantation of a donated organ are stored for a number of days and subsequently used to modify the organ transplant in the same recipient or to accomplish transplantation in the

recipient of an organ from a different donor. Such blood vessels intended and labeled for use in organ transplantation may be used in these ways when the use is consistent with HRSA requirements.

II. Background

In the **Federal Register** of May 12, 2006, we published a direct final rule and a companion proposed rule (71 FR 27606 and 27649, respectively) to revise HRSA's definition of ''organ'' to include blood vessels recovered from an organ donor during the same recovery procedure of such organ(s) and intended and labeled for use in organ transplantation; and to exclude such blood vessels from FDA's definition of human cells, tissues, or cellular or tissue-based products (HCT/Ps) (21 CFR 1271.3(d)). The direct final rule amended the regulations so that blood vessels intended and labeled for use in organ transplantation were under the same regulatory scheme as organs, thereby making blood vessels intended and labeled for use in organ transplantation readily available to meet organ transplant needs. Such direct final rule would become effective unless we received significant adverse comment. We published a companion proposed rule to provide a procedural framework within which the rule could be finalized in the event we received any significant adverse comments regarding the direct final rule, and the direct final rule had to be withdrawn.

We received comments from health care professionals and a nonprofit organization. Among the comments received, one comment fully supported the rulemaking. Another comment concerned the use and tracking of blood vessels recovered from a deceased organ donor but not transplanted with the recovered organ, and questioned the transfer of regulatory responsibility for such blood vessels from FDA to HRSA. Another comment suggested that the rulemaking distinguish between organ transplant recipients based on the type of their organ donor (living, nonrelated; living, related; or deceased) and use these distinctions to define who may receive the blood vessels addressed in the rulemaking. The comments received and our responses to the comments are discussed in section IV of this document. Because we received significant adverse comment in response to the rulemaking, we published a notice in the **Federal Register** of September 14, 2006 (71 FR 54198), withdrawing the direct final rule.

III. Highlights of the Final Rule

To transfer from FDA to HRSA jurisdiction over blood vessels intended for use in organ transplantation, the final rule amends 21 CFR 1271.3(d), 42 CFR 121.2, and 42 CFR 121.7 as follows:

A. 21 CFR 1271.3(d)

21 CFR 1271.3(d) defines HCT/Ps as ''articles containing or consisting of human cells or tissues that are intended for implantation, transplantation, infusion, or transfer into a human recipient.'' In the definition, we also exclude certain articles from the definition of HCT/Ps. This final rule adds § 1271.3(d)(8), excluding from the definition of HCT/Ps blood vessels intended for use in organ transplantation. The rule excludes such blood vessels intended for use in organ transplantation only when they are labeled as ''For use in organ transplantation only,'' to distinguish such vessels from blood vessels not intended for use in organ transplantation. By labeling such blood vessels ''For use in organ transplantation only,'' we expect that they will not be used for other purposes. Under the final rule, blood vessels intended for other uses remain subject to 21 CFR part 1271.

B. 42 CFR 121.2

Under 42 CFR 121.2, ''Organ'' means a human kidney, liver, heart, lung, or pancreas. This final rule adds to that definition ''Blood vessels recovered from an organ donor during the recovery of such organ(s) are considered part of an organ with which they are procured for purposes of this Part if the vessels are intended for use in organ transplantation and labeled 'For use in organ transplantation only'.'' Blood vessels intended for use in organ transplantation are required to be in compliance with HRSA provisions for donor screening and testing. The labeling provision is required in order for such blood vessels to fall under this regulatory program. Any OPTN labeling policies, whether voluntary or enforceable, supplement this requirement.

C. 42 CFR 121.7

In 42 CFR 121.7, we are redesignating paragraph (e) as paragraph (f), and adding a new paragraph (e). Under 42 CFR 121.7(e), a blood vessel intended for use in organ transplantation is subject to the allocation requirements under 42 CFR part 121 and enforceable OPTN policies pertaining to the organ with which the blood vessel is procured. These provisions apply until the transplant center receiving the organ determines that the blood vessel is not needed for the transplantation of that organ. This allocation priority assures that vessels that may be necessary for the immediate transplantation of the organs with which they are recovered are made available for that use prior to being diverted to other organ transplant uses.

IV. Comments on the Proposed Rule and HRSA and FDA Responses

(Comment 1) One comment supported the proposed rule. The comment stated that the Organ Procurement and Transplantation Network/United Network for Organ Sharing (OPTN/UNOS) Board of Directors has approved a policy to provide guidance for the recovery, use, and storage of deceased donor vascular allografts. The comment also stated that the OPTN/UNOS policy does not result in undue burden to the transplant community and is consistent with the provisions of the proposed rule.

(Response) We appreciate the supportive comment. One of our reasons for the proposed rule is to eliminate the burden of dual oversight, by FDA and HRSA, of those blood vessels used in organ transplantation. The policy discussed in the comment is OPTN/UNOS Policy 5.7.[1] OPTN/UNOS Policy 5.7 addresses practices for blood vessel recovery, storage, and transplant by transplant centers and OPOs. The policy will only be implemented once this final rule goes into effect.

(Comment 2) One comment stated that patients would be better protected under the existing regulatory scheme. The comment questioned the safety of transplanting blood vessels recovered from a deceased organ donor into third party recipients who received organs from other donors. The comment explained that use of blood vessels in these recipients poses disease transmission and human leukocyte antigen (HLA) sensitization risks that jeopardize patient safety. The comment also stated that the OPTN and organ transplant programs lack adequate tracking and traceability mechanisms for such blood vessels.

(Response) We acknowledge that the use of blood vessels poses disease transmission and HLA sensitization risks in third party recipients. The intent of this rule is to facilitate the successful completion of life-saving organ transplants in medical procedures

[1] See *http://www.optn.org/PoliciesandBylaws2/policies/pdfs/policy_17.pdf.* (FDA and HRSA have verified the Web site address, but the agencies are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**).

where the vasculature of the donated organ is inadequate, or to salvage a graft that would otherwise be lost. It is up to the organ transplant surgeon to assess the risks and benefits of, and alternatives to, using a particular vessel to accomplish or modify an organ transplant. Moreover, the risks of disease transmission and HLA sensitization would apply even if FDA retained jurisdiction over these blood vessels as HCT/Ps. FDA regulations, like HRSA policies, reduce, but cannot entirely eliminate, the risk of disease transmission, and FDA tissue regulations do not address HLA sensitization. In addition, the OPTN has long-established mechanisms for tracking of organs from the donor to the recipient, which require the reporting of transplant outcomes. HRSA intends to monitor the use and outcomes of these vessels used in organ transplantation, and to work with the OPTN to modify policies governing their use as needed.

(Comment 3) One comment suggested that the rulemaking should distinguish between organ recipients based on the type of their organ donor (living, nonrelated; living, related; or deceased) and use these distinctions to define the types of transplant recipients who may receive these vessels for organ transplant use. The comment asked whether a surgeon may use vessels from a deceased donor to repair a thrombosed renal artery in the recipient of a living donor kidney.

(Response) We decline to make these suggested changes to the rulemaking. The language in 42 CFR 121.7(e) establishes a priority allocation for use of vessels with organs from the same donor. If vessels are not needed for this use, the rule does not preclude vessels recovered from deceased donors and labeled ''For use in organ transplantation only'' from being transplanted into recipients of organs from living donors, either to perform the initial transplant of the organ or to later modify the organ transplant. The situation described in the comment would be an example of the use of such vessels to modify a transplant.

V. Legal Authority

We are issuing these regulations under the authority of the National Organ Transplant Act as amended (NOTA) and section 361 of the Public Health Service Act (the PHS Act). NOTA authorizes HRSA, by delegation from the Secretary, to issue regulations governing the operation of the OPTN. NOTA, as amended, also authorizes the Secretary to define human organs to be covered by the OPTN. Section 374 of the PHS Act specifically states, ''[t]he term 'organ' means the human kidney, liver, heart, lung, pancreas, *and any other human organ (other than corneas and eyes) specified by the Secretary by regulation.* * * *.'' (42 U.S.C. § 274b(d)(2)) (emphasis supplied). Accordingly, HRSA is issuing this regulation to modify the definition of ''organ,'' and to make blood vessels labeled and intended for use in the transplantation of organs subject to regulations governing the operation of the OPTN. Extending the definition of organs governed by HRSA in 42 CFR 121.2 to add blood vessels recovered with organs that are intended for use in organ transplantation, and labeled as such, furthers the Secretary's charge under NOTA.

Under the authority of section 361 of the PHS Act delegated to the Commissioner of FDA, the Department of Health and Human Services may make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between the States or from foreign countries into the States. This modification of FDA's existing regulation reflects FDA's re-evaluation of the level of regulation that is necessary to prevent disease transmission involving blood vessels intended for use in organ transplantation.

VI. Analysis of Impacts

FDA and HRSA have examined the impacts of the final rule under Executive Order 12866 and 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 agencies believe that this final rule is not a significant regulatory action under the 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 agencies do not expect that the transfer from FDA to HRSA of jurisdiction over the blood vessels described in the rule will result in substantial changes in the way transplant hospitals and OPOs procure, store, and transplant such blood vessels, FDA and HRSA certify 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 $122 million, using the most current (2005) 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.

VII. The Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

VIII. Environmental Impact

FDA and HRSA have determined under 21 CFR 25.30(j) 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.

IX. Federalism

FDA and HRSA have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA and HRSA have determined that the rule does not contain 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. Accordingly, FDA and HRSA have concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

X. Effective Date

This final rule is effective on April 11, 2007.

List of Subjects

21 CFR Part 1271

Biologics, Communicable diseases, Drugs, HIV/AIDS, Human cells, tissues, and cellular and tissue-based products, Medical devices, Reporting and recordkeeping requirements.

42 CFR Part 121

Healthcare, Hospitals, Reporting and recordkeeping requirements.

■ Therefore, under the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs and to the Administrator, Health Resources and Services Administration, 21 CFR part 1271 and 42 CFR part 121 are amended as follows:

21 CFR Chapter I

PART 1271—HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE-BASED PRODUCTS

■ 1. The authority citation for 21 CFR part 1271 continues to read as follows:

Authority: 42 U.S.C. 216, 243, 263a, 264, 271.

■ 2. Section 1271.3 is amended by adding paragraph (d)(8) to read as follows:

§ 1271.3 How does FDA define important terms in this part?

* * * * *

(d) * * *

(8) Blood vessels recovered with an organ, as defined in 42 CFR 121.2, that are intended for use in organ transplantation and labeled ''For use in organ transplantation only.''

* * * * *

42 CFR Chapter I

PART 121—ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK

■ 3. The authority citation for 42 CFR part 121 continues to read as follows:

Authority: Sections 215, 371–376 of the Public Health Service Act (42 U.S.C. 216, 273–274d); and sections 1102, 1106, 1138, and 1871 of the Social Security Act (42 U.S.C. 1302, 1306, 1320b–8 and 1395hh).

■ 4. Section 121.2 is amended by adding a sentence at the end of the definition of ''Organ'' to read as follows:

§ 121.2 Definitions

* * * * *

Organ * * * Blood vessels recovered from an organ donor during the recovery of such organ(s) are considered part of an organ with which they are procured for purposes of this part if the vessels are intended for use in organ transplantation and labeled ''For use in organ transplantation only.''

* * * * *

■ 5. Section 121.7 is amended by redesignating paragraph (e) as paragraph (f) and by adding paragraph (e) to read as follows:

§ 121.7 Identification of organ recipient.

* * * * *

(e) *Blood vessels considered part of an organ.* A blood vessel that is considered part of an organ under this part shall be subject to the allocation requirements and policies pertaining to the organ with which the blood vessel is procured until and unless the transplant center receiving the organ determines that the blood vessel is not needed for the transplantation of that organ.

* * * * *

Dated: December 8, 2006.

Elizabeth M. Duke,

Administrator, Health Resources and Services Administration.

Dated: February 2, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy, Food and Drug Administration.

[FR Doc. 07–1131 Filed 3–9–07; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA–137F3]

RIN 1117–AA31

Exemption of Chemical Mixtures

AGENCY: Drug Enforcement Administration (DEA), U.S. Department of Justice.

ACTION: Final rule.

SUMMARY: On December 15, 2004, the Drug Enforcement Administration (DEA) published a Final Rule corrected January 4, 2005) that implemented new regulations concerning chemical mixtures that contain any of the 27 listed chemicals. The Final Rule added a new provision not previously raised by DEA in any proposed rulemaking. This newly introduced provision exempted domestic and import transactions in chemical mixtures that are regulated solely due to the presence of the List II solvent chemicals acetone, ethyl ether, 2-butanone, or toluene from the Controlled Substances Act (CSA) recordkeeping and reporting requirements. Because this exemption was not previously proposed in any rulemaking, DEA implemented this exemption on an interim basis and requested public comment on this exemption provision.

Based upon a review of all comments, DEA is finalizing this exemption. As such, domestic and import transactions in chemical mixtures containing the List II chemicals acetone, ethyl ether, 2-butanone, and toluene shall be exempt from CSA chemical recordkeeping and reporting requirements.

DATES: This Final Rule is effective March 12, 2007.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

I. Background

Historical Legal Status of Chemical Mixtures

The Chemical Diversion and Trafficking Act of 1988 (CDTA), (Pub. L. 100–690) created the definition of ''chemical mixture'' (21 U.S.C. 802(40)), and exempted chemical mixtures from regulatory control. The CDTA established 21 U.S.C. 802(39)(A)(vi), as amended by Title VII of Public Law 109–177, to exclude ''any transaction in a chemical mixture'' from the definition of a ''regulated transaction.'' The exemption of all chemical mixtures, however, provided traffickers with an unregulated source for obtaining listed chemicals for use in the illicit manufacture of controlled substances.

To remedy this situation, the Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103–200) (DCDCA), enacted in April 1994, subjected chemical mixtures containing listed chemicals to CSA regulatory requirements, unless specifically exempted by regulation. The DCDCA, therefore, subjected all regulated chemical mixtures to recordkeeping, reporting, and security requirements of the CSA. Additionally, the DCDCA added a registration requirement for handlers of regulated List I chemical mixtures.

The DCDCA, however, also amended 21 U.S.C. 802(39)(A)(vi), as amended by Title VII of Public Law 109–177, to provide the Attorney General with the authority to establish regulations exempting chemical mixtures from the definition of a ''regulated transaction'' ''based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered'' (21 U.S.C. 802(39)(A)(vi) as amended by Title VII of Pub. L. 109–177). This authority has been delegated to the Administrator of DEA by 28 CFR 0.100 and redelegated to the Deputy

Administrator under 28 CFR Appendix to Subpart R, section 12.

Prior to publication of a final rulemaking, chemical mixtures containing listed chemicals have been treated as exempt from CSA regulatory control. Regulations regarding the exemption of chemical mixtures were initially proposed by DEA on October 13, 1994, as part of its proposed regulations to implement the DCDCA (59 FR 51888). In response to industry concerns, the proposed regulations were withdrawn on December 9, 1994, (59 FR 63738).

DEA proposed new regulations regarding the exemption of chemical mixtures by publishing a new NPRM entitled ''Exemption of Chemical Mixtures'' on September 16, 1998 (63 FR 49506). DEA proposed the following three-tiered approach to identify which chemical mixtures qualify for automatic exemption: (1) It contains a listed chemical at or below an established concentration limit; or (2) it falls within a specifically defined category; or (3) the manufacturer of the mixture applies for and is granted a specific exemption for the product.

On December 15, 2004, DEA published a final rule which specified criteria used to determine whether chemical mixtures qualify for automatic exemption from CSA chemical regulatory controls for 27 listed chemicals (69 FR 74957; corrected at 70 FR 294, January 4, 2005). Those chemical mixtures that do not meet the exemption criteria are treated as regulated chemicals and therefore, subject to CSA chemical regulatory controls.

Chemical Mixture Definition

Title 21 U.S.C. 802(40) defines the term ''chemical mixture'' as ''a combination of two or more chemical substances, at least one of which is not a List I chemical or a List II chemical, except that such term does not include any combination of a List I chemical or a List II chemical with another chemical that is present solely as an impurity.'' Therefore, a chemical mixture contains any number of listed chemicals along with any number of non-listed chemicals. A combination of only listed chemicals is, therefore, not a chemical mixture pursuant to the CSA definition. As such, the regulatory controls pertaining to each individual listed chemical are applicable.

It is DEA's longstanding policy that the combination of a listed chemical in an inert carrier is not considered a chemical mixture. An inert carrier can be any chemical that does not interfere with the listed chemical's function but is present to aid in the delivery of the listed chemical so it can be used in some chemical process. Examples include, but are not limited to, solutions of listed chemicals such as methylamine in water or hydrogen chloride dissolved in water or alcohol. Persons who question if their formulations are chemical mixtures should contact DEA for guidance.

New Interim Chemical Mixture Exemption Category

The Final Rule published on December 15, 2004, (69 FR 74957; corrected at 70 FR 294, January 4, 2005) also added, on an interim basis, a new exemption category. DEA determined that certain solvent-based mixtures involving silicon-based products, paint-related materials, and other solvent-based chemical mixtures containing acetone, ethyl ether, 2-butanone, and toluene are not likely to be diverted domestically. These solvent chemicals are mostly a concern because they are used in cocaine and heroin processing, which occurs outside the United States.

Therefore, the December 15, 2004 rulemaking created a new exemption category for these mixtures. Domestic and import transactions in chemical mixtures that are regulated solely due to the presence of the List II solvent chemicals acetone, ethyl ether, 2-butanone, or toluene were removed, on an interim basis, from the definition of a regulated transaction by adding a new paragraph to 21 CFR 1310.08. Methyl isobutyl ketone, also a List II solvent chemical, was not included because domestic and import transactions in that chemical have already been excluded from the definition of a regulated transaction at 21 CFR 1310.08.

This new exemption (for domestic and import transactions in chemical mixtures containing the List II chemicals acetone, ethyl ether, 2-butanone, and toluene) was not discussed in the original NPRM published on September 16, 1998 (63 FR 49506). Therefore, this exemption was implemented on an interim basis with opportunity for public comment in the December 15, 2004 rulemaking (69 FR 74957; corrected at 70 FR 294, January 4, 2005). DEA solicited comments on this portion of the rulemaking.

II. Comments Received Regarding the Interim Regulations

DEA received three comments in response to the December 15, 2004, rulemaking (69 FR 74957) from interested parties. Two comments were from trade associations, and one comment was from a chemical manufacturer. In general, the comments supported efforts by DEA to regulate chemical mixtures that have potential use to drug traffickers. Each comment specifically supported finalization of the exemption for domestic and import transactions for chemical mixtures containing the List II solvent chemicals acetone, ethyl ether, 2-butanone, and toluene.

Two comments, however, requested that the exemption be expanded to include certain exports of such chemical mixtures. The comments suggested that DEA only regulate exports of such mixtures to certain specific countries of concern. Given the applicability of such solvents for both cocaine and heroin processing, however, the geographic regions of concern are extremely widespread. Additionally, DEA has concerns that exports of solvent chemical mixtures can be subject to re-exportation from destination countries. DEA believes that such exports of chemical mixtures should not be exempted since exports of these chemical mixtures could have significant potential for diversion. Therefore, these chemical mixtures, unless otherwise exempt, are subject to the export and other CSA chemical regulatory requirements.

One commenter expressed concerns regarding the regulatory language found in 21 CFR 1310.08(l) stating that, ''Domestic and import transactions in chemical mixtures that contain acetone, ethyl ether, 2-butanone, or toluene unless regulated because of being formulated with another listed chemical above the concentration limit'' shall be excluded transactions. The commenter stated that the regulatory language does not make it clear that this exemption applies if the mixture contains more than one of these chemicals (i.e. contains two or more of the following: acetone, ethyl ether, 2-butanone or toluene). The commenter expressed concerns that enforcement officials may deem chemical mixtures containing more than ''one'' of these solvents as regulated if the total quantity exceeded the List II concentration limits. DEA agrees. Therefore, DEA is modifying 21 CFR 1310.08(l) to read, ''Domestic and import transactions in chemical mixtures that contain acetone, ethyl ether, 2-butanone, and/or toluene, unless regulated because of being formulated with other List I or List II chemical(s) above the concentration limit'' shall be excluded.

Clarification of Concentration Limits

As DEA stated in its Final Rule establishing concentration limits for the vast majority of chemical mixtures (69 FR 74957, December 15, 2004), and

codified at 21 CFR 1310.14(c), mixtures containing a listed chemical in concentrations equal to or less than those specified in the ''Table of Concentration Limits'' are designated as exempt from specified provisions set forth in that section. The concentration limit is set at 35 percent (by weight or volume) for the cumulative amount of acetone, methyl ethyl ketone (MEK), methyl isobutyl ketone (MIBK), toluene, and ethyl ether. Therefore, the table in 21 CFR 1310.14(c) specifies that for exports, the limit applies to the specific chemical or any combination of acetone, ethyl ether, 2-butanone, methyl isobutyl ketone, and toluene, if present in the mixture by summing the concentrations for each chemical. For example, an export involving a chemical mixture containing 20 percent acetone and 20 percent ethyl ether would not be exempt because the cumulative total of 40 percent exceeds the 35 percent concentration limit.

Final Action Taken in This Rulemaking

After considering all comments, DEA has decided to exempt domestic and import transactions in chemical mixtures that contain acetone, ethyl ether, 2-butanone, and/or toluene under 21 CFR 1310.08 pursuant to 21 U.S.C. 802(39)(A)(iii) because regulation of such transactions has been determined to be unnecessary for the enforcement of the CSA. DEA determined that there is not a significant risk of domestic diversion for these chemical mixtures.

Specific Requirements That Will Apply to Regulated Chemical Mixtures Containing List II Chemicals Upon Publication of This Final Rule

The above exemption only exempts such chemical mixtures from the domestic recordkeeping and import notification requirements. All other CSA chemical regulatory provisions, as specified in detail in the December 15, 2004 rule [69 FR 74957; corrected at 70 FR 294, January 4, 2005], shall apply.

III. Exemption Authority

The CSA authorizes DEA, pursuant to 21 U.S.C. 802(39)(A)(iii), to remove certain transactions in listed chemicals from the definition of a regulated transaction that are unnecessary for enforcement of the CSA. Based on comments to the **Federal Register** proposed rule ''Exemption of Chemical Mixtures'' (63 FR 49506, September 16, 1998), DEA identified certain transactions in mixtures of acetone, ethyl ether, 2-butanone, and toluene that are unlikely sources for diversion. DEA was informed that tens of thousands of domestic transactions in these chemical mixtures occur annually. DEA determined that the regulation of domestic and import transactions in mixtures containing the chemicals acetone, ethyl ether, 2-butanone, and toluene were unnecessary for enforcement of the CSA and should be removed from the definition of a regulated transaction.

Since the NPRM to this rulemaking did not discuss this exemption, the public did not have the opportunity to comment on the exclusion of these transactions from the definition of a regulated transaction.

However, to avoid unnecessary burdens on affected companies during the pendency of proceedings in this matter, DEA decided to include as part of its December 15, 2004, Final Rule an interim rule, with request for comment, removing these transactions from the definition of a regulated transaction. Now that DEA has had the opportunity to solicit and review comments, the exemption is being finalized in this rule.

IV. Regulatory Certifications

Regulatory Flexibility Act

DEA has become aware that a substantial number of chemical mixtures that are not useful to traffickers could potentially be regulated if the chemical mixtures that are subject to this rulemaking were not excluded from certain regulatory requirements. DEA determined that the regulation of these chemical mixtures is not necessary for enforcement of the CSA. Therefore, DEA decided to exempt these chemical mixtures from regulatory controls by exemption of certain types of transactions.

DEA notes that the List II solvent chemicals acetone, ethyl ether, 2-butanone, and toluene contribute to the largest number of potentially regulated chemical mixtures of List II chemicals. To limit the number of potentially regulated chemical mixtures to those necessary for enforcement of the CSA, DEA decided to define all domestic and import transactions of mixtures in these List II solvent chemicals as exempt transactions. This exemption applies to all persons that handle these chemical mixtures and not only to those who are represented in the comments. DEA previously implemented this exemption and is finalizing the exemption in this rulemaking.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Deputy Administrator has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Section 1(b), Principles of Regulation. DEA has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, Section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget. This rule finalizes an exemption for domestic and import transactions involving the List II chemicals acetone, ethyl ether, 2-butanone, and toluene.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $118,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This rulemaking finalizes an exemption provision which reduced the paperwork burden on handlers of acetone, ethyl ether, 2-butanone and toluene. By exempting domestic and import transactions involving chemical mixtures containing these List II chemicals DEA is not subjecting these

transactions to CSA recordkeeping and reporting requirements. Domestic and import transactions involving chemical mixtures containing acetone, ethyl ether, 2-butanone and toluene are not subject to the following information collections: DEA information collection 1117–0023: Import/Export Declaration for List I and List II Chemicals [imports only]; and DEA information collection 1117–0029: Annual Reporting Requirement for Manufacturers of Listed Chemicals.

List of Subjects In 21 CFR Part 1310

Drug traffic control, List I and List II chemicals, Reporting and Recordkeeping requirements.

■ For the reasons set out above, 21 CFR part 1310 is amended to read as follows:

PART 1310—[AMENDED]

■ 1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 827(h), 830, 871(b), 890.

■ 2. Section 1310.08 is amended by revising paragraph (l) to read as follows:

§ 1310.08 Excluded Transactions.

* * * * *

(l) Domestic and import transactions in chemical mixtures that contain acetone, ethyl ether, 2-butanone, and/or toluene, unless regulated because of being formulated with other List I or List II chemical(s) above the concentration limit.

Dated: March 1, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–4314 Filed 3–9–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[Docket No. MO–039–FOR]

Missouri Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Missouri regulatory program (Missouri program) regarding bonding under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Previously, we approved an emergency rule that allowed Missouri to transition from a ''bond pool'' approach to bonding to a ''full cost bond'' approach in a timely manner. We are now approving Missouri's permanent rule concerning this same topic. Missouri proposed to revise its program to improve operational efficiency.

DATES: *Effective Date:* March 12, 2007.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (618) 463–6460. E-mail: *MCR_AMEND@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Missouri Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Missouri program on November 21, 1980. You can find background information on the Missouri program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the November 21, 1980, **Federal Register** (45 FR 77017). You can also find later actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15, and 925.16.

II. Submission of the Amendment

By letter dated October 11, 2006 (Administrative Record No. MO–666), Missouri sent us a ''permanent rule'' amendment to its program regarding bonding under SMCRA (30 U.S.C. 1201 *et seq.*). This amendment was sent as a replacement for Missouri's ''emergency rule'' that we previously approved on June 8, 2006 (71 FR 33243). The ''emergency rule'' allowed Missouri to transition from a ''bond pool'' approach to bonding to a ''full cost bond'' approach in a timely manner. The ''permanent rule'' amendment, when approved, will become a permanent part of Missouri's program.

We announced receipt of Missouri's proposed ''emergency rule'' amendment in the November 29, 2005, **Federal Register** (70 FR 71425). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one and we did not receive any comments. We also stated in this **Federal Register** document that if Missouri submitted a ''permanent rule'' with language that has the same meaning as the ''emergency rule,'' we would publish a final rule and Missouri's ''permanent rule'' would become part of the Missouri program. Because Missouri's ''permanent rule'' has the same meaning as the ''emergency rule,'' we are proceeding with the final rule.

III. OSM's Findings

Following are the findings we made concerning Missouri's ''permanent rule'' amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

A. Minor Revisions to Missouri's Regulations

Missouri's definition for ''regulatory authority,'' found at 10 CSR [Code of State Regulations] 40–8.010(82), means the Land Reclamation Commission (commission), the director, or their designated representatives and employees unless otherwise specified in the State's rules. Missouri proposed to replace the words ''commission'' or ''regulatory authority'' with the word ''director'' in the following regulations: 10 CSR 40–7.011(2)(A), (3)(C), (4)(B), (6)(B)1., 5., 6., and 7., (6)(C)1. and 8., (6)(D)2., and (6)(D)2.B, 3.B, 3.B(I) and 5.C; and 10 CSR 40–7.041(1)(A), (B)1. and (B)2. Missouri proposed to improve operational efficiency by specifying that the director is to perform certain duties. We find that the substitution of the word ''director'' for the words ''commission'' or ''regulatory authority'' will not render Missouri's regulations less effective than the Federal regulations because in accordance with Missouri's definition for regulatory authority, the director is a regulatory authority as is the commission and the certain duties specified in the regulations cited above are not duties reserved solely for the commission according to section 444.810 of Missouri's surface coal mining law.

Therefore, we are approving these revisions.

B. Revisions to Missouri's Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations.

Topic	Missouri regulation (10 CSR)	Federal counterpart regulation (30 CFR)
Requirement to File a Bond	40–7.011(2)(B)	800.11(d).
Bond Amounts	40–7.011(4)	800.14(a) and (b).
Changing Bond Amounts	40–7.011(5)	800.15.
Personal Bonds Secured by Letters of Credit	40–7.011(6)(C)2.	800.21(b)(2).
Definition for "Parent Corporation"	40–7.011(6)(D)1.F.	800.23(a).
Self-Bonding	40–7.011(6)(D)2., (6)(D)2.B., (6)(D)2.D.(I) through (III), and (6)(D)3., and (6)(D)6..	800.23(b), (b)(2), (b)(4)(i) through (iii), (c), and (f).
Criteria and schedule for release of reclamation liability.	40–7.021(2)(B)5. and 6.	800.40(c).

Because the above State regulations have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

C. 10 CSR 40–7.011 Bond Requirements

1. 10 CSR 40–7.011(1) Definitions

a. Missouri proposed to revise its definition for personal bond in paragraph (1)(C) to read as follows:

> Personal bond means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by negotiable certificates of deposit or irrevocable letters of credit which may be drawn upon by the director if reclamation is not completed or if the permit is revoked prior to completion of reclamation.

The Federal definition for collateral bond found at 30 CFR 800.15(b) means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by one or more of the following: A cash account; negotiable bonds of the United States, a State, or municipality; negotiable certificates of deposit; irrevocable letters of credit; a perfected, first-lien security interest in real property; or other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service. The Federal regulation at 30 CFR 800.50 provides for the regulatory authority to forfeit bonds and use funds collected from bond forfeiture to complete the reclamation plan or portion thereof, on the permit area or increment to which bond coverage applies.

Missouri has chosen to limit the vehicles that support an indemnity agreement to negotiable certificates of deposit and irrevocable letters of credit. Missouri also provides that the director may use funds from personal bonds if reclamation is not completed or if the permit is revoked before the completion of reclamation. We are, therefore, approving Missouri's definition for personal bond because it is no less effective than the above Federal regulations.

b. Missouri proposed to revise its definition for Phase I bond in paragraph (1)(D) to read as follows:

> Phase I bond means performance bond conditioned on the release of sixty percent (60%) of the bond upon the successful completion of Phase I reclamation of a permit area in accordance with the approved reclamation plan.

There is no Federal definition for Phase I bond, however, the Federal regulation at 30 CFR 800.40(c) states that the regulatory authority may release all or part of the bond for the entire permit area or incremental area if the regulatory authority is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with specific schedules for reclamation of Phases I, II, and III. The schedule for Phase I reclamation, found at 30 CFR 800.40(c)(1), involves the operator completing the backfilling, re-grading (which may include the replacement of topsoil), and drainage control of a bonded area in accordance with the approved reclamation plan. When this schedule is complete, the regulatory authority may release 60 percent of the bond. We are approving Missouri's definition for Phase I bond because it is no less effective than the Federal regulation at 30 CFR 800.40(c)(1).

2. 10 CSR 40–7.011(6) Types of Bonds

a. 10 CSR 40–7.011(6)(A) Surety Bonds

Missouri proposed to revise paragraph (6)(A)8. regarding surety bonds. This paragraph inappropriately refers to a "bank" or "bank charter" when the subject matter of this paragraph pertains to a surety company. Missouri proposed to delete the language that refers to a "bank" or "bank charter." Also, Missouri proposed to correct the incorrect reference citation, 10 CSR 40–7.031(A)(6), so that it correctly reads 10 CSR 40–7.031(1)(F)2. We are approving Missouri's revisions regarding the deletion of the terms "bank" and "bank charter" because they are inappropriately included in this paragraph that pertains only to surety companies. We are also approving the correction of the incorrect reference citation.

Finally, Missouri proposed that, upon the incapacity of the surety because of bankruptcy or insolvency, or suspension or revocation of its license, the permittee must promptly notify the director. Upon this notification, the director must issue a notice of violation (NOV) against the operator who is without bond coverage specifying that the operator must replace the bond in no more than 90 days. If the NOV is not abated in accordance with the schedule, a cessation order must be issued requiring immediate compliance with 10 CSR 40–3.150(4), Cessation of Operations—Permanent.

The Federal regulation at 30 CFR 800.16(e)(2) sets forth a requirement that upon the incapacity of a bank or surety company by reason of bankruptcy or insolvency, or suspension or revocation of a charter or license, the permittee must be deemed to be without bond coverage and must promptly notify the regulatory authority. When the regulatory authority receives the notification, it must notify the operator in writing to replace the bond in a period not to exceed 90 days. If the operator does not provide an adequate bond, the operator must cease mining and immediately begin reclamation operations in accordance with the approved reclamation plan.

We are approving the above revision because it is no less effective than the Federal regulation at 30 CFR 800.16(e)(2).

b. 10 CSR 40–7.011(6)(B) Personal Bonds Secured by Certificates of Deposit

i. Missouri proposed to revise paragraphs (6)(B)2., 4., 6., and 7. regarding personal bonds secured by certificates of deposit. Paragraph (6)(B)4. refers to banks or savings and loan companies issuing the certificates of deposit, while paragraphs (6)(B)2., 6., and 7. only refer to banks issuing certificates of deposit. Missouri proposed to revise these paragraphs to make them consistent with paragraph (6)(B)4. Missouri also proposed to remove the term ''Federal Savings and Loan Insurance Corporation (FSLIC)'' from this paragraph because the FSLIC was abolished and the Federal Deposit Insurance Corporation (FDIC) now insures savings and loan companies. We are approving these revisions because the Federal regulation at 30 CFR 800.21(a)(4) implies that banks or savings and loan companies are acceptable sources for certificates of deposit by its reference to certificates of deposits insured by the FDIC or the FSLIC.

ii. Missouri proposed to revise paragraph (6)(B)4. by adding that permittees may not submit, from a single bank or savings and loan company, certificates of deposit totaling more than the maximum insurable amount as determined by the FDIC. We are approving this revision because the Federal regulation at 30 CFR 800.21(a)(4) contains the provision that an individual certificate of deposit cannot be accepted in an amount that is greater than the maximum insurable amount as determined by the FDIC.

iii. Missouri proposed to revise paragraph (6)(B)7. by changing the number of days that an operator has for replacing bond coverage from 60 to 90 days if the operator is without bond because of a bank's or savings and loan company's insolvency or bankruptcy or suspension or revocation of its charter or license. Missouri also proposed to add a requirement to paragraph (6)(B)7. that prohibits an operator from resuming mining operations until after the director has determined that an acceptable bond has been posted. We are approving the revision because the Federal regulation at 30 CFR 800.16(e) provides that the operator must replace the bond in a period not to exceed 90 days and that the operator must not resume mining operations until the regulatory authority has determined that an acceptable bond has been posted.

c. 10 CSR 40–7.011(6)(C) Personal Bonds Secured by Letters of Credit

i. Missouri proposed to revise paragraph (6)(C)4. as follows:

> The letter of credit shall be issued by a bank authorized to do business in the United States. If the issuing bank is located in another state, a bank located in Missouri must confirm the letter of credit. Confirmations shall be irrevocable and on a form provided by the director;

The Federal regulation at 30 CFR 800.21(b)(1) requires letters of credit to be issued by a bank organized or authorized to do business in the United States. Therefore, we are approving Missouri's proposed revision because it is no less effective than the Federal regulation.

ii. Missouri proposed to revise paragraph (6)(C)9. to require the bond to have a mechanism by which a bank must give prompt notice to the director and the permittee of any action filed alleging the insolvency or bankruptcy of the bank or permittee or alleging any violations which would result in the suspension or revocation of the bank's charter or license to do business. Missouri also proposed that upon the incapacity of any bank by reason of insolvency or bankruptcy or suspension or revocation of its charter or license, the permittee shall be deemed to be without bond and the director must, upon notification of the incapacity, issue an NOV to the operator who is without bond. The NOV must specify a period not to exceed 90 days in which to replace the bond coverage. In addition, if the NOV is not abated in accordance with the abatement schedule, a cessation order must be issued requiring the immediate compliance with 10 CSR 40–3.150(4) Cessation of Operations—Permanent and the mining operations must not resume until the director has determined that an acceptable bond has been posted.

The Federal regulation at 30 CFR 800.16(e)(1) requires the bond to have a mechanism for a bank or surety company to promptly notify the regulatory authority and the permittee of any action filed alleging the insolvency or bankruptcy of the bank, surety company, or permittee or alleging any violations which would result in the suspension or revocation of the bank's or surety company's charter or license to do business. The Federal regulation at 30 CFR 800.16(e)(2) deems the permittee to be without bond coverage upon the incapacity of the bank or surety company by reason of insolvency or bankruptcy or suspension or revocation of its charter or license and requires the permittee to promptly notify the regulatory authority of the incapacity. The regulatory authority upon this notification must notify, in writing, the operator who is without bond coverage, to replace bond coverage in a period not to exceed 90 days. If an adequate bond is not posted, the operator must (1) cease mining, (2) comply with 30 CFR 816.132 or 30 CFR 817.132, Cessation of Operations: Permanent, and (3) immediately begin reclamation operations in accordance with the reclamation plan.

We are approving Missouri's revisions because they are no less effective than the above Federal regulations.

d. 10 CSR 40–7.011(6)(D) Self-Bonding

i. Missouri proposed to revise paragraph (6)(D)8. by changing the time period for replacing the bond from 60 days to 90 days if the financial conditions of the permittee or third-party guarantors change so that they no longer satisfy the requirements for being able to post self bonds. Missouri also proposed that if the bond is not replaced in accordance with the schedule set by the director, the operator must immediately begin to conduct reclamation operations in accordance with the reclamation plan.

The Federal regulation at 30 CFR 800.23(g) provides that if the financial conditions of the applicant, parent, or non-parent corporate guarantor change so that the criteria for being able to post self bonds are not met, the permittee must immediately notify the regulatory authority and must post an alternative form of bond within 90 days. If the permittee does not post the alternate bond, the operator must cease mining operations and immediately begin to conduct reclamation operations in accordance with the reclamation plan.

We are approving Missouri's revision because it is no less effective than the Federal regulation at 30 CFR 800.23(g).

3. 10 CSR 40–7.011(7) Replacement of Bonds

Missouri proposed to revise paragraph (7)(A). This paragraph allows permittees to replace existing surety or personal bonds with other surety or personal bonds. Missouri proposed to add self bonds so that permittees may replace existing surety, personal or self bonds with other surety, personal or self bonds.

The Federal regulation at 30 CFR 800.30(a) provides that the regulatory authority may allow a permittee to replace existing bonds with other bonds that provide adequate coverage.

We are approving Missouri's revision because it is no less effective than the Federal regulation at 30 CFR 800.30(a).

D. 10 CSR 40–7.021(2) Criteria and Schedule for Release of Reclamation Liability

1. Missouri proposed to revise paragraphs (2) and (2)(E) Paragraph (2) reads as follows:

(2) Criteria and Schedule for Release of Reclamation Liability. Except as described in subsection (2)(E), reclamation liability shall be released in three (3) phases.

Missouri proposed to delete the phrase, ''Except as described in subsection (2)(E),'' so that revised paragraph (2) reads as follows:

(2) Criteria and Schedule for Release of Reclamation Liability. Reclamation liability shall be released in three (3) phases.

Paragraph (2)(E) reads as follows:

(E) All bonding liability may be released in full from undisturbed areas when further disturbances from surface mining have ceased. No bonding shall be released from undisturbed areas before Phase I liability applying to adjacent disturbed lands is released, except that the commission may approve a separate bond release from an area of undisturbed land if the area is not excessively small and can be separated from areas that have been or will be disturbed by a distinct boundary, which can be easily located in the field and which is not so irregular as to make record keeping unusually difficult. The permit shall terminate on all areas where all bonds have been released.

Missouri proposed to delete all the language in this paragraph except the last sentence, so that revised paragraph (2)(E) reads as follows:

(E) The permit shall terminate on all areas where all bonds have been released.

The Federal regulations that pertain to the requirement for releasing Phase I, II, and III performance bonds are found at 30 CFR 800.40(c), however, there are no direct Federal counterpart regulations to 10 CSR 40–7.021(2) and (2)(E). The language being removed from 10 CSR 40–7.021(2) references 10 CSR 40–7.021(2)(E) and both of these paragraphs pertain to the full release of bond, under certain conditions, from undisturbed areas where further disturbance from surface mining have ceased. The Federal regulation at 30 CFR 800.15(c) allows bond adjustments which involve undisturbed land and states that these adjustments are not considered bond release subject to the procedures of 30 CFR 800.40. We are approving the removal of the language from 10 CSR 40–7.021(2) and (2)(E) because the removal of this language is not inconsistent with and will not render Missouri's regulations less effective than the Federal regulations.

2. Missouri proposed to revise paragraph (2)(A) regarding the criteria for release of Phase I liability. Paragraph (2)(A) reads as follows:

(A) An area shall qualify for release of Phase I liability upon completion of backfilling and grading, topsoiling, drainage control and initial seeding of the disturbed area. Phase I bond shall be retained on unreclaimed temporary structures, such as roads, siltation structures, diversions and stockpiles, on an acre for acre basis.

Missouri proposed to delete the phrase, ''on an acre for acre basis,'' from the last sentence of this paragraph.

The Federal counterpart regulation is found at 30 CFR 800.40(c)(1) and provides that Phase I reclamation is complete after the operator completes the backfilling, regrading (which may include the replacement of topsoil), and drainage control of the bonded area in accordance with the approved reclamation plan. We are approving the deletion of the above phrase from Missouri's regulation because it will not render the State regulation less effective than the Federal counterpart regulation.

3. Missouri proposed to revise paragraph (2)(B)4. regarding the criteria for qualifying for release of Phase II liability to read as follows:

4. A plan for achieving Phase III release has been approved for the area requested for release and the plan has been incorporated into the permit;

There is no direct Federal counterpart regulation for paragraph (2)(B)4. However, the Federal regulation at 30 CFR 784.13(a) requires each application to contain a plan for the reclamation of the lands within the proposed permit area. Missouri's proposed regulation is no less effective than the above Federal regulations and we are approving it.

4. Missouri proposed to revise paragraph (2)(D) regarding bond release by deleting the language and replacing it with new language, and by adding new paragraphs 1. through 3. to read as follows:

(D) Bonds release.

1. Phase I—After the operator completes the backfilling, grading, topsoiling, drainage control, and initial seeding of the disturbed area in accordance with the approved reclamation plan, the director shall release 60 percent of the bond for the applicable area.

2. Phase II—After vegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, the director shall release an additional amount of bond. When determining the amount of bond to be released after successful vegetation has been established, the director shall retain that amount of bond for the vegetated area which would be sufficient to cover the cost of reestablishing vegetation if completed by a third party and for the period specified for in 10 CSR 40–7.021(1)(B) for reestablishing vegetation.

3. Phase III—After the operator has completed successfully all surface coal mining and reclamation activities, the director shall release the remaining portion of the bond, but not before the expiration period specified for the period of liability in 10 CSR 40–7.021(1)(B).

The Federal counterpart regulations are found at 30 CFR 800.40(c)(1) through (c)(3) and set forth the criteria for releasing bond based upon the three phases of reclamation. We are approving Missouri's proposed revision because it is substantively the same as the Federal counterpart regulations.

E. 10 CSR 40–7.031 Permit Revocation, Bond Forfeiture and Authorization To Expend Reclamation Fund Monies

Missouri proposed to revise paragraph (2) regarding the procedures for permit suspension or revocation and paragraph (4) regarding declaration of permit revocation. More specifically, Missouri proposed to revise paragraphs (2)(E)1. and (4), and to delete paragraphs (2)(E)2.C and D in order to remove provisions related to the Missouri Coal Mine Land Reclamation Fund. Missouri also proposed to add new paragraphs (4)(A) through (B)2. to specify what monies the director may use for reclamation purposes for bonds forfeited before January 1, 2006, and for those forfeited on or after January 1, 2006.

The Federal regulations at 30 CFR 800.11(a) through (d) set forth the provisions for a permit applicant to file, with the regulatory authority, a bond or bonds for performance that is conditioned upon the faithful performance of all the requirements of the Act, the regulatory program, the permit, and the reclamation plan. The regulations also include a ''full cost bond'' bonding system. The Federal regulation at 30 CFR 800.11(e) provides that we may approve an alternative bonding system as part of a State program. The previously approved Missouri Coal Mine Land Reclamation Fund is a ''bond pool'' fund that is part of Missouri's alternative bonding system and is used to complete reclamation on permit sites for which the permits have been revoked and the associated bonds have been forfeited. Missouri proposed to terminate its alternative bonding system and to adopt a ''full cost bond'' bonding system effective January 1, 2006. With this transition to a ''full cost bond'' bonding system, Missouri proposed that only permit sites whose bonds have been forfeited before January 1, 2006, are eligible to have

monies expended from the ''bond pool'' fund for the purpose of completing reclamation of the sites. Missouri also proposed that permit sites whose bonds have been forfeited on or after January 1, 2006, are eligible to have monies expended from the forfeited ''full cost bonds'' for the purpose of completing reclamation of the sites. We are approving Missouri's revisions as they are no less effective than the Federal regulations because permit sites under the alternative bonding system and the ''full cost bond'' bonding system have funds available for reclamation, if required.

Finally, Missouri proposed to add new paragraphs (4)(B)1. and 2. to read as follows:

1. In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The director may complete or authorize completion of reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

2. In the event the amount of performance bond forfeited is more than the amount necessary to complete reclamation, the unused funds shall be returned by the director to the party from whom they were collected.

The Federal counterpart regulations are found at 30 CFR 800.50(d)(1) and (2). We are approving Missouri's revisions because they are substantively identical to the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the emergency rule amendment (70 FR 71425), but did not receive any.

Federal Agency Comments

On November 10, 2005, and December 13, 2005, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the emergency rule amendment from various Federal agencies with an actual or potential interest in the Missouri program (Administrative Record Nos. MO–665.1 and MO–665.9). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Missouri proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the emergency rule amendment.

On November 10, 2005, and December 13, 2005, under 30 CFR 732.17(h)(11)(i), we requested comments on the emergency rule amendment from EPA (Administrative Record Nos. MO–665.1 and MO–665.9). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 10, 2005, and December 13, 2005, we requested comments on Missouri's emergency rule amendment (Administrative Record No. MO–665.1 and MO–665.9), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Missouri sent us on October 11, 2006.

To implement this decision, we are amending the Federal regulations at 30 CFR part 925, which codify decisions concerning the Missouri program to include the original amendment submission date and the date of final publication for this rulemaking.

VI. Procedural Determinations

Administrative Procedure Act

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. The provisions being approved in this rulemaking are substantively identical to those approved in the emergency rulemaking on June 8, 2006. At that time, notice and an opportunity to comment were provided to members of the public and no comments were received. Consequently, an additional comment period on the same provisions is viewed as unnecessary. In addition, we find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

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

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

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

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 2, 2007.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Region.

■ For the reasons set out in the preamble, 30 CFR part 925 is amended as set forth below:

PART 925—MISSOURI

■ 1. The authority citation for part 925 continues to read as follows:

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

■ 2. Section 925.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 925.15 Approval of Missouri regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
October 11, 2006	March 12, 2007	10 CSR 40–7.011(1)(C) and (D), (2)(A) and (B), (3)(C), (4) and (5), (6)(A)6., 8. and 9., (6)(B)1., 2., and 4. through 7., (6)(C)1. through 4., 8. and 9., (6)(D)1.F., 2., 2.B., 2.D.(I) through (III), 3., 5.C., 6., 8., and (7)(A); 10 CSR 40–7.021(1)(A), (2), (2)(A), (2)(B)3. through 6., (2)(C)2., (2)(D) and (E); 10 CSR 40–7.031(2)(E)1. and 2., (2)(E)2.C. & D., (3)(C), and (4) through (4)(B)2.; and 10 CSR 40–7.041.

[FR Doc. E7–4416 Filed 3–9–07; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 230

[Docket No. 070302051–7051–01; I.D. 021607D]

Whaling Provisions; Aboriginal Subsistence Whaling Quotas

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

ACTION: Rule.

SUMMARY: NMFS announces the aboriginal subsistence whaling quota for bowhead whales, and other limitations deriving from regulations adopted at the 2002 Special Meeting of the International Whaling Commission (IWC). For 2007, the quota is 75 bowhead whales struck. This quota and other limitations will govern the harvest of bowhead whales by members of the Alaska Eskimo Whaling Commission (AEWC).

DATES: Effective March 12, 2007.

ADDRESSES: Office of International Affairs, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Cheri McCarty, (301) 713–9090.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*). Regulations that implement the Act, found at 50 CFR 230.6, require the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 2002 Special Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock. The bowhead quota was based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of two Native groups: Alaska Eskimos and Chukotka Natives in the Russian Far East.

This action by the IWC thus authorized aboriginal subsistence whaling by the AEWC for bowhead whales. This aboriginal subsistence harvest is conducted in accordance with a cooperative agreement between NOAA and the AEWC.

The IWC set a 5–year block quota of 280 bowhead whales landed. For each of the years 2003 through 2007, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any year, including 15 unused strikes from the 1998 through 2002 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any one year. At the end of the 2006 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota for 2007 is 82 (67 + 15).

This arrangement ensures that the total quota of bowhead whales landed and struck in 2007 will not exceed the quotas set by the IWC. Under an arrangement between the United States and the Russian Federation, the Russian natives may use no more than seven strikes, and the Alaska Eskimos may use no more than 75 strikes.

NOAA is assigning 75 strikes to the Alaska Eskimos. The AEWC will allocate these strikes among the 10 villages whose cultural and subsistence needs have been documented in past requests for bowhead quotas from the IWC, and will ensure that its hunters use no more than 75 strikes.

Other Limitations

The IWC regulations, as well as the NOAA regulation at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA regulations (at 50 CFR 230.4) contain a number of other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here. Only licensed whaling captains or crew under the control of those captains may engage in whaling. They must follow the provisions of the relevant cooperative agreement between NOAA and a Native American whaling organization. The aboriginal hunters must have adequate crew, supplies, and equipment. They may not receive money for participating in the hunt. No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts. Captains may not continue to whale after the relevant quota is taken, after the season has been closed, or if their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Dated: March 6, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E7–4443 Filed 3–9–07; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 061109296-7009-02; I.D. 030607B]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS announces that the Commonwealth of Virginia is transferring 150,000 lb (68,039 kg) of commercial bluefish quota to the State of New York from its 2007 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective March 7, 2007 through December 31, 2007, unless NMFS publishes a superseding document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Management Specialist, (978) 281–9341, FAX (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.160.

Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.160(f). The Regional Administrator is required to consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations.

Virginia has agreed to transfer 150,000 lb (68,039 kg) of its 2007 commercial quota to New York. The Regional Administrator has determined that the

criteria set forth in § 648.160(f)(1) have been met. The revised bluefish quotas for calendar year 2007 are: New York, 1,034,278 lb (469,141 kg); and Virginia, 868,660 lb (394,018 kg).

Classification

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

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

Dated: March 6, 2007.

Alan D. Risenhoover,

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

[FR Doc. 07–1148 Filed 3–7–07; 2:38 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 061113298–7046–02; I.D. 110106A]

RIN 0648–AU91

Fisheries Off West Coast States; Highly Migratory Species Fisheries

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

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to revise the method for renewing and replacing permits issued under the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS). Permits are required for all commercial vessels and all recreational charter vessels participating in HMS fisheries managed under the FMP. The final rule modifies the renewal process by substituting the last day of the month corresponding to the last digit of the vessel's identification number with the last day of the vessel owner's birth month as the expiration date. The rule also requires that vessel owners requiring a duplicate permit to submit a completed application form to NMFS. These regulations are needed to improve the efficiency and timeliness of the permit system. The proposed rule is adopted without change.

DATES: Effective April 11, 2007.

ADDRESSES: Requests to renew an HMS permit or to apply for a replacement permit may be submitted by any of the following methods:

- Fax: 562–980–4047, Attn. Permits Coordinator.
- Telephone: 562–980–4030.
- Mail to: Permits Coordinator, Sustainable Fisheries Division (SFD) Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.
- E-mail: *HMSpermitrenewal.swr@noaa.gov*

FOR FURTHER INFORMATION CONTACT: Mark Helvey, NMFS, Southwest Region, SFD, (562) 980–4040.

SUPPLEMENTARY INFORMATION: These regulations modify the process NMFS uses to renew and replace permits in the U. S. West Coast HMS fisheries managed under the HMS FMP. The FMP was prepared by the Pacific Fishery Management Council and was implemented through regulations at 50 CFR part 660 under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*

Background

NMFS requires a permit for all commercial vessels and all recreational charter vessels that fish for HMS in the U.S. exclusive economic zone (EEZ) off the States of California, Oregon, and Washington, or land or transship HMS shoreward of the outer boundary of the U.S. EEZ off the States of California, Oregon, and Washington. The purpose of the HMS permit is to identify vessels in the HMS fisheries so that NMFS knows those participants who need to be contacted when management information is required and who to notify when potential management actions affecting the fisheries are being considered.

The requirement for a permit was established by final rule implementing the approved portions of the FMP for HMS published on April 7, 2004 (69 FR 18444). These permits were initially issued in 2005 after publishing a **Federal Register** notice on February 10, 2005 (70 FR 7022), that announced approval by the Office of Management and Budget of the collection-of-information components of the permit system.

Permit Renewal

Permits are issued to the managing owner of a specific vessel for a 2-year term. The initial issuance of HMS permits began in 2005 and these permits expire in 2007. NMFS initially implemented a permit term renewal process intentionally staggered so that there will be less likelihood of an excessive number of renewals at any one time of the year. NMFS used the last day of the month designated by the last digit of the vessel identification number as determining the renewal date for expiring permits (e.g., if the vessel identification number ends in 3, the renewal date is March 31, 2 years later). Use of this criterion extends the renewal process over a 10-month term: January through October.

Because of the administrative burden of processing the high number of permits in effect, this final rule modifies the criterion by using the last day of the managing vessel owner's birth month as the expiration date. The managing vessel owner's date of birth is required in the Pacific HMS Vessel Permit Application and is already contained in the Pacific HMS Vessel Permit database. NMFS believes that staggering the renewal process over 12 months rather than 10 months will improve the efficiency of the permit renewal process. The first renewal date under this new system will be the last day of the vessel owner's birthday month in the second calender year after the permit is issued. NMFS anticipates that the system implemented by this final rule should result in delivery of permits to vessel operators in a more efficient manner. This final rule does not require any new information to be provided by the applicant. A Southwest Region Pacific HMS Vessel Permit Application form may still be obtained from the SFD (see **ADDRESSES**) or downloaded from the Southwest Region home page (*http://swr.nmfs.noaa.gov/permits.htm*) to apply for a permit under this section. A completed application is one that contains all the required information and signatures. NMFS intends to contact vessel owners with a renewal notice by mail 3 months in advance of their permit expiration date. This procedure should provide additional time for fishermen to renew their HMS permits before the start of the fishing season. NMFS will also allow HMS fishermen to renew their permits even earlier by contacting NMFS directly (see **ADDRESSES**).

Replacement Permits

Replacement permits are issued by NMFS to vessel owners to replace lost or mutilated permits. Vessel owners with a lost or mutilated permit primarily notify NMFS by telephone when requesting a replacement permit. NMFS has never established a formal process to provide replacement permits, but the number of requests for replacements over the past year make it clear that such a process is required. Under this regulation, vessel owners requiring a replacement permit must submit a new completed application

form to NMFS by mail or fax (see **ADDRESSES**).

Comments and Responses

A summary of the comments on the proposed rule and responses to those comments follow. After considering these comments, NMFS is adopting the proposed rule as final without change.

Use of Birth Month

Comment 1: Several commenters objected to the use of birth month as the criterion used to establish the expiration date. They stated that the birth month of many vessel owners may coincide during months when they could be at sea.

Response: This final rule only substitutes the month used to determine the expiration of a 2-year term HMS permit from the last digit of the vessel's identification number to the birth month of the vessel owner. When NMFS originally set up the process for permit renewals in a final rule published in 2004 and implemented in April 2005, it announced that it would use the last digit of the vessel identification number of an owner's vessel to determine the month the permit would be renewed. Based on a 0 to 9 numbering system, this staggered the renewal process over a 10-month time period. This procedure was designed at a time when NMFS believed that approximately 1300 HMS permits would be issued for HMS fisheries. Since the HMS permit program originated in April 2005, NMFS has issued approximately 2,000 HMS permits. Use of the vessel owner's birth month allows NMFS to stagger the issuance of permits over a 12 month time period and thereby provide more time to complete the renewal process. However, NMFS is sensitive to the concerns raised by commenters pertaining to a permit expiring when they may be at sea. NMFS will notify each fisherman by mail 3 months in advance of the expiration of her/his HMS permit. NMFS will also allow fishermen to contact NMFS directly and request renewal of their permit prior to the expiration date (see **ADDRESSES**).

Standard Annual Renewal Date

Comment 2: Some commenters suggested that NMFS standardize the procedure for renewing permits and do it at one time of the year such at the end or beginning of the calender year when many fishermen are not fishing and are in port.

Response: NMFS had always intended that HMS permit renewals be staggered over an extended period to eliminate the likelihood of an extreme permit renewal accumulation at any one time of the year. NMFS decided in 2004 that a staggered process would be more efficient for the agency and more likely to result in the delivery of permits to each fisherman in a timely manner.

Comment 3: Regarding the idea of processing all permit renewals within a shorter time frame, one commenter believed that if NMFS could place two people on permit renewals full time for two weeks, that NMFS could renew up to 1600 permits within that period.

Response: In almost 2 years of processing HMS permit applications, NMFS has learned that approximately 30% percent of the applications are lacking some type of information (e.g., address, date of birth etc.). In order to complete the application, NMFS must contact the vessel owner either by phone or mail to obtain the omitted information. NMFS has learned that any followup effort on its part does extend the time required to process a permit application especially if the vessel owner is difficult to reach. NMFS had always intended that HMS permit renewals be staggered over an extended period to eliminate the likelihood of an extreme permit renewal accumulation at any one time of the year which might prevent delivery of permits to each fisherman in a timely manner.

Changing the Term of the Permit

Comment 4: One commenter suggested staggering the permit renewals on a yearly basis by providing three different terms or periods of duration for future renewals. By this method, one-third of the permits would have a term of 1-year, one-third would have a 2-year term, and the last third would have a 3-year term. Then after the first year, the 1-year group would be ready for renewal. In the second year, the 2-year group would be up for renewal and so on. By using this system, NMFS would only have to renew one third of all HMS permits each year and thereby could conduct the renewal process in a much shorter time frame.

Response: NMFS appreciates recommendations from the fishing industry for simplifying processes that affect them. However, the intent of this final rule is only to change the criterion for determining what month a vessel owner's HMS permit comes up for renewal. There is no intent to change the term of the permit. When NMFS originally promulgated proposed regulations for the HMS permit process in 2003, it was considering setting the term of the permits at 5 years. However, after reviewing the experience of other fisheries and other areas of the country, it became clear to NMFS that a permit period of 2 years or less is more effective for ensuring accurate information about patterns of fishery participation and the names and addresses of participants in the fisheries. NMFS believes now, as it did then, that a permit term of more than 2 years increases the probability that changes in vessel names and owners and interests of related businesses will not be accurately tracked compared to a 2-year or less term. A longer term would reduce NMFS' effectiveness in advising HMS participants of changes in management measures or in permit and reporting requirements.

Combining Permit Renewals

Comment 5: In addition to processing all HMS permits renewals at one time of the year, one commenter also suggested combining all permits handled by NMFS (e.g., HMS, Federal groundfish permits, etc.) into a single process. The commenter mentioned that this would simplify the permit requirements and minimize complications to fishermen to ensure that they were in compliance with all permits.

Response: NMFS makes note of this comment and recognizes it as a laudable objective but such a recommendation goes beyond the scope of this rulemaking.

Classification

This final rule revises procedures for renewing and replacing permits issued under regulations implementing the HMS FMP published at 69 FR 18444 on April 7, 2004. The Regional Administrator, NMFS Southwest Region, determined that this rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act, codified at 16 U.S.C. 1801 *et seq.*

This final rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage (71 FR 70939) that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0204. Public reporting burden for preparing an

HMS Vessel Permit Application is estimated to average 0.42 hours per vessel, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with a collection-of-information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, Permits.

Dated: March 6, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.707, paragraphs (b)(4) and (b)(5) are revised to read as follows:

§ 660.707 Permits.

* * * * *

(b) * * *

(4) Permits issued under this subpart will remain valid until the first date of renewal, and permits may be subsequently be renewed for 2-year terms. The first date of renewal will be the last day of the vessel owner's birth month in the second calendar year after the permit is issued (e.g., if the birth month is March and the permit is issued on October 3, 2007, the permit will remain valid through March 31, 2009).

(5) Replacement permits may be issued without charge to replace lost or mutilated permits. Replacement permits may be obtained by submitting to the SFD c/o the Regional Administrator a complete, signed vessel permit application. An application for a replacement permit is not considered a new application.

* * * * *

[FR Doc. E7–4429 Filed 3–9–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01; I.D. 030607F]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2007 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 8, 2007, until 1200 hrs, A.l.t., September 1, 2007.

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

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

The A season allocation of the 2007 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA is 7,813 metric tons (mt) as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,613 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 6, 2007.

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

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

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

Dated: March 6, 2007.

Alan D. Risenhoover,

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

[FR Doc. 07–1147 Filed 3–7–07; 2:38 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 47
Monday, March 12, 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.

FARM CREDIT ADMINISTRATION

12 CFR Part 627

RIN 3052-AC16

Title IV Conservators, Receivers, and Voluntary Liquidations; Joint and Several Liability—Priority of Claims

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, we), proposes to amend the priority of claims regulations to provide priority of claims rights to Farm Credit System (System, FCS, Farm Credit) banks if they make payments under a reallocation agreement to holders of consolidated and System-wide obligations on behalf of a defaulting System bank. We also propose to clarify that payments to a class of claims will be on a pro rata basis.

DATES: You may send comments on or before May 11, 2007.

ADDRESSES: We offer a variety of methods for you to submit comments. For accuracy and efficiency reasons, we encourage commenters to submit comments by e-mail or through the Agency's Web site or the Federal eRulemaking Portal. You may also send comments by mail or by facsimile transmission. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov.*
- *Agency Web site: http://www.fca.gov.* Once you are at the Web site, select ''Legal Info,'' then ''Pending Regulations and Notices.''
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.
- *Fax:* (703) 883–4477. Posting and processing of faxes may be delayed. Please consider another means to comment, if possible.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Legal Info,'' and then select ''Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT: Christopher D. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4434, or Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

Our objectives in this proposed rule are to:

- Provide System banks that make payments under a reallocation agreement to holders of consolidated and System-wide obligations of a defaulting bank the same priority of claims rights they would have for payments made under statutory joint and several calls by the FCA.
- Clarify that claims in the same class will receive payments on a pro rata basis if there are insufficient assets in a receivership to pay the entire class in full.

II. Background

A. Joint and Several Liability Under the Act

System associations obtain funding by means of direct loans from their affiliated Farm Credit banks. The banks in turn obtain their funding primarily by issuing System-wide obligations to investors through the Federal Farm Credit Banks Funding Corporation (Funding Corporation).[1] The banks' authority to issue System-wide obligations is provided in section 4.2(d) of the Farm Credit Act of 1971, as amended (Act).[2] Section 4.2(c) of the Act also authorizes the banks to obtain funding by issuing consolidated obligations with other banks operating under the same title of the Act, but all of the System's joint funding at the present time is through System-wide obligations.[3]

Investors in consolidated and System-wide obligations have three levels of repayment sources. Under section 4.4(a)(2)(A) of the Act, each bank is primarily liable for the portion of any consolidated or System-wide obligation made on its behalf.[4] If the bank that is primarily liable is unable to pay, payment must be made by the Farm Credit System Insurance Corporation (FCSIC), created in 1988. The FCSIC insures the timely payment of interest and principal on consolidated and System-wide obligations (these obligations are referred to as ''insured obligations''). The source of payments by the FCSIC is the Farm Credit Insurance Fund (Insurance Fund), whose assets consist primarily of premiums paid by the System banks (as well as earnings on the premiums).[5] The Insurance Fund must be used to make payments on behalf of System banks defaulting on their insured obligations, but the FCSIC also has discretion to make other expenditures out of the Insurance Fund.[6]

If a System bank is unable to pay the portion of any insured obligations issued on its behalf and the Insurance Fund is exhausted, section 4.4(a)(2) of the Act provides that the other (nondefaulting) System banks are jointly and severally liable for such timely payments as follows:

- The FCA will make calls on nondefaulting banks in proportion to each bank's proportionate share of the aggregate available collateral held by all nondefaulting banks.[7]
- If the aggregate available collateral does not fully satisfy the insured

[1] The Funding Corporation is the fiscal agent of the System established under section 4.9 of the Farm Credit Act of 1971, as amended (12 U.S.C. 2160).

[2] 12 U.S.C. 2153(d).

[3] 12 U.S.C. 2153(c).

[4] 12 U.S.C. 2155(a)(2)(A).

[5] Section 5.55 of the Act (12 U.S.C. 2277a–4).

[6] Section 5.60(c) of the Act (12 U.S.C. 2277a–9).

[7] Section 4.4(a)(2)(F) of the Act requires the FCA to appoint a receiver upon making a joint and several call.

obligations of the defaulting bank, the FCA will make calls on all nondefaulting banks in proportion to each bank's remaining assets.

A bank's ''available collateral'' is defined in section 4.4(a)(2)(C) as ''the amount (determined at the close of the last calendar quarter ending before such call) by which a bank's collateral * * * exceeds the collateral required to support the bank's outstanding notes, bonds, debentures, and other similar obligations.''

Furthermore, the Act provides subrogation rights to both the banks and the FCSIC for payments of insured obligations made on behalf of a defaulting bank. With respect to FCSIC, section 5.61(c)(1) and (2) of the Act provides:

> [O]n the payment to an owner of an insured obligation issued on behalf of an insured System bank in receivership, the [FCSIC] shall be subrogated to all rights of the owner against the bank to the extent of the payment * * * Subrogation * * * shall include the right on the part of the [FCSIC] to receive the same dividends from the proceeds of the assets of the bank as would have been payable to the owner on a claim for the insured obligation.[8]

With respect to System banks, section 4.4(a)(2)(E) provides:

> Any System bank that, pursuant to a call by the [FCA], makes a payment of principal or interest to the holder of any consolidated or System-wide obligations issued on behalf of another System bank shall be subrogated to the rights of the holder against such other bank to the extent of such payment.

B. FCA Priority of Claims Regulations

Part 627 of our regulations governs the conduct of System institution conservatorships and receiverships. Section 627.2750 sets forth the priority of claims in the distribution of the assets of a bank in liquidation. After payment of certain receivership expenses and secured claims, paragraph (h) provides for the payment of ''[a]ll claims of holders of consolidated and Systemwide bonds and claims of the other Farm Credit banks arising from their payments pursuant to [joint and several calls by the FCA under] 12 U.S.C. 2155'' before payments are made to general creditors. Section 627.2755 requires the receiver to pay in full all the claims of a class of claims of the same priority (or make provision for such payment) before paying the claims of classes of lesser priority. That regulation further provides that the receiver must pay such claims on a pro rata basis if there are insufficient funds to pay in full any class of claims against a System association in receivership. However, the regulation does not address how the receiver must pay claims against a System bank or institution other than an association in the case of insufficient funds to pay a class of claims in full.

C. System Banks' Petition To Amend Regulations

At the present time, the System banks and associations are well capitalized, and no bank or association has been placed in receivership since 1989. The FCA has never made joint and several calls on System banks to pay consolidated and System-wide bondholders, and monies from the Insurance Fund have never been used for that purpose. Nonetheless, the potential effect of a joint and several call based on banks' aggregate available collateral has caused System banks to consider possible alternative methodologies based on an agreement among the banks.

In recent years, the banks have discussed the benefits and feasibility of using a methodology for joint and several calls based on the proportion of total System-wide debt on which each nondefaulting bank is primarily liable. The banks have explored the possibility of entering into a reallocation agreement among themselves to pay a defaulting bank's maturing insured obligations as the Insurance Fund is nearing exhaustion but before statutory joint and several calls are triggered. The banks have informed us that, while they are in general agreement on the outlines of an agreement for payment based on individual banks' outstanding System-wide debt, a key to an agreement is that payments made under the banks' agreement would be entitled to the same payment rights as if the banks had made the payments under a statutory joint and several call.

The System banks have petitioned the FCA to amend our priority of claims regulations to provide the same subrogation rights to banks under a reallocation agreement to make joint and several payments on insured obligations that the banks would receive if they made payments under section 4.4(a)(2) of the Act. We have reviewed the banks' petition and believe there is merit in the banks' efforts to create an alternative methodology that they perceive has the potential benefit to increase funds available to pay a defaulting bank's insured obligations. Such an agreement would be subject to Agency approval. Therefore, we are proposing to amend our regulations to allow for such a reallocation agreement and to provide priority of claims rights equivalent to those granted to the banks for payments under section 4.4(a)(2) of the Act.

The proposed rule is described more fully below.

III. Description of Proposed Rule

Section 627.2750—Priority of Claims—Banks

Section 627.2750 sets forth the priority of claims for banks in liquidation. Each paragraph describes a class of claims. Existing paragraph (h) provides for payment of claims of holders of consolidated and System-wide obligations and of other System banks arising from their payments made under statutory joint and several calls. We propose to add to this paragraph all claims of other System banks arising from their payments of consolidated and System-wide obligations under a reallocation agreement. The agreement must be in writing and approved by the FCA.

Section 627.2755—Payment of Claims

Existing § 627.2755 contains several provisions that apply to some or all types of System institutions that may be placed in receivership by the FCA under part 627 of our regulations.[9] We propose to amend paragraph (a) by deleting language limiting the pro rata requirement to association receiverships. This will clarify that, in all System institution receiverships, if there are insufficient funds to pay a class of claims in full, payments to such class must be on a pro rata basis.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 627

Agriculture, Banks, Banking, Claims, Rural areas.

For the reasons stated in the preamble, we propose to amend part 627 of chapter VI, title 12 of the Code

[8] 12 U.S.C. 2277a–10(c).

[9] We note that part 627 of FCA's regulations does not apply to the Federal Agricultural Mortgage Corporation, also known as Farmer Mac. Regulations applicable to Farmer Mac are in part 650 of FCA's regulations.

of Federal Regulations to read as follows:

PART 627—TITLE IV CONSERVATORS, RECEIVERS, AND VOLUNTARY LIQUIDATIONS

1. The authority citation for part 627 continues to read as follows:

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58, 5.61 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7, 2277a–10).

Subpart B—Receivers and Receiverships

2. Revise § 627.2750(h) to read as follows:

§ 627.2750 Priority of claims—banks.

* * * * *

(h) All claims of holders of consolidated and System-wide bonds and all claims of the other Farm Credit banks arising from their payments on consolidated and System-wide bonds pursuant to 12 U.S.C. 2155 or pursuant to an agreement among the banks to reallocate the payments, provided the agreement is in writing and approved by the Farm Credit Administration.

* * * * *

§ 627.2755 [Amended]

3. Amend § 627.2755(a) by removing the words ''described in § 627.2745'' in the last sentence.

Dated: March 7, 2007.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E7–4427 Filed 3–9–07; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM362 Special Conditions No. 25–06–15–SC]

Special Conditions: Boeing Model 787–8 Airplane; Interaction of Systems And Structures, Electronic Flight Control System—Control Surface Awareness, High Intensity Radiated Fields (HIRF) Protection, Limit Engine Torque Loads for Sudden Engine Stoppage, and Design Roll Maneuver Requirement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Boeing Model 787–8 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include electronic flight control systems and high bypass engines. These special conditions also pertain to the effects of such novel or unusual design features, such as effects on the structural performance of the airplane. Finally, these special conditions pertain to effects of certain conditions on these novel or unusual design features, such as the effects of high intensity radiated fields (HIRF). Additional special conditions will be issued for other novel or unusual design features of the Boeing Model 787–8 airplanes.

DATES: Comments must be received on or before April 26, 2007.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM362, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM362. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions based on comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On March 28, 2003, Boeing applied for an FAA type certificate for its new Boeing Model 787–8 passenger airplane. The Boeing Model 787–8 airplane will be an all-new, two-engine jet transport airplane with a two-aisle cabin. The maximum takeoff weight will be 476,000 pounds, with a maximum passenger count of 381 passengers.

Type Certification Basis

Under provisions of 14 CFR 21.17, Boeing must show that Boeing Model 787–8 airplanes (hereafter referred to as ''the 787'') meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–117, except §§ 25.809(a) and 25.812, which will remain at Amendment 25–115. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the 787 because of a novel or unusual design feature, special conditions are prescribed under provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 787 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2).

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

Discussion of Novel or Unusual Design Features

The 787 will incorporate a number of novel or unusual design features. Because of rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions for the 787 contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Most of these proposed special conditions are identical or nearly identical to those previously required for type certification of the Model 777 series airplanes.

Most of these proposed special conditions were derived initially from standardized requirements developed by the Aviation Rulemaking Advisory Committee (ARAC), comprised of representatives of the FAA, Europe's Joint Aviation Authorities (now replaced by the European Aviation Safety Agency), and industry. In the case of some of these requirements, a draft notice of proposed rulemaking has been prepared but no final rule has yet been promulgated.

Additional special conditions will be issued for other novel or unusual design features of the 787 in the near future.

1. Interaction of Systems and Structures

The 787 is equipped with systems that affect the airplane's structural performance, either directly or as a result of failure or malfunction. That is, the airplane's systems affect how it responds in maneuver and gust conditions, and thereby affect its structural capability. These systems may also affect the aeroelastic stability of the airplane. Such systems represent a novel and unusual feature when compared to the technology envisioned in the current airworthiness standards. A special condition is needed to require consideration of the effects of systems on the structural capability and aeroelastic stability of the airplane, both in the normal and in the failed state.

This special condition requires that the airplane meet the structural requirements of subparts C and D of 14 CFR part 25 when the airplane systems are fully operative. The special condition also requires that the airplane meet these requirements considering failure conditions. In some cases, reduced margins are allowed for failure conditions based on system reliability.

2. Electronic Flight Control System: Control Surface Awareness

With a response-command type of flight control system and no direct coupling from cockpit controller to control surface, such as on the 787, the pilot is not aware of the actual surface deflection position during flight maneuvers. These features are novel and unusual when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These special conditions are meant to contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Some unusual flight conditions, arising from atmospheric conditions or airplane or engine failures or both, may result in full or nearly full surface deflection. Unless the flightcrew is made aware of excessive deflection or impending control surface deflection limiting, piloted or auto-flight system control of the airplane might be inadvertently continued in a way that would cause loss of control or other unsafe handling or performance characteristics.

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

3. High Intensity Radiated Fields (HIRF) Protection

The 787 will use electrical and electronic systems which perform critical functions. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. There is no specific regulation that addresses requirements for protection of electrical and electronic systems from HIRF. Increased power levels from radio frequency transmitters and use of sensitive avionics /electronics and electrical systems to command and control the airplane have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, the proposed special conditions are needed for the 787. These proposed special conditions require that avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function because of HIRF.

High-power radio frequency transmitters for radio, radar, television, and satellite communications can adversely affect operations of airplane electrical and electronic systems. Therefore, immunity of critical avionics/electronics and electrical systems to HIRF must be established. Based on surveys and analysis of existing HIRF emitters, adequate protection from HIRF exists if airplane system immunity is demonstrated when exposed to the HIRF environments in either paragraph (a) OR (b) below:

(a) A minimum environment of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

(1) System elements and their associated wiring harnesses must be exposed to the environment without benefit of airframe shielding.

(2) Demonstration of this level of protection is established through system tests and analysis.

(b) An environment external to the airframe of the field strengths shown in the table below for the frequency ranges indicated. Immunity to both peak and average field strength components from the table must be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

Field strengths are expressed in terms of peak root-mean-square (rms) values over the complete modulation period.

The environment levels identified above are the result of an FAA review of existing studies on the subject of HIRF and of the work of the

Electromagnetic Effects Harmonization Working Group of ARAC.

4. Limit Engine Torque Loads for Sudden Engine Stoppage

The 787 will have high-bypass engines with a chord-swept fan 112 inches in diameter. Engines of this size were not envisioned when § 25.361, pertaining to loads imposed by engine seizure, was adopted in 1965. Worst case engine seizure events become increasingly more severe with increasing engine size because of the higher inertia of the rotating components.

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

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

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

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

The FAA concludes that modern large engines, including those on the 787, are novel and unusual compared to those envisioned when § 25.361(b)(1) was adopted and thus warrant a special condition. The proposed special condition contains design criteria recommended by ARAC. The ARAC proposal would revise the wording of § 25.361(b), including §§ 25.361(b)(1) and (b)(2), removing language pertaining to structural failures and moving it to a separate requirement that discusses the reduced factors of safety that apply to these failures.

5. Design Roll Maneuver Requirement

The 787 is equipped with an electronic flight control system that provides control of the aircraft through pilot inputs to the flight computer. Current part 25 airworthiness regulations account for ''control laws,'' for which aileron deflection is proportional to control stick deflection. They do not address any nonlinearities [1] or other effects on aileron actuation that may be caused by electronic flight controls. Therefore, the FAA considers the flight control system to be a novel and unusual feature compared to those envisioned when current regulations were adopted. Since this type of system may affect flight loads, and therefore the structural capability of the airplane, special conditions are needed to address these effects.

This proposed special condition differs from current requirements in that it requires that the roll maneuver result from defined movements of the cockpit roll control as opposed to defined aileron deflections. Also, the proposed special condition requires an additional load condition at design maneuvering speed (V_A), in which the cockpit roll control is returned to neutral following the initial roll input.

This proposed special condition differs from similar special conditions applied to previous designs. This special condition is limited to the roll axis only, whereas previous special conditions also included pitch and yaw axes. A special condition is no longer needed for the yaw axis because § 25.351 was revised at Amendment 25–91 to take into account effects of an electronic flight control system. No special condition is needed for the pitch axis because the applicant's proposed methodology for the pitch maneuver takes into account effects of an electronic flight control system.

Applicability

As discussed above, these proposed special conditions are applicable to the 787. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features of the 787. It is not a rule of general applicability, and it affects only the applicant that applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these Special Conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Administrator of the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 787–8 airplane.

1. Interaction of Systems and Structures

The Boeing Model 787–8 airplane is equipped with systems which affect the airplane's structural performance either directly or as a result of failure or malfunction. The influence of these systems and their failure conditions must be taken into account when showing compliance with requirements of subparts C and D of part 25 of Title 14 of the Code of Federal Regulations. The following criteria must be used for showing compliance with this proposed special condition for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, fuel management systems, and other systems that either directly or as a result of failure or malfunction affect structural performance. If this proposed special condition is used for other systems, it may be necessary to adapt the criteria to the specific system.

(a) The criteria defined here address only direct structural consequences of system responses and performances. They cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. They may in some instances duplicate standards already established for this evaluation. These criteria are only applicable to structures whose failure could prevent continued safe flight and landing. Specific criteria defining acceptable limits on handling characteristics or stability requirements when operating in the system degraded

[1] A nonlinearity is a situation where output does not change in the same proportion as input.

or inoperative mode are not provided in this special condition.

(b) Depending on the specific characteristics of the airplane, additional studies may be required that go beyond the criteria provided in this special condition in order to demonstrate capability of the airplane to meet other realistic conditions such as alternative gust conditions or maneuvers for an airplane equipped with a load alleviation system.

(c) The following definitions are applicable to this special condition.

(1) *Structural performance:* Capability of the airplane to meet the structural requirements of part 25.

(2) *Flight limitations:* Limitations that can be applied to the airplane flight conditions following an in-flight failure occurrence and that are included in the flight manual (speed limitations or avoidance of severe weather conditions, for example).

(3) *Operational limitations:* Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (fuel, payload, and master minimum equipment list limitations, for example).

(4) *Probabilistic terms:* Terms (probable, improbable, extremely improbable) used in this special condition which are the same as those probabilistic terms used in § 25.1309.

(5) *Failure condition:* Term that is the same as that used in § 25.1309. The term failure condition in this proposed special condition, however, applies only to system failure conditions that affect structural performance of the airplane. Examples are system failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins.

Note: Although failure annunciation system reliability must be included in probability calculations for paragraph (f) of the proposed special condition, there is no specific reliability requirement for the annunciation system required in paragraph (g) of the proposed special condition.

(d) *General.* The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

(e) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C of 14 CFR part 25 (or used in lieu of those specified in subpart C), taking into account any special behavior of such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant degree of nonlinearity in rate of displacement of control surface or thresholds, or any other system nonlinearities, must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 for static strength and residual strength, using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered if the applicant demonstrates that the airplane has design features that will not allow it to exceed those limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

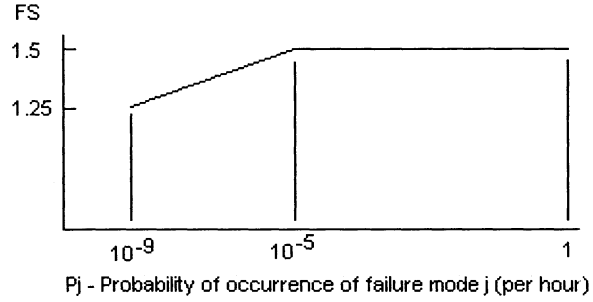
(f) *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) *Establishing loads at the time of failure.* Starting from 1-g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads, multiplied by an appropriate factor of safety related to probability of occurrence of the failure, are ultimate loads to be considered for design. The factor of safety (FS) is defined in Figure 1.

Figure 1

Factor of safety at the time of occurrence



(ii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in subparagraph (f)(1)(i) of these special conditions. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speeds beyond design cruise speed or design cruise mach number (V_C/M_C), freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) *Establishing loads in the system failed state for the continuation of the flight.* For the continuation of flight of the airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) Loads derived from the following conditions (or used in lieu of the following conditions) at speeds up to V_C/M_C, or the speed limitation

prescribed for the remainder of the flight, must be determined:

(A) The limit symmetrical maneuvering conditions specified in § 25.331 and § 25.345.

(B) The limit gust and turbulence conditions specified in § 25.341 and § 25.345.

(C) The limit rolling conditions specified in § 25.349 and the limit unsymmetrical conditions specified in § 25.367 and § 25.427(b) and (c).

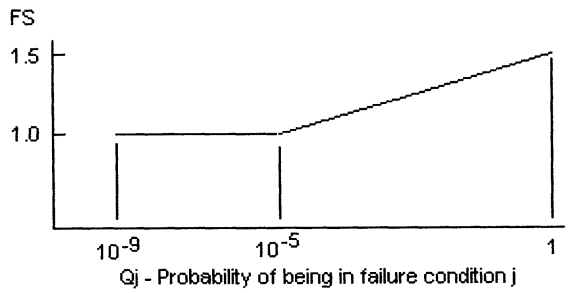
(D) The limit yaw maneuvering conditions specified in § 25.351.

(E) The limit ground loading conditions specified in § 25.473 and § 25.491.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads in paragraph (f)(2)(i) of the special condition multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2

Factor of safety for continuation of flight



$Qj = (Tj)(Pj)$

Where:

Tj = Average time spent in failure condition j (in hours)

Pj = Probability of occurrence of failure mode j (per hour)

Note: If Pj is greater than 10^{-3} per flight hour then a 1.5 factor of safety must be applied to all limit load conditions specified in subpart C-Structure, of 14 CFR part 25.

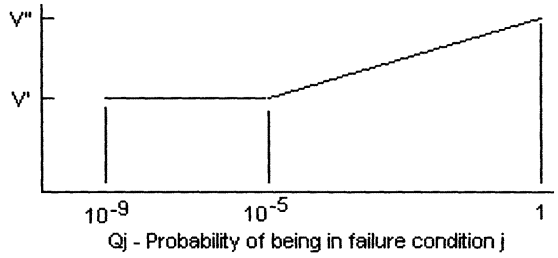
(iii) For residual strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in paragraph (f)(2)(ii) of the special condition. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance then the effects of these loads must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3

Clearance speed



V′ = Clearance speed as defined by § 25.629(b)(2).

V″ = Clearance speed as defined by § 25.629(b)(1).

$Qj = (Tj)(Pj)$

Where:

Tj = Average time spent in failure condition j (in hours)

Pj = Probability of occurrence of failure mode j (per hour)

Note: If Pj is greater than 10–3 per flight hour, then the flutter clearance speed must not be less than V″.

(vi) Freedom from aeroelastic instability must also be shown up to V′ in Figure 3 above, for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(3) Consideration of certain failure conditions may be required by other sections of 14 CFR part 25 regardless of calculated system reliability. Where

analysis shows the probability of these failure conditions to be less than 10–9, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(g) *Failure indications.* For system failure detection and indication, the following apply.

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability of the airplane below the level required by part 25 or significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, instead of detection and indication systems to achieve the objective of this requirement. Such certification maintenance inspections or daily checks must be limited to components on which faults are not readily detectable by normal detection and indication systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of subpart C below 1.25, or flutter margins below V″, must be signaled to the crew during flight.

(h) *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance, or affects the reliability of the remaining system to maintain structural performance, then the provisions of this special condition must be met, including the provisions of paragraph (e) for the dispatched condition, and paragraph (f) for subsequent failures. Expected operational limitations may be taken into account in establishing Pj as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 10^{-3} per hour.

2. Electronic Flight Control System: Control Surface Awareness

In addition to compliance with §§ 25.143, 25.671, and 25.672, the following special condition applies:

(a) The system design must ensure that the flightcrew is made suitably aware whenever the primary control means nears the limit of control authority. This indication should direct the pilot to take appropriate action to avoid the unsafe condition in accordance with appropriate airplane flight manual (AFM) instructions. Depending on the application, suitable annunciations may include cockpit control position, annunciator light, or surface position indicators. Furthermore, this requirement applies at limits of control authority, not necessarily at limits of any individual surface travel.

(b) Suitability of such a display or alerting must take into account that some pilot-demanded maneuvers are necessarily associated with intended full performance, which may require full surface deflection. Therefore, simple alerting systems, which would function in both intended or unexpected control-limiting situations, must be properly balanced between needed crew awareness and nuisance factors. A monitoring system which might compare airplane motion, surface deflection, and pilot demand could be useful for eliminating nuisance alerting.

3. High Intensity Radiated Fields (HIRF) Protection

(a) Protection from Unwanted Effects of High-intensity Radiated Fields. Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields external to the airplane.

(b) For the purposes of these Special Conditions, the following definition applies: Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent continued safe flight and landing of the airplane.

4. Limit Engine Torque Loads for Sudden Engine Stoppage

In lieu of § 25.361(b) the following special condition is proposed:

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

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

(2) The maximum acceleration of the engine.

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

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

(2) The maximum acceleration of the power unit.

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

(1) Loss of any fan, compressor, or turbine blade.

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

(d) The ultimate loads developed from the conditions specified in paragraphs (c)(1) and (c)(2) are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

5. Design Roll Maneuver Requirement

In lieu of compliance to § 25.349(a), the following special conditions are proposed.

The following conditions, speeds, and cockpit roll control motions (except as the motions may be limited by pilot effort) must be considered in combination with an airplane load factor of zero and of two-thirds of the positive maneuvering factor used in design. In determining the resulting control surface deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b):

(a) Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular

acceleration must be investigated for airplanes with engines or other weight concentrations outboard of the fuselage. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

(b) At V_A, sudden movement of the cockpit roll control up to the limit is assumed. The position of the cockpit roll control must be maintained until a steady roll rate is achieved and then must be returned suddenly to the neutral position.

(c) At V_C, the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than that obtained in paragraph (2).

(d) At V_D, the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than one-third of that obtained in paragraph (2).

Issued in Renton, Washington, on March 1, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–4306 Filed 3–9–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27508; Directorate Identifier 2006–NM–252–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) ERJ 170 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as an obstruction at the cargo compartment fire extinguisher system drier metering unit (DME) inlet, affecting the system effectiveness and, consequently, making the fire extinguishing capability at those compartments inadequate should a fire erupt. 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 April 11, 2007.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–27508; Directorate Identifier 2006–NM–252–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2006–01–03, effective February 7, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states that it has been found the occurrence of one case of obstruction at the cargo compartment fire extinguisher system drier metering unit (DMU) inlet, affecting the system effectiveness and, consequently, making the fire extinguishing capability at those compartments inadequate should a fire erupt. The MCAI requires installation of a debris strainer at the DMU inlet. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EMBRAER has issued Service Bulletin 170–26–0002, dated November 11, 2005. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information

referenced above. We are proposing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the proposed AD. These requirements, if ultimately adopted, will take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 75 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $24,000, or $320 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2007–27508; Directorate Identifier 2006–NM–252–AD.

Comments Due Date

(a) We must receive comments by April 11, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes in operation; certificated in any category.

Reason

(d) The MCAI states that it has been found the occurrence of one case of obstruction at the cargo compartment fire extinguisher system drier metering unit (DMU) inlet, affecting the system effectiveness and, consequently, making the fire extinguishing capability at those compartments inadequate should a fire erupt. The MCAI requires installation of a debris strainer at the DMU inlet.

Actions and Compliance

(e) Unless already done, do the following actions. Within 700 flight hours after the effective date of this AD, install a debris strainer at the DMU inlet, in accordance with the detailed instructions and procedures described in EMBRAER Service Bulletin 170–26–0002, dated November 11, 2005. Record compliance with this AD in the applicable maintenance log book.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, *ATTN:* Todd Thompson, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

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

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

Related Information

(g) Refer to MCAI Brazilian Airworthiness Directive 2006–01–03, effective February 7, 2006; and EMBRAER Service Bulletin 170–26–0002, dated November 11, 2005; for related information.

Issued in Renton, Washington, on March 5, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–4373 Filed 3–9–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27071; Directorate Identifier 2007–CE–004–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models C90A, B200, B200C, B300, and B300C Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2006–23–02 which applies to certain Raytheon Aircraft Company (RAC) (formerly Beech) Models C90A, B200, B200C, B300, and B300C airplanes. AD 2006–23–02 currently requires you to inspect the flight controls for improper assembly or damage, and if any improperly assembled or damaged flight controls are found, take corrective action. Since we issued AD 2006–23–02, we have determined the need to add airplane serial numbers that were not previously included in the applicability. Consequently, this proposed AD would retain the actions of AD 2006–23–02 and add airplane serial numbers to the applicability. We are proposing this AD to detect and correct improperly assembled or damaged flight controls, which could result in an unsafe condition by reducing capabilities of the flight controls and lead to loss of control of the airplane.

DATES: We must receive comments on this proposed AD by May 11, 2007.

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

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

For service information identified in this proposed AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; *telephone:* (800) 429–5372 or (316) 676–3140.

FOR FURTHER INFORMATION CONTACT: Chris B. Morgan, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Wichita, Kansas 67209; *telephone:* (316) 946–4154; *fax:* (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2007–27071; Directorate Identifier 2007–CE–004–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Discussion

A report from an FAA Manufacturing Inspection District Office that describes numerous nonconformities during the manufacture of RAC Models C90A, B200, B200C, B300, and B300C airplanes caused us to issue AD 2006–23–02, Amendment 39–14814 (71 FR 65390, November 8, 2006). AD 2006–23–02 currently requires that you inspect the flight controls for improper assembly or damage, and if any improperly assembled or damaged flight controls are found, take corrective action on certain RAC Models C90A, B200, B200C, B300, and B300C airplanes.

Since issuing AD 2006–23–02, we have determined the need to add airplane serial numbers that were not previously included in the applicability.

This condition, if not corrected, could result in an unsafe condition by reducing capabilities of the flight controls.

Relevant Service Information

We have reviewed:

—Raytheon Aircraft Company Mandatory Service Bulletin Number SB 27–3761, Issued: February 2006; and

—Raytheon Aircraft Company Mandatory Service Bulletin Number SB 27–3761, Issued: February 2006, Revised: December 2006. This revision adds additional serial numbers to the effectivity.

The service information describes procedures for inspecting the flight control systems to ensure conformity with type design and correct the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would supersede AD 2006–23–02 with a new AD that would retain the actions of AD 2006–23–02 and add airplane serial numbers to the applicability. This proposed AD would require you to use the service information described previously to perform these actions.

Differences Between This Proposed AD and the Service Information

We are requiring all phases of the flight control system be inspected at one time. The service information as presented allows some sections of the system to go 800 hours time-in-service before they are scheduled for inspection. We feel this time is excessive to allow potential safety items and nonconformities to exist. We have determined that the proposed compliance time will not inadvertently ground the affected airplanes.

Costs of Compliance

We estimate that this proposed AD would affect 138 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
80 work-hours × $80 per hour = $6,400	Not Applicable	$6,400	$883,200

We have no way of determining the number of airplanes that may need any corrective action that would be required based on the results of the proposed inspection.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2006–23–02, Amendment 39–14814 (71 FR 76575, December 21, 2006), and adding the following new AD:

Raytheon Aircraft Company (Formerly Beech): Docket No. FAA–2007–27071; Directorate Identifier 2007–CE–004–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by May 11, 2007.

Affected ADs

(b) This AD supersedes AD 2006–23–02, Amendment 39–14814.

Applicability

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

(1) Group 1 Airplanes (maintains the actions from AD 2006–23–02):

Model	Serial numbers
(i) C90A	LJ–1697 through LJ–1726, LJ–1728, LJ–1729, and LJ–1731 through LJ–1739
(ii) B200	BB–1827 through BB–1912
(iii) B200C.	BL–148 and BL–149
(iv) B300	FL–379 through FL–423, FL–426, FL–428 through FL–450, and FL–452
(v) B300C.	FM–11

(2) Group 2 Airplanes: Model C90A, serial numbers LJ–1741 through LJ–1743.

Unsafe Condition

(d) This AD results from our determination to add airplane serial numbers that were not previously included in the applicability. We are issuing this AD to detect and correct improperly assembled or damaged flight controls, which could result in an unsafe condition by reducing capabilities of the flight controls and lead to loss of control of the airplane.

Compliance

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

Actions	Compliance	Procedures
(1) Inspect the entire flight control system for improper assembly and any damage.	(i) *For Group 1 Airplanes:* At whichever of the following occurs first: (A) Within 100 hours time-in-service (TIS) after December 13, 2006 (the effective date of AD 2006–23–02); or (B) At the next annual inspection that occurs at least 30 days after December 13, 2006 (the effective date of AD 2006–23–02). (ii) *For Group 2 Airplanes:* At whichever of the following occurs first: (A) Within 100 hours TIS after the effective date of this AD; or	Follow Raytheon Aircraft Company Mandatory Service Bulletin Number SB 27–3761, Issued: February 2006; or Raytheon Aircraft Company Mandatory Service Bulletin Number SB 27–3761, Issued: February 2006, Revised: December 2006.

Actions	Compliance	Procedures
	(B) At the next annual inspection that occurs at least 30 days after the effective date of this AD.	
(2) If you find any improperly assembled or damaged flight controls as a result of the inspection required by paragraph (e)(1) of this AD, take corrective action as specified in the service information	Before further flight after the inspection required by paragraph (e)(1) of this AD.	Follow Raytheon Aircraft Company Mandatory Service Bulletin Number SB 27–3761, Issued: February 2006; or Raytheon Aircraft Company Mandatory Service Bulletin Number SB 27–3761, Issued: February 2006, Revised: December 2006.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office (ACO), FAA, ATTN: Chris B. Morgan, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Wichita, Kansas 67209; *telephone:* (316) 946–4154; *fax:* (316) 946–4107, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(g) AMOCs approved for AD 2006–23–02 are approved for this AD.

Related Information

(h) To get copies of the service information referenced in this AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; *telephone:* (800) 429–5372 or (316) 676–3140. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. The docket number is Docket No. FAA–2007–27071; Directorate Identifier 2007–CE–004–AD.

Issued in Kansas City, Missouri, on March 6, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–4404 Filed 3–9–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27509; Directorate Identifier 2006–NM–201–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 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 all Fokker Model F.28 Mark 0070 and 0100 airplanes. This proposed AD would require a detailed inspection for wear of the attachment holes of the control levers of the braking system and applicable corrective actions. This proposed AD results from a report that, after landing, the flightcrew of a Model F.28 Mark 0100 airplane noted that an extreme difference in pedal angle was required to achieve equal braking action. We are proposing this AD to prevent failure of one or more brake control levers, which could result in uncommanded braking and loss of control of the airplane during takeoff, landing, or taxiing.

DATES: We must receive comments on this proposed AD by April 11, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

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

Contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–27509; Directorate Identifier 2006–NM–201–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified us that an unsafe

condition may exist on all Fokker Model F.28 Mark 0070 and 0100 airplanes. The CAA–NL advises of a report that, after landing, the flightcrew of a Model F.28 Mark 0100 airplane noted that an extreme difference in pedal angle was required to achieve equal braking action; concurrently, the temperature of the left-hand braking system was noted to be considerably higher than the right-hand braking system. Investigation revealed that the attachment holes of the control levers of the braking system were worn to the point of imminent failure. The airplane and affected levers had accumulated 15,583 total flight cycles and 21,460 total flight hours. This condition, if not corrected, could lead to failure of one or more brake levers, which could result in uncommanded braking and loss of control of the airplane during take-off, landing, or taxiing.

Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–32–142, dated August 12, 2005. The service bulletin describes procedures for inspecting for wear of the attachment holes of the control levers of the braking system and applicable corrective actions. Corrective actions include replacing the control levers with new control levers at times determined by the level of wear found during the inspection. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA–NL mandated the service information and issued Dutch airworthiness directive NL–2005–011, dated August 31, 2005, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. We have examined the CAA–NL's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Among the Proposed AD, the Dutch Airworthiness Directive, and the Service Information.''

Differences Among the Proposed AD, the Dutch Airworthiness Directive, and the Service Information

The Fokker service bulletin and the Dutch airworthiness directive describe a one-time inspection for wear of the attachment holes of the control levers. However, we have determined that confusion might occur regarding the inspection of any replacement control levers. Therefore, this proposed AD would require inspecting any replacement control lever for wear of the attachment holes, at an interval not to exceed 12,000 flight hours after the installation of any such lever, and applicable corrective actions thereafter, as described by the service information.

The service bulletin refers to a ''detailed visual inspection'' for wear of the attachment holes of the control levers. We have determined that the procedures in the service bulletin should be described as a ''detailed inspection.'' We have included a definition of this type of inspection in Note 1 of this proposed AD.

Where the service bulletin specifies immediate replacement of the control lever if the applicable remaining material (dimension X2) of the attachment hole is less than 2.0 millimeters (0.08 inches), this proposed AD would direct operators to replace the control lever if dimension X2 is less than or equal to 2.0 millimeters.

These differences have been coordinated with the CAA–NL.

Costs of Compliance

This proposed AD would affect about 9 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $720, or $80 per airplane, per inspection cycle.

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):

Fokker Services B.V.: Docket No. FAA–2007–27509; Directorate Identifier 2006–NM–201–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 11, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Fokker Model F.28 Mark 0070 and 0100 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report that, after landing, the flight crew of a Model F.28 Mark 0100 airplane noted that an extreme difference in pedal angle was required to achieve equal braking action. We are issuing this AD to prevent failure of one or more brake control levers, which could result in uncommanded braking and loss of control of the airplane during takeoff, landing, or taxiing.

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 Replacement

(f) Within 1,500 flight cycles or 12 months after the effective date of this AD, whichever occurs first: Perform a detailed inspection for excessive wear of the brake control levers and do the applicable corrective actions in accordance with and at the times specified in Section 3, ''Accomplishment Instructions,'' of Fokker Service Bulletin SBF100–32–142, dated August 12, 2005. Repeat the requirements of this paragraph thereafter for any replacement control lever at an interval not to exceed 12,000 flight hours after the installation of such a control lever. Operators should note that, where the service bulletin specifies immediate replacement of the control lever if the applicable remaining material (dimension X2) of the attachment hole is less than 2.0 millimeters (0.08 inches), this AD requires replacing the control lever if dimension X2 is less than or equal to 2.0 millimeters.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(h) Dutch airworthiness directive NL–2005–011, dated August 31, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on March 5, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–4379 Filed 3–9–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27072 Airspace Docket No. 07–AWP–1]

RIN 2120–AA66

Proposed Modification of Class E Airspace; St. Johns, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace area at St. Johns, AZ. The establishment of an Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 32 at St. Johns Industrial Air Park, St. Johns, AZ, has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the RNAV (GPS) IAP to RWY 32 at St. Johns Industrial Air Park makes this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV (GPS) IAP to RWY 32 at St. Johns Industrial Air Park, St. Johns, AZ.

DATES: Comments must be received on or before April 26, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–27072/ Airspace Docket No. 07–AWP–1 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address).

An informal docket may also be examined during normal business hours at the Office of the Regional Western Terminal Operations, Federal Aviation Administration, at 15000 Aviation Boulevard, Lawndale, California 90261, telephone number (310) 725–6502.

FOR FURTHER INFORMATION CONTACT: Francis Hope, System Support Specialist, Western Service Center, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 725–6502.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–27072 Airspace Docket No. 07–AWP–1.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.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*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677,

to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at St. Johns Industrial Air Park, St. Johns, AZ. The establishment of an Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 32 at St. Johns Industry Air Park, St. Johns, AZ, has made this proposal necessary.

Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the RNAV (GPS) IAP to RWY 32 at St. Johns Industrial Air Park, St. Johns, AZ. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV (GPS) IAP to RWY 32 at St. Johns Industrial Air Park, St. Johns, AZ. Class E airspace designations are published in paragraph 60005 of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, which is Incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; 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 the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2006, and Effective, September 15, 2006, is amended as follows:

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

* * * * *

AWP AZ E5 St. Johns, AZ [Amended]

St. Johns Industrial Air Park, AZ
(Lat. 34°31′07″ N., long. 109°22′44″ W.)
St. Johns VORTAC
(Lat. 34°25′27″ N., long. 109°08′37″ W.)

That airspace extending upward from 700 feet above the surface within 4.3 miles each side of the St. Johns VORTAC 296° radial extending from the St. Johns VORTAC to 23 miles northwest of the VORTAC, and that airspace beginning at lat. 34°23′30″ N., long. 109°14′30″ W., to lat. 34°22′00″ N., long. 109°20′00″ W., to lat. 34°26′00″ N., long. 109°21′00″ W., to the point of beginning. That airspace extending upward from 1,200 feet above the surface within 8.7 miles southeast and 6.1 miles northwest of the St. Johns VORTAC 067° and 247° radials, extending from the 7.8 miles northeast to 17.4 miles southwest of the VORTAC, excluding the portion within the state of New Mexico, and that airspace beginning at lat. 34°47′41″ N., long. 109°49′22″ W., to lat. 34°42′54″ N., long. 109°35′03″ W., to lat. 34°40′56″ N., long. 109°37′33″ W., to lat. 34°47′33″ N., long. 109°54′19″ W., to the point of beginning and that airspace bounded by lat. 34°37′06″ N., long. 109°48′33″ W., to lat. 34°28′39″ N., long. 109°27′29″ W., to lat. 34°26′21″ N., long. 109°41′35″ W., to lat. 34°33′51″ N., long. 19°52′12″ W., to the point of beginning.

* * * * *

Issued in Los Angeles, California, on February 12, 2007.

Teri L. Bristol,

Acting Director of Terminal Operations, Western Service Area.

[FR Doc. 07–1127 Filed 3–9–07; 8:45 am]

BILLING CODE 4910–13–M

BROADCASTING BOARD OF GOVERNORS

22 CFR Part 504

Testimony by BBG Employees, Production of Official Records, and Disclosure of Official Information in Legal Proceedings

AGENCY: Broadcasting Board of Governors.

ACTION: Proposed Rule; Comment Request.

SUMMARY: The Broadcasting Board of Governors (BBG) seeks public comment on a proposed rule that would govern access to BBG information and records in connection with legal proceedings in which neither the United States nor the BBG is a party. The rule would establish guidelines for use in determining whether BBG employees will be permitted to testify or to provide records relating to their official duties. The rule would also establish procedures that requesters would have to follow when making demands on or requests to a BBG employee for official documents or to provide testimony. The proposed rule will promote uniformity in decisions, conserve the ability of BBG to conduct official business, preserve its employee resources, protect confidential information, provide guidance to requestors, minimize involvement in matters unrelated to its mission and programs, avoid wasteful allocation of agency resources, and avoid spending public time and money for private purposes.

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

ADDRESSES: Send or deliver comments to the Office of the General Counsel, Broadcasting Board of Governors, 330 Independence Ave., SW., Washington, DC 20237 by mail or fax at (202) 203–4585.

FOR FURTHER INFORMATION CONTACT: Christopher Veith, Assistant General Counsel, Broadcasting Board of Governors, 330 Independence Ave., SW., Washington, DC 20237, phone: (202) 203–4550 or fax at (202) 203–4585.

SUPPLEMENTARY INFORMATION:

Background

The BBG occasionally receives subpoenas and other informal requests for documents and requests for BBG employees to provide testimony or evidence in cases in which the BBG is not a party. Usually these subpoenas or requests are for BBG records that are not available to the public under the Freedom of Information Act. The BBG may also receive a request for an

employee to provide testimony relating to materials contained in BBG's official records or to provide testimony or information acquired by a BBG employee during the performance of the employee's official duties.

Although the BBG has rules governing requests for information from the general public, the BBG currently has no regulations governing subpoenas and other informal requests for document production and testimony of BBG employees in legal proceedings. An increase in such requests in recent years warrants adoption of regulations governing their submission, evaluation, and processing. Responding to these requests and subpoenas is not only burdensome, may result in a significant disruption of a BBG employee's work schedule and possibly involve the BBG in issues unrelated to its responsibilities. In order to resolve these problems, many agencies have issued regulations, similar to the proposed regulation, governing the circumstances and manner in which an employee may respond to demands for testimony or for the production of documents. Establishing uniform procedures for legal processes will ensure timely notice and promote centralized decision-making. The United States Supreme Court upheld this type of regulation in United States ex rel. *Touhy* v. *Ragen*, 340 U.S. 462 (1951).

Briefly summarized, the proposed rule will prohibit disclosure of nonpublic official records or testimony by the BBG's employees, as defined in part 504.4, unless there is compliance with the rule. The proposed rule sets out the information that requesters must provide and the factors that the BBG will consider in making determinations in response to requests for testimony or the production of documents.

The charges for witnesses are the same as those provided in Federal courts and the fees related to production of records are the same as those charged under FOIA. The charges for time spent by an employee to prepare for testimony and for searches, copying, and certification of records by the BBG are authorized under 31 U.S.C. 9701, which permits an agency to charge for services or things of value that are provided by the agency.

This rule applies to a range of matters in any legal proceeding in which the BBG is not a named party and applies to current and former BBG employees. Both current and former BBG employees are prohibited by 18 U.S.C. 1905 from testifying about specific matters involving information for which they had responsibility during their active employment unless permitted to testify as provided in the rule. They would not be prohibited from testifying about general matters unconnected with the specific BBG matters for which they had responsibility.

This rule will ensure a more efficient use of the BBG's resources, minimize the possibility of involving the BBG in issues unrelated to its responsibilities, promote uniformity in responding to such subpoenas and like requests, and maintain the impartiality of the BBG in matters that are in dispute between other parties. It will also serve the BBG's interest in protecting sensitive, confidential, and privileged information and records that are generated in fulfillment of the BBG's statutory responsibilities.

This rule is internal and procedural rather than substantive. It does not create a right to obtain official records or the official testimony of a BBG employee nor does it create any additional right or privilege not already available to the BBG to deny any demand or request for testimony or documents. Failure to comply with the procedures set out in these regulations would be a basis for denying a demand or request submitted to the BBG.

List of Subjects in 22 CFR Part 504

Administrative practice and procedure.

For the reasons stated in the preamble, the Broadcasting Board of Governors proposes to amend 22 CFR, Chapter V, by adding part 504, to read as follows:

PART 504—TESTIMONY BY BBG EMPLOYEES, PRODUCTION OF OFFICIAL RECORDS, AND DISCLOSURE OF OFFICIAL INFORMATION IN LEGAL PROCEEDINGS

Subpart A—General Provisions

Sec.

504.1 Scope and purpose.
504.2 Applicability.
504.3 Definitions.

Subpart B—Demands or Requests for Testimony and Production of Documents

504.4 General prohibition.
504.5 Factors the BBG will consider.
504.6 Filing requirements for litigants seeking documents or testimony.
504.7 Service of requests or demands.
504.8 Processing requests or demands.
504.9 Final determinations.
504.10 Restrictions that apply to testimony.
504.11 Restrictions that apply to released records.
504.12 Procedure when a decision is not made prior to the time a response is required.
504.13 Procedure in the event of an adverse ruling.

Subpart C—Schedule of Fees

504.14 Fees.

Subpart D—Penalties

504.15 Penalties.

Authority: 22 U.S.C. 6204.

Subpart A—General Provisions

504.1 Scope and purpose.

(a) These regulations in this subpart establish policy, assign responsibilities and prescribe procedures with respect to:

(1) The production or disclosure of official information or records by BBG employees, and

(2) The testimony of current and former BBG employees, relating to official information, official duties, or the BBG's records, in connection with federal or state litigation in which the BBG is not a party.

(b) The BBG intends these provisions to:

(1) Conserve the time of BBG employees for conducting official business;

(2) Minimize the involvement of BBG employees in issues unrelated to BBG's mission;

(3) Maintain the impartiality of BBG employees in disputes between private litigants; and

(4) Protect sensitive, confidential information and the deliberative processes of the BBG.

(c) In providing for these requirements, the BBG does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of BBG. It does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

§ 504.2 Applicability.

This part applies to demands and requests to current and former employees for factual or expert testimony relating to official information or official duties or for production of official records or information, in legal proceedings in which the BBG is not a named party. This part does not apply to:

(a) Demands upon or requests for a BBG employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of the BBG;

(b) Demands upon or requests for a former BBG employee to testify as to matters in which the former employee was not directly or materially involved while at the BBG;

(c) Requests for the release of records under the Freedom of Information Act,

5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a; or

(d) Congressional demands and requests for testimony, records or information.

§ 504. 3 Definitions.

The following definitions apply to this part:

(a) Demand means an order, subpoena, or other command of a court or other competent authority for the production, disclosure, or release of records or for the appearance and testimony of a BBG employee in a legal proceeding.

(b) General Counsel means the General Counsel of the BBG or a person to whom the General Counsel has delegated authority under this part.

(c) Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

(d) BBG means the Broadcasting Board of Governors.

(e) BBG employee means:

(1) Any current or former employee of the BBG.

(2) This definition does not include persons who are no longer employed by the BBG and who agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment with the BBG.

(f) Records or official records and information means all information in the custody and control of the BBG, relating to information in the custody and control of the BBG, or acquired by a BBG employee in the performance of his or her official duties or because of his or her official status, while the individual was employed by the BBG.

(g) Request means any informal request, by whatever method, for the production of records and information or for testimony which has not been ordered by a court or other competent authority.

(h) Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

Subpart B—Demands or Requests for Testimony and Production of Documents

§ 504.4 General prohibition.

(a) In any United States federal, state, and local proceeding or administrative action, or proceeding or administrative action conducted in a foreign country, in which the BBG is not a party, no BBG employee shall, in response to a demand or request for official records or information, furnish or produce documents or testimony as to any material contained in BBG files, any information relating to or based upon material contained in BBG files, or any information or material acquired as part of the performance of that person's official duties (or because of that person's official status) without the prior written approval of the General Counsel.

(b) Whenever a request or demand for information is made upon a BBG employee, the employee, wherever located, shall immediately prepare a report that specifically describes the testimony or documents sought and immediately notify the General Counsel. The BBG employee shall then await instructions from the General Counsel concerning a response to the request or demand. The failure of any BBG employee to follow the procedures specified in this subpart neither creates nor confers any rights, privileges, or benefits on any person or party.

§ 504.5 Factors the BBG will consider.

The General Counsel, in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a demand or request. Among the relevant factors that the General Counsel may consider in making this decision are whether:

(a) The purposes of this part are met;

(b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(c) Allowing such testimony or production of records would assist or hinder the BBG in performing its statutory duties;

(d) Allowing such testimony or production of records would be in the best interest of the BBG or the United States;

(e) The records or testimony can be obtained from other sources;

(f) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;

(g) Disclosure would violate a statute, Executive Order or regulation;

(h) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential or financial information, otherwise protected information, or information which would otherwise be inappropriate for release;

(i) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights or national security interests;

(j) Disclosure would result in the BBG appearing to favor one litigant over another;

(k) Whether the request was served before the demand;

(l) A substantial Government interest is implicated;

(m) The demand or request is within the authority of the party making it; and

(n) The demand or request is sufficiently specific to be answered and/or can be limited to information to that which would be consistent with the factors specified herein.

§ 504. 6 Filing requirements for litigants seeking documents or testimony.

A litigant must comply with the following requirements when filing a request for official records and information or testimony under this subpart. A request should be filed before a demand.

(a) The request must be in writing and must be submitted to the General Counsel.

(b) The written request must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs any need to maintain the confidentiality of the information and outweighs the burden on the BBG to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than a BBG employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in

the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will require for each BBG employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The BBG reserves the right to require additional information to complete the request where appropriate.

(d) The request should be submitted at least 30 days before the date that records or testimony is required. Requests submitted in less than 30 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with the request.

(f) The request should state that the requester will provide a copy of the BBG employee's statement free of charge and that the requester will permit the BBG to have a representative present during the employee's testimony.

§ 504.7 Service of requests or demands.

Requests or demands for official records or information or testimony under this Subpart must be served on the General Counsel, BBG, 330 Independence Ave., SW., Washington, DC 20237 by mail or fax at (202) 203–4585 and clearly marked ''Part 504—Request for Testimony or Official Records in Legal Proceedings.''

§ 504.8 Processing requests or demands.

(a) After receiving service of a request or demand for testimony, the General Counsel will review the request and, in accordance with the provisions of this Subpart, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or produce official records and information.

(b) Absent exigent circumstances, the BBG will issue a determination within 30 days from the date the request is received.

(c) The General Counsel may grant a waiver of any procedure described by this Subpart where a waiver is considered necessary to promote a significant interest of the BBG or the United States, or for other good cause.

(d) Certification (authentication) of copies of records. The BBG may certify that records are true copies in order to facilitate their use as evidence. If a requester seeks certification, the requester must request certified copies from the BBG at least 30 days before the date they will be needed. The request should be sent to the BBG General Counsel.

§ 504.9 Final determinations.

The General Counsel makes the final determination on demands or requests to employees for production of official records and information or testimony in litigation in which the BBG is not a party. All final determinations are within the sole discretion of the General Counsel. The General Counsel will notify the requester and, when appropriate, the court or other competent authority of the final determination, the reasons for the grant or denial of the request, and any conditions that the General Counsel may impose on the release of records or information, or on the testimony of a BBG employee. The General Counsel's decision exhausts administrative remedies for discovery of the information.

§ 504.10 Restrictions that apply to testimony.

(a) The General Counsel may impose conditions or restrictions on the testimony of BBG employees including, for example:

(1) Limiting the areas of testimony;

(2) Requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal;

(3) Requiring that the transcript will be used or made available only in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) The BBG may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not:

(1) Disclose confidential or privileged information; or

(2) For a current BBG employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the BBG unless testimony is being given on behalf of the United States (see also 5 CFR 2635.805).

(d) The scheduling of an employee's testimony, including the amount of time that the employee will be made available for testimony, will be subject to the BBG's approval.

§ 504.11 Restrictions that apply to released records.

(a) The General Counsel may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, the BBG may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the General Counsel so determines, original BBG records may be presented for examination in response to a request, but they may not be presented as evidence or otherwise used in a manner by which they could lose their identity as official BBG records, nor may they be marked or altered. In lieu of the original records, certified copies may be presented for evidentiary purposes.

§ 504.12 Procedure when a decision is not made prior to the time a response is required.

If a response to a demand or request is required before the General Counsel can make the determination referred to in Sec. 504.9, the General Counsel, when necessary, will provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the request is being reviewed, provide an estimate as to when a decision will be made, and seek a stay of the demand or request pending a final determination.

§ 504. 13 Procedure in the event of an adverse ruling.

If the court or other competent authority fails to stay a demand or request, the employee upon whom the demand or request is made, unless otherwise advised by the General Counsel, will appear, if necessary, at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents, and respectfully decline to comply with the demand or request, citing United States ex rel. *Touhy* v. *Ragen,* 340 U.S. 462 (1951).

Subpart C—Schedule of Fees

§ 504.14 Fees.

(a) Generally. The General Counsel may condition the production of records or appearance for testimony upon

advance payment of a reasonable estimate of the costs to the BBG.

(b) Fees for records. Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time will be calculated on the basis of the hourly pay of the employee (including all pay, allowances, and benefits). Fees for duplication will be the same as those charged by the BBG in its Freedom of Information Act regulations at 22 CFR Part 503.

(c) Witness fees. Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district court closest to the location where the witness will appear and on 28 U.S.C. 1821, as applicable. Such fees will include cost of time spent by the witness to prepare for testimony, in travel and for attendance in the legal proceeding, plus travel costs.

(d) Payment of fees. A requester must pay witness fees for current BBG employees and any record certification fees by submitting to the General Counsel a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony of former BBG employees, the requester must pay applicable fees directly to the former BBG employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) Waiver or reduction of fees. The General Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(f) De minimis fees. Fees will not be assessed if the total charge would be $10.00 or less.

Subpart D—Penalties

§ 504.15 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by the BBG, or as ordered by a Federal court after the BBG has had the opportunity to be heard, may face penalties as provided in any applicable enforcement statute.

(b) A current BBG employee who testifies or produces official records and information in violation of this part shall be subject to disciplinary action and, if done for a valuable consideration, may subject that person to criminal prosecution.

Dated: March 6, 2007.

Carol F. Baker,

Director, Office of Administration.

[FR Doc. E7–4329 Filed 3–9–07; 8:45 am]

BILLING CODE 8610–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–07–015]

RIN 1625–AA87

Security Zone: America's 400th Celebration, Jamestown, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Coast Guard is establishing a security zone encompassing waters within 2-nautical miles of Church Point at 37–12.45 N, 076–46.66 W, Jamestown Island, VA, for America's 400th Anniversary celebration. This action is intended to restrict vessel traffic within the security zone. This security zone is necessary to protect attendees of this event from potential maritime hazards and threats and enhance public and maritime security.

DATES: Comments and related material must reach the Coast Guard on or before March 27, 2007.

ADDRESSES: You may mail comments and related material to the attention of LCDR Thomas Tarrants at the address listed below. Documents indicated in this preamble as being available in the docket are part of docket CGD05–07–015 and are available for inspection or copying at USCG Sector Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, Virginia 23703, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Thomas Tarrants, Enforcement Branch Chief, U.S. Coast Guard Sector Hampton Roads, Virginia at (757) 483–8571.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05–07–015, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for a comment period shorter than 30 days. This security zone of short duration is needed to provide for the security of persons at the event, and a shortened comment period provides the public the ability to comment while ensuring the security zone is in place before the event.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Sector Hampton Roads at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Following terrorist attacks on the United States in September 2001, there is now a heightened awareness that vessels or persons could engage in subversive activity against targets ashore in the United States. This regulation is necessary to protect attendees of America's 400th Anniversary celebration on Jamestown Island, VA, from potential maritime threats. This temporary security zone will only be in effect from 3 p.m. on May 11th, 2007 until 10 p.m. on May 13th, 2007. This zone will have minimal impact on vessel transits because vessels can request authorization from the Captain of the Port (COTP) to safely transit through the zone and they are not precluded from using any portion of the waterway except the security zone area itself. Additionally, public notifications announcing this regulation will be made via marine information broadcasts prior to the zone taking effect.

Discussion of Rule

The Coast Guard is proposing to establish a temporary security zone on specified waters to provide protection to dignitaries visiting Jamestown Island. The security zone will be effective from 3 p.m. on May 11th, 2007, until 10 p.m. on May 13th, 2007. The security zone

will encompass all waters around Jamestown Island, VA within a 2-nautical mile radius of Church Point at 37–12.45 N, 076–46.66 W. No persons or vessels may enter or remain in the regulated area without authorization by the Captain of the Port, Hampton Roads, or his designated representative.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this rulemaking restricts access to the regulated area, the effect of this rulemaking will not be significant because: (i) The COTP may authorize access to the security zone; (ii) the security zone will be in effect for a limited duration; (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

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

However, this proposed rule may affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in the described portion of the security zone between 3 p.m. on May 11, 2007, to 10 p.m. on May 13, 2007. The security zone will not have a significant impact on a substantial number of small entities because the zone does not encompass a high vessel traffic area, and vessels can request authorization from the COTP to enter the zone. Maritime advisories will also be issued, so the mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rulemaking would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Thomas Tarrants, Enforcement Branch Chief, U.S. Coast Guard Sector Hampton Roads, Virginia at (757) 483–8571.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the U.S. Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these

standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this proposed rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add temporary § 165.T05–015, to read as follows:

§ 165.T05–015 Security Zone: Jamestown Island, VA.

(a) *Location:* The following area is a security zone: All waters within a 2-nautical-mile radius of Church Point at 37–12.45N, 076–46.66W on Jamestown Island, VA.

(b) *Definition:* As used in this section; Designated Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulation.* (1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia, or his designated representative.

(2) The operator of any vessel in the immediate vicinity of this security zone shall:

(i) Stop the vessel immediately upon being directed to do so by the Captain of the Port, Hampton Roads, Virginia, or his designated representative on board a vessel displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by the Captain of the Port, Hampton Roads, Virginia, or his designated representative on board a vessel displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads, Virginia can be contacted at telephone number (757) 668–5555.

(4) U.S. Coast Guard vessels enforcing the security zone can be contacted on VHF–FM marine band radio, channel 13 (156.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement period:* The security zone will be enforced from 3 p.m. until 10 p.m. on May 11, 2007; from 9 a.m. to 11 p.m. on May 12, 2007; and from 9 a.m. to 10 p.m. on May 13, 2007.

(e) *Effective Date:* This regulation is effective from 3 p.m. on May 11, 2007, to 10 p.m. on May 13, 2007.

Dated: February 27, 2007.

Patrick B. Trapp,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. E7–4303 Filed 3–9–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0635; FRL–8286–6]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Visible Emissions and Particulate Matter Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Nevada Department of Conservation and Natural Resources portion of the Nevada State Implementation Plan. These revisions concern visible emissions and particulate matter regulations. EPA is proposing this action under the Clean Air Act obligation to take action on State submittals of revisions to state implementation plans. The intended effect is to approve updated visible emissions and particulate matter rules in the Nevada State Implementation Plan because doing so will not interfere with attainment or maintenance of the national ambient air quality standards or any other requirement of the Clean Air Act. EPA is taking comments on this proposal and plans to follow with a final action.

DATES: Any comments must arrive by April 11, 2007.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0635, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov*.
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy

location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, EPA Region IX, (415) 947–4126.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What regulations did the State submit?

The State of Nevada's Department of Conservation and Natural Resources, Division of Environmental Protection (NDEP) submitted a large revision to the applicable Nevada State Implementation Plan (SIP) on January 12, 2006. The January 12, 2006 SIP revision submittal includes new and amended statutes and rules as well as requests for rescission of certain rules in the existing SIP. The January 12, 2006 SIP revision submittal supersedes the regulatory portion of an earlier submittal dated February 16, 2005.[1] On March 26, 2006, we found that the Nevada SIP submittal dated January 12, 2006 satisfied the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

The primary purpose of this SIP revision is to clarify and harmonize the provisions approved by EPA into the applicable SIP with the current provisions adopted by the State. Because this revision incorporates so many changes from the 1970s and 1980s vintage SIP regulations, EPA has decided to review and act on the submittal in a series of separate actions. The first such action, related to various definitions, sulfur emission rules, and restrictions on open burning and use of incinerators, was proposed in the **Federal Register** on September 13, 2005 (70 FR 53975) and finalized on March 27, 2006 (71 FR 15040). The second such action, related to statutory authority, was proposed in the **Federal Register** on June 9, 2006 (71 FR 33413) and finalized on August 31, 2006 (71 FR 51766). A third action, related to most of the State's requests for rescission, and fourth action, related to monitoring and VOC rules, were proposed on August 28, 2006 (71 FR 50875) and August 31, 2006 (71 FR 51793), respectively, and finalized on January 3, 2007 (72 FR 11) and December 11, 2006 (71 FR 71486), respectively.

In today's notice, we are taking another step in the process of acting on the State's January 12, 2006 SIP revision submittal by proposing action on the State's request for approval of six amended rules related to visible emissions and particulate matter and for rescission of two related rules. The remaining portions of the submittal will be acted on in future **Federal Register** actions.

The following two tables list the provisions of the Nevada Air Quality Regulations (NAQR) or Nevada Administrative Code (NAC) addressed by this proposal. Table 1 list the amended rules submitted by NDEP for approval into the SIP and addressed herein. If approved, the submitted rules in table 1 would replace existing rules in the applicable SIP.

TABLE 1.—AMENDED RULES SUBMITTED FOR APPROVAL INTO THE SIP

NAC No.	NAC Title	Adopted	Submitted
445B.22017	Visible emissions: Maximum opacity; determination. (Effective April 1, 2006.)	10/04/05	01/12/06
445B.2202	Visible emissions: Exceptions for stationary sources. (Effective April 1, 2006.)	10/04/05	01/12/06
445B.22027	Emissions of particulate matter: Maximum allowable throughput for calculating emissions rates	01/22/98	01/12/06
445B.2203	Emissions of particulate matter: Fuel-burning equipment	09/09/99	01/12/06
445B.22033	Emissions of particulate matter: Sources not otherwise limited	01/22/98	01/12/06
445B.22037	Emissions of particulate matter: Fugitive dust.	10/03/95	01/12/06

Table 2 lists two related rules in the existing SIP for which NDEP has requested rescission. If we approve the rescission requests, the two rules listed in table 2 would be deleted from the applicable SIP.

TABLE 2.—RELATED SIP RULES FOR WHICH THE STATE HAS REQUESTED RESCISSION

SIP provision	Title	Submittal date	Approval date
NAQR Article 16.3.3.1	Opacity from kilns	12/29/78	06/18/82
NAC 445.535	Kilogram-calorie	10/26/82	03/27/84

[1] The February 16, 2005 SIP submittal also includes documentation of public notice and hearing for certain new or amended rules for which EPA is proposing approval. The January 12, 2006 SIP submittal was not a complete re-submittal of the earlier submittal in that it did not include this documentation. Our consideration of the rules submitted on January 12, 2006 and evaluated herein takes into account the public participation documentation contained in the earlier submittal. Public participation documentation for the rescission of NAC 445.535, also evaluated herein, was also included in the February 16, 2005 SIP submittal and is taken into account in this proposed action. NAC 445.535 (which had been recodified as NAC 445B.089) was repealed for the purposes of State law by the Nevada State Environmental Commission effective March 5, 1998. NDEP has also provided documentation of public process for rescission of NAQR article 16.3.3.1 (re-codified as NAC 445.828), which was repealed by the commission for purposes of State law effective October 15, 1985. CAA section 110(l) requires reasonable notice and public hearing prior to adoption of SIP revisions by States for subsequent submittal to EPA for approval or disapproval under CAA section 110(k)(3).

B. What is the regulatory history of the Nevada SIP?

In January 1972, pursuant to the Clean Air Amendments of 1970, the Governor of Nevada submitted the original Nevada SIP to EPA. EPA approved certain portions of the original SIP and disapproved other portions under section 110(a) of the Clean Air Act (Act or CAA). See 37 FR 10842 (May 31, 1972). For some of the disapproved portions of the original SIP, EPA promulgated substitute provisions under CAA section 110(c).[2] This original SIP included various rules, codified as articles within the Nevada Air Quality Regulations (NAQR), and various statutory provisions codified in chapter 445 of the Nevada Revised Statutes (NRS). In the early 1980's, Nevada reorganized and re-codified its air quality rules into sections within chapter 445 of the Nevada Administrative Code (NAC). Today, Nevada codifies its air quality regulations in chapter 445B of the NAC and codifies air quality statutes in chapter 445B (''Air Pollution'') of title 40 (''Public Health and Safety'') of the NRS.

Nevada adopted and submitted many revisions to the original set of regulations and statutes in the SIP, some of which EPA approved on February 6, 1975 at 40 FR 5508; on March 26, 1975 at 40 FR 13306; on January 9, 1978 at 43 FR 1341; on January 24, 1978 at 43 FR 3278; on August 21, 1978 at 43 FR 36932; on July 10, 1980 at 45 FR 46384; on April 14, 1981 at 46 FR 21758; on August 27, 1981 at 46 FR 43141; on March 8, 1982 at 47 FR 9833; on April 13, 1982 at 47 FR 15790; on June 18, 1982 at 47 FR 26386; on June 23, 1982 at 47 FR 27070; on March 27, 1984 at 49 FR 11626. Since 1984, EPA has approved very few revisions to Nevada's applicable SIP despite numerous changes that have been adopted by the State Environmental Commission. As a result, the version of the rules enforceable by NDEP is often quite different from the SIP version enforceable by EPA.

C. What is the purpose of this proposed rule?

The purpose of this proposal is to present EPA's conclusions and rationale with respect to the State's January 12, 2006 submittal of amended visible emissions and particulate matter rules and requests for rescission of two related rules from the applicable SIP. The technical support document (TSD) that we prepared for this proposed rulemaking provides additional detail concerning these amended rules and rescission requests and our evaluation of them.

II. EPA's Evaluation and Action

A. How is EPA evaluating the regulations?

Under CAA section 110(k)(2), EPA is obligated to take action on submittals by States of SIPs and SIP revisions. CAA section 110(k)(3) authorizes EPA to approve or disapprove, in whole or in severable part, such submittals.

EPA has reviewed the visible emissions and particulate matter rules and related rescission requests submitted on January 12, 2006 by NDEP for compliance with the CAA requirements for SIPs in general set forth in CAA section 110(a)(2) and 40 CFR part 51 and also for compliance with CAA requirements for SIP revisions in CAA sections 110(l) and 193.[3] Relevant EPA guidance and policy documents that we used to help evaluate enforceability include ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency,'' dated September 23, 1987, from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* As described below, EPA is proposing approval of the submitted visible emissions and particulate matter rules and related rescission requests.

B. Do the regulations meet the evaluation criteria?

We believe that all six of the submitted rules evaluated herein (see table 1, above) are consistent with the relevant statutory and regulatory provisions, as well as policy and guidance regarding enforceability and SIP relaxations and that proposed approval of the six submitted rules provides the basis to approve the rescission requests for the two related rules in the applicable SIP (see table 2, above). A short discussion of our rationale is provided in the following paragraphs.

1. *NAC 445B.22017 (Visible emissions: Maximum opacity; determination), NAC 445B.2202 (Visible emissions: Exceptions for stationary sources), NAC 445B.22027 (Emissions of particulate matter: Maximum allowable throughput for calculating emissions rates), and NAC 445B.22037 (Emissions of particulate matter: Fugitive dust).* Generally, these submitted rules retain or enhance the requirements set forth in the corresponding rules in the current applicable SIP. Compared to the current applicable SIP rules, the amended rules include a different, but acceptable, formulation defining the basic 20% opacity standard and a lower (*i.e.*, more stringent) project-size exemption threshold (from 20 acres to 5 acres) for the requirement to implement a dust control program and obtain a surface area disturbance permit from NDEP.

The January 12, 2006 SIP submittal contained multiple versions of the two visible emissions rules, NAC 445B.22017 and 445B.2202, reflecting the contingent effective dates adopted by the State Environmental Commission for amendments to these rules. The amendments adopted by the commission (but made effective at an indefinite future date) removed an exemption to the application of the opacity limit that we otherwise would have found unapprovable. In adopting the amendments to the rules (and associated contingent effective dates), the State Environmental Commission committed to publishing a notice when the amendments (removing the unapprovable exemption) become effective. On April 1, 2006, the State Environmental Commission issued such a notice and thus the unobjectionable (and approvable) versions of the two visible emissions rules are now in effect and form the basis for our proposed action on these rules herein.

2. *NAQR Article 16.3.3.1 (Opacity from kilns).* Based on our findings above concerning the two visible emissions rules, *i.e.*, NAC 445B.22017 and NAC 445B.2202, we find retention of NAQR Article 16.3.3.1 (Opacity from kilns) in the SIP to be unnecessary and thus we propose to approve NDEP's request for rescission of that rule.

3. *NAC 445B.2203 (Emissions of particulate matter: Fuel-burning equipment) and NAC 445B.22033 (Emissions of particulate matter: Sources not otherwise limited).* These submitted rules contain the same basic emissions limits and exemptions as the corresponding current applicable SIP rules, but the limits in the submitted rules apply to ''PM_{10}'' as opposed to ''particulate matter.'' ''PM_{10}'' refers to particles with diameters equal to or less than a nominal 10 microns and is the basis for a NAAQS, while ''particulate matter'' (PM) refers more inclusively to

[2] Provisions that EPA promulgates under CAA section 110(c) in substitution of disapproved State provisions are referred to as Federal Implementation Plans.

[3] CAA section 110(l) prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. CAA section 193 prohibits modifications in control requirements that were in effect before the Clean Air Act Amendments of 1990 in any nonattainment area unless the modification insures equivalent or greater emission reductions of the nonattainment pollutant.

any material (except uncombined water) that exists in a finely divided form as a liquid or solid at reference conditions. Thus, except for sources whose ''PM'' consists only of particles of a size that are ''PM_{10}'', simple replacement of ''PM'' with ''PM_{10}'' without any downward adjustment in the formula that establishes the allowable emission limit represents a relaxation in the limit with respect to PM_{10} emissions.

Given the hypothetical nature of this relaxation, we reviewed in detail the permit conditions for four major sources to determine whether the change from PM to PM_{10} in the allowable limit would in effect result in an increase in PM10 emissions. Based on this review and for a variety or reasons, we have determined that no such increase would occur. For certain emission units at these sources, the PM emissions subject to NAC 445.731 and/or 445.732 are comprised entirely of particles that are also PM_{10}. For certain other emissions units, the potentials to emit are less than the allowable limits under either the existing SIP rules NAC 445.731 and 445.732 or the submitted rules NAC 445B.2203 or 445B.22033. Lastly, other emissions sources are subject to other federally enforceable emission limits (*e.g.*, limits established under PSD requirements or NSPS) that would be unaffected by our action proposed herein and that are more stringent, in some cases by an order of magnitude, than the allowable limits under either the existing SIP rules or submitted rules. Therefore, we have determined that replacement of the existing SIP rules NAC 445.731 and NAC 445.732 with submitted rules NAC 445B.2203 and NAC 445B.22033 would not interfere with attainment or maintenance of the NAAQS for the purposes of CAA section 110(l).

Because submitted rules NAC 445B.2203 and 445B.22033 would apply to a major stationary source (Sunrise power plant) in the Las Vegas PM_{10} nonattainment area, we reviewed these two submitted rules for compliance with applicable nonattainment area requirements in part D of title I of the Act. Based on review of the EPA-approved PM_{10} attainment plan for Las Vegas Valley, we have concluded that neither NAC 445B.2203 nor 445B.22033 need be made more stringent at this time to meet nonattainment planning requirements although the rules may need to be revised if we determined that Las Vegas Valley has failed to meet the 2006 attainment date for the PM_{10} NAAQS. We also have concluded that approval of NAC 445B.2203 and 445B.22033 would be consistent with CAA section 193 because the Sunrise power plant normally runs on natural gas and all of the PM generated using natural gas is also PM_{10}. The same is true for the cooling tower at the Sunrise power plant. Thus, approval of NAC 445B.2203 and 445B.22033 would not result in an increase in PM_{10} emissions which otherwise would have been required to be offset by equivalent emissions reductions to satisfy CAA section 193.

4. *NAC 445.535, Kilogram-calorie.* This rule is one of the current applicable SIP rules for which NDEP requested rescission in its January 12, 2006 SIP revision submittal. NAC 445.535 defines a measurement unit used in current applicable SIP rule NAC 445.731, which would be superseded in the applicable SIP if we finalize our proposed approval of submitted rule NAC 445B.2203. As such, we find that retention of NAC 445.535 in the applicable SIP is unnecessary, and as such, we propose to approve NDEP's request for rescission of NAC 445.535 from the applicable SIP.

C. EPA Recommendations To Further Improve the Regulations

In connection with NAC 445B.22017, an amended rule for which we are proposing approval herein, we note that the term ''6-minute period'' is used [see NAC 445B.22017(3)] and that the term ''six-minute period'' is specifically defined in NAC 445B.172, a provision that has not been submitted to EPA for approval. Assuming that ''6-minute period'' is intended to be the same as ''six-minute period'' as defined in NAC 445B.172, NDEP should submit NAC 445B.172 to EPA for approval into the applicable SIP to assure correct and consistent interpretation of NAC 445B.22017(3).

D. Proposed Action and Public Comment

Pursuant to section 110(k)(3) of the Act and for the reasons set forth above, EPA is proposing approval of the following provisions submitted to EPA on January 12, 2006:

- NAC 445B.22017 (Visible emissions: Maximum opacity; determination) (effective April 1, 2006),
- NAC 445B.2202 (Visible emissions: Exceptions for stationary sources) (effective April 1, 2006),
- NAC 445B.22027 (Emissions of particulate matter: Maximum allowable throughput for calculating emissions rates),
- NAC 445B.2203 (Emissions of particulate matter: Fuel-burning equipment),
- NAC 445B.22033 (Emissions of particulate matter: Sources not otherwise limited), and
- NAC 445B.22037 (Emissions of particulate matter: Fugitive dust).

Based on our proposed approval of these submitted rules, we are also proposing to approve the State's request to rescind NAQR Article 16.3.3.1 (Opacity from kilns) and NAC 445.535 (Kilogram-calorie). If finalized as proposed, this action would incorporate the six submitted rules into the federally-enforceable SIP [4] and rescind NAQR Article 16.3.3.1 and NAC 445.535 therefrom.

We will accept comments from the public on this proposed approval for the next 30 days.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to approve state rules as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and

[4] Final approval of these rules would supersede the following rules in the applicable SIP (superseding rule shown in parentheses) when sources come into compliance with the new rule: NAC 445.721 (NAC 445B.22017); NAQR Article 4.3, 4.3.1, 4.3.2, 4.3.3 and 4.3.5 (NAC 445B.2202); NAC 445.731 (NAC 445B.2203), NAC 445.732 (NAC 445B.22033), and NAC 445.734 (NAC 445B.22037). NAC 445.729 would not be superseded by the corresponding submitted rule NAC 445B.22027 because the former is relied upon by certain SIP rules (*e.g.*, NAC 445.730) that are being retained in the SIP.

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve state rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: February 15, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E7–4428 Filed 3–9–07; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 10, 12, 25

[FAR Case 2006–016; Docket 2007–0001; Sequence 4]

RIN: 9000–AK70

Federal Acquisition Regulation; FAR Case 2006–016, Numbered Notes for Synopses

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to update and clarify policy for synopses of proposed contract actions and to delete all references to Numbered Notes.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before May 11, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2006–016 by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Search for any document by first selecting the proper document types and selecting ''Federal Acquisition Regulation'' as the agency of choice. At the ''Keyword'' prompt, type in the FAR case number (for example, FAR Case 2006–001) and click on the ''Submit'' button. Please include any personal and/or business information inside the document.You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''Federal Acquisition Regulation'', and typing the FAR case number in the keyword field. Select the ''Submit'' button.

• *Fax:* 202–501–4067.

• *Mail:* General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2006–016 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2006–016.

SUPPLEMENTARY INFORMATION:

A. Background

The use of Numbered Notes originally provided a method to expedite publicizing synopses in the Commerce Business Daily (CBD). The data transmission for this defunct publication was cumbersome and time-consuming. The use of Numbered Notes simplified the inclusion of repetitive information. In addition, use of these Notes reduces the size of the publication (and, therefore, the cost to publish and distribute this hardcopy periodical.)

During the transition period from the CBD periodical for publishing synopses to the electronic postings of synopses on the Federal Business Opportunities (FedBizOpps) Web site, the Numbered Notes were moved from the CBD to FedBizOpps. At the same time, the prescriptions for the Numbered Notes were generally deleted from the FAR.

Electronic posting of synopses allows contracting officers to easily insert text, as needed. Electronic posting also places the full text of synopses in easy-to-read, stand-alone documents that may be individually printed hardcopy or saved as data files by interested parties. This differs sharply from the earlier CBD periodical which printed a hardcopy of all synopses for a particular day.

Since the prescriptions for the Numbered Notes were deleted from the FAR, the Numbered Notes have not been maintained and many of the Numbered Notes do not accurately reflect current FAR requirements or have been made obsolete by the functionality of FedBizOpps. Also, without prescriptions in the FAR, contracting officers are not required to use the Numbered Notes. The content of each Numbered Note and a discussion of the Note follows:

1. The proposed contract is 100 percent set-aside for small business concerns.

Contracting officers identify set-asides via a drop-down box in FedBizOpps. Therefore, the Note is redundant.

2. A portion of the acquisition is set-aside for small business concerns.

Contracting officers identify set-asides via a drop-down box in FedBizOpps. Therefore, the Note is redundant.

3. The proposed contract is a labor surplus area set-aside. (This note is deleted as of 7/21/99.)

The Note is obsolete.

4. The proposed contract is 100 percent set aside for small disadvantaged business concerns (SDB). Offers from concerns other than SDBs will not be considered. (This note is deleted as of 11/24/99.)

The Note is obsolete.

5. The proposed contract is 100 percent set-aside for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs). Offers from other than HBCUs and MIs will not be considered.

Contracting officers identify set-asides via a drop-down box in FedBizOpps. Therefore, the Note is redundant.

6. The proposed contract is a total small disadvantaged business set-aside or is being considered as a total small disadvantaged business set-aside. (This note is deleted as of 11/24/99.)

The Note is obsolete.

7. The proposed contract is 100 percent set-aside for Historically Black Colleges, Universities and Minority Institutions or is partially set-aside for Historically Black Colleges, Universities and Minority Institutions.

Contracting officers identify set-asides via a drop-down box in FedBizOpps. Therefore, the Note is redundant.

8. The solicitation document contains information that has been designated as ''Militarily Critical Technical Data.'' Only businesses that have been certified by the Department of Defense, United States/Canada Joint Certification Office, and have a valid requirement may have a copy of the solicitation document. All requests for copies of the solicitation document must include a certified copy of DD Form 2345, Militarily Critical Technical Data Agreement. To obtain certification, contact: Commander, Defense Logistics Information Service (DLIS), ATTN: U.S./Canada Joint Certification Office, 74 Washington Avenue North, Battle Creek, MI 49017–3084 or call the DLIS at (800)-352–3572. The DLIS United States/Canada Joint Certification Lookup service is available via the Internet at: *http://www.dlis.dla.mil/ccal/.*

The requirement is unique to DoD. The FAR does not include a reference to Militarily Critical Technical Data. The Office of Management and Budget (OMB) Control Number 0704–0207 for the information collection requirements associated with DD Form 2345 result from Department of Defense Directive Number 5230.25. In addition, the link reference in the Note is no longer valid, i.e., *http://www.dlis.dla.mil/ccal/.* Other information in the Note may also be inaccurate. Accordingly, this Note is not useful in the GPE.

9. Interested parties may obtain copies of Military and Federal Specifications and Standards, Qualified Product Lists, Military Handbooks, and other standardization documents from the DoD Single Stock Point (DODSSP), in Philadelphia, PA. Most documents are available in Adobe PDF format from the ASSIST database via the Internet at *http://assist.daps.mil/.*

Users may search for documents using the ASSIST-Quick Search and, in most cases, download the documents directly via the Internet using standard browser software.

Documents not available for downloading from ASSIST can be ordered from the DODSSP using the ASSIST Shopping Wizard, after establishing a DODSSP Customer Account by following the registration procedures or by phoning the DODSSP Special Assistance Desk at (215) 697–2179 (DSN: 442–2179).

Users not having access to the Internet may contact the DODSSP Special Assistance Desk at (215) 697–2179 (DSN: 442–2179) or mail requests to the DODSSP, Bldg. 4/D, 700 Robbins Avenue, Philadelphia, PA 19111–5094. Patterns, Drawings, Deviations Lists, Purchase Descriptions, etc., are not stocked at the DODSSP.

The following FAR provisions notify prospective offerors how to obtain copies of the various specifications, standards, and data item descriptions: FAR 52.211–1, Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards, and Commercial Item Descriptions; FAR 52.211–2, Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST); FAR 52.211–3, Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards, and Commercial Item Descriptions; and FAR 52.211–4, Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards, and Commercial Item Descriptions. Additionally, FAR 52.209–1, Qualification Requirements, notifies prospective offerors how to obtain the qualification requirements for the pending contract. Therefore, the Note appears to be redundant. In addition, the link referenced in the Note is no longer valid, i.e., *http://www.assist.daps.mil.* Other information in the Note may also be inaccurate.

10. Reserved.

11. Reserved.

12. One or more of the items under this acquisition may be subject to an Agreement on Government Procurement approved and implemented in the United States by the Trade Agreements Act of 1979. All offers shall be in the English language and in U.S. dollars. All interested suppliers may submit an offer.

FAR Subpart 25.4, Trade Agreements, sufficiently addresses the procedures. Specifically, FAR 25.408 prescribes FAR provisions: 52.214–34, Submission of OfferSin the English Language; 52.214–35, Submission of Offers in U.S. Currency; and paragraph (c)(5) of 52.215–1, Instructions to Offerors—Competitive Acquisitions; contains most of the information in the Note. However, the World Trade Organization Government Procurement Agreement, and some of the Free Trade Agreements, require that a notice must appear in the synopsis that the procurement is covered by the Agreement. Therefore, the requirement should be included in the FAR.

13. The proposed contract is restricted to domestic sources under the authority of FAR 6.302–3. Accordingly, foreign sources, except Canadian sources, are not eligible for award.

FAR 6.302–3 provides for restrictions to either the ''United States or its outlying areas'' or the ''United States, its outlying areas, or Canada.'' In addition, acquisitions can be restricted based on other factors in 6.302–3. Therefore, it seems inappropriate to only address one of the restrictions.

14. Reserved.

15. Reserved.

16. Reserved.

17. Reserved.

18. Reserved.

19. Reserved.

20. Reserved.

21. Reserved.

22. The proposed contract action is for supplies or services for which the Government intends to solicit and negotiate with only one source under the authority of FAR 6.302. Interested persons may identify their interest and capability to respond to the requirement or submit proposals. This notice of intent is not a request for competitive proposals. However, all proposals received within forty-five days (thirty days if award is issued under an existing basic ordering agreement) after date of publication of this synopsis will be considered by the Government. A determination by the Government not to compete with this proposed contract based upon responses to this notice is solely within the discretion of the

Government. Information received will normally be considered solely for the purpose of determining whether to conduct a competitive procurement.

Since there is no prescription for the Note in the FAR, contracting officers might be prescribing different time periods when responses will be considered. To ensure a uniform timeframe, the requirement should be maintained in the FAR.

23. Award will be made only if the offeror, the product/service or the manufacturer meets qualification requirements at time of award, in accordance with FAR clause 52.209–1 or 52.209–2. The solicitation identifies the office where additional information can be obtained concerning qualification requirements and is cited in each individual solicitation.

FAR 52.209–2 is reserved. FAR 52.209–1, Qualification Requirements, notifies prospective offerors how to obtain the requirements that must be satisfied to become qualified or to demonstrate their capability. Therefore, the Note is redundant.

24. This acquisition is for architect-engineer (A-E) services, and is procured in accordance with the Brooks A-E Act as implemented in FAR Subpart 36.6. A-E firms meeting the requirements described in this announcement are invited to submit: (1) a Standard Form (SF) 330, Architect-Engineer Qualifications, Parts I and II, and (2) any requested supplemental data to the procurement office shown. Firms registering for consideration for future Federal A-E projects are encouraged to electronically submit SF 330 Part II, General Qualifications, to *http://www.bpn.gov/orca/login.aspx*, and to update at least annually. Firms with a SF 330 Part II on file in this central Federal database do not need to submit a Part II for this acquisition unless directed by the announcement. Firms responding to this announcement before the closing date will be considered for selection, subject to any limitations indicated with respect to size and geographic location of firm, specialized technical expertise or other requirements listed. Following an evaluation of the qualifications and performance data submitted, three or more firms that are considered to be the most highly qualified to provide the type of services required will be chosen for negotiation. Selection of firms for negotiation shall be made in order of preference based on the demonstrated competence and qualifications necessary for satisfactory performance in accordance with the specific selection criteria listed in the announcement.

To be considered for architect-engineer contracts, a firm must file, with the appropriate office or board, the Standard Form (SF) 330, Architect-Engineer Qualifications, Part II, and when applicable, SF 330, Part I (see FAR 36.603(b)). The other information contained in the Note is also addressed in FAR 36.603(b). FAR 5.207(c)(12) requires contracting officers to include any significant evaluation factors in the synopsis. The requirement to have a filed SF 330 is a significant evaluation factor and would, therefore, be included in the synopsis. Accordingly, *the Note is redundant.*

25. Information submitted should be pertinent and specific in the technical area under consideration, on each of the following qualifications: (1) Experience: An outline of previous projects, specific work previously performed or being performed and any in-house research and development effort; (2) Personnel: Name, professional qualifications and specific experience of scientists, engineers and technical personnel who may be assigned as a principal investigator and/or project officer; (3) Facilities: Availability and description of special facilities required to perform in the technical areas under consideration. A statement regarding industry security clearance. Any other specific and pertinent information as pertains to this particular area of procurement that would enhance our consideration and evaluation of the information submitted.

Contracting officers are required to include the evaluation factors in the solicitation. Therefore, the Note is redundant.

26. Based upon market research, the Government is not using the policies contained in Part 12, Acquisition of Commercial Items, in its solicitation for the described supplies or services. However, interested persons may identify to the contracting officer their interest and capability to satisfy the Government's requirement with a commercial item within 15 days of this notice.

Market research is sufficient for identifying commercial solutions. Therefore, the Note is unnecessary.

27. The proposed contract is set-aside for HUBZone small business concerns. Offers from other than HUBZone small business concerns will not be considered.

Contracting officers identify set-asides via a drop-down box in FedBizOpps. Therefore, the Note is redundant.

28. The proposed contract is set-aside for Very Small Business Concerns (VSB). A VSB is a small business concern whose headquarters is located within the geographic area served by a district designated by SBA; and which, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed $1 million. Offers from other than very small business concerns will not be considered.

The VSB program is no longer applicable. Therefore, the Note is obsolete.

29. The proposed contract is set-aside for Service-Disabled Veteran-Owned small business concerns. Offers from other than Service-Disabled Veteran-Owned small business concerns will not be considered.

Contracting officers identify set-asides via a drop-down box in FedBizOpps. Therefore, the Note is redundant.

This rule proposes to make the following changes to the FAR:

(a) Require that a ''proposed contract action the Government intends to solicit and negotiate with only one source under the authority of 6.302'' be subject to the 15–day advance notice publishing requirement at FAR 5.203 to establish a minimum time period for which the Government will consider proposals from other than an intended source.

(b) Delete the reference to the ''GPO billing account code'' at FAR 5.207 because the GPO has been replaced by FedBizOpps.

(c) Delete the reference to an ''opening date'' at FAR 5.207 because this term is now obsolete. ''Opening date'' was used in the CBD periodical when the date of publication for an announcement was uncertain. In FedBizOpps, the electronic posting date has replaced the opening date.

(d) Delete the references and coverage on Numbered Notes at FAR 5.205(a), 5.207(c)(13) and (14), 5.207(e), 10.002(d)(2), 12.603(c)(2)(xv), and 25.408(a)(2) because the referenced Notes are no longer needed.

(e) Add requirements to the FAR clause at 5.207(c)(13) to identify, in the synopsis, acquisitions subject to the trade agreements.

(f) Revise the ''set-asides'' coverage at FAR 5.207 to include all allowable set-asides and delete the reference to ''Numbered Notes'' because the type of set-aside is identified in FedBizOpps by selecting the appropriate set-aside from a drop-down menu, *e.g.*, partial women-owned small business concern, total HUBZone small business concern.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it makes no significant change to the policy for the synopses of proposed contract actions. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 5, 10, 12, and 25 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2006–016), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 5, 10, 12, and 25

Government procurement.

Dated: March 2, 2007.

Ralph De Stefano

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 5, 10, 12, and 25 as set forth below:

1. The authority citation for 48 CFR parts 5, 10, 12, and 25 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Amend section 5.203 by revising paragraph (a) introductory text to read as follows:

5.203 Publicizing and response time.

* * * * *

(a) An agency must transmit a notice of proposed contract action to the GPE (see 5.201). All publicizing and response times are calculated based on the date of publication. The publication date is the date the notice appears on the GPE. The notice must be published at least 15 days before issuance of a solicitation or a proposed contract action the Government intends to solicit and negotiate with only one source under the authority of 6.302, except that, for acquisitions of commercial items, the contracting officer may—

* * * * *

5.205 [Amended]

3. Amend section 5.205 in the fifth sentence following the paragraph heading of paragraph(a) by removing the words ''cite the appropriate Numbered Note,''

4. Amend section 5.207 by—

a. Removing paragraph (a)(4) and redesignating paragraphs (a)(5) through (a)(19) as (a)(4) through (a)(18) respectively;

b. Revising newly redesignated paragraph (a)(9);

c. Revising paragraphs (c)(13) and (c)(14);

d. Revising paragraph (d);

e. Removing paragraph (e) and redesignating paragraphs (f) and (g) as (e) and (f),respectively; and

f. Revising the newly designated paragraph (f).

The revised text read as follows:

5.207 Preparation and Transmittal of Synopses.

(a) * * *

(9) Closing Response Date.

* * * * *

(c) * * *

(13) (i) If the solicitation will include the FAR clause at 52.225–3, Buy American Act Free Trade Agreements Israeli Trade Act, or an equivalent agency clause, insert the following notice in the synopsis: ''One or more of the items under this acquisition is subject to Free Trade Agreements.''

(ii) If the solicitation will include the FAR clause at 52.225–5, Trade Agreements, or an equivalent agency clause, insert the following notice in the synopsis: ''One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements.''

(iii) If the solicitation will include the FAR clause at clause 52.225–11, Buy American Act–Construction Materials under Trade Agreements, or an equivalent agency clause, insert the following notice in the synopsis: ''One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements.''

(14) In the case of noncompetitive contract actions (including those that do not exceed the simplified acquisition threshold), identify the intended source and insert a statement of the reason justifying the lack of competition.

* * * * *

(d) *Set-asides.* When the proposed acquisition provides for a total or partial small business program set-aside, the contracting officer shall identify the type of set-aside in the solicitation.

(e) * * *

(f) *Cancellation of synopsis.* Contracting officers should not publish notices of solicitation cancellations (or indefinite suspensions) of proposed contract actions in the GPE. Cancellations of solicitations must be made in accordance with 14.209 and 14.404–1.

PART 10—MARKET RESEARCH

10.002 [Amended]

5. Amend section 10.002(d)(2) by removing the parenthetical from the end of the second sentence.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.603 [Amended]

6. Amend section 12.603 by removing paragraph (c)(2)(xv) and redesignating paragraphs (c)(2)(xvi) and (xvii) as paragraphs (c)(2)(xv) and (xvi), respectively.

PART 25—FOREIGN ACQUISITIONS

7. Amend section 25.408 by revising paragraph (a)(2) to read as follows:

25.408 Procedures.

(a) * * *

(2) Comply with the requirements of 5.207, Preparation and Transmittal of Synopses;

* * * * *

[FR Doc. 07–1102 Filed 3–9–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070227048–7048–01; I.D. 020807C]

RIN 0648–AU63

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Total Allowable Catches for Georges Bank Cod, Haddock, and Yellowtail Flounder in the U.S./Canada Management Area for Fishing Year 2007

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2007 fishing year (FY) Total Allowable Catches (TACs) for Georges Bank (GB) cod, haddock, and yellowtail flounder in the U.S./Canada Management Area, as recommended by the New England Fishery Management Council (Council). These TACs may be adjusted during FY 2007, if NMFS determines that the harvest of these stocks in FY 2006 exceeded the TACs specified for FY 2006. The intent of this action is to provide for the conservation and management of those three stocks of fish.

DATES: Comments must be received by April 11, 2007.

ADDRESSES: You may submit written comments by any of the following methods:

- E-mail: *USCATAC@NOAA.gov*. Include in the subject line the following: Comments on the proposed TACs for the U.S./Canada Management Area.
- Federal e-rulemaking Portal: *http://www.regulations.gov*.
- Mail: Paper, disk, or CD ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the proposed TACs for the U.S./Canada Management Area.''
- Fax: (978) 281–9135.

Copies of the Transboundary Management Guidance Committee's 2006 Guidance Document and copies of the Environmental Assessment (EA) of the 2007 TACs (including the Regulatory Impact Review and Regulatory Flexibility Analysis (IRFA) may be obtained from NMFS at the mailing address specified above; telephone (978) 281–9315. NMFS prepared a summary of the IRFA, which is contained in the Classification section of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Management Specialist, (978) 281–9273, fax (978) 281–9135, e-mail *Tobey.Curtis@NOAA.gov*.

SUPPLEMENTARY INFORMATION: The Northeast (NE) Multispecies Fishery Management Plan (FMP) specifies a procedure for setting annual hard TAC levels (i.e., the fishery or area closes when a TAC is reached) for GB cod, haddock, and yellowtail flounder in the U.S./Canada Management Area. The regulations governing the annual development of TACs (§ 648.85(a)(2)) were implemented by Amendment 13 to the FMP (69 FR 22906; April 27, 2004) in order to be consistent with the U.S./Canada Resource Sharing Understanding (Understanding), which is an informal (i.e. non-binding) understanding between the United States and Canada that outlines a process for the management of the shared GB groundfish resources. The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution.

Annual TACs are determined through a process involving the Council, the Transboundary Management Guidance Committee (TMGC), and the U.S./Canada Transboundary Resources Steering Committee (§ 648.85(a)(2)(i)). In November 2006, the TMGC approved the 2006 Guidance Document for GB cod, GB haddock, and GB yellowtail flounder, which included recommended U.S. TACs for these stocks. The recommended 2007 TACs were based upon the most recent stock assessments (Transboundary Resource Assessment Committee (TRAC) Status Reports for 2006), and the fishing mortality strategy shared by both the United States and Canada. The strategy is to maintain a low to neutral (less than 50 percent) risk of exceeding the fishing mortality limit reference (F_{ref} = 0.18, 0.26, and 0.25, for cod, haddock, and yellowtail flounder, respectively). When stock conditions are poor, fishing mortality rates (F) should be further reduced to promote rebuilding.

For GB cod, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2007 is 1,900 mt. This corresponds to an F less than the F_{ref} of 0.18 in 2007, and represents a low risk (less than 25 percent) of exceeding the F_{ref}. At this level of harvest it is unlikely that the stock biomass will decrease from 2007 to 2008. The annual allocation shares for FY 2007 between the United States and Canada are based on a combination of historical catches (25 percent weighting) and resource distribution based on trawl surveys (75 percent weighting). Combining these factors entitles the United States to 26 percent and Canada to 74 percent, resulting in a national quota of 494 mt of cod for the United States and 1,406 mt of cod for Canada.

For GB haddock, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2007 is 19,000 mt. This corresponds to an F of less than the F_{ref} of 0.26 in 2007 and would result in a risk of 50 percent of exceeding the F_{ref}. The annual allocation shares for 2007 between countries are based on a combination of historical catches (25 percent weighting) and resource distribution based on trawl surveys (75 percent weighting). Combining these factors entitles the United States to 33 percent and Canada to 67 percent, resulting in a national quota of 6,270 mt of haddock for the United States and 12,730 mt of haddock for Canada.

For GB yellowtail flounder, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2007 is 1,250 mt. This TAC would result in a risk of 50 percent that the fishing mortality rate in 2007 would exceed the F_{ref} of 0.25. The annual allocation shares for 2007 between countries are based on a combination of historical catches (25 percent weighting) and resource distribution based on trawl surveys (75 percent weighting). Combining these factors entitles the United States to 72 percent and Canada to 28 percent, resulting in a national quota of 900 mt of yellowtail flounder for the United States and 350 mt of yellowtail flounder for Canada.

On September 7, 2006, the 2006 Guidance Document was presented to the U.S./Canada Transboundary Resources Steering Committee. On November 16, 2006, the Council approved, consistent with the 2006 Guidance Document, the following U.S. TACs recommended by the TMGC and recommended their adoption to NMFS: 494 mt of GB cod, 6,270 mt of GB haddock, and 900 mt of GB yellowtail flounder. The 2007 haddock and yellowtail flounder TACs represent a decrease from 2006 TAC levels, and the 2007 cod TAC represents an increase from the 2006 TAC (Tables 1 and 2).

TABLE 1: 2007 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,900	19,000	1,250
U.S. TAC	494 (26)	6,270 (33)	900 (72)
Canada TAC	1,406 (74)	12,730 (67)	350 (28)

TABLE 2: 2006 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,700	22,000	3,000
U.S. TAC	374 (22)	7,480 (34)	2,070 (69)
Canada TAC	1,326 (78)	14,520 (66)	930 (31)

The 2007 TACs are based upon stock assessments conducted in July 2006 by the TRAC. The proposed TACs are consistent with the results of the TRAC and the TMGC's harvest strategy and, therefore, NMFS proposes that they be implemented through this action.

The regulations for the U.S./Canada Management Understanding, implemented by Amendment 13, at § 648.85(a)(2)(ii), state the following: ''Any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.''

Therefore, should an analysis of the catch of the shared stocks by U.S. vessels indicate that an overage occurred during FY 2006, the pertinent TAC will be adjusted downward in order to be consistent with the FMP and the Understanding. Although it is very unlikely, it is possible that a very large overage could result in an adjusted TAC of zero. If an adjustment to one of the 2007 TACs for cod, haddock, or yellowtail flounder is necessary, the public will be notified through publication in the **Federal Register** and through a letter to permit holders.

Classification

NMFS has determined that the proposed rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This proposed rule is exempt from review under Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from the NMFS (see **ADDRESSES**).

The specification of hard TACs is necessary in order to ensure that the agreed upon U.S./Canada fishing mortality levels for these shared stocks of fish are achieved in the U.S./Canada Management Area (the geographic area on GB defined to facilitate management of stocks of cod, haddock, and yellowtail flounder that are shared with Canada). A description of the objectives and legal basis for the proposed TACs is contained in the SUMMARY of this proposed rule.

Under the Small Business Administration (SBA) size standards for small fishing entities ($3.5 million), all permitted and participating vessels in the groundfish fishery are considered to be small entities and, therefore, there are no differential impacts between large and small entities. Gross sales by any one entity (vessel) do not exceed this threshold. The maximum number of small entities that could be affected by the proposed TACs are approximately 1,000 vessels, i.e., those with limited access NE multispecies days-at-sea (DAS) permits that have an allocation of Category A or B DAS. Realistically, however, the number of vessels that choose to fish in the U.S./Canada Management Area, and that therefore would be subject to the associated restrictions, including hard TACs, would be substantially less.

From May 2005 through April 2006 (i.e., FY 2005), 184 individual NE multispecies DAS vessels fished in the U.S./Canada Management Area. Because the regulatory regime in FY 2007 will be similar to that in place in FY 2005, it is likely that the number of vessels that choose to fish in the area during FY 2007 will be similar to the number of vessels that fished in the area during FY 2005.

The economic impacts of the proposed TACs are difficult to predict due to several factors that affect the amount of catch, as well as the price of the fish. Furthermore, the economic impacts are difficult to predict due to the relative newness of these regulations (May 2004; Amendment 13 to the FMP). Therefore, there are relatively few historic data, and little is known about the specific fishing patterns or market impacts that may be caused by this hard TAC management system. In general, the rate at which yellowtail flounder is caught in the Eastern and Western U.S./Canada Area and the rate at which cod is caught in the Eastern U.S./Canada Area will determine the length of time the Eastern U.S./Canada Area will remain open. The length of time the Eastern U.S./Canada Area is open will determine the amount of haddock that is caught. During the 2004 and 2005 fishing years, the TACs were not fully utilized, and inseason changes to the regulations impacted the fishery.

The amount of GB cod, haddock, and yellowtail flounder landed and sold will not be equal to the sum of the TACs, but will be reduced as a result of discards (discards are counted against the hard TAC), and may be further reduced by limitations on access to stocks that may result from the associated rules. Reductions to the value of the fish may result from fishing derby behavior and the potential impact on markets. The overall economic impact of the proposed 2007 U.S./Canada TACs will likely be different from the economic impacts of the 2006 TACs due to the reduced yellowtail flounder TAC, and may result in reduced revenue. Although the 2007 cod TAC represents an increase from 2006, the 2007 haddock and yellowtail flounder TACs represent decreases from 2006. For yellowtail flounder, the decrease is substantial. Based on the estimates in the EA, revenues from cod caught in the Eastern U.S./Canada Area may increase from 2006 to 2007 by approximately 32 percent, and revenue from haddock and yellowtail flounder in the U.S./Canada Management Area may decline by 16 percent and 57 percent, respectively. According to the analysis, the overall change in revenue from 2006 to 2007 for the 3 species combined could amount to a 33–percent decline (or approximately $ 3.5 million), although it is difficult to predict future fishing patterns, and there are factors that may mitigate the decline in overall revenue. For example, there could be an increase in yellowtail flounder price, as well as the potential for increased opportunity to harvest haddock from the Eastern U.S./Canada Area. If the larger GB cod TAC results in a longer period of time that the Eastern U.S./Canada Area is open, and if vessels attempt to, and are successful in avoidance of cod, the Eastern Area may be open for a longer period of time in FY 2007 than it was in 2006, resulting in additional revenue from haddock.

Although unlikely, a downward adjustment to the TACs specified for FY 2007 could occur after the start of the fishing year, if it is determined that the U.S. catch of one or more of the shared stocks during the 2006 fishing year exceeded the relevant TACs specified for FY 2006. The economic effects of this downward adjustment would likely result in a short term loss of revenue proportional to the magnitude of the adjustment.

Three alternatives were considered for FY 2007: The proposed TACs, the status quo TACs, and the no action alternative. No additional set of TACs are proposed because the process involving the TMGC and the Council yields only one proposed set of TACs. Accordingly, NMFS chooses to either accept or reject the recommendation of the Council. The proposed TACs would have a similar economic impact as the status quo TACs. Adoption of the status quo TACs, however, would not be consistent with the FMP because the status quo TACs do not represent the best available scientific information incorporated from the most recent TRAC. Although the no action alternative (no TACs) would not constrain catch in the U.S./Canada Management Area, and therefore would likely provide some additional fishing opportunity, the no action alternative is not a reasonable alternative because it is inconsistent with the FMP in both the short and long term. The FMP requires specification of hard TACs in order to limit catch of shared stocks to the appropriate level (i.e., consistent with the Understanding and the FMP). As such, the no action alternative would likely provide less economic benefits to the industry in the long term than the proposed alternative.

Two of the three proposed TACs would be reduced (haddock and yellowtail flounder), and could, under certain circumstances, constrain fishing opportunity on cod (for which the TACis increasing). The proposed TACs do not modify any collection of information, reporting, or recordkeeping requirements. The proposed TACs do not duplicate, overlap, or conflict with any other Federal rules.

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

Dated: March 6, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E7–4442 Filed 3–9–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 72, No. 47
Monday, March 12, 2007

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 6, 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 & Plant Health Inspection Service

Title: National Animal Health Monitoring System Dairy 2007.

OMB Control Number: 0579–0205.

Summary of Collection: Collection and dissemination of animal health data and information is mandated by 7 U.S.C. 391, the Animal Industry Act of 1884, which established the precursor of the Animal and Plant Health Inspection Service (APHIS), Veterinary Services, the Bureau of Animal Industry. The collection, analysis and dissemination of livestock and poultry health information on a national basis are consistent with the APHIS mission of protecting and improving American agriculture's productivity and competitiveness. In connection with this mission, the National Animal Health Monitoring System's (NAHMS) program includes periodic national commodity studies to investigate animal health related issues and examine general health and management practices used on farms. NAHMS will initiate the fourth national data collection for dairy through Dairy 2007. The Dairy 2007 study is a part of an ongoing series of NAHMS studies on the U.S. dairy population.

Need and Use of the Information: The purpose of this fourth dairy study is to collect information, through questionnaires and biologic sampling to help the United States detect trends in the management, production, and health status of the nation's dairy industry over time. Without this type of national data, the U.S.'s ability to detect trends in management, production, and health status, either directly or indirectly, would be reduced or nonexistent.

Description of Respondents: Farms.

Number of Respondents: 4000.

Frequency of Responses: Reporting; annually.

Total Burden Hours: 7,888.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–4299 Filed 3–9–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–TM–07–0032; TM–07–05]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: The meeting dates are Tuesday, March 27, 2007, 1 p.m. to 5 p.m.; Wednesday, March 28, 2007, 8 a.m. to 5 p.m.; and Thursday, March 29, 2007, 8 a.m. to 4 p.m. Requests from individuals and organizations wishing to make oral presentations at the meeting are due by the close of business on March 16, 2007.

ADDRESSES: The meeting will take place at The Washington Plaza Hotel located at Ten Thomas Circle, NW., Washington, DC 20005.

- Requests for copies of the NOSB meeting agenda, may be sent to Ms. Valerie Frances, Executive Director, NOSB, USDA–AMS–TMP–NOP, 1400 Independence Ave., SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250–0268. The NOSB meeting agenda and proposed recommendations may also be viewed at *www.ams.usda.gov/nop.*
- Comments on proposed NOSB recommendations may be submitted in writing to Ms. Frances at either the postal address above or via the internet at *www.regulations.gov* only. The comments should identify Docket No. AMS–TM–07–0032; TM–07–05. It is our intention to have all comments to this notice whether they are submitted by mail or the internet available for viewing on the *www.regulations.gov* Web site.
- Requests to make an oral presentation at the meeting may also be sent to Ms. Valerie Frances at the postal address above, by e-mail at *valerie.frances@usda.gov,* via facsimile at (202) 205–7808, or phone at (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Valerie Frances, Executive Director,

NOSB, National Organic Program (NOP), (202) 720–3252, or visit the NOP Web site at: *http://www.ams.usda.gov/nop.*

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for substances to be used in organic production, and to advise the Secretary on other aspects of the implementation of the OFPA. The NOSB met for the first time in Washington, DC, in March 1992, and currently has six committees working on various aspects of the organic program. The committees are: Compliance, Accreditation, and Certification; Crops; Handling; Livestock; Materials; and Policy Development.

In August of 1994, the NOSB provided its initial recommendations for the NOP to the Secretary of Agriculture. Since that time, the NOSB has submitted 108 addenda to its recommendations and reviewed more than 272 substances for inclusion on the National List of Allowed and Prohibited Substances. The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000, (65 FR 80548). The rule became effective April 21, 2001.

In addition, the OFPA authorizes the National List of Allowed and Prohibited Substances and provides that no allowed or prohibited substance would remain on the National List for a period exceeding 5 years unless the exemption or prohibition is reviewed and recommended for renewal by the NOSB and adopted by the Secretary of Agriculture. This expiration is commonly referred to as sunset of the National List. The National List appears at 7 CFR Part 205, Subpart G.

The principal purposes of the NOSB meeting are to provide an opportunity for the NOSB to receive an update from the USDA/NOP and hear progress reports from NOSB committees regarding work plan items and proposed action items. The last meeting of the NOSB was held on October 17–19, 2006, in Arlington, VA.

At its last meeting, the Board concluded its first review of the 169 substances on the National List since October 2002 that were due to sunset October 2007. The Board recommended the renewal of 166 of the 169 exemptions and prohibitions on the National List (along with any restrictive annotations), and the removal of 3 exemptions from the National List. The sunset review process will now be on-going.

At this meeting, the Board will begin the sunset review process of 13 materials. There are 8 substances for use in crops and handling which were placed on the National List on November 3, 2003, and are scheduled to expire on November 3, 2008. There are 5 substances for use in handling which were placed on the National List on November 4, 2003, and are scheduled to expire on November 4, 2008. The sunset review process must be concluded no later than November 3 and 4, 2008, respectively. If renewal is not concluded by those dates, the use or prohibition of these 13 materials will no longer be in compliance with the National Organic Program.

The Policy Development Committee will present recommendations regarding revisions to the NOSB Policy and Procedures Manual and a guide for new NOSB members. The Policy Development, Crops and Livestock Committees will jointly discuss their work towards guidance for the certification of organic research sites.

The Crops Committee will present recommendations on Ammonium salts of fatty acids and Pelargonic acid, materials petitioned for use on § 205.601. The Committee will begin their sunset review of Copper sulfate, Ozone gas, and Peracetic acid, with their respective annotations and limitations, and Environmental Protection Agency (EPA) List 3—Inerts of unknown toxicity—for use only in passive pheromone dispensers. These National List material exemptions are due to expire on November 3, 2008, from § 205.601. The Committee will also begin their sunset review on the exemption for Calcium chloride for use as a brine-sourced foliar spray. Calcium chloride is otherwise considered a prohibited natural substance on § 205.602 and is also due to expire on November 3, 2008.

The Materials and Handling Committees will discuss the materials review process and provide an update regarding their efforts to clarify the definitions of materials on the National List in §§ sections 205.605(a), (b) and § 205.606.

The Handling Committee will present recommendations on fifty-three materials petitioned for consideration for inclusion on either § 205.605 or § 205.606 for use in organic products: Carbon dioxide, carrot fiber, celery powder, dillweed oil, fish gelatin, fish oils, fructooligosaccharides (FOS), frozen galangal, gellan gum, hops, inulin, chipotle peppers, Koji mold, lemongrass, milled flax seed, natamycin, natural casings, non-fat dry milk, pectins (LM), poblano peppers, red peppers, rice starch, Salvia hispanica, sea salt, seaweed (Wakame, Undaria spp), spices (dried), sweet potato starch, turkish bay leaves, whey protein concentrates, whey protein isolate, and yeast. The following substances were petitioned for use in organic products as colors only: Annatto extract, beet juice, beta carotene, black currant juice, blueberry juice, carrot juice (orange), carrot juice (purple/black), cherry juice, chokeberry-aronia juice, elderberry juice, grape juice, grape skin extract, hibiscus juice, lycopene, paprika, pumpkin juice, purple potato juice, red cabbage extract, red radish extract, saffron, tomato juice extract, and turmeric.

Additionally, the Handling Committee will begin their sunset review of National List material exemptions on § 205.605(a) which are Agar-agar and Tartaric acid, due to expire on November 3, 2008, and Animal enzymes, Calcium sulfate, and Glucono delta-lactone, with their respective annotations and limitations, due to expire on November 4, 2008. The Committee will also begin their sunset review of material exemptions on § 205.605(b) which are Ethylene (Allowed for postharvest ripening of tropical fruit and degreening of citrus) due to expire on November 3, 2008, and Cellulose and Potassium hydroxide, with their respective annotations and limitations, due to expire on November 4, 2008.

The Livestock Committee will present their recommendations on the development of organic aquaculture (finfish) standards, and the issue of cloning in organic agriculture.

The Compliance, Accreditation, and Certification Committee will discuss the standardization of information required on organic certificates and peer review procedures.

The Meeting is Open to the Public. The NOSB has scheduled time for public input for Tuesday, March 27, 2007, from 3:15 p.m. to 5 p.m., Wednesday, March 28, 2007, from 8 a.m. to 9:30 a.m. and 3 p.m. to 5 p.m., and Thursday, March 29, 2007, from 8 a.m. to 10:45 a.m. Individuals and organizations wishing to make oral presentations at the meeting may forward their requests by mail, facsimile, e-mail, or phone to Valerie Frances as listed in **ADDRESSES** above. Individuals or organizations will be

given approximately 5 minutes to present their views. All persons making oral presentations are requested to provide their comments in writing. Written submissions may contain information other than that presented at the oral presentation. Anyone may submit written comments at the meeting. Persons submitting written comments are asked to provide 30 copies.

Interested persons may visit the NOSB portion of the NOP Web site at *http://www.ams.usda.gov/nop* to view available meeting documents prior to the meeting, or visit *www.regulations.gov* to submit and view comments as provided for in **ADDRESSES** above. Documents presented at the meeting will be posted for review on the NOP Web site approximately 6 weeks following the meeting.

Dated: March 7, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–1156 Filed 3–7–07; 3:12 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Community Outreach and Assistance Partnership Program

Funding Opportunity Title: Community Outreach and Assistance Partnership Program.

Announcement Type: Request for Applications (RFA) Community Outreach and Assistance Partnership Program: Initial Announcement.

CFDA Number: 10.455.

Dates: The closing date and time for receipt of an application is 5 p.m. eastern time on May 1, 2007. Applications received after the deadline will not be considered for funding. All awards will be made and partnership agreements completed no later than September 30, 2007.

Overview: In accordance with section 522(d) of the Federal Crop Insurance Act (Act), the Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces the availability of approximately $5 million in fiscal year 2007 for collaborative outreach and assistance programs for limited resource, socially disadvantaged and other traditionally under-served farmers and ranchers, who produce Priority Commodities as defined in Part I.C. Awards under this program will be made on a competitive basis for projects of up to one year. Recipients of awards must demonstrate non-financial benefits from a partnership agreement and must agree to the substantial involvement of RMA in the project. This announcement lists the information needed to submit an application under this program.

FOR FURTHER INFORMATION CONTACT: David Wiggins, National Outreach Program Manager, Telephone (202) 690–2686, Facsimile (202) 690–1518, E-mail: *david.wiggins@rma.usda.gov*. Application materials can be downloaded from the RMA Web site at *http://www.rma.usda.gov*; or from the Government grants Web site at *http://www.grants.gov*. Click on ''Find Grant Opportunities,'' then select ''Search Grant Opportunities,'' then select ''Basic Search,'' type in ''RMA'' in the Keyword Search field and select ''Search,'' select ''Community Outreach and Assistance Partnership Program'' under the Opportunity Title column to access the application package for this announcement.

This announcement consists of seven parts.

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- B. Purpose
- C. Definition of Priority Commodities
- D. Program Description

Part II—Award Information
- A. Available Funding
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Part III—Eligibility Information
- A. Eligible Applicants
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Part I—General Information

A. Legislative Authority and Background

This program is authorized under section 522(d)(3)(F) of the Act which authorizes FCIC funding for risk management training and informational efforts for agricultural producers through the formation of partnerships with public and private organizations. RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. One of RMA's four strategic goals is to ensure that its customers and potential customers are well informed of the risk management solutions available. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, providing risk management education and information and offering outreach programs aimed at equal access and participation of underserved communities. A priority must be given to reaching producers of Priority Commodities as defined in section C of this part.

B. Purpose

The purpose of this program is to fund projects that provide limited resource, socially disadvantaged, and other traditionally underserved producers of Priority Commodities with training, informational opportunities and assistance necessary to understand:

(1) The kind of risks addressed by existing and emerging risk management tools;

(2) The features and appropriate use of existing and emerging risk management tools; and

(3) How to make sound risk management decisions.

Each partnership agreement awarded through this program will provide the applicant with funds, guidance, and the substantial involvement of RMA to deliver outreach and assistance programs to producers in a specific geographical area.

C. Definition of Priority Commodities

For purposes of this program, Priority Commodities are defined as:

- *Agricultural commodities covered by (7 U.S.C. 7333).* Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery,

Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.

• *Specialty crops*. Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.

• *Underserved commodities*. This group includes: (a) Commodities, including livestock, that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock, with inadequate crop insurance coverage produced by limited resource, socially disadvantaged, and other traditionally underserved producers.

A project is considered as giving priority to Priority Commodities if the majority of the educational outreach and assistance activities are directed to limited resource, socially disadvantaged and other traditionally under-served producers of one or more of the three classes of commodities listed above or any combination of the three classes.

D. Program Description

This program will support a wide range of innovative outreach and assistance activities in farm management, financial management, marketing contracts, crop insurance and other existing and emerging risk management tools FCIC, working through RMA, will be substantially involved in the activities listed under paragraph 2. The applicant must identify specific ways in which RMA could have substantial involvement in the proposed outreach activity.

In addition to the specific, required activities listed under paragraph 1, the applicant may suggest other activities that would contribute directly to the purpose of this program. For any additional activity suggested, the applicant should identify the objective of the activity, the specific tasks required to meet the objective, specific time lines for performing the tasks, and specific responsibilities of the partners.

1. In conducting activities to achieve the purpose and goal of this program, award recipients will be required to perform the following activities:

• Develop and finalize a risk management outreach delivery plan that will contain the tasks needed to accomplish the purpose of this program, including a description of the manner in which various tasks for the project will be completed, the dates by which each task will be completed, and the partners that will have responsibility for each task. Task milestones must be listed to ensure that progress can be measured at various stages throughout the life of the project. The plan must also provide for the substantial involvement of RMA in the project.

Note: All partnership agreements resulting from this announcement will include delivery plans in a table format. All applicants are strongly encouraged to refer to the table in the application package, when preparing a delivery plan and to use this format as part of the project description.

• Assemble risk management instructional materials appropriate for producers of Priority Commodities to be used in delivering education and information. This will include: (a) Gathering existing instructional materials that meet the local needs of producers of Priority Commodities; (b) identifying gaps in existing instructional materials; and (c) developing new materials or modifying existing instructional materials to fill existing gaps.

• Develop and conduct a promotional program. This program will include activities using the media, newsletters, publications, or other informational dissemination techniques that are designed to: (a) Raise awareness for risk management; (b) inform producers of the availability of risk management tools; and (c) inform producers of the training and informational opportunities being offered. Minority media and publications should also be used to achieve the broadest promotion of outreach opportunities for limited resource and socially disadvantaged farmers and ranchers possible.

• Deliver risk management training and informational opportunities to limited resource and socially disadvantaged agricultural producers and agribusiness professionals of Priority Commodities. This will include organizing and delivering educational activities using the instructional materials identified earlier. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise farmers on risk management.

• Document all outreach activities conducted under the partnership agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The recipient will also be required to provide information to an RMA-selected contractor to evaluate all outreach activities and advise RMA as to the effectiveness of activities.

2. RMA will be responsible for the following activities:

• Review and approve in advance the recipient's project delivery plan.

• Collaborate with the recipient in assembling risk management materials for producers. This will include: (a) Reviewing and approving in advance all educational materials for technical accuracy; (b) serving on curriculum development workgroups; (c) providing curriculum developers with fact sheets and other risk management publications prepared by RMA; (d) advising the applicant on the materials available over the internet through the AgRisk Education Library; (e) advising the applicant on technical issues related to crop insurance instructional materials; and (f) advising the applicant on the use of the standardized design and layout formats to be used on program materials.

• Collaborate with the recipient on a promotional program for raising awareness of risk management and for informing producers of training and informational opportunities. This will include: (a) Reviewing and approving in advance all promotional plans, materials, and programs; (b) serving on workgroups that plan promotional programs; (c) advising the applicant on technical issues relating to the presentation of crop insurance products in promotional materials; and (d) participating, as appropriate, in media programs designed to raise general awareness or provide farmers with risk management education.

• Collaborate with the recipient on outreach activities to agricultural producers and agribusiness leaders. This will include: (a) Reviewing and approving in advance all producer and agribusiness educational delivery plans; (b) advising the applicant on technical issues related to the delivery of crop insurance education and information; and (c) assisting the applicant in informing crop insurance professionals about educational plans and scheduled meetings.

• Reviewing and approving recipient's documentation of risk management education and outreach activities.

Part II—Award Information

A. Available Funding

The amount of funds available in FY 2007 for support of this program is approximately $5 million dollars. There is no commitment by USDA/RMA to fund any particular project or to make a specific number of awards. No maximum or minimum funding levels have been established for individual projects or geographic locations. Applicants awarded a partnership

agreement for an amount that is less than the amount requested may be required to modify their application to conform to the reduced amount before execution of the partnership agreement. It is expected that awards will be made approximately 120 days after the application deadline.

B. Types of Applications

Applicants must specify whether the application is a new, renewal, or resubmitted application.

1. New Application—This is an application that was not been previously submitted to the RMA Outreach Program. All new applications will be reviewed competitively using the selection process and evaluation criteria described in this RFA.

2. Renewal Application—This is an application that requests additional funding for a project beyond the period that was approved in an original or amended award. Applications for renewed funding must contain the same information as required for new applications, and additionally must contain a Progress Report. Renewal applications must be received by the relevant due dates, will be evaluated in competition with other pending applications, and will be reviewed according to the same evaluation criteria as new applications.

3. Resubmitted Application—This is an application previously submitted to the RMA Outreach office, but was not funded. Resubmitted applications must be received by the relevant due dates, and will be evaluated in competition with other pending applications and will be reviewed according to the same evaluation criteria as new applications.

Part III—Eligibility/Funding

A. Eligible Applicants

Educational institutions, community based organizations, associations of farmers and ranchers, state departments of agriculture, and other non-profit organizations with demonstrated capabilities in developing and implementing risk management and other marketing options for priority commodities are eligible to apply. Individuals are not eligible applicants. Applicants are encouraged to form partnerships with other entities that complement, enhance, and/or increase the effectiveness and efficiency of the proposed project. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (*e.g.* debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards). Applications from ineligible or excluded persons will be rejected in their entirety.

B. Project Period

Each project will be funded for a period of up to one year from the project starting date for the activities described in this announcement.

C. Non-Financial Benefits

To be eligible, applicants must also demonstrate that they will receive a non-financial benefit as a result of a partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete their educational program). Applications that do not demonstrate a non-financial benefit will be rejected.

D. Cost Sharing or Matching

Cost sharing, matching, in-kind contribution, or cost participation is not required.

E. Funding Restrictions

Indirect costs for projects submitted in response to this solicitation are limited to 10 percent of the total direct costs of the agreement. Partnership agreement funds may not be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;
2. To purchase, rent, or install fixed equipment;
3. Repair or maintain privately owned vehicles;
4. Pay for the preparation of the partnership application;
5. Fund political activities;
6. Pay costs incurred prior to receiving this partnership agreement;
7. Fund any activities prohibited in 7 CFR parts 3015 and 3019, as applicable.

Part IV—Application and Submission Information

A. Address To Submit an Application Package

The address for submissions is USDA/RMA, Community Outreach, and Assistance Partnership Program, c/o William Buchanan, 1400 Independence Avenue, SW., Room 6709, Stop 0805, Washington, DC 20250–0805. All applications must be submitted by the deadline. Late or incomplete applications will not be considered and will be returned to the applicant. Applications will be considered as meeting the announced deadline if they are received in the mailroom at the following address on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants using the U.S. Postal Service should allow for the extra time for delivery due to the additional security measures that mail delivered to government offices in the Washington DC area now requires. Failure of the selected delivery services will not extend the deadline. Applicants are strongly encouraged to submit completed and signed application packages using overnight mail or delivery service to ensure timely receipt.

B. Content and Form of Application Submission

1. *General*—Use the following guidelines to prepare an application. Each application must contain the following elements in the order indicated. Proper preparation of applications will assist reviewers in evaluating the merits of each application in a systematic, consistent fashion.

(a) Prepare the application on only one side of the page using standard size (8½″ × 11″) white paper, one-inch margins, typed or word processed using no type smaller than 12 point font, and single or double spaced. Use an easily readable font face (*e.g.*, Geneva, Helvetica, Times Roman).

(b) Number each page of the application sequentially, starting with the Project Description, including the budget pages, required forms, and any appendices.

(c) Staple the application in the upper left-hand corner. Do not bind. An original and two copies of the completed and signed application (3 total) and one electronic copy (Microsoft Word format preferred) on compact disc or diskette must be submitted in one package. Only hard copies of OMB Standard Forms should be submitted. Do not include the standard forms on the diskette.

(d) Include original illustrations (photographs, color prints, etc.) in all copies of the application to prevent loss of meaning through poor quality reproduction.

2. *Application for Federal Assistance, OMB Standard Form 424*—Please complete this form in its entirety. The

original copy of the application must contain a pen-and-ink signature of the, authorized organizational representative (AOR), individual with the authority to commit the organization's time and other relevant resources to the project. The Catalog of Federal Domestic Assistance Number (block 10) is ''10–455—Community Outreach and Assistance''.

3. *Table of Content*—Each application must contain a detailed Table of Contents immediately following OMB SF 424.

4. *Project Summary*—(Limited to one page, placed after the Table of Contents) The summary should be a self-contained, specific description of the activity to be undertaken and should focus on: overall project goals(s) and supporting objectives; plans to accomplish project goals; and relevance of the project to the goals of the community outreach and assistance program.

5. *Progress Report*—(Limited to three pages, placed immediately after the Project Summary) Renewal applications of an existing project supported under the same program should include a clearly identified summary progress report describing the results to date. The progress report should contain a comparison of actual accomplishments with the goals established for the project.

6. *A Project Description*—(Limited to twenty-five single-sided pages) that describes the outreach project in detail, including the program delivery plan and a Statement of Work. The description should provide reviewers with sufficient information to effectively evaluate the merits of the application under the criteria contained in Part V. The description should include the circumstances giving rise to the proposed activity; a clear, concise statement of the objectives; the steps necessary to implement the program to attain the objectives; an evaluation plan for the activities; and a program delivery plan and statement of work that describes how the activities will be implemented and managed by the applicant.

The statement of work in table format should identify each objective and the key tasks to achieve the objective, the entity responsible for the task, the completion date, the task location, and RMA's role. Applicants are strongly encouraged to refer to the sample table in the application package, when preparing a delivery plan and to use this table format in that portion of the application narrative that addresses the delivery plan.

7. *Budget, OMB Standard Form 424–A,* ''Budget Information, Non-Construction Program''—Indirect costs allowed for projects submitted under this announcement will be limited to 10 percent of the total direct cost of the partnership or cooperative agreement. Applicants should include reasonable travel costs associated with attending at least two RMA designated two-day events, which will include a Project Directors' meeting and civil rights training.

8. *Budget Narrative*—A detailed narrative in support of the budget should show all funding sources and itemized costs for each line item contained on the SF–424A. All budget categories must be individually listed (with costs) in the same order as the budget and justified on a separate sheet of paper and placed immediately behind the SF–424A. There must be a detailed breakdown of all costs, including indirect costs. Include budget notes on each budget line item detailing how each line item was derived. Also provide a brief narrative description of any costs that may require explanation (i.e., why a specific cost may be higher than market costs). Only items or services that are necessary for the successful completion of the project will be funded as permitted under the Act, the applicable Federal Cost principles, and are not prohibited under any other Federal statute. Salaries of project personnel should be requested in proportion to the effort that they would devote to the project.

9. *Key Personnel*—The roles and responsibilities of each PD and/or collaborator should be clearly described; and the vitae of the PD and each co-PD, senior associate and other professional personnel.

10. *Collaborative Arrangements (including Letters of Support)*—If it will be necessary to enter into formal consulting or collaborative arrangements, such arrangements should be fully explained and justified. If the consultants or collaborators are known at the time of application, a vitae or resume should be provided. Evidence (*e.g.*, letter of support) should be included if the collaborators involved have agreed to render these services. Additional information on consultants and collaborators are required in the budget portion of the application.

11. *Current and Pending Support*—All applications must list all current public or private support to which personnel identified in the application have committed portions of their time, whether or not salary support for persons involved is included in the budget. An application that duplicates or overlaps substantially with an application already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. The projects proposed for funding should be included in the pending section.

12. *Disclosure of Lobbying Activities, OMB Standard Form LLL*—All applications must contain a signed copy of this form (See Part VI (F)). Applicants who are not engaging in lobbying activities should write ''Not Applicable'' and sign the form.

13. *A completed and Signed ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Primary Covered Transactions), AD 1047.''*

14. A completed and Signed ''Certifications Regarding Drug-Free Workplace, AD–1049.''

15. *Appendices* are allowed if they are directly germane to the proposed project.

C. Acknowledgment of Applications

Applications submitted by facsimile or through other electronic media (except grants.gov), regardless of the date or time of submission or the time of receipt, will not be considered and will be returned to the applicant. Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide an e-mail address in the application. If an e-mail address is not indicated on an application, receipt will be acknowledged in writing. There will be no notification of incomplete, unqualified, or unfunded applications until the awards have been made. RMA will assign an identification number to the application when received. This number will be provided to applicants when the receipt of application is acknowledged. Applicants should reference the assigned identification number in all correspondence regarding the application.

If receipt of application is not acknowledged by RMA within 15 days of the submission deadline, the applicant should contact David Wiggins at (202) 690–2686 or electronically at *david.wiggins@rma.usda.gov.*

Part V—Application Review Process

A. General

Each application will be evaluated using a two-part process. First, each application will be screened by RMA personnel to ensure that it meets the requirements in this announcement. Applications that do not meet the requirements of this announcement or

are incomplete will not receive further consideration.

Second, a review panel will consider the merits of all applications that meet the requirements in the announcement. A panel of not less than three independent reviewers will evaluate each application. Reviewers will be drawn from USDA, other Federal agencies, and others representing public and private organizations, as needed. The project description and any appendices submitted by applicant will be used by the review panel to evaluate the merits of the project being proposed for funding. The panel will examine and score applications based on each of the four criteria contained in paragraph B of this part ''Evaluation Criteria and Weights''.

The panel will be looking for the specific elements listed with each criterion when evaluating the applications and scoring them. For each application, panel members will assign a point value up to the maximum for each criterion. After all reviewers have evaluated and scored each of the applications, the scores for the entire panel will be averaged to determine an application's final score.

After assigning points for each criterion, applications will be listed in initial rank order and presented, along with funding level recommendations, to the Manager of FCIC, who will make the final decision on awarding of a partnership agreement. Applications will then be funded in final rank order until all available funds have been expended. Applicants must score 50 points or more to be considered for funding. If there are unused remaining funds, RMA may conduct another round of competition through the announcement of another RFA.

An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the programs described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding under this announcement is sufficiently similar to a project that has been funded or has been recommended to be funded under another FCIC or RMA education or outreach program, then the Manager may elect to not fund that application in whole or in part.

B. Evaluation Criteria and Weights

1. Project Benefits—Maximum 40 Points

The applicant must demonstrate that the project benefits to limited resource, socially disadvantaged and other traditionally underserved producers warrant the funding requested. Applicants will be scored according to the extent they can: (a) Reasonably estimate the number of producers reached through the project; (b) justify the estimates with clear specifics related to the delivery plan; (c) identify the actions producers will likely be able to take as a result of the project; and (d) identify specific measures for evaluating the success of the project. Reviewers' scoring will be based on the scope and reasonableness of the applicants' estimate of the number of producers reached through the project, clear descriptions of specific expected project benefits for producers, and well-constructed plans for measuring the project's effectiveness.

2. Project Management—Maximum 20 Points

The applicant must demonstrate an ability to implement sound and effective project management practices. Higher scores will be awarded to applicants that can demonstrate organizational skills, leadership; and experience in delivering services or programs using the appropriate language service, that assist limited resource, socially disadvantaged and other traditionally underserved producers. If the applicant has been a recipient of other Federal or other government grants, cooperative agreements, or contracts, the applicant must also detail that they have consistently complied with financial and program reporting and auditing requirements. Applicants that will employ, or have access to, personnel who have experience in directing agricultural programs or providing educations programs that benefit producers will receive higher rankings. Higher scores will be awarded to applicants with no more than two on-going projects funded by RMA under this program in previous years.

3. Collaborative Partnering—Maximum 20 Points

The applicant must demonstrate experience and capacity to partner with and gain the support of other agencies, grower organizations, agribusiness professionals, and agricultural leaders to enhance the quality and effectiveness of the program. Applicants will receive higher scores to the extent that they can document and demonstrate: (a) That partnership commitments are in place for the express purpose of delivering the program in this announcement; (b) that the project will incorporate training on the benefits and implementation of the Adjusted Gross Revenue Lite (AGR–LITE) insurance coverage plan; (c) that the project promotes energy alternatives for small farmers and ranchers; (d) that a broad and diverse group of farmers and ranchers will be reached; and (e) that a substantial effort has been made to partner with organizations that can meet the needs of producers that are small, have limited resources, are minorities, or are beginning farmers and ranchers.

4. Delivery Plan—Maximum 20 Points

The applicant must demonstrate that its program delivery plan is clear and specific. For each of the applicant's responsibilities contained in the description of the program, the applicant must demonstrate that it can identify specific tasks and provide reasonable time lines that further the purpose of this program. Applicants will obtain a higher score to the extent that the tasks of the project are specific, measurable, and reasonable, have specific periods for completion, relate directly to the required activities, the program objectives described in this announcement, and use the appropriate language service.

5. Diversity—Maximum 20 Points

Management reserves the right to award applications up to 20 additional points to promote the broadest geographic diversity.

Part VI—Award Administration

A. Notification of Cooperative or Partnership Agreement Awards

Following approval by the RMA awarding official, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the awarding official of RMA shall enter into partnership agreements with applicants whose applications are judged to be most meritorious under the procedures set forth in this announcement. The agreements provide the amount of Federal funds for use in the project period, the terms, and conditions of the award and the time period for the project.

The effective date of the agreement is the date the agreement is executed by both parties. RMA will extend to award recipients, in writing, the authority to draw down funds for conducting the activities listed in the agreement. All funds provided to the applicant by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved agreement and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is

made or implied for any award resulting from this notice.

Applicants that are not funded will be notified within 120 days after the submission deadline.

B. Access to Panel Review Information

Upon written request from the applicant, your score from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

C. Confidential Aspects of Proposals and Awards

When an application results in a partnership agreement, it becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original copy of a proposal that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Copies of proposals not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to award.

D. Reporting Requirements

Applicants awarded partnership agreements will be required to submit quarterly progress and financial reports (OMB Standard Form 269) throughout the project period, as well as a final program and financial report no later than 90 days after the end of the project period.

E. Administration

All partnership agreements are subject to the requirements of 7 CFR part 3015.

F. Prohibitions and Requirements With Regard to Lobbying

All partnership agreements are subject to the requirements of 7 CFR part 3018. A copy of the certification and disclosure forms must be submitted with the application.

G. Applicable OMB Circulars

All partnership and cooperative agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

H. Confidentiality

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application.

I. Requirement To Participate in Civil Rights Training

All recipients of federally assisted programs are required to comply with Federal civil rights laws and regulations. USDA/RMA policies and procedures requires recipients of federally assisted programs to attend mandatory civil rights training sponsored by RMA, to become fully aware of civil rights requirements and responsibilities. Applicants should include in their budgets reasonable travel costs associated with attending at least two two-day RMA designated events that includes a Project Directors meeting and required civil rights training.

Part VII—Additional Information

A. Requirement To Use Program Logo

Applicants awarded partnership agreements will be required to use a program logo and design provided by RMA for all instructional and promotional materials.

B. Requirement To Provide Project Information to an RMA-selected Contractor

Applicants awarded partnership agreements will be required to assist RMA in evaluating the effectiveness of its outreach program by providing documentation of outreach activities and related information to any contractor selected by RMA for program evaluation purposes. This requirement also includes providing demographic data on program participants.

C. Private Crop Insurance Organizations and Potential Conflicts of Interest

Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under this announcement. However, such entities will not be allowed to receive funding to conduct activities that would otherwise be required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC and the entity. Such entities will also not be allowed to receive funding to conduct activities that could be perceived by producers as promoting one company's services or products over another's. If applying for funding, such organizations are encouraged to be sensitive to potential conflicts of interest and to describe in their application the specific actions they will take to avoid actual and perceived conflicts of interest.

D. DUNS Number

A Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of businesses worldwide. A **Federal Register** notice of final policy issuance (68 FR 38402) requires a DUNS number in every application (*i.e.*, hard copy and electronic) for a grant or cooperative agreement. Therefore, potential applicants should verify that they have a DUNS number or take steps needed to obtain one. For information about how to obtain a DUNS number, go to *http://www.grants.gov.* Please note that the registration may take up to 14 business days to complete.

E. Required Registration for Grants.gov

The Central Contract Registry (CCR) is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must register in the CCR prior to the submission of applications via grants.gov (a DUNS number is needed for CCR registration). For information about how to register in the CCR, visit *http://www.grants.gov.* Allow a minimum of 5 days to complete the CCR registration.

Signed in Washington, DC on March 6, 2007.

James Callan,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. E7–4334 Filed 3–9–07; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

New Mexico Collaborative Forest Restoration Program Technical Advisory Panel

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The New Mexico Collaborative Forest Restoration Program Technical Advisory Panel will meet in Albuquerque, New Mexico. The purpose of the meeting is to provide recommendations to the Regional Forester, USDA Forest Service Southwestern Region, on which forest restoration grant proposals submitted in response to the Collaborative Forest Restoration Program Request For Proposals best meet the objectives of the Community Forest Restoration Act (Title VI, Pub. L. 106–393).

DATES: The meeting will be held April 23–27, 2007, beginning at 1 p.m. on Monday, April 23 and ending at approximately 4 p.m. on Friday, April 27.

ADDRESSES: The meeting will be held at the Holiday Inn, 5050 Jefferson St., NE., Albuquerque, NM 87109; 505–944–2222. Written comments should be sent to Walter Dunn, at the Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway, SE., Albuquerque, NM 87102. Comments may also be sent via e-mail to *wdunn@fs.fed.us*, or via facsimile to Water Dunn at (505) 842–3165.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway, SE., Albuquerque, or during the Panel meeting at the Holiday Inn, 5050 Jefferson St., NE., Albuquerque, NM 87109; 505–944–2222.

FOR FURTHER INFORMATION CONTACT: Walter Dunn, Designated Federal Official, at (505) 842–3425, or Melissa Zaksek, at (505) 842–3289, Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway, SE., Albuquerque, NM 87102.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Panel discussion is limited to Forest Service staff and Panel members. However, project proponents may respond to questions of clarification from Panel members or Forest Service staff. Persons who wish to bring Collaborative Forest Restoration Program grant proposal review matters to the attention of the Panel may file written statements with the Panel staff before or after the meeting. Public input sessions will be provided and individuals who submitted written statements prior to the public input sessions will have the opportunity to address the Panel at those sessions.

Dated: March 5, 2007.

Abel M. Camarena,

Deputy Regional Forester.

[FR Doc. 07–1136 Filed 3–9–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice for Request To Reinstate Previously Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intent to reinstate a previously approved information collection in support of the Single Family Housing Guaranteed Loan Program.

DATES: Comments on this notice must be received by May 11, 2007 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Joaquín Tremols, Supervisory Loan Specialist, Single Family Housing Guaranteed Loan Division, Stop 0784, Room 2250, USDA Rural Development, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–0784, telephone (202) 720–1465, E-mail *joaquin.tremols@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Single Family Housing Guaranteed Loan Program.

OMB Number: 0575–0179.

Type of Request: Reinstatement of a Previously Approved Information Collection.

Abstract: Under this program, loan guarantees are provided to participating lenders who make loans to income eligible borrowers in rural areas. The purpose of this program is to promote affordable housing for low- and moderate-income borrowers in rural America.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 27 minutes per response.

Respondents: Private sector lenders participating in the Rural Development Single Family Housing Guaranteed Loan Program.

Estimated Number of Respondents: 1,800.

Estimated Number of Responses per Respondent: 130.

Estimated Number of Responses: 234,000.

Estimated Total Annual Burden on Respondents: 105,131.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division, at (202) 692–0035.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of USDA, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, Stop 0742–1400 Independence Avenue, SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 6, 2007.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E7–4419 Filed 3–9–07; 8:45 am]

BILLING CODE 3410–XV–P

BROADCASTING BOARD OF GOVERNORS

Closed Meeting

Date and Time: Tuesday, March 13, 2007, 2–4 p.m.

Place: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

Closed Meeting: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating

to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b(c)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b(c)(2) and (6)).

Contact Person for More Information: Persons interested in obtaining more information should contact Carol Booker at (202) 203–4545.

Dated: March 8, 2007.

Carol Booker,

Legal Counsel.

[FR Doc. 07–1170 Filed 3–8–07; 12:33 pm]

BILLING CODE 8230–01–M

BROADCASTING BOARD OF GOVERNORS

Cancellation Notice

Date and Time: Wednesday, February 14, 2007, 1:30–2 p.m.

Place: Middle East Broadcasting Networks, Inc, Suite D, 7600 Boston Boulevard, Springfield, VA 22153.

Please be advised that the above meeting was canceled due to inclement weather.

Contact Person for More Information: Persons interested in obtaining more information should contact Carol Booker at (202) 203–4545.

Dated: February 27, 2007.

Carol Booker,

Legal Counsel.

[FR Doc. 07–1171 Filed 3–8–07; 12:33 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the Census Advisory Committee of Professional Associations. The Committee will address policy, research, and technical issues related to 2010 Decennial Census Programs. The Committee will also discuss several economic initiatives and demographic program topics, as well as issues pertaining to 2010 communications. Last minute changes to the agenda are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: April 19–20, 2007. On April 19, the meeting will begin at 8:30 a.m. and adjourn at approximately 5 p.m. On April 20, the meeting will begin at 8:15 a.m. and adjourn at approximately 12:30 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room HQ–8H153, North Building, Washington, DC 20233. Her telephone number is 301–763–6590, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The Census Advisory Committee of Professional Associations is composed of 36 members, appointed by the presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the Chairperson of the Board of the American Marketing Association. The Committee addresses Census Bureau programs and activities related to each respective association's area of expertise. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10(a)(b)).

The meeting is open to the public, and a brief period is set aside for public comment and questions. Persons with extensive questions or statements must submit them in writing at least three days before the meeting to the Committee Liaison Officer named above. Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer.

Dated: March 2, 2007.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E7–4298 Filed 3–9–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 7–2007]

Foreign-Trade Zone 134—Chattanooga, TN; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Chattanooga Chamber Foundation (CCF), grantee of FTZ 134, requesting authority to expand its zone in the Chattanooga area within and adjacent to the Chattanooga Customs and Border Protection port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 28, 2007.

FTZ 134 was approved on January 30, 1987 (Board Order 339, 52 FR 4370, 2/11/87). On February 22, 2000, the grant of authority was reissued to CCF (Board Order 1075, 65 FR 11548, 3/3/00). The general-purpose zone currently consists of the following sites: *Site 1* (3 acres)—public warehouse facility located at 3318 Amnicola Highway, Chattanooga; and, *Site 2* (230 acres)—located at Amnicola Highway and Stuart Street on the Tennessee River at river mile 467, Chattanooga.

The applicant is now requesting authority to expand the general-purpose zone to include ten additional sites (5,277.37 acres) in the Chattanooga are: *Proposed Site 3* (3,133 acres)—Enterprise South Industrial Park, located approximately one mile from Interstate 75 bounded by Highway 58 to the north, South Hickory Valley Road to the west and Norfolk Southern Railway to the south, Chattanooga (Hamilton County); *Proposed Site 4* (13.7 acres)—JIT Warehousing and Distribution Complex, 530 Manufacturers Road, Chattanooga; *Proposed Site 5* (51.4 acres, 5 parcels)—within 313-acre Bonny Oaks Industrial and Office Park, located at Bonny Oaks Drive and Jersey Pike off Highway 153, Chattanooga; *Proposed Site 6* (16 acres)—Kenco-Polymer Warehouse Complex, 2210 Polymer Drive, Chattanooga; *Proposed Site 7* (46.62 acres, 3 parcels)—within the 250-acre North Industrial Park, located adjacent to US Highway 70 and Sparta Highway, McMinnville (Warren County); *Proposed Site 8* (1,279.87 acres, 8 parcels)—within the 2,500-acre Mountain View Industrial Park, located at Mountain View Industrial Drive off of Tennessee State Highway 55, Morrison (Warren County); *Proposed Site 9* (522.83 acres, 5 parcels)—Nickajack Port

and Industrial Park, located adjacent to State Route 156 at mile 424.0 L on Guntersville Reservoir, New Hope (Marion County); *Proposed Site 10* (121.15 acres)—Hiwassee River Industrial Park, 1590 Lauderdale Memorial Highway NW, Charleston (Bradley County); *Proposed Site 11* (87 acres, 3 parcels)—within the 330-acre Cleveland/Bradley Industrial Park, 620 Industrial Drive, Cleveland (Bradley County); and, *Proposed Site 12* (5.8 acres)—within the 50-acre Pike Hill Industrial Center, 70 Easy Street, McMinnville. The sites will provide public warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 11, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 29, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: Chattanooga Chamber Foundation, 811 Broad Street, Chattanooga, TN 37402; and, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2814B, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

For further information, contact Camille Evans at *Camille_Evans@ita.doc.gov* or at (202) 482–2350.

Dated: February 28, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 07–1133 Filed 3–9–07; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Partial Rescission and Notice of Intent To Rescind, in Part, and Partial Extension of Time Limit for Preliminary Results of the Third Antidumping Duty Administrative Review

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

DATES: *Effective Date:* March 12, 2007.

SUMMARY: The Department of Commerce (''Department'') is partially rescinding the administrative review with respect to 38 companies, for which it received timely withdrawal requests for review for the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam''). The period of review (''POR'') covers August 1, 2005, through July 31, 2006. A complete list of the companies for which the administrative review is being rescinded is provided in the ''*Partial Rescission*'' section below. Furthermore, because nine companies reported that they had no sales or shipments to the United States during the POR, we intend to rescind the review of these companies. Additionally, for the reasons discussed below, the Department is partially extending the preliminary results of this administrative review by an additional 90 days, to no later than August 1, 2007.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or Michael Holton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3797 and (202) 482–1324, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2006, the Department published a notice of an opportunity to request an administrative review on the antidumping duty order on certain frozen fish fillets from Vietnam. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Notice of Opportunity To Request Administrative Review*, 71 FR 43441 (August 1, 2006) (''*Notice of Opportunity*''); *Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003) (''*Order*''). Pursuant to its *Notice of Opportunity*, and in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act''), and section 351.213(b) of the Department's regulations, on August 31, 2006, the Department received a joint request from the Catfish Farmers of America and individual U.S. catfish processors (collectively, ''Petitioners'') for a review covering 51 exporters/manufacturers. These exporters/manufacturers are: Alphasea Co., Ltd. (''Alphasea''); An Giang Agriculture and Foods Import Export Company (''Afiex''); An Giang Agriculture Technology Service Company (''ANTESCO''); An Giang Fisheries Import and Export Joint Stock Company (''Agifish''); An Lac Seafood Co., Ltd.; (''An Lac''); ANHACO; Bamboo Food Co., Ltd.; Basa Co., Ltd.; Ben Tre Forestry and Aquaproduct Import-Export Company (''FAQUIMEX''); Binh Dinh Import Export Company (''Imex Binhdinh''); Blue Sky Co., Ltd.; Cam Ranh Seafood Processing Seaprodex Company (''Cam Ranh''); Can Tho Agricultural and Animal Products Import Export Company (''CATACO''); Cantho Seafood Export (''CASEAFOOD''); Can Tho Animal Fishery Products Processing Export Enterprise (''Cafatex''); Da Nang Seaproducts Import-Export Corporation (''Seaprodex Danang''); Dragon Waves Frozen Food Factory Co. (''Dragon''); Duyen Hai Foodstuffs Processing Factory (''COSEAFEX''); Geologistics Ltd.; Gepimex 404 Company; Hai Thach Trading Services Co., Ltd.; Hai Vuong Co., Ltd.; Hung Vuong Co., Ltd.; Kien Giang Ltd.; Mekongfish Company (aka Mekong Fisheries Joint Stock Company) (''Mekonimex''); Nam Duong Co., Ltd. (aka KP Khanh Loi or Nam Duong Trading Co.); Nam Hai Co., Ltd.; Nam Viet Company Limited (''NAVICO''); Nhan Hoa Co., Ltd.; Phan Quan Trading Co., Ltd.; Phu Thanh Frozen Factory; Phu Thuan Company; Phuoc My Seafoods Processing Factory; Phuong Dong Seafood Co., Ltd.; Quang Dung Food Co., Ltd.; QVD; QVD Dong Thap Food Co., Ltd.; Sadec Aquatic Products Import Enterprise (''DOCIFISH''); Thanh Viet Co. Ltd.; Thuan Hung Co., Ltd.; Tin Thinh Co. Ltd.; Tuan Anh Company Limited; United Seafood Packers Co., Ltd.; Van Duc Foods Export Joint Stock Co.; Viet Hai Seafood Company Limited (''Vietnam Fish-One''); Vinh Hiep Co., Ltd.; Vinh Hoan Company, Ltd. (''Vinh Hoan''); Vinh Long Import-Export Company (''Imex Cuu Long''); VN Seafoods Co., Ltd.; Lian Heng Investment Co., Ltd. and Lian Heng Trading Co., Ltd. (collectively ''Lian Heng''). Additionally, on August 31, 2006, the following four exporters/

manufacturers separately requested a review: CASEAMEX; East Sea Seafoods Joint Venture Co., Ltd. (''East Sea''); [1] QVD; and Vinh Hoan.[2] No other interested party requested a review.

On September 29, 2006, the Department published its notice of initiation of an antidumping administrative review on certain frozen fish fillets from Vietnam. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006) (''*Initiation Notice*''). We initiated the review covering all 53 companies for which an administrative review was requested.

Withdrawal of Requests for Review

On October 25, 2006, CASEAMEX withdrew its request for an administrative review. On December 8, 2006, Vinh Hoan withdrew its request for an administrative review.[3] On December 26, 2006, H & N withdrew its request for the review of its entries of subject merchandise produced and exported by Vinh Hoan. Also on December 26, 2006, Petitioners withdrew their request for the instant administrative review with respect to the following 37 exporters/manufacturers: Alphasea; Afiex; ANTESCO; Agifish; An Lac; ANHACO; Bamboo Food Co., Ltd.; Basa Co., Ltd.; Imex Binhdinh; Blue Sky Co., Ltd.; Cam Ranh; CASEAFOOD; Cafatex; Seaprodex Danang; Dragon; COSEAFEX; Geologistics Ltd.; Gepimex 404 Company; Hai Thach Trading Services Co., Ltd.; Hai Vuong Co., Ltd.; Kien Giang Ltd.; Mekonimex; Nam Duong Co., Ltd.; Nam Hai Co., Ltd.; Nhan Hoa Co., Ltd.; Phan Quan Trading Co., Ltd.; Phu Thanh Frozen Factory; Phuoc My Seafoods Processing Factory; Phuong Dong Seafood Co., Ltd.; Quang Dung Food Co., Ltd.; Thanh Viet Co. Ltd.; Tin Thinh Co. Ltd.; Tuan Anh Company Limited; Vinh Hiep Co., Ltd.; Vinh Hoan; Imex Cuu Long; and VN Seafoods Co., Ltd.

Additionally, on December 27, 2006, Petitioners withdrew their review request for another exporter/manufacturer: QVD. However, we are not rescinding the review with respect to QVD because QVD still has an active review request.

Accordingly, for 38 of the 53 companies for which the Department initiated a review, the Department subsequently received timely withdrawal requests.

Quantity and Value (''Q&V'') Submission, and Separate-Rate Application/Certification

On October 12, 2006, the Department issued a quantity and value (''Q&V'') questionnaire to the 53 named companies, requesting the Q&V of subject merchandise exported during the POR. In the same letter, the Department also provided information for respondents wishing to submit a Separate-Rate Application or Separate-Rate Certification.[4] On November 3, 2006, the Department issued a letter to those companies that had not submitted a Q&V response granting them a second opportunity to submit the Q&V of any exports of subject merchandise to the United States during the POR by November 17, 2006.[5]

Between October 19, 2006, and November 17, 2006, the Department received Q&V questionnaire responses from the following 17 companies: Alphasea; Agifish; FAQUIMEX; Seaprodex Da Nang; East Sea; Hung Vuong Co., Ltd.; NAVICO; Phu Thuan Company; QVD; DOCIFISH; Thanh Viet Co. Ltd.; Thuan Hung Co., Ltd.; United Seafood Packers Co., Ltd.; Van Duc Foods Export Joint Stock Co.; Vietnam Fish-One; Vinh Hoan; and Lian Heng. Of the 17 companies, the following nine companies stated that they did not have sales, shipments, or entries of the subject merchandise to the United States during the POR: FAQUIMEX; Hung Vuong Co., Ltd.; NAVICO; Phu Thuan Company; DOCIFISH;[6] Thuan Hung Co., Ltd.; United Seafood Packers Co., Ltd.; Van Duc Foods Export Joint Stock Co.; and Vietnam Fish-One.

In addition, between November 8, 2006, and December 11, 2006, we received five Separate-Rate Certifications from the following companies: Agifish; QVD; Seaprodex Danang; Thuan Hung Co., Ltd.; and Vinh Hoan, and a Separate-Rate Status Application from East Sea.

In Petitioners' December 26, 2006, letter, in addition to submitting withdrawal requests for 37 exporters/manufacturers, Petitioners also submitted comments regarding respondent selection. Specifically, Petitioners requested that the Department conduct a review of the entries of subject merchandise during the POR for the remaining 15 companies.[7] In addition, Petitioners requested that the Department corroborate the shipment information for those companies claiming no shipments with the entry information available from U.S. Customs and Border Protection (''CBP'').

Partial Rescission

Pursuant to section 351.213(d)(1) of the Department's regulations, the Department may rescind an administrative review, ''if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.''

Because Petitioners' and certain Respondent requests were timely, in accordance with section 351.213(d)(1) of the Department's regulations, we are rescinding this review with respect to the following 38 companies: Alphasea; Afiex; ANTESCO; Agifish; An Lac; ANHACO; Bamboo Food Co., Ltd.; Basa Co., Ltd.; Imex Binhdinh; Blue Sky Co.,

[1] On August 31, 2006, East Sea also separately requested a new shipper review (''NSR''), but it withdrew its NSR request on November 13, 2006. The Department rescinded East Sea's NSR request on January 23, 2007. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Rescission of Antidumping Duty New Shipper Review*, 72 FR 2857 (January 23, 2007).

[2] On August 29, 2006, H & N Foods International (''H & N''), a U.S.-based importer of the merchandise subject to this administrative review, also requested that the Department conduct an administrative review of H & N's entries of subject merchandise produced and exported by Vinh Hoan.

[3] Petitioners did not object to CASEAMEX's and Vinh Hoan's withdrawal requests. In fact, Petitioners included Vinh Hoan in its withdrawal request dated December 26, 2006.

[4] *See Letter with Attachments from Alex Villanueva, Program Manager, to All Interested Parties* (October 12, 2006). The Q&V questionnaire response was originally due on October 26, 2006. The due date for the Separate-Rate Application was December 11, 2006, and the due date for the Separate-Rate Certification was November 11, 2006.

[5] *See Letter with Attachments from Alex Villanueva, Program Manager, to All Interested Parties* (November 3, 2006). In the letter, the Department also extended the deadline to submit the Separate-Rate Certification from November 11, 2006, to December 11, 2006, which coincided with the deadline for the Separate-Rate Application.

[6] Phu Thuan and DOCIFISH did not file their Q&V responses correctly. After we examined entry data furnished by CBP for these exporters/manufacturers, we were satisfied that the record does not indicate that there were U.S. entries of subject merchandise from these companies during the POR. The Department placed the Q&V submissions from Phu Thuan and DOCIFISH on the record and notified the interested parties on the service list that these two no-shipment companies did not properly file their submissions and did not properly serve interested parties. In addition, Alphasea also did not file its response properly. On November 22, 2006, the Department issued a letter to Alphasea rejecting its Q&V due to filing deficiency and notifying it to resubmit its Q&V questionnaire response by December 1, 2006. Alphasea resubmitted its Q&V questionnaire response on December 1, 2006.

[7] In addition to Petitioners, withdrawal requests for review 37 companies, CASEAMEX also withdrew its request for review. With 38 companies withdrawn from the review, there are 15 remaining companies: FAQUIMEX; CATACO; East Sea; Hung Vuong Co. Ltd.; NAVICO; Phu Thuan Company; QVD; QVD Dong Thap Food Co., Ltd.; DOCIFISH; Thuan Hung Co., Ltd.; United Seafood Packers Co., Ltd.; Van Duc Foods Export Joint Stock Co.; Vietnam Fish-One; and Lian Heng (which conisists of Lian Heng Investment Co., Ltd and Lian Heng Trading Co., Ltd.).

Ltd.; Cam Ranh; CASEAFOOD; Cafatex; CASEAMEX; Seaprodex Danang; Dragon; COSEAFEX; Geologistics Ltd.; Gepimex 404 Company; Hai Thach Trading Services Co., Ltd.; Hai Vuong Co., Ltd.; Kien Giang Ltd.; Mekonimex; Nam Duong Co., Ltd.; Nam Hai Co., Ltd.; Nhan Hoa Co., Ltd.; Phan Quan Trading Co., Ltd.; Phu Thanh Frozen Factory; Phuoc My Seafoods Processing Factory; Phuong Dong Seafood Co., Ltd.; Quang Dung Food Co., Ltd.; Thanh Viet Co. Ltd.; Tin Thinh Co. Ltd.; Tuan Anh Company Limited; Vinh Hiep Co., Ltd.; Vinh Hoan; Imex Cuu Long; and VN Seafoods Co., Ltd.

Intent to Rescind

Additionally, nine of the remaining 15 companies indicated no shipments, entries, or sales of the subject merchandise to the United States during the POR. Pursuant to 19 CFR 351.213(d)(3) of the Department's regulations, the Department may rescind an administrative review, ''to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.'' We examined entry data furnished by CBP for these nine exporters/manufacturers, and are satisfied that the record does not indicate that there were U.S. entries of subject merchandise from these nine companies during the POR. Accordingly, we intend to rescind this review with respect to the following nine companies: FAQUIMEX; Hung Vuong Co., Ltd.; NAVICO; Phu Thuan Company; DOCIFISH; Thuan Hung Co., Ltd.; United Seafood Packers Co., Ltd.; Van Duc Foods Export Joint Stock Co.; and Vietnam Fish-One.

After the partial rescission of 38 companies and the intent to rescind on nine companies, six companies remain in this review: CATACO; East Sea; Lian Heng (including Lian Heng Investment Co., Ltd., and Lian Heng Trading Co., Ltd.); QVD; and QVD Dong Thap Food Co., Ltd.

Assessment Rates

The Department will instruct CBP to assess antidumping duties on all appropriate entries. For those companies for which this review has been rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the POR in accordance with 19 CFR 351.212(c)(1)(i). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

Extension of Time Limit for Preliminary Results

On January 16, 2007, Petitioners submitted a timely request for a 120-day extension of the preliminary results of this review.[9] On January 19, 2007, East Sea argued that an extension of 120 days is not warranted and would be unfair to respondents and, therefore, requested that the Department extend the preliminary results deadline by 30 days, and in no case more than 60 days. The preliminary results of this administrative review are currently due no later than May 3, 2007.

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the preliminary results in the administrative review of certain frozen fish fillets from Vietnam within the current time limit. Specifically, it is necessary to extend the deadline of the preliminary results because: (1) The Department was only recently able to select the respondents for this review, on January 5, 2007; (2) the Department will need time to collect and analyze questionnaire responses for all mandatory respondents [10] and the non-mandatory respondent, Lian Heng,[11] and issue supplemental questionnaires where necessary; and (3) the Department needs additional time to analyze the responses of companies who submitted Separate Rate Certifications/Applications. Accordingly, the Department finds that additional time is needed in order to complete these preliminary results.

Section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the deadline for the preliminary results to a maximum of 365 days from the last of the anniversary month of the order. For the reasons noted above, we are partially extending the time for the completion of the preliminary results of this review by 90 days until no later than August 1, 2007. The deadline for the final results of the administrative review continues to be 120 days after the publication of the preliminary results.

Notification to Parties

This notice serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of time. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 351.213(d)(4) of the Department's regulations and

[9] In their January 16, 2007, letter, Petitioners also requested that the Department extend the deadline for the submission of new factual information by 60 days, or until March 19, 2007. On February 8, 2007, the Department issued a letter to all interested parties, providing all interested parties the opportunity to provide any comments on the Department's surrogate country selection, and to submit any information which they believe the Department should consider when valuing factors of production in this review. The due date for submitting such information is March 19, 2007.

[10] On January 5, 2007, the Department selected the following two companies as mandatory respondents: QVD and East Sea. *See Letter from Alex Villanueva, Program Manager, to All Interested Parties* (Selection of Respondents) (January 5, 2007).

[11] Lian Heng is a Cambodian company subject to this review pursuant to *Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry*, 71 FR 38608 (July 7, 2006).

On October 25, 2006, Lian Heng submitted a letter to the Department arguing that it was inappropriate for Lian Heng to respond to the Q&V questionnaire response because its exports of frozen fish fillets are products of Cambodia, not Vietnam, and therefore, Lian Heng claimed that responding to the questionnaire would seem to contradict the country of origin. On November 6, 2006, the Department issued a letter to Lian Heng, rejecting Lian Heng's October 25, 2006, arguments, and granted Lian Heng a second opportunity to submit its Q&V by November 17, 2006. Lian Heng submitted its Q&V response on November 17, 2006.

sections 751(a)(2)(c) and 777(i)(1) of the Act.

Dated: March 2, 2007.

Gary S. Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 07–1134 Filed 3–9–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071206C]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that the Northwest Indian Fisheries Commission (NWIFC) has submitted a Tribal Resource Management Plan (Tribal Plan) for NMFS to evaluate. It was presented by the Bureau of Indian Affairs (BIA) on behalf of the Northwest Indian Tribes; the submission fulfills the Tribes' obligations under the protective regulations promulgated for Puget Sound Chinook salmon and Hood Canal summer-run chum salmon under the Endangered Species Act (ESA). The Tribal Plan describes research and assessment activities that may affect listed Puget Sound Chinook salmon and Hood Canal summer-run chum salmon in Washington State. NMFS has completed a proposed evaluation of how well the Tribal Plan fulfills ESA criteria, and the Secretary of Commerce (Secretary) is making that proposed evaluation available for public comment.

DATES: Written comments on the Secretary's proposed evaluation must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on April 11, 2007.

ADDRESSES: Written comments and requests for copies of the proposed evaluation should be addressed to Gary Rule, Protected Resources Division, National Marine Fisheries Service, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to (503) 230 5441. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Gary Rule, Portland, OR (ph.: 503- 230 5424, Fax: 503–210–5441, e-mail: *gary.rule@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Species Covered in this Notice

Puget Sound Chinook salmon (*Oncorhynchus tshawytscha*)

Hood Canal summer-run chum salmon (*O. keta*)

Authority

Under section 4 of the ESA, the Secretary is required to adopt such regulations as he deems necessary and advisable for the conservation of the species listed as threatened. The ESA Tribal 4(d) rule (70 FR 37160; June 28, 2005) states that the ESA section 9 take prohibitions do not apply to Tribal Plans that will not appreciably reduce the likelihood of survival and recovery for the listed species.

The Tribal Plan

The NWIFC–through the BIA and on behalf of the Northwest Indian Tribes–has submitted a Tribal Plan for scientific research and assessment activities within the range of the Puget Sound Chinook salmon and Hood Canal summer-run chum salmon ESUs. The Northwest Indian Tribes conduct, independently and in cooperation with other agencies, a variety of research and assessment projects. These projects provide the technical basis for managing fisheries and conserving and restoring salmon stocks and their habitat. The need for an improved understanding of salmonid survival in the freshwater and early marine life stages drives much of the current research. The Tribal Plan includes implementation, monitoring, and evaluation procedures designed to ensure that the research is consistent with the objectives of the ESA. The research activities described in the Tribal Plan would take place over a ten-year period starting in 2007.

As 50 CFR 223.209 requires, the Secretary must determine whether the Tribal Plan would appreciably reduce the likelihood of survival and recovery for Puget Sound Chinook salmon and Hood Canal summer-run chum salmon ESUs. The Secretary must take comments on how the Tribal Plan addresses the criteria in 50 CFR 223.209 in making that determination.

Dated: March 7, 2007.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–4441 Filed 3–9–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[030602141–7049–48]

California Bay Watershed Education and Training (B–WET) Program, Adult and Community Watershed Education in the Monterey Bay

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice; cancellation of solicitation.

SUMMARY: The National Marine Sanctuary Program (NMSP) cancels the competitive California B–WET Program, Adult and Community Watershed Education in the Monterey Bay, for fiscal year 2007 due to insufficient funding.

FOR FURTHER INFORMATION CONTACT: Seaberry Nachbar, National Marine Sanctuary Program, 299 Foam Street, Monterey, CA 93940, or by phone at (831) 647–4204.

SUPPLEMENTARY INFORMATION: The B–WET Program solicitation was originally included in the NOAA Omnibus Notice, Availability of Grant Funds for Fiscal Year 2007, published in the **Federal Register** on December 27, 2006. Due to insufficient funding, NMSP cancels the competitive grant program announced in that solicitation. NMSP will return to the applicants all applications NMSP received in response to the solicitation.

The B–WET Program is listed in the Catalog of Federal Domestic Assistance (CFDA) under Grant Program 11.429, California Bay Watershed Education and Training Program.

Dated: March 1, 2007.

Daniel Basta,

Director, National Marine Sanctuary Program.

[FR Doc. 07–1155 Filed 3–9–07; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Protected Areas Federal Advisory Committee; Public Meeting

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a meeting of the Marine Protected Areas Federal Advisory Committee (Committee) in Arlington, Virginia.

DATES: The meeting will be held Tuesday, April 24, from 8:30 a.m. to 5 p.m., Wednesday, April 25, from 8 a.m. to 5 p.m., and Thursday, April 26, from 8 a.m. to 5 p.m. These times and the agenda topics described below are subject to change. Refer to the web page listed below for the most up-to-date meeting agenda.

ADDRESSES: The meeting will be held at the National Science Foundation, Room 555, 4121 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, Designated Federal Officer, MPA FAC, National Marine Protected Areas Center, 1305 East West Highway, Silver Spring, Maryland 20910. (*Phone:* 301–713–3100 x136, *Fax:* 301–713–3110); *e-mail lauren.wenzel@noaa.gov;* or visit the National MPA Center Web site at *http://www.mpa.gov*).

SUPPLEMENTARY INFORMATION: The Committee, composed of external, knowledgeable representatives of stakeholder groups, was established by the Department of Commerce (DOC) to provide advice to the Secretaries of Commerce and the Interior on implementation of Section 4 of Executive Order 13158 on MPAs. The meeting will be open to public participation with a one hour time period set aside from 4 p.m. to 5 p.m. on Tuesday, April 24, 2007, and one hour set aside from 8:10 a.m. to 9:10 a.m. on Thursday, April 26, 2007. In general, each individual or group will be limited to a total time of five (5) minutes. Copies of written statements should be submitted to the Designated Federal Official by April 20, 2007.

Matters to be Considered: The Committee will work in Subcommittees and as a full Committee to develop recommendations for the Department of Commerce and the Department of the Interior on the regional coordination of the national system of marine protected areas; incentives and implementation; and natural and social science needed to support the national system. The Agenda is subject to change, and the latest version will be posted at *http://www.mpa.gov.*

Dated: March 5, 2007.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 07–1151 Filed 3–9–07; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Centers for Coastal Ocean Science Draft Human Dimensions Strategic Plan (FY2008–FY2013)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability and solicitation of public comments on the National Centers for Coastal Ocean Science Draft Human Dimensions Strategic Plan (FY2008–FY2013).

SUMMARY: NOAA publishes this notice to announce availability of the National Centers for Coastal Ocean Science Draft Human Dimensions Strategic Plan (FY2008–FY2013) for public comment.

DATES: Comments must be received before 11:59 p.m. EDT, March 19, 2007.

ADDRESSES: Electronic submission of comments via e-mail to *nccos.hd@noaa.gov* is preferred. Comments may also be sent by fax to (301) 713–4353 or mail to NOAA National Ocean Service, National Centers for Coastal Ocean Science, c/o Marybeth Bauer, Ph.D., 1305 East-West Highway, NOS HQTR Route N/SCI, Silver Spring, MD 20910. E-mail and fax comments should state ''Comments'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Marybeth Bauer, Ph.D., by e-mail at *nccos.hd@noaa.gov* (preferred) or mail at NOAA National Ocean Service, National Centers for Coastal Ocean Science, 1305 East-West Highway, NOS HQTR Route N/SCI, Silver Spring, MD 20910 or phone at (301) 713–3020. E-mail requests for information should state ''Request for Information'' in the subject line. An electronic copy of the National Centers for Coastal Ocean Science Draft Human Dimensions Strategic Plan (FY2008–FY2013) is available at: *http://coastalscience.noaa.gov/human/strategy/NCCOSDraftHDStrategicPlan.pdf.*

SUPPLEMENTARY INFORMATION: NOAA's National Centers for Coastal Ocean Science (NCCOS) provides coastal resource managers, other decision makers, and stakeholders with the ecosystem information and tools needed to balance society's environmental, social, and economic goals in mitigating and adapting to stressors such as climate change, extreme natural events, pollution, invasive species, and resource use.

Humans are integral to ecosystems, and the human dimensions of ecosystems are an integral focus of the science NCCOS conducts and conveys. NOAA's Strategic Plan (FY2006–FY2011) (available at: *http://www.ppi.noaa.gov/pdfs/STRATEGIC%20PLAN/Strategic_Plan_2006_FINAL_04282005.pdf*) defines an ecosystem as a geographically specified system of organisms, including humans, the environment, and the processes that control its dynamics. An environment encompasses the biological, chemical, physical, and social conditions that surround organisms. The human dimensions of ecosystems can be expressed in terms of three points of interaction between environmental and human systems: human causes, consequences, and responses to environmental change. Encompassing a broad array of social science, humanities, and other disciplines, human dimensions research aims to understand these human-environmental interactions and facilitate use of this understanding to assist decisions affecting environmental processes and their societal outcomes.

NCCOS developed a Draft Human Dimensions Strategic Plan (FY2008–2013) to define and implement human dimensions research critical to support an ecosystem approach to the management of coastal and ocean resources. The plan expands a Societal Stressors Objective in NCCOS's Strategic Plan (*http://coastalscience.noaa.gov/documents/strategicplan.pdf*). The final Human Dimensions Strategic Plan will guide development of the NCCOS ecosystem science agenda, workforce, organizations, partnerships, and other capacities, including research conducted through extramural partners, grants, and contracts. Planning, programming, budgeting, and execution of NCCOS activities will reflect the objectives of the final plan through FY 2013.

The draft plan puts forth the following human dimensions goals and objectives. First, to provide human dimensions information essential to support an ecosystem approach to coastal and ocean resource management (Goal 1), the plan recommends identifying and characterizing stakeholders and their values (Objective 1.1), monitoring human dimensions (Objective 1.2), assessing and monitoring human causes of ecosystem stress (Objective 1.3), documenting traditional and local ecological knowledge (Objective 1.4), addressing value and ethical dimensions (Objective 1.5), and developing institutional strategies (Objective 1.6). Second, to provide integrated ecosystem

information essential to support an ecosystem approach to coastal and ocean resource management, the plan recommends developing and operationalizing integrative information products and tools (Objective 2.1) and defining and implementing integrated ecosystem assessments (Objective 2.2). Third, to promote resilient ecosystems (Goal 3), the plan recommends assessing the cumulative impacts of hazards on coastal communities (Objective 3.1), assessing risk and vulnerability (Objective 3.2), developing risk communication strategies (Objective 3.3), and evaluating forecasting and other capabilities (Objective 3.4). Finally, to provide critical support (Goal 4), the plan recommends building essential organizational capacities (Objective 4.1) and developing communications, outreach, and educational strategies (Objective 4.2).

The purpose of this notice is to solicit comments on the Draft Human Dimensions Strategic Plan (FY2008–2013) to ensure the value of the final document for coastal and ocean resource science and governance. NCCOS encourages Federal and non-Federal government partners, resource managers, other decision makers, stakeholders, and other interested parties to submit comments. We especially encourage comments related to the value of the plan to support an ecosystem approach to the management of coastal and ocean resources, and its collaborative implementation.

To facilitate efficient and thorough consideration of all submissions, please format your comments as follows: (1) Background information on yourself, including name, title, organizational affiliation, and contact information including e-mail address; (2) general comments; and (3) specific comments with references to line numbers. Please follow all substantive, non-editorial comments with well-developed suggestions for revision. Please include identifying information at the top of all pages. The Draft NCCOS Human Dimensions Strategic Plan (FY2008–2013) is being issued for comment only and is not intended for interim use.

Gary C. Matlock

Director, National Center for Coastal Ocean Science.

[FR Doc. 07–1153 Filed 3–9–07; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030607D]

Marine Mammals; File No. 774–1714

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

ACTION: Notice; receipt of application for amendment.

SUMMARY: Notice is hereby given that the National Marine Fisheries Service, Southwest Fisheries Science Center (SWFSC) (Stephen B. Reilly, Ph.D., Principal Investigator), Protected Resources Division, 8604 La Jolla Shores Dr., La Jolla, CA 92037, has requested an amendment to scientific research Permit No. 774–1714–05.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 11, 2007.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 774–1714.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 774–1714, issued on June 30, 2004 (68 FR 57673), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 774–1714–05 authorizes the SWFSC to conduct research on seven pinniped species, 53 cetacean species, and five sea turtle species in the Pacific, Indian, Atlantic, Arctic and Southern Oceans. The permit authorizes Level B harassment during aerial and vessel surveys for photo-identification/photogrammetry, incidental harassment, collection of sloughed skin, and salvage of carcasses and parts; Level A harassment for capture, biopsy sampling, and tagging activities; and the import/export of specimens. The permit holder requests authorization to: (1) reorganize their take table to reflect annual takes instead of 5–year cumulative takes; (2) increase the number of animals harassed during aerial and vessel surveys, biopsy sampled, and/or tagged for several cetacean species; (3) collapse authorized takes of six cetacean stocks to the species level; (4) add Antarctic minke whales (*Balaenoptera bonaerensis*) to species that may be harassed during aerial and vessel surveys for photo-id and biopsy sampled; (5) add four new cetacean categories for animals that are observed but not identifiable during surveys; (6) add 14 cetacean species/stocks to those that may be harassed/sampled in the Southern Ocean; and (7) satellite tag up to 50 non-endangered killer whales (*Orcinus orca*) in Antarctic waters annually.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI

96814–4700; phone (808)973–2935; fax (808)973–2941.

Dated: March 6, 2007.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–4445 Filed 3–9–07; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled Accomplishment Surveys for Senior Corps Programs to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mr. Nathan Dietz, at (202) 606–6663, (*Ndietz@cns.gov*). Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

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

(b) *Electronically by e-mail to: Katherine_Astrich@omb.eop.gov.*

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

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice, regarding all the component surveys of the Senior Corps Performance Surveys was published in the **Federal Register** on September 20, 2006. This comment period ended on December 20, 2006. No public comments were received from this notice.

Description

The Corporation seeks to renew clearance for the Accomplishment Surveys for Senior Corps Programs to collect information about Senior Corps volunteer activities and accomplishments, as well as to gather information about the practices used by the organizations that recruit, supervise and manage Senior Corps volunteers.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Accomplishment Surveys for Senior Corps Programs.

OMB Number: 3045–0049.

Agency Number: None.

Affected Public: Not-for-profit organizations.

Type of Respondents: Senior Corps volunteer station supervisors.

Total Respondents: 2,500.

Frequency: On occasion.

Estimated Total Burden Hours: 1,875 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: March 5, 2007.

Robert T. Grimm, Jr.,

Director, Office of Research and Policy Development.

[FR Doc. E7–4365 Filed 3–9–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics).

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Threat Reduction Advisory Committee will meet in closed session on Thursday, May 10, 2007, at the Defense Threat Reduction Agency (DTRA), and on Friday, May 11, 2007 in the Pentagon, Washington, DC.

The mission of the Committee is to advise the Under Secretary of Defense (Acquisition, Technology and Logistics) on technology security, combating weapons of mass destruction, chemical and biological defense, transformation of the nuclear weapons stockpile, and other matters related to the Defense Threat Reduction Agency's mission.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Appendix II), it has been determined that this Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly the meeting will be closed to the public.

DATES: Thursday, May 10, 2007, (8 a.m. to 4 p.m.) and Friday, May 11, 2007, (8 a.m. to 9:30 a.m.)

ADDRESSES: Defense Threat Reduction Agency, Defense Threat Reduction Center Building, Conference Room G, Room 1252, 8725 John J. Kingman Road, Fort Belvoir, Virginia and the USD (AT&L) Conference Room (3E659), the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Wright, Defense Threat Reduction Agency/AST, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. *Phone:* (703) 767–5717.

Dated: March 5, 2007.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–1139 Filed 3–9–07; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to begin work on the 2007 report topics to include military women's health care in the theater of operations and spouses' employment opportunities. The meeting is open to the public, subject to the availability of space.

Interested person may submit a written statement for consideration by the Defense Department Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the Point of Contact listed below at the address detailed below, NLT 5 p.m. March 21st 2007. If a written statement is not received by March 21st 2007 prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Department Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Department Advisory Committee on Women in the Services Chairperson and ensure they are provided to the members of the Defense Department Advisory Committee on Women in the Services. If members of the public are interested in making an oral statement, a written statement must be submitted as above. After reviewing the written comments, the Chairperson and the Designated Federal Officer will allow the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting permitting time allows and the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Tuesday, 27 March from 4:30 p.m. to 5 p.m. before the full Committee. Number of oral presentations to be made will depend on the number of requests received from members of the public.

DATES: 27 March 2007 8:30 a.m.–5 p.m.

28 March 2007, 8:30 a.m.–12 p.m.

Location: Double Tree Hotel Crystal City National Airport, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: CPT Arnalda Magloire, USA, DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. *arnalda.magloire@osd.mil* Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION: Meeting agenda.

Tuesday, 27 March 2007, 8:30 a.m.–5 p.m.

Welcome & Administrative Remarks—2007 Report briefings on military women's health care in the theater of operations and Service members' spouses' employment opportunities.

Public Forum.

Wednesday, 28 March 2007, 8:30 a.m.–12 p.m.

Welcome & Administrative Remarks—2007 Report briefings on military women's health care in the theater of operations and Service members' spouses' employment opportunities.

Note: Exact order may vary.

Dated: March 5, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–1141 Filed 3–9–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Task Force on Sexual Assault in the Military Services

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

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150 and 160, the following meeting notice is announced:

Name of Committee: Defense Task Force on Sexual Assault in the Military Services (hereafter referred to as the Task Force).

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

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

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

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

The administrative working meeting will be held at Marshall Hall from 8:30 a.m. to 12 p.m. on Monday, March 19, 2007. The preparatory working meetings will be held at Marshall Hall from (a) 1:30 p.m. to 5 p.m. on Monday March 19, 2007; and (b) 8:30 a.m. to 12 p.m., and 1:30 p.m. to 5 p.m. on Tuesday and Wednesday March 20 and 21, 2007.

Both the Administrative and Preparatory Work Meetings, pursuant to 41 CFR 102–3.160, are closed to the public.

In addition, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement. The basis for this waiver is the recent selection of the Task Force members and the Agency's request that the Task Force immediately begin its work.

FOR FURTHER INFORMATION CONTACT: Lieutenant Shaka Thorne, U.S. Navy, Designated Federal Officer, Defense Task Fore on Sexual Assault in the Military Services, 2850 Eisenhower Ave, Suite 100, Alexandria, Virginia 22314.

Telephone: (703) 325–6640.

Fax: (703) 325–6710/6711, DSN# 221, *shaka.thorne@wso.whs.mil.*

Dated: March 7, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–1164 Filed 3–8–07; 11:16 am]

BILLING CODE 5001–06–M

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 April 11, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting

comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 7, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Application for Grants Under the Smaller Learning Communities Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 300.

Burden Hours: 18,900.

Abstract: The Smaller Learning Communities Program awards grants to local educational agencies. The grant application package contains information for applicants, including priorities, selection criteria, and requirements, along with standard ED forms. The Department of Education is proposing to revise one priority, establish simpler selection criteria, eliminate the collection of one data element, and require each applicant to provide a copy of its indirect cost rate agreement if it seeks reimbursement of its indirect costs.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 3283. 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. E7–4425 Filed 3–9–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 11, 2007.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 6, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title: FIPSE Performance Reports.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 725.

Burden Hours: 12,000.

Abstract: This collection includes an annual and a final performance report for use with all of the following FIPSE programs: Comprehensive (84.116B), EU-U.S. (84.116J), U.S.-Brazil (84.116M), North America (84.116N), and U.S.-Russia (84.116S) Programs. Also included are an annual and a final performance report for Congressionally-Directed grants (earmarks) (84.116Z). A total of four (4) forms comprise this collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3287. 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. E7–4426 Filed 3–9–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Waivers Granted under Section 9401 of the Elementary and Secondary Education Act, as Amended

Summary: In this notice, we announce the waivers that the U.S. Department of Education (Department) has granted, from the date of enactment of the No Child Left Behind Act of 2001 through December 31, 2006, under the waiver authority in section 9401 of the Elementary and Secondary Education Act of 1965 (ESEA). The Department considered waiver requests in several different categories: (1) Waivers related to Hurricanes Katrina and Rita; (2) growth model pilots; (3) waivers allowing local educational agencies (LEAs) to provide supplemental educational services (SES) rather than public school choice to eligible students attending schools that receive funding under Part A of Title I of the ESEA (Title I schools) and are in the first year of school improvement; (4) waivers allowing LEAs in need of improvement to be eligible to apply to their State educational agency (SEA) to become SES providers; (5) general programmatic waivers; (6) extensions of the period in which funds are available for obligation; and (7) waivers allowing recipients of funds under the Indian Education program to charge additional administrative costs to the program.

Waiver Data

I. Waivers Related to Hurricanes Katrina and Rita

Through December 31, 2006, the Department granted the following hurricane-related waivers to States under the general waiver authority in section 9401 of the ESEA:

1. Waiver Applicant: Alabama Department of Education

- *Provisions waived:* Sections 1111(b)(2)(C)(v) and 1111(h)(1)(C) of the ESEA.
- *Date waiver granted:* May 18, 2006.
- *Description of waiver:* Permitted Alabama to create a separate subgroup for students displaced by Hurricanes Katrina and Rita for adequate yearly progress (AYP) decisions based on assessment data for the 2005–2006 school year.

2. Waiver Applicant: Arkansas Department of Education

- *Provisions waived:* Sections 1111(b)(2)(C)(v) and 1111(h)(1)(C) of the ESEA.
- *Date waiver granted:* May 19, 2006.
- *Description of waiver:* Permitted Arkansas to create a separate subgroup for students displaced by Hurricanes Katrina and Rita for AYP decisions based on assessment data for the 2005–2006 school year.

3. Waiver Applicant: Georgia Department of Education

- *Provisions waived:* Sections 1111(b)(2)(C)(v) and 1111(h)(1)(C) of the ESEA.
- *Date waiver granted:* April 19, 2006.
- *Description of waiver:* Permitted Georgia to create a separate subgroup for students displaced by Hurricanes Katrina and Rita for AYP decisions based on assessment data for the 2005–2006 school year.

4. Waiver Applicant: Georgia Department of Education

- *Provisions waived:* Sections 1116(b)(1)(E) and 1116(b)(5)(B) of the ESEA.
- *Date waiver granted:* May 5, 2006.
- *Description of waiver:* For the 2006–2007 school year, because of the large number of students displaced by Hurricane Katrina, permits the Dekalb County School District to provide SES, rather than public school choice, to eligible students attending Title I schools in the first year of school improvement.

5. Waiver Applicant: Louisiana Department of Education

- *Provision waived:* Section 2416(a)(1) of the ESEA.
- *Date waiver granted:* September 21, 2005.
- *Description of waiver:* Waived, with respect to FY 2004 and FY 2005 Title II, Part D, ESEA (Educational Technology) funds, the requirement that districts spend at least 25 percent of those funds on professional development.

6. Waiver Applicant: Louisiana Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of the General Education Provisions Act (GEPA).
- *Date waiver granted:* September 21, 2005.
- *Description of waiver:* Extended by one year the period of availability for all ESEA funds that otherwise would have expired on September 30, 2005.

7. Waiver Applicant: Louisiana Department of Education

- *Provision waived:* Section 1127 of the ESEA.
- *Date waiver granted:* September 21, 2005.
- *Description of waiver:* Permitted Louisiana to waive for its districts, more than once every three years, the 15 percent carryover limitation for FY 2003 Title I, Part A, ESEA funds.

8. Waiver Applicant: Louisiana Department of Education

- *Provisions waived:* Sections 1116(b)(1)(E)(i) and 1116(b)(5)(B) of the ESEA.
- *Date waiver granted:* January 13, 2006.
- *Description of waiver:* For the 2005–2006 school year, permitted the LEAs of three parishes—Orleans, Calcasieu, and Jefferson—to provide SES, rather than public school choice, to eligible students attending Title I schools in their first year of school improvement.

9. Waiver Applicant: Louisiana Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* July 27, 2006.
- *Description of waiver:* Extended by one year the period of availability for all ESEA funds that otherwise would have expired on September 30, 2006.

10. Waiver Applicant: Louisiana Department of Education

- *Provision waived:* Section 1127 of the ESEA.
- *Date waiver granted:* July 27, 2006.
- *Description of waiver:* Extended to FY 2004 and FY 2005 Title I, Part A, ESEA funds a previously granted waiver allowing Louisiana to waive for its districts, more than once every three years, the 15 percent Title I, Part A, ESEA carryover limitation.

11. Waiver Applicant: Louisiana Department of Education

- *Provisions waived:* Sections 1111(b)(2)(C)(v) and 1111(h)(1)(C) of the ESEA.
- *Date waiver granted:* August 2, 2006.

• *Description of waiver:* Permitted Louisiana to create a separate subgroup for students displaced by Hurricanes Katrina and Rita for AYP decisions based on assessment data for the 2005–2006 school year.

12. Waiver Applicant: Louisiana Department of Education

• *Provisions waived:* Sections 1116(b)(1), (5), (7), and (8) of the ESEA.
• *Date waiver granted:* August 2, 2006.
• *Description of waiver:* Provided greater flexibility in making accountability determinations for districts and schools that were closed for 18 or more instructional days and were located in an area declared a disaster area due to Hurricanes Katrina or Rita.

13. Waiver Applicant: Mississippi Department of Education

• *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
• *Date waiver granted:* September 12, 2005.
• *Description of waiver:* Extended by one year the period of availability for all ESEA funds that otherwise would have expired on September 30, 2005.

14. Waiver Applicant: Mississippi Department of Education

• *Provision waived:* Section 2416(a)(1) of the ESEA.
• *Date waiver granted:* December 14, 2005.
• *Description of waiver:* Waived, with respect to FY 2004 and FY 2005 Title II, Part D, ESEA (Educational Technology) funds, the requirement that districts must spend at least 25 percent of those funds on professional development.

15. Waiver Applicant: Mississippi Department of Education

• *Provisions waived:* Sections 1111(b)(2)(C)(v) and 1111(h)(1)(C) of the ESEA.
• *Date waiver granted:* June 28, 2006.
• *Description of waiver:* Permitted Mississippi to create a separate subgroup for students displaced by Hurricanes Katrina and Rita for AYP decisions based on assessment data for the 2005–2006 school year.

16. Waiver Applicant: Tennessee Department of Education

• *Provisions waived:* Sections 1111(b)(2)(C)(v) and 1111(h)(1)(C) of the ESEA.
• *Date waiver granted:* May 19, 2006.
• *Description of waiver:* Permitted Tennessee to create a separate subgroup for students displaced by Hurricanes Katrina and Rita for AYP decisions based on assessment data for the 2005–2006 school year.

17. Waiver Applicant: Texas Education Agency

• *Provisions waived:* Sections 1111(b)(2)(C)(v) and 1111(h)(1)(C) of the ESEA.
• *Date waiver granted:* May 23, 2006.
• *Description of waiver:* Permitted Texas to create a separate subgroup for students displaced by Hurricanes Katrina and Rita for AYP decisions based on assessment data for the 2005–2006 school year.

18. Waiver Applicant: Texas Education Agency

• *Provisions waived:* Sections 1116(b)(1), (5), (7), and (8) of the ESEA.
• *Date waiver granted:* May 23, 2006.
• *Description of waiver:* Provided greater flexibility in making accountability determinations for districts and campuses that were closed for 7 or more instructional days and were located in an area declared a disaster area due to Hurricane Rita.

II. Other Section 9401 Waivers

In addition to the waivers related to Hurricanes Katrina and Rita, the Department has granted the following waivers to States and districts, through December 31, 2006, under the general waiver authority in section 9401 of the ESEA:

A. Growth Model Pilots

1. Waiver Applicant: North Carolina Department of Public Instruction

• *Provision waived:* Section 1111(b)(2) of the ESEA.
• *Date waiver granted:* May 17, 2006.
• *Description of waiver:* Provided North Carolina the flexibility to implement a growth-based accountability model as part of determining AYP beginning in the 2005–2006 school year, conditioned on the State's having received approval of its assessment system by July 1, 2006.

2. Waiver Applicant: Tennessee Department of Education

• *Provision waived:* Section 1111(b)(2) of the ESEA.
• *Date waiver granted:* May 17, 2006.
• *Description of waiver:* Provided Tennessee the flexibility to implement a growth-based accountability model as part of determining AYP beginning in the 2005–2006 school year.

3. Waiver Applicant: Arkansas Department of Education

• *Provision waived:* Section 1111(b)(2) of the ESEA.
• *Date waiver granted:* November 9, 2006.
• *Description of waiver:* Provided Arkansas the flexibility to implement a growth-based accountability model as part of determining AYP beginning in the 2006–2007 school year, conditioned on the State's receiving approval of its standards and assessment system by the end of the 2006–2007 school year.

4. Waiver Applicant: Delaware Department of Education

• *Provision waived:* Section 1111(b)(2) of the ESEA.
• *Date waiver granted:* November 9, 2006.
• *Description of waiver:* Provided Delaware the flexibility to implement a growth-based accountability model as part of determining AYP beginning in the 2006–2007 school year.

5. Waiver Applicant: Florida Department of Education

• *Provision waived:* Section 1111(b)(2) of the ESEA.
• *Date waiver granted:* November 9, 2006.
• *Description of waiver:* Provided Florida the flexibility to implement a growth-based accountability model as part of determining AYP beginning in the 2006–2007 school year, conditioned on the State's receiving approval of its standards and assessment system by the end of the 2006–2007 school year.

B. Allowing Local Educational Agencies (LEAs) to Provide SES Rather Than Public School Choice to Eligible Students in Title I Schools in the First Year of School Improvement

1. Waiver Applicant: Virginia Department of Education

• *Provisions waived:* Sections 1116(b)(1)(E) and 1116(b)(5)(B) of the ESEA.
• *Date waiver granted:* August 25, 2005.
• *Description of waiver:* For the 2005–2006 school year, permitted four school districts—Alexandria City Schools, Henry County Public Schools, Newport News City Schools, and Stafford County Public Schools—to offer SES, rather than public school choice, to eligible students in Title I schools in the first year of school improvement.

2. Waiver Applicant: Alaska Department of Education and Early Development

• *Provisions waived:* Sections 1116(b)(1)(E) and 1116(b)(5)(B) of the ESEA.
• *Date waiver granted:* August 14, 2006.
• *Description of waiver:* For the 2006–2007 school year, permits the Anchorage School District to offer SES, rather than public school choice, to

eligible students in Title I schools in the first year of school improvement.

3. Waiver Applicant: Delaware Department of Education

- *Provisions waived:* Sections 1116(b)(1)(E) and 1116(b)(5)(B) of the ESEA.
- *Date waiver granted:* August 14, 2006.
- *Description of waiver:* For the 2006–2007 school year, permits the New Castle Vocational and Technical School District to offer SES, rather than public school choice, to eligible students in Title I schools in the first year of school improvement.

4. Waiver Applicant: Indiana Department of Education

- *Provisions waived:* Sections 1116(b)(1)(E) and 1116(b)(5)(B) of the ESEA.
- *Date waiver granted:* July 25, 2006.
- *Description of waiver:* For the 2006–2007 school year, permits three school districts—Metropolitan School District of Decatur Township, Monroe County Community School Corporation, and Muncie Community Schools—to offer SES, rather than public school choice, to eligible students in Title I schools in the first year of school improvement.

5. Waiver Applicant: North Carolina Department of Public Instruction

- *Provisions waived:* Sections 1116(b)(1)(E) and 1116(b)(5)(B) of the ESEA.
- *Date waiver granted:* July 25, 2006.
- *Description of waiver:* For the 2006–2007 school year, permits seven school districts—Burke County, Cumberland County, Durham County, Guilford County, Northampton County, Pitt County, and Robeson County—to offer SES, rather than public school choice, to eligible students in Title I schools in the first year of school improvement.

6. Waiver Applicant: Virginia Department of Education

- *Provisions waived:* Sections 1116(b)(1)(E) and 1116(b)(5)(B) of the ESEA.
- *Date waiver granted:* July 25, 2006.
- *Description of waiver:* For the 2006–2007 school year, permits four school districts—Alexandria City Schools, Henry County Public Schools, Newport News City Schools, and Stafford County Public Schools—to offer SES, rather than public school choice, to eligible students in Title I schools in the first year of school improvement.

C. Allowing LEAs in Need of Improvement To Be Eligible to Apply to their SEA to Become SES Providers

1. Waiver Applicant: Boston Public Schools

- *Provision waived:* 34 CFR 200.47(b)(1)(iv)(B).
- *Date waiver granted:* November 3, 2005.
- *Description of waiver:* Permitted Boston Public Schools to be eligible to apply to its SEA to become a provider of SES to eligible students during the 2005–2006 school year even though the district was identified for improvement.

2. Waiver Applicant: Chicago Public Schools

- *Provision waived:* 34 CFR 200.47(b)(1)(iv)(B).
- *Date waiver granted:* November 3, 2005.
- *Description of waiver:* Permitted Chicago Public Schools to be eligible to apply to its SEA to become a provider of SES to eligible students during the 2005–2006 school year even though the district was identified for improvement.

3. Waiver Applicant: Anchorage School District

- *Provision waived:* 34 CFR 200.47(b)(1)(iv)(B).
- *Date waiver granted:* July 25, 2006.
- *Description of waiver:* Permitted the Anchorage School District to be eligible to apply to its SEA to become a provider of SES to eligible students during the 2006–2007 school year even though the district has been identified for improvement.

4. Waiver Applicant: Boston Public Schools

- *Provision waived:* 34 CFR 200.47(b)(1)(iv)(B).
- *Date waiver granted:* July 25, 2006.
- *Description of waiver:* Permitted Boston Public Schools to be eligible to apply to its SEA to become a provider of SES to eligible students during the 2006–2007 school year even though the district has been identified for improvement.

5. Waiver Applicant: Chicago Public Schools

- *Provision waived:* 34 CFR 200.47(b)(1)(iv)(B).
- *Date waiver granted:* July 25, 2006.
- *Description of waiver:* Permitted Chicago Public Schools to be eligible to apply to its SEA to become a provider of SES to eligible students during the 2006–2007 school year even though the district has been identified for improvement.

6. Waiver Applicant: Hillsborough County Public Schools

- *Provision waived:* 34 CFR 200.47(b)(1)(iv)(B).
- *Date waiver granted:* August 14, 2006.
- *Description of waiver:* Permitted Hillsborough County Public Schools to be eligible to apply to its SEA to become a provider of SES to eligible students during the 2006–2007 school year even though the district has been identified for improvement.

D. General Programmatic Waivers

1. Waiver Applicant: San Diego City Schools, CA

- *Provision waived:* 34 CFR 200.63(b)(1)(i) (2002).
- *Date waiver granted:* August 21, 2002.
- *Description of waiver:* Permitted San Diego to exclude from comparability determinations for school year 2002–2003 supplemental State and local funds that the district spent on a particular program (Blueprint for Student Success) implemented in schools that had less than 50 percent students from low-income families.

2. Waiver Applicant: San Diego City Schools, CA

- *Provision waived:* 34 CFR 200.79(b)(1) (2003).
- *Date waiver granted:* October 29, 2003.
- *Description of waiver:* Permitted San Diego to exclude from comparability determinations through school year 2005–2006 supplemental State and local funds that the district spent on a particular program (Blueprint for Student Success) implemented in schools that had less than 40 percent students from low-income families.

3. Waiver Applicant: Belleville Township High School District 201, IL

- *Provisions waived:* Sections 1113(a)(2) and 1113(c)(2)(A) of the ESEA.
- *Date waiver granted:* June 3, 2003.
- *Description of waiver:* Permitted the district to provide, through summer 2006, Title I, Part A, ESEA funding to its second high school, which has a poverty rate below the district-wide poverty rate, and to allocate an amount per poor child to both its high schools that is less than 125 percent of the amount of funds under Title I, Part A of the ESEA that the district received for the year.

4. Waiver Applicant: DuPage High School District 88, IL

- *Provisions waived:* Sections 1113(a)(2) and 1113(c)(2)(A) of the ESEA.
- *Date waiver granted:* August 27, 2004.
- *Description of waiver:* Permits the district to provide, through summer 2008, Title I, Part A, ESEA funding to its second high school, which has a poverty rate below the district-wide poverty rate, and to allocate an amount per poor child to both its high schools that is less than 125 percent of the amount of funds under Title I, Part A of the ESEA that the district received for the year.

5. Waiver Applicant: Belleville Township High School District 201, IL

- *Provisions waived:* Sections 1113(a)(2) and 1113(c)(2)(A) of the ESEA.
- *Date waiver granted:* April 26, 2006.
- *Description of waiver:* Extended Belleville's previously granted waiver, allowing the district to provide Title I, Part A, ESEA funding to its second high school, which has a poverty rate below the district-wide poverty rate, and to allocate an amount per poor child to both its high schools that is less than 125 percent of the amount of funds under Title I, Part A of the ESEA that the district received for the year.

6. Waiver Applicant: Minnesota Department of Education

- *Provision waived:* Section 1127 of the ESEA.
- *Date waiver granted:* July 1, 2004.
- *Description of waiver:* Permitted Minnesota to waive for its districts, more than once every three years, the 15 percent carryover limitation for FY 2003 and FY 2004 Title I, Part A, ESEA funds.

7. Waiver Applicant: New Hampshire School Administrative Unit No. 29, NH

- *Provision waived:* Section 1113(a)(1) of the ESEA.
- *Date waiver granted:* June 10, 2004.
- *Description of waiver:* Extended through the end of school year 2006–2007 a previously granted waiver that enables three schools that do not meet the Title I, Part A, ESEA eligibility requirements to continue to receive funds under the program.

8. Waiver Applicant: New York State Education Department

- *Provision waived:* Section 9201(a) of the ESEA.
- *Date waiver granted:* October 27, 2003.
- *Description of waiver:* Permitted New York to consolidate through the 2005–2006 school year certain Federal funds reserved for State administration even though a majority of the SEA's resources were not derived from non-Federal sources.

9. Waiver Applicant: New York State Education Department

- *Provision waived:* Section 9201(a) of the ESEA.
- *Date waiver granted:* June 7, 2006.
- *Description of waiver:* Permitted New York to consolidate certain FY 2006 Federal funds (and remaining carryover funds) reserved for State administration even though a majority of the SEA's resources are not derived from non-Federal sources.

10. Waiver Applicant: Clay County Schools, WV

- *Provisions waived:* Section 1113(c)(1) of the ESEA and 34 CFR 200.78(c).
- *Date waiver granted:* July 28, 2004.
- *Description of waiver:* Extended through the end of school year 2007–2008 a previously granted waiver that allows the district to allocate more Title I, Part A, ESEA funds per poor child to several elementary schools than to middle schools with a higher percentage of children from low-income families.

E. Extensions of the Obligation Period

1. Waiver Applicant: Alaska Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* September 29, 2003.
- *Description of waiver:* Extended through December 31, 2004 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

2. Waiver Applicant: Colorado Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* November 25, 2003.
- *Description of waiver:* Extended through December 31, 2004 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

3. Waiver Applicant: District of Columbia Public Schools

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* November 24, 2003.
- *Description of waiver:* Extended through December 31, 2003 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

4. Waiver Applicant: District of Columbia Public Schools

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* January 14, 2004.
- *Description of waiver:* Extended through February 29, 2004 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on December 31, 2003.

5. Waiver Applicant: Florida Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* September 29, 2003.
- *Description of waiver:* Extended through September 30, 2004 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

6. Waiver Applicant: Illinois State Board of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* January 14, 2004.
- *Description of waiver:* Extended through June 30, 2004 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

7. Waiver Applicant: Maryland Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* September 25, 2003.
- *Description of waiver:* Extended through December 15, 2003 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

8. Waiver Applicant: Massachusetts Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* November 24, 2003.
- *Description of waiver:* Extended through June 30, 2004 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

9. Waiver Applicant: Michigan Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* September 25, 2003.
- *Description of waiver:* Extended through September 30, 2004 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

10. Waiver Applicant: Nebraska Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* January 14, 2004.
- *Description of waiver:* Extended through June 30, 2004 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

11. Waiver Applicant: Nevada Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* January 14, 2004.
- *Description of waiver:* Extended through June 30, 2004 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

12. Waiver Applicant: New Jersey Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* September 29, 2003.
- *Description of waiver:* Extended through September 30, 2004 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

13. Waiver Applicant: New Jersey Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* June 17, 2005.
- *Description of waiver:* Extended through September 30, 2006 the period of availability for Title II, Part D, ESEA (Educational Technology) funds that otherwise would have expired on September 30, 2005.

14. Waiver Applicant: New Mexico Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* September 24, 2003.
- *Description of waiver:* Extended through June 30, 2004 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

15. Waiver Applicant: New York State Education Department

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* March 31, 2005.
- *Description of waiver:* Extended through September 30, 2005 the period of availability for Title II, Part D, ESEA (Educational Technology) funds that otherwise would have expired on September 30, 2004.

16. Waiver Applicant: North Dakota Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* September 29, 2003.
- *Description of waiver:* Extended through December 31, 2003 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

17. Waiver Applicant: Ohio Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* November 24, 2003.
- *Description of waiver:* Extended through August 20, 2004 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

18. Waiver Applicant: Ohio Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* March 31, 2005.
- *Description of waiver:* Extended through June 1, 2006 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on August 20, 2004.

19. Waiver Applicant: Pennsylvania Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* September 29, 2003.
- *Description of waiver:* Extended by six months the period of availability for funds awarded under section 6111 of the ESEA (Grants for State Assessments and Related Activities) that otherwise would have expired on September 30, 2003.

20. Waiver Applicant: Rhode Island Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* July 29, 2003.
- *Description of waiver:* Extended through September 30, 2004 the period of availability for Title I, ESEA Accountability funds that otherwise would have expired on September 30, 2003.

21. Waiver Applicant: South Carolina Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* September 29, 2003.
- *Description of waiver:* Extended through September 30, 2004 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

22. Waiver Applicant: Tennessee Department of Education

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* September 29, 2003.
- *Description of waiver:* Extended through December 30, 2003 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

23. Waiver Applicant: Washington Office of Public Instruction

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* November 24, 2003.
- *Description of waiver:* Extended through December 31, 2003 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on September 30, 2003.

24. Waiver Applicant: Washington Office of Public Instruction

- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* December 30, 2003.
- *Description of waiver:* Extended through February 29, 2004 the period of availability for funds awarded under the School Renovation program that otherwise would have expired on December 31, 2003.

F. Waivers of Administrative Cost Limitation That Applies to Indian Education Funds

As part of their application for funds under the Indian Education Formula Grant program, LEAs were allowed to request, if needed, waivers of the five percent administrative cost limitation in section 7115(d) of the ESEA. The following LEAs received approval of budgets that permitted them to expend more than five percent of their funds on administrative costs for the fiscal year grant awards noted:

- Dillingham City School District, AK—FY 2004 and FY 2005.
- Iditarod Area School District, AK—FY 2005.
- Juneau Borough School District, AK—FY 2005.
- Pike County School District, AL—FY 2004.
- Alhambra School District 68, AZ—FY 2003.
- Cedar Unified School District, AZ—FY 2003.
- Kayenta Unified School District, AZ—FY 2003.
- San Carlos Unified School District, AZ—FY 2003.
- Snowflake Unified School District, AZ—FY 2003.
- Whiteriver Unified School District, AZ—FY 2004.
- Clovis Unified School District, CA—FY 2004.
- El Dorado County Office of Education, CA—FY 2005.
- Eureka City Unified School District, CA—FY 2004 and FY 2005.
- Fortuna Union High School District, CA—FY 2004 and FY 2005.
- Klamath-Trinity Joint Unified School District, CA—FY 2005.
- Marysville Joint Unified School District, CA—FY 2003 and FY 2005.
- Oakland Unified School District, CA—FY 2004.
- Palermo Union Elementary School District, CA—FY 2003 and FY 2005.
- San Diego Unified School District, CA—FY 2005.
- San Francisco Unified School District, CA—FY 2003.
- San Lorenzo Unified School District, CA—FY 2004 and FY 2005.
- Shasta Union High School District, CA—FY 2003 and FY 2004.
- Ventura Unified School District, CA—FY 2004.
- Arkansas City Unified School District 470, KS—FY 2005.
- Coffeyville Unified School District 445, KS—FY 2005.
- Lawrence Unified School District 497, KS—FY 2003 and FY 2005.
- Baraga Area Schools, MI—FY 2003.
- Carman-Ainsworth Community Schools, MI—FY 2003, FY 2004, and FY 2005.
- Gladstone Area Schools, MI—FY 2004 and FY 2005.
- Grand Rapids Public Schools, MI—FY 2004.
- L'Anse Area Schools, MI—FY 2004.
- Bloomington Public Schools, MN—FY 2002.
- Cass Lake-Bena Schools ISD 115, MN—FY 2003.
- East Grand Forks Schools, MN—FY 2003 and FY 2005.
- Grand Rapids Schools ISD 318, MN—FY 2004.
- Minneapolis Special School District 1, MN—FY 2004.
- Richmond County Schools, NC—FY 2004.
- Grand Forks Public Schools, ND—FY 2005.
- Farmington Municipal Schools, NM—FY 2005.
- Washoe County School District, NV—FY 2003 and FY 2004.
- Anadarko Public Schools, OK—FY 2004 and FY 2005.
- Bartlesville Public Schools ISD 30, OK—FY 2003, FY 2004, and FY 2005.
- Bixby Public Schools, OK—FY 2003 and FY 2005.
- Broken Arrow Public Schools, OK—FY 2003 and FY 2005.
- Choctaw-Nicoma Park Schools, OK—FY 2002.
- Coalgate Public Schools, OK—FY 2004.
- Colbert Public Schools, OK—FY 2003, FY 2004, and FY 2005.
- Colcord Public Schools, OK—FY 2003, FY 2004, and FY 2005.
- Collinsville Public Schools, OK—FY 2004.
- Dickson Independent School District, OK—FY 2003.
- El Reno Public Schools, OK—FY 2005.
- Fort Gibson Schools, OK—FY 2003.
- Haskell Public Schools, OK—FY 2004 and FY 2005.
- Jay Public Schools, OK—FY 2003 and FY 2004.
- Little Axe Public Schools, OK—FY 2004.
- Meeker Public Schools, OK—FY 2004.
- Morris Public Schools, OK—FY 2004.
- Mounds Public Schools, OK—FY 2002.
- Muskogee Public Schools, OK—FY 2003 and FY 2004.
- Norman Public Schools, OK—FY 2004.
- Oklahoma City Public Schools, OK—FY 2003 and FY 2005.
- Oolagah-Talala Public Schools, OK—FY 2005.
- Pocola Public Schools, OK—FY 2002.
- Ponca City Public Schools, OK—FY 2003, FY 2004, and FY 2005.
- Poteau Public Schools, OK—FY 2005.
- Sand Springs Public Schools, OK—FY 2004 and FY 2005.
- Sapulpa Public Schools, OK—FY 2002 and FY 2003.
- Sequoyah Public Schools, OK—FY 2005.
- Shawnee Public Schools, OK—FY 2005.
- Sperry Public Schools, OK—FY 2005.
- Sterling Public Schools, OK—FY 2004.
- Sulphur Public Schools, OK—FY 2004.
- Tishomingo Public Schools, OK—FY 2003 and FY 2004.
- Tulsa Public Schools, OK—FY 2003.
- Eugene Public Schools, OR—FY 2004.
- Lincoln County School District, OR—FY 2005.
- Umatilla Confederated Tribes, OR—FY 2003.
- Mitchell School District 17–2, SD—FY 2002.
- Mobridge School District 62–3, SD—FY 2002.
- Rapid City Area School District 51–4, SD—FY 2002.
- Shannon County School District 65–1, SD—FY 2002.
- Sioux Falls School District 49–5, SD—FY 2004.
- Fort Worth Independent School District, TX—FY 2004.
- Edmonds School District 15, WA—FY 2003.
- Highline School District 401, WA—FY 2002, FY 2004, and FY 2005.
- North Thurston School District 3, WA—FY 2003, FY 2004, and FY 2005.
- Okanogan School District 105, WA—FY 2002.
- Puget Sound Educational Service District 121, WA—FY 2003 and FY 2004.
- Quinault Lake School District 97, WA—FY 2002.
- Spokane Public Schools (School District 81), WA—FY 2004.
- Milwaukee Public Schools, WI—FY 2004 and FY 2005.

FOR FURTHER INFORMATION CONTACT: Jeanette Lim, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W314, Washington, DC 20202. Telephone: (202) 401–9090 or by e-mail: *jeanette.lim@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette)

on request to the program contact person listed in this section.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

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

Dated: March 7, 2007.

Raymond Simon,

Deputy Secretary.

[FR Doc. 07–1149 Filed 3–9–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Rehabilitation Short-Term Training Program—National Rehabilitation Leadership Institute; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.246D.

Dates: Applications Available: March 12, 2007.

Deadline for Transmittal of Applications: April 11, 2007.

Deadline for Intergovernmental Review: June 11, 2007.

Eligible Applicants: States and public and nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

Estimated Available Funds: $250,000.

Maximum Award: We will reject any application that proposes a budget exceeding $250,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Range of Awards: $225,000–$250,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Short-Term Training program supports special seminars, institutes, workshops, and other short-term courses in technical matters relating to the vocational, medical, social, and psychological rehabilitation programs, independent living services programs, and client assistance programs.

Priority: This priority is from the notice of final priority for this program, published in the **Federal Register** on November 7, 2001 (66 FR 56422). This priority is designed to improve the leadership among top-level managers and administrators of the State Vocational Rehabilitation Services Program. This priority supports a National Rehabilitation Leadership Institute that will address the leadership needs in all VR agencies funded under the Rehabilitation Act of 1973, as amended (Act), and programs funded under section 121 of the Act.

Absolute Priority: For FY 2007, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

National Rehabilitation Leadership Institute

We will fund one project to establish a National Rehabilitation Leadership Institute that will focus on developing the leadership skills of top-level managers and administrators in State VR agencies. The project must have plans for addressing the leadership needs in all VR agencies funded under the Act and programs funded under section 121 of the Act.

The project must employ a curriculum that focuses on the development of leadership skills and on the application of those skills to current challenges and issues in the VR program. The project must be capable of structuring leadership curricula around current VR issues of national significance, such as using VR evaluation standards and performance indicators to assess and improve agency performance, coordinating effectively with generic employment and training programs, and increasing client choice. The advisory committee (described later in this notice) and the Assistant Secretary will determine actual issues.

The project must employ a curriculum that includes several levels of training to meet the needs of audiences ranging from new State administrators and directors to seasoned administrators and directors. The project's curriculum must include sequential courses that allow for repeated practice of newly learned skills over time, with performance feedback. The project must provide training in a peer setting.

The project must coordinate its training activities with activities conducted under the State Vocational Rehabilitation Unit In-Service Training program, the Rehabilitation Continuing Education Program, and the National Technical Assistance Centers funded by the Rehabilitation Services Administration (RSA). These programs are also charged with improving the leadership skills of State agency personnel. Therefore, collaboration and coordination are necessary.

The project must establish an advisory committee that includes RSA central and regional office representatives, representatives of State VR agency administrators and trainers, rehabilitation counselors, VR clients, Regional Continuing Education Centers, other educators and trainers of VR personnel, tribes and tribal agencies, and others as determined to be appropriate by the grantee and RSA. This committee must provide substantial input on and direction to the training curriculum, including the specific VR issues to be incorporated.

The project must include an evaluation component based upon clear, specific performance and outcome measures. The results must be reported in its annual progress report.

The project must be designed to ensure that State agencies will contribute to the costs of the participant's training.

Note: Examples of current challenges and issues in the VR program include the new approach to monitoring, and how State agency leaders should plan to use the system and the information it yields for program improvement.

Note: There are no longer RSA regional offices. References to regional offices in the program priority should be interpreted to apply to the RSA central office.

Program Authority: 29 U.S.C. 709(a)(2) and 772.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, and 86. (b) The regulations in 34 CFR parts 385 and 390. (c) The notice of final priority for this program published in the **Federal Register** on November 7, 2001 (66 FR 56422).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $250,000.

Maximum Award: We will reject any application that proposes a budget exceeding $250,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Range of Awards: $225,000–$250,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States and public and nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

2. *Cost Sharing or Matching:* The Secretary has determined that a grantee must provide a match of at least 10 percent of the total cost of the project (34 CFR 390.40).

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

IV. Application and Submission Information

1. *Address To Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.246D.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: March 12, 2007.

Deadline for Transmittal of Applications: April 11, 2007.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Deadline for Intergovernmental Review: June 11, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Rehabilitation Short-Term Training—National Rehabilitation Leadership Institute, CFDA Number 84.246D must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Rehabilitation Short-Term Training Program—National Rehabilitation Leadership Institute at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.246, not 84.246D).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures

pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Christine Marschall, U.S. Department of Education, 400 Maryland Avenue, SW., room 5053, Potomac Center Plaza, Washington, DC 20202–2800. Fax: (202) 245–6824.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier), your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.246D), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.246D), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.246D), 550 12th Street, SW., room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: In reviewing applications under this competition, the Secretary will use selection criteria selected from 34 CFR 75.210 of EDGAR. These are listed in the application package for this competition. The Secretary also will use the selection criterion in 34 CFR 390.30 to evaluate applications under this competition.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The absolute priority for this competition requires the applicant to include in its application an evaluation component based upon clear, specific performance and outcome measures. The results of its evaluation must be reported in its required annual progress report. The cooperative agreement for this project will further describe the reporting requirements. In addition, the annual report must include information on the percentage of training participants who report an increase in their knowledge, skills, and abilities and the percentage of training participants who report the training is relevant to their employment. The data on these measures will be collected by the grantee via survey, assessed, and reported in the aggregate to RSA. The grantee will negotiate targets with RSA after the first year, which will be used to establish a baseline.

VII. Agency Contact

For Further Information Contact: Christine Marschall, U.S. Department of Education, 400 Maryland Avenue, SW., room 5053, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7429 or by e-mail: *Christine.Marschall@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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

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

Dated: March 7, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–4437 Filed 3–9–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity (National Advisory Committee); Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to announce the public meeting of the National Advisory Committee and invite third-party oral presentations (3–5 minutes) before the Committee. In all instances, your comments about agencies seeking initial recognition, continued recognition and/or an expansion of an agency's scope of recognition must relate to the Criteria

for Recognition. In addition, your comments for any agency whose interim report is scheduled for review must relate to the issues raised and the Criteria for Recognition cited in the Secretary's letter that requested the interim report. This notice also presents the proposed agenda and informs the public of its opportunity to attend this meeting. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

When and Where Will the Meeting Take Place?

We will hold the public meeting on Wednesday, May 30, 2007, from 8:30 a.m. until approximately 5:30 p.m.; on Thursday, May 31, 2007, from 8:30 a.m. until approximately 5:30 p.m., and on Friday, June 1, 2007, from 8:30 a.m. until approximately 3:30 p.m. in the Mt. Vernon Rooms A and B at The Madison, 1177 Fifteenth Street, NW., Washington, DC 20005. You may call the hotel at (202) 862–1600 to inquire about rooms.

What Assistance Will Be Provided to Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Who Is the Contact Person for the Meeting?

Please contact Ms. Francesca Paris-Albertson, Executive Director of the National Advisory Committee on Institutional Quality and Integrity, if you have questions about the meeting. You may contact her at the U.S. Department of Education, Room 7110, 1990 K St., NW., Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Francesca.Paris-Albertson@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Is the Authority for the National Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA) as amended, 20 U.S.C. 1011c.

What are the Functions of the National Advisory Committee?

The Committee advises the Secretary of Education about:

- The establishment and enforcement of the Criteria for Recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.
- The relationship between: (1) Accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

What Items Will Be on the Agenda for Discussion at the Meeting?

Agenda topics will include the review of agencies that have submitted petitions for renewal of recognition and/or an expansion of an agency's scope of recognition, and the review of agencies that have submitted an interim report.

What Agencies Will the National Advisory Committee Review at the Meeting?

The following agencies will be reviewed during the May 30-June 1, 2007 meeting of the National Advisory Committee:

Nationally Recognized Accrediting Agencies

Petition for an Expansion of Scope

1. Accrediting Bureau of Health Education Schools (Current scope of recognition: The accreditation of private, postsecondary institutions in the United States offering predominantly allied health education programs and the programmatic accreditation of medical assistant, medical laboratory technician and surgical technology programs, leading to a certificate, diploma, or the Associate of Applied Science and Associate of Occupational Science degrees.) (Requested scope of recognition: The accreditation of private, postsecondary institutions in the United States offering predominantly allied health education programs and the programmatic accreditation of medical assistant, medical laboratory technician and surgical technology programs, leading to a certificate, diploma, Associate of Applied Science, Associate of Occupational Science, or Academic Associate degree, including those offered via distance education.)

Petitions for Renewal of Recognition That Include an Expansion of the Scope of Recognition

1. American Board of Funeral Service Education, Committee on Accreditation (Current scope of recognition: The accreditation of institutions and programs within the United States awarding diplomas, associate degrees and bachelor's degrees in funeral service or mortuary science.) (Requested scope of recognition: The accreditation of institutions and programs within the United States awarding diplomas, associate degrees and bachelor degrees in funeral service and/or mortuary science, including the accreditation of Distance Learning courses and programs offered by these programs and institutions.)

2. American Dietetic Association, Commission on Accreditation for Dietetics Education (Current scope of recognition: The accreditation within the United States of Didactic and Coordinated Programs in Dietetics at both the undergraduate and graduate level, post baccalaureate Dietetic Internships, and Dietetic Technician Programs at the associate degree level and for its accreditation of such programs offered via distance education.) (Requested scope of recognition: The accreditation and preaccreditation within the United States of Didactic and Coordinated Programs in Dietetics at both the undergraduate and graduate level, post baccalaureate Dietetic Internships, and Dietetic Technician Programs at the associate degree level and for its accreditation of such programs offered via distance education.)

3. Council on Accreditation of Nurse Anesthesia Educational Programs (Current scope of recognition: The accreditation of institutions and programs of nurse anesthesia within the United States at the post-master's certificate, master's, or doctoral degree levels.) (Requested scope of recognition: The accreditation of institutions and

programs of nurse anesthesia within the United States at the post master's certificate, master's, or doctoral degree levels, including programs offering distance education.)

4. Council on Education for Public Health (Current scope of recognition: The accreditation and preaccreditation (''Preaccreditation status'') within the United States of graduate schools of public health, graduate programs in community health education outside schools of public health, and graduate programs in community health/preventive medicine outside schools of public health.) (Requested scope of recognition: The accreditation within the United States of schools of public health and public health programs outside schools of public health at the baccalaureate and graduate degree levels, including those offered via distance education.)

5. Council on Occupational Education (Current scope of recognition: The accreditation and preaccreditation (''Candidacy status'') throughout the United States of non-degree granting postsecondary occupational/vocational institutions and those postsecondary occupational/vocational education institutions that have state authorization to grant the applied associate degree in specific vocational/occupational fields.) (Requested scope of recognition: The accreditation and preaccreditation (''Candidacy Status'') throughout the United States of postsecondary occupational education institutions offering non-degree and applied associate degree programs in specific career and technical education fields, including institutions that offer programs via distance education.)

Petitions for Renewal of Recognition

1. Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission (Current and requested scope of recognition: The accreditation and preaccreditation (''Correspondent'' and ''Candidate'') within the United States of advanced rabbinical and Talmudic schools.)

2. Commission on Accreditation of Healthcare Management Education (Current and requested scope of recognition: The accreditation throughout the United States of graduate programs in health services administration.)

3. Liaison Committee on Medical Education (Current and requested scope of recognition: The accreditation of medical education programs within the United States leading to the M.D. degree.)

4. Middle States Association of Colleges and Schools, Commission on Higher Education (Current and requested scope of recognition: The accreditation and preaccreditation (''Candidacy status'') of institutions of higher education in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, and the U.S. Virgin Islands, including distance education programs offered at those institutions.)

5. New England Association of Schools and Colleges, Commission on Technical and Career Institutions (Current and requested scope of recognition: The accreditation and preaccreditation (''Candidate status'') of secondary institutions with vocational-technical programs at the 13th and 14th grade level, postsecondary institutions, and institutions of higher education that provide primarily vocational/technical education at the certificate, associate, and baccalaureate degree levels in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving preaccreditation, initial accreditation, and adverse actions.)

6. New York State Board of Regents, and the Commissioner of Education (Current and requested scope of recognition: The accreditation of those degree-granting institutions of higher education in New York that designate the agency as their sole or primary nationally recognized accrediting agency for purposes of establishing eligibility to participate in HEA programs.)

Interim Reports (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition.)

1. American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Family Therapy Education.

2. American Osteopathic Association, Commission on Osteopathic College Accreditation.

3. American Podiatric Medical Association, Council on Podiatric Medical Education.

State Agencies Recognized for the Approval of Nurse Education

Petition for Initial Recognition

1. Kansas State Board of Nursing.

Petition for Renewal of Recognition

1. Missouri State Board of Nursing.

Federal Agency Seeking Degree-Granting Authority

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

Proposed Master's Degree-Granting Authority

1. Air University, Maxwell Air Force Base, Alabama (request to award a Master's of Science in Flight Test Engineering Degree.)

Who Can Make Third-Party Oral Presentations at This Meeting?

We invite you to make a third-party oral presentation before the National Advisory Committee concerning the recognition of any agency published in this notice.

How Do I Request To Make an Oral Presentation?

You must submit a written request to make an oral presentation concerning an agency listed in this notice to the contact person identified earlier in this notice so that the request is received via mail, fax, or e-mail no later than April 18, 2007.

Your request (no more than 6 pages maximum) must include:

1. The names, addresses, phone and fax numbers, and e-mail addresses of all persons seeking an appearance,

2. The organization they represent, and

3. A brief summary of the principal points to be made during the oral presentation.

If you wish, you may attach documents illustrating the main points of your oral testimony. Please keep in mind, however, that any attachments are included in the 6-page limit. Please do not send materials directly to Committee members. Only materials submitted by the deadline to the contact person listed in this notice and in accordance with these instructions become part of the official record and

are considered by the Committee in its deliberations. Documents received after the April 18, 2007 deadline will not be distributed to the National Advisory Committee for their consideration. Individuals making oral presentations may not distribute written materials at the meeting.

If I Cannot Attend the Meeting, Can I Submit Written Comments Regarding an Accrediting Agency in Lieu of Making an Oral Presentation?

This notice requests third-party oral testimony, not written comment. Requests for written comments on agencies that are being reviewed during this meeting were published in the **Federal Register** on January 30, 2007. The National Advisory Committee will receive and consider only written comments submitted by the deadline specified in the above-referenced **Federal Register** notice.

How Do I Request To Present Comments Regarding General Issues Rather Than Specific Accrediting Agencies?

At the conclusion of the meeting, the National Advisory Committee, at its discretion, may invite attendees to address the Committee briefly on issues pertaining to the functions of the Committee, which are listed earlier in this notice. If you are interested in making such comments, you should inform Ms. Paris-Albertson before or during the meeting.

How May I Obtain Access to the Records of the Meeting?

We will record the meeting and make a transcript available for public inspection at the U.S. Department of Education, 1990 K St., NW., Washington, DC 20006 between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. It is preferred that an appointment be made in advance of such inspection.

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/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/index.html.*

(Authority: 5 U.S.C. Appendix 2.)

Dated: March 2, 2007.

James F. Manning,

Delegated the Authority of the Assistant Secretary.

[FR Doc. E7–4448 Filed 3–9–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket Nos. EA–321, EA–322, EA–323, EA–324 and EA–325]

Applications To Export Electric Energy; Emera Energy Services Subsidiaries

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Applications.

SUMMARY: Five power marketing subsidiaries of Emera Incorporated (Emera) have applied to export electric energy from the United States to Canada, pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests or requests to intervene must be submitted on or before April 11, 2007.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Ave., Washington, DC 20585–0350 (Fax 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On February 20, 2007, five subsidiaries of Emera each separately applied to the Department of Energy (DOE) for authority to export electric energy from the United States to Canada as power marketers. The electric energy which each applicant proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the U.S. The applicants are: Emera Energy Services Subsidiary No. 1 LLC (Emera Energy Sub No. 1) (OE Docket No. EA–321); Emera Energy Services Subsidiary No. 2 LLC (Emera Energy Sub No. 2) (OE Docket No. EA–322); Emera Energy Services Subsidiary No. 3 LLC (Emera Energy Sub No. 3) (OE Docket No. EA–323); Emera Energy Services Subsidiary No. 4 LLC (Emera Energy Sub No. 4) (OE Docket No. EA–324); and Emera Energy Services Subsidiary No. 5 LLC (Emera Energy Sub No. 5) (OE Docket No. EA–325).

Each applicant proposes to export electric energy to Canada and to arrange for the delivery of those exports to Canada over the international transmission facilities presently owned by Citizens Utilities, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by the applicants has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the applications to export electric energy to Canada should be clearly marked with OE Docket Nos. EA–321, EA–322, EA–323, EA–324 or EA–325 as listed above. Additional copies are to be filed directly with Calvin Bell, Emera Energy Services, Inc., One Cumberland Place, Suite 102, Bangor, ME 04401, and Richard J. Smith, Assistant Secretary, Emera Incorporated, 1894 Barrington Street, 17th Floor, Barrington Tower, P.O. Box 910, Halifax, Nova Scotia, Canada B3J 2W5 and Michael E. Small, Wendy N. Reed, Deborah C. Brentani, Wright & Talisman, P.C., 1200 G Street, NW., Suite 600, Washington, DC 20005.

A final decision will be made on each of these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and determinations are made by the DOE that the proposed actions will not

adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the OE Web site at *http://www.oe.energy.gov/304.htm*.

Issued in Washington, DC, on March 5, 2007.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E7–4323 Filed 3–9–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, April 5, 2007, 9 a.m.–5 p.m.; Friday, April 6, 2007, 8:30 a.m.–4 p.m.

ADDRESSES: Monarch Hotel, 12566 Southeast 93rd Avenue, Clackamas, Oregon 97015, *Phone:* (503) 652–1515, *Fax:* (503) 652–7609.

FOR FURTHER INFORMATION CONTACT: Erik Olds, Federal Coordinator, Department of Energy Richland Operations Office, 2440 Stevens Drive, P.O. Box 450, H6–60, Richland, WA 99352; *Phone:* (509) 376–8656; *Fax:* (509) 376–1214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Update from the River and Plateau Committee on 100 Area cleanup status.
- Presentation from the Columbia River Toxics Program.
- Advice from the Health, Safety and Environmental Protection Committee on workers' compensation programs.
- Advice from the Budgets and Contracts Committee on Fiscal Year 2007, 2008 and 2009 allocations and funding.
- Tank Waste Committee report on Tank Farm System Integration Issue Manager work towards Hanford Advisory Board Advice #192.
- Tank Waste Committee report on Double-Shell Tank Integrity Issue Manager work.
- Tank Closure and Waste Management Environmental Impact Statement update.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Erik Olds' office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Erik Olds' office at the address or telephone number listed above.

Issued at Washington, DC on March 6, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–4332 Filed 3–9–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, March 20, 2007, 8 a.m.–5 p.m.; Wednesday, March 21, 2007, 8 a.m.–12 p.m.

Opportunities for public participation will be held Tuesday, March 20, from 1 p.m. to 1:15 p.m. and 3:45 p.m. to 4 p.m.; and Wednesday, March 21, from 9:15 a.m. to 9:30 a.m.

These times are subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Red Lion Hotel, 1555 Pocatello Creek Road, Pocatello, Idaho 83201.

FOR FURTHER INFORMATION CONTACT: Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, ID 83415. Phone (208) 526–6518; Fax (208) 526–8789 or e-mail: *pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://www.inlemcab.org*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Robert L. Pence for the most current agenda):

- TAN–607 Hot Shop Engineering Evaluation/Cost Analysis (EE/CA).
- Yucca Mountain Briefing.
- General EE/CA Philosophy.
- Spent Nuclear Fuel Next Steps and Plan.
- Subsurface Disposal Area Draft Feasibility Study.
- Budget Discussions.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Robert L. Pence at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9

a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Robert L. Pence, Federal Coordinator, at the address and phone number listed above.

Issued at Washington, DC on March 6, 2007.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–4370 Filed 3–9–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, March 26, 2007, 1 p.m.–5 p.m.; Tuesday, March 27, 2007, 8:30 a.m.–4 p.m.

ADDRESSES: North Augusta Community Center, 495 Brookside Avenue, North Augusta, South Carolina 29961.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Monday, March 26, 2007

1 p.m.—Combined Committee Session.

5 p.m.—Adjourn.

Tuesday, March 27, 2007

8:30 a.m.—Approval of Minutes, Agency Updates.

9:45 a.m.—Public Comment Session.

10 a.m.—Chair and Facilitator Update.

10:45 a.m.—Strategic & Legacy Management Committee Report.

11:45 a.m.—Public Comment Session.

12 p.m.—Lunch Break.

1 p.m.—Nuclear Materials Committee Report.

2 p.m.—Waste Management Committee Report.

2:30 p.m.—Public Comment Session.

2:45 p.m.—Facility Disposition & Site Remediation Committee Report.

3:15 p.m.—Administrative Committee Report.

4 p.m.—Adjourn.

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, March 26, 2007.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling her at (803) 952–7886.

Issued at Washington, DC on March 6, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–4374 Filed 3–9–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–110–000, ER07–110–001, ER07–110–002 and ER07–110–003]

BTEC New Albany LLC; Notice of Issuance of Order

March 5, 2007.

BTEC New Albany LLC (New Albany) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. New Albany also requested waivers of various Commission regulations. In particular, New Albany requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by New Albany.

On March 2, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by New Albany should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is April 2, 2007.

Absent a request to be heard in opposition by the deadline above, New Albany is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of New Albany, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of New Albany's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order 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 filed to access the document. 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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4338 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF90–65–014]

Cogen Technologies Linden Venture, L.P.; East Coast Power Linden Holding, L.L.P; Notice of Filing

March 6, 2007.

Take notice that on March 2, 2007 Cogen Technologies Linden Venture, L.P. and East Coast Power Linden Holding, L.L.P. filed a supplement to its February 14, 2007 application for recertification as a qualifying Cogeneration Facility, pursuant to section 292.207(b) of the Commission's regulations.

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

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

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

Comment Date: 5 p.m. Eastern Time on March 13, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4385 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–320–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 2007.

Take notice that on February 28, 2007, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Forty-Fourth Revised Sheet No. 11A, to become effective April 1, 2007.

CIG states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4354 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–334–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 6, 2007.

Take notice that on March 1, 2007, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of April 1, 2007:

Eighty-second Revised Sheet No. 25
Eighty-second Revised Sheet No. 26
Eight-first Revised Sheet No. 27
Sixty-ninth Revised Sheet No. 28
Twenty-second Revised Sheet No. 31

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

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.*

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4396 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–335–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 6, 2007.

Take notice that on March 1, 2007, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Seventeenth Revised Sheet No. 44, with a proposed effective date of April 1, 2007.

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4397 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–336–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 6, 2007.

Take notice that on March 1, 2007, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of April 1, 2007:

Eighty-third Revised Sheet No. 25
Eighty-third Revised Sheet No. 26
Eighty-second Revised Sheet No. 27
Seventieth Revised Sheet No. 28

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4398 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–337–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 6, 2007.

Take notice that on March 1, 2007, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of April 1, 2007:

Forty-second Revised Sheet No. 18
Thirtieth Revised Sheet No. 18A
Forty-third Revised Sheet No. 19

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4399 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–314–000]

Dominion Cove Point LNG, LP; Notice of Proposed Changes in FERC Gas Tariff

March 5, 2007.

Take notice that on February 28, 2007, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective April 1, 2007:

Eighth Revised Sheet No. 10
Fourth Revised Sheet No. 12

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4348 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–315–000]

Dominion Cove Point LNG, LP; Notice of Proposed Changes in FERC Gas Tariff

March 5, 2007.

Take notice that on February 28, 2007, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifth Revised Sheet No. 12, to become effective April 1, 2006:

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4349 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–515–000]

Domtar Corporation; Notice of Issuance of Order

March 5, 2007.

Domtar Corporation (Domtar) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based

rate schedule provides for the sale of energy and capacity and at market-based rates. Domtar also requested waivers of various Commission regulations. In particular, Domtar requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Domtar.

On March 1, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Domtar should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is April 2, 2007.

Absent a request to be heard in opposition by the deadline above, Domtar is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Domtar, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Domtar's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order 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 filed to access the document. 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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4340 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–88–000]

Egan Hub Storage, LLC; Notice of Application

March 5, 2007.

Take notice that on February 20, 2007, Egan Hub Storage, LLC, 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP07–88–000 an application pursuant to section 7of the Natural Gas Act (NGA), as amended, to expand the Egan Gas Storage Facility by constructing an additional salt dome storage cavern, a 24-inch 16.5-mile loop of existing Line 73, a new meter and regulator station, associated interconnecting pipelines and appurtenant facilities, and upgrade an existing meter and regulator station at the Egan Gas Storage Facility in Acadia Parish, Louisiana, 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 website 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 Ashley Leder, Director, Certificates and Reporting, Egan Hub Storage, LLC, 5400 Westheimer Court, Houston, Texas 77251 at (713) 627–5113 or fax (713) 627–5947.

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 via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web (*http://www.ferc.gov*) site under the ''e-Filing'' link.

Comment Date: March 26, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4336 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–325–000]

Equitrans, L.P.; Notice of Proposed Changes In FERC Gas Tariff

March 6, 2007.

Take notice that on March 1, 2007, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, with an effective date of April 1, 2007:

Seventeenth Revised Sheet No. 5
Twenty-Sixth Revised Sheet No. 6
Fifteenth Revised Sheet No. 10

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4387 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–357–000, ER07–357–001]

Fenton Power Partners I, LLC; Notice of Issuance of Order

March 5, 2007.

Fenton Power Partners I, LLC (Fenton Power) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Fenton Power also requested waivers of various Commission regulations. In particular, Fenton Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Fenton Power.

On March 1, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Fenton Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is April 2, 2007.

Absent a request to be heard in opposition by the deadline above, Fenton Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Fenton Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Fenton Power's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order 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 filed to access the document. 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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4339 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–324–000]

Florida Gas Transmission Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

March 6, 2007.

Take notice that on March 1, 2007, Florida Gas Transmission Company, LLC (FGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to become effective April 1, 2007:

Third Revised Sheet No. 7
Third Revised Sheet No. 8
Third Revised Sheet No. 9
Third Revised Sheet No. 11
Third Revised Sheet No. 12
Third Revised Sheet No. 13
Third Revised Sheet No. 14

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4386 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–331–000]

Florida Gas Transmission Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

March 6, 2007.

Take notice that on March 1, 2007, Florida Gas Transmission Company, LLC (FGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fourth Revised Sheet No. 7, to become effective April 1, 2007.

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4393 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–317–000]

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

March 5, 2007.

Take notice that on February 28, 2007, Guardian Pipeline, L.L.C (Guardian) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets attached to the filing, to become effective on April 1, 2007.

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

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4351 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–540–002]

High Island Offshore System, L.L.C.; Notice of Tariff Filing

March 5, 2007.

Take notice that on February 28, 2007, High Island Offshore System, L.L.C. (HIOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to its filing, to become effective March 1, 2007.

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4345 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–333–000]

High Island Offshore System L.L.C.; Notice of Tariff Filing

March 6, 2007.

Take notice that on March 1, 2007, High Island Offshore System L.L.C. (HIOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifth Revised Sheet No. 11, with an effective date of April 1, 2007.

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4395 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–326–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 6, 2007.

Take notice that on March 1, 2007, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets, to become effective April 1, 2007:

Second Revised Eighteenth Revised Sheet No. 5
Second Revised Fourteenth Revised Sheet No. 5–A
Second Revised Sixteenth Revised Sheet No. 6

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4388 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–527–000]

Longview Fibre Paper & Packaging, Inc.; Notice of Issuance of Order

March 6, 2007.

Longview Fibre Paper & Packaging, Inc. (Longview Fibre) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Longview Fibre also requested waivers of various Commission regulations. In particular, Longview Fibre requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Longview Fibre.

On March 6, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Longview Fibre should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is April 5, 2007.

Absent a request to be heard in opposition by the deadline above, Longview Fibre is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Longview Fibre, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Longview Fibre's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order 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 filed to access the document. 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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4384 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–318–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 2007.

Take notice that on February 28, 2007, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets attached to the filing, to become effective on April 1, 2007.

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4352 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–313–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

March 5, 2007.

Take notice that on February 28, 2007, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Ninety Eighth Revised Sheet No. 9, to become effective March 1, 2007.

Any person desiring to intervene or to protest this filing must file in

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4347 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–128]

Natural Gas Pipeline Company of America; Notice of Tariff Filing and Negotiated Rate

March 5, 2007.

Take notice that on February 28, 2007, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 26D.04 and Eleventh Revised Sheet No. 414, to become effective April 1, 2007. Natural also tendered for filing its Transportation Rate Schedule FTS Agreement with a Negotiated Rate Exhibit.

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4360 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–129]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

March 5, 2007.

Take notice that on February 28, 2007, Natural Gas Pipeline Company of America (Natural) tendered for filing an amendment to five (5) Transportation Rate Schedule FTS Agreements currently on file with the Commission, to be effective March 1, 2007.

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

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

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

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4361 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–063]

Northern Natural Gas Company; Notice of Negotiated Rate

March 5, 2007.

Take notice that on February 28, 2007, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on March 1, 2007:

47 Revised Sheet No. 66
39 Revised Sheet No. 66A
Original Sheet No. 66B.01

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4359 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–330–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 6, 2007.

Take notice that on March 1, 2007, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets attached to the filing, proposed to be effective on April 1, 2007:

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4392 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–329–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Proposed Changes in FERC Gas Tariff

March 6, 2007.

Take notice that on March 1, 2007, Panhandle Eastern Pipe Line Company, LP (Panhandle) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing, to become effective April 1, 2007.

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

protests on persons other than the Applicant.

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4391 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–157–006]

Saltville Gas Storage Company L.L.C.; Notice of Tariff Filing

March 5, 2007.

Take notice that on February 28, 2007, Saltville Gas Storage Company L.L.C. (Saltville) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, reflecting an effective date of April 1, 2007:

Original Sheet No. 15
Original Sheet No.16
Original Sheet No. 17
Original Sheet No. 18
Sheet Nos. 19–30

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4344 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–332–000]

Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

March 6, 2007.

Take notice that on March 1, 2007, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Nineteenth Revised Sheet No. 5, to become effective April 1, 2007:

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4394 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–34–000]

Southwest Gas Storage Company; Notice of Compliance Filing

March 6, 2007.

Take notice that on February 20, 2007, Southwest Gas Storage Company filed a cost and revenue study to comply with the Commission's Order Setting Complaint for Hearing, issued on December 21, 2006, in Docket No. RP07–34–000 (117 FERC ¶ 61,318 (2006)).

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

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

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

Comment Date: 5 p.m. Eastern Time on March 14, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4402 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–339–000]

Texas Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

March 6, 2007.

Take notice that on March 1, 2007, Texas Gas Transmission, LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets attached to the filing, to become effective April 1, 2007.

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4401 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–327–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

March 6, 2007.

Take notice that on March 1, 2007, TransColorado Gas Transmission Company (TransColorado) tendered for filing its Annual Fuel Gas Reimbursement Percentage (FGRP) report pursuant to Section 12.9 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1. TransColorado also included 6th Revised Sheet No. 20 in this filing.

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4389 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–569–001]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

March 5, 2007.

Take notice that on February 28, 2007, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective March 1, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4346 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–328–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 6, 2007.

Take notice that on March 1, 2007, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective April 1, 2007:

Twenty-Sixth Revised Sheet No. 29
Twenty-First Revised Sheet No. 44
Fourteenth Revised Sheet No. 61
Tenth Revised Sheet No. 61A

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4390 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–338–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 6, 2007.

Take notice that on March 1, 2007 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing. The tariff sheets are proposed to be effective April 1, 2007.

Transco states that it is serving copies of the instant filing to its affected customers, interested state commissions and other interested parties.

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4400 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–323–000]

Trunkline Gas Company, LLC; Notice of Tariff Filing

March 5, 2007.

Take notice that on March 1, 2007, Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective April 1, 2007.

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4357 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–316–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 2007.

Take notice that on February 28, 2007, Viking Gas Transmission Company (Viking) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets attached to the filing, to become effective on April 1, 2007.

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4350 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–319–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 2007.

Take notice that on February 28, 2007, Viking Gas Transmission Company (Viking) tendered for filing to be part of its FERC Gas Tariff, First Revised Volume No. 1, Twelfth Revised Sheet No. 5C, to become effective April 1, 2007.

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

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

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4353 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–321–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 2007.

Take notice that on March 1, 2007, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff Second Revised Volume No. 1, Seventh Revised Sheet No. 724, to be effective March 1, 2007.

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4355 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–322–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 2007.

Take notice that on March 1, 2007, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective April 1, 2007.

Sixty-Fifth Revised Sheet No. 15
Thirty-Eighth Revised Sheet No. 15A
Sixty-Third Revised Sheet No. 18
Thirty-Eighth Revised Sheet No. 18A
Thirty-Eighth Revised Sheet No. 19
Thirty-Eighth Revised Sheet No. 20
Eighth Revised Sheet No. 724

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

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

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

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4356 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–40–000]

Californians for Renewable Energy, Inc. (CARE), Complainant v. California Public Utilities Commission, Pacific Gas and Electric Company, Metcalf Energy Center and the Los Medanos Energy Center, LLC, Respondents; Notice of Complaint

March 5, 2007.

Take notice that on March 2, 2007, Californians for Renewable Energy, Inc. (CARE) tendered for filing pursuant to section 206 of the Federal Power Act a complaint against the California Public Utilities Commission (CPUC) for its action on February 15, 2007 authorizing Pacific Gas Electric Company (PG&E) to enter into a power purchase agreement with Metcalf Energy Center, LLC and the Los Medanos Energy Center, LLC, in alleged violation of the ''filed rate doctrine''. CARE requests the contract be subject to the Commission's review under the December 19, 2006 opinions by the U.S. Court of Appeals for the Ninth Circuit in a pair of opinions—*Public Utility Dist. No. 1* v. *FERC 471 F.3d 1053 (9th Cir. 2006) and Public Utility commission of the State of*

California v. *FERC, 2006 U.S. App. LEXIS 31140* (9th Cir. De. 19, 2006)

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

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

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

Comment Date: 5 p.m. Eastern Time on March 22, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4337 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 5, 2007.

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

Docket Numbers: ER07–484–001.

Applicants: Idaho Power Company.

Description: Idaho Power Co. submits a revised Network Integration Service Agreement, Fourth Revised Service Agreement 155, omitted from the 1/30/07 filing.

Filed Date: 02/28/2007

Accession Number: 20070302–0088.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 21, 2007.

Docket Numbers: ER07–494–001.

Applicants: Southern Company Services.

Description: Alabama Power Co. submits a revised Table of Contents to the Small Generator Interconnection Agreement.

Filed Date: 02/28/2007.

Accession Number: 20070302–0087.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 21, 2007.

Docket Numbers: ER07–574–000.

Applicants: Appalachian Power Company.

Description: Appalachian Power Co. submits a Letter Agreement with American Municipal Power-Ohio, Inc and the Blue Ridge Power Authority.

Filed Date: 02/27/2007.

Accession Number: 20070301–0141.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 20, 2007.

Docket Numbers: ER07–575–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Co. submits an amended Network Integration Transmission Service Agreement and an amended Network Operating Agreement with the City of Denver, Iowa.

Filed Date: 02/27/2007.

Accession Number: 20070301–0142.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 20, 2007.

Docket Numbers: ER07–577–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an unexecuted Facilities Construction Agreement with Endeavor Power Partners, LLC *et al.*

Filed Date: 02/28/2007.

Accession Number: 20070302–0092.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 21, 2007.

Docket Numbers: ER07–578–000.

Applicants: CinCap VIII, LLC.

Description: CinCap VIII, LLC submits notice of cancellation of First Revised Sheet 1 to FERC Electric Tariff, Original.

Filed Date: 02/28/2007.

Accession Number: 20070302–0086.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 21, 2007.

Docket Numbers: ER07–579–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an unexecuted amended and restated Generator Interconnection Agreement w/Michigan Electric Transmission Co., LLC etc pursuant Order 614.

Filed Date: 02/28/2007.

Accession Number: 20070302–0089.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 21, 2007.

Docket Numbers: ER07–580–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. (MISO) submits an unexecuted Large Generator Interconnection Agreement w/Michigan Electric Transmission Co, LLC and on 3/2/07 MISO filed an errata to this filing.

Filed Date: 02/28/2007; 03/02/07.

Accession Number: 20070302–0091.

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

Docket Numbers: ER07–581–000.

Applicants: American Electric Power Service Corporation.

Description: AEP Texas North Co submits a fully executed Interconnection Agreement with Buffalo Gap Wind Farm 3, LLC dated 2/20/07.

Filed Date: 03/01/2007.

Accession Number: 20070302–0090.

Comment Date: 5 p.m. Eastern Time on Thursday, March 22, 2007.

Docket Numbers: ER07–582–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits Second Revised Schedule 136, an agreement entitled ''Form of Distribution Facilities Agreement—Electric Standby Service etc.

Filed Date: 03/02/2007.

Accession Number: 20070305–0188.

Comment Date: 5 p.m. Eastern Time on Friday, March 23, 2007.

Docket Numbers: ER07–584–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation, agent for Indiana Michigan Power Co, submits and requests acceptance of a new Power Quality Agreement with Wabash Valley Power Authority etc.

Filed Date: 02/28/2007.

Accession Number: 20070305–0186.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 21, 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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4331 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 6, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–31–000.

Applicants: Diablo Winds, LLC.

Description: Diablo Winds, LLC submits a notice of Self-Recertification as an Exempt Wholesale Generator.

Filed Date: 01/08/2007.

Accession Number: 20070125–0179.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 13, 2007.

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

Docket Numbers: ER03–1413–005.

Applicants: Sempra Energy Trading Corp.

Description: Sempra Energy Trading Corp submits a supplement to its 8/1/06 updated market analysis.

Filed Date: 02/21/2007.

Accession Number: 20070222–0111.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 14, 2007.

Docket Numbers: ER05–1202–002.

Applicants: Blue Canyon Windpower II LLC.

Description: Blue Canyon Windpower II, LLC submits its revised FERC Electric Tariff, First Revised Volume 1.

Filed Date: 02/06/2007.

Accession Number: 20070208–0188.

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

Docket Numbers: ER05–1420–002.

Applicants: Lehman Brothers Commodity Services Inc.

Description: Lehman Brothers Commodity Services Inc. submits a Notice of Non-Material Change.

Filed Date: 02/20/2007.

Accession Number: 20070220–5028.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 13, 2007.

Docket Numbers: ER07–520–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an errata to its Amended Interconnection Agreement with the City of Lebanon, Ohio, filed 2/6/07.

Filed Date: 02/23/2007.

Accession Number: 20070305–0189.

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

Docket Numbers: ER07–576–000.

Applicants: Baltimore Gas and Electric Company.

Description: Baltimore Gas and Electric Co submits revised tariff sheets to its FERC Open Access Transmission Tariff, effective 6/1/07.

Filed Date: 02/28/2007.

Accession Number: 20070305–0128.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 21, 2007.

Docket Numbers: ER07–583–000.

Applicants: Commonwealth Edison Company.

Description: Commonwealth Edison Co submits Sixth Revised Sheet 245 et al to FERC Electric Tariff, Sixth Revised Volume 1, to be effective 5/1/07.

Filed Date: 03/01/2007.

Accession Number: 20070305–0124.

Comment Date: 5 p.m. Eastern Time on Thursday, March 22, 2007.

Docket Numbers: ER07–590–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits a Request for Limited Waiver and Guidance.

Filed Date: 02/23/2007.

Accession Number: 20070223–5067.

Comment Date: 5 p.m. Eastern Time on Friday, March 16, 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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4403 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–452–000]

Trunkline Gas Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed Field Zone Expansion Project

March 5, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed to be constructed by Trunkline Gas Company, LLC (Trunkline) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of:

Texas and Louisiana

• Installation of a 45-mile-long 36-inch-diameter NTX Line-200 Loop natural gas pipeline and associated facilities from the Gate Valve 43 in Jasper County, Texas to the Longville Meter Station in Beauregard Parish, Louisiana, running through Jasper and Newton Counties, Texas and Beauregard Parish, Louisiana.

Texas

• Installation of three meter stations in Hardin County, Jasper Counties, and Liberty County, Texas; and

• Abandonment a 6,350-horsepower (Hp) gas-turbine centrifugal compressor unit replaced with a new 10,350-Hp electric motor-driven compressor unit and for a total of 10,350-Hp of compression at the Kountze Compressor Station in Hardin County, Texas.

Louisiana

• Installation of a 13.5-mile-long 36-inch-diameter Henry Hub Lateral natural gas pipeline and associated facilities along existing pipeline right-of-way (ROW) in Vermilion Parish, Louisiana;

• Installation of two bi-directional meter stations in Vermilion Parish, Louisiana;

• Relocation of two 3,000-Hp compressor units from the Centerville Compressor Station to the Kaplan Compressor Station in Vermilion Parish, Louisiana; and

• Installation of a 10,350-Hp compressor unit at the Longview Compressor Station in Beauregard Parish, Louisiana.

Illinois

• Removal of a 3,000-Hp compressor unit at the Joppa Compressor Station in Massac County, Illinois; modify it and uprate to 5,100-Hp, and then re-install it at the Kaplan Compressor Station in Louisiana.

The purpose of the proposed project is to expand the capacity of Trunkline's natural gas pipeline facilities to allow for the flow of natural gas from expanding gas production in Texas to delivery points in Louisiana.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

• Label one copy of the comments for the attention of the Gas Branch 2, PJ11.2.

• Reference Docket No. CP06–452–000; and

• Mail your comments so that they would be received in Washington, DC on or before April 4, 2007.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you would need to create a free account which can be created by clicking on ''Sign-up.''

Comments would be considered by the Commission but would not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *FERCONLINESUPPORT@FERC.GOV*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov*, click on ''eSubscription'' and then click on ''Sign-up.''

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4335 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: P–2165–022]

Alabama Power Company; Notice of Application and Applicant-Prepared EA Accepted or Filing, Soliciting Motions To Intervene and Protests, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions

March 5, 2007.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2165–022.

c. *Date filed:* July 28, 2005.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Warrior River Hydroelectric Project, which includes the Lewis Smith and Bankhead Developments.

f. *Location:* The Lewis Smith development is located in northwestern Alabama in the headwaters of the Black Warrior River on the Sipsey Fork in Cullman, Walker, and Winston Counties. The Bankhead development is located in central Alabama downstream of the Lewis Smith development, on the Black Warrior River in Tuscaloosa County. The Lewis Smith development occupies 2,691.44 acres of federal lands administered by the U.S. Forest Service, and the Bankhead development occupies 18.7 acres of federal lands administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry L. Stewart, Senior Vice President and Senior Production Officer, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291–8180.

i. *FERC Contact:* Monte TerHaar, Telephone (202) 502–6035, and e-mail *monte.terhaar@ferc.gov*.

j. Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on 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.

Motions to intervene, protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing.

l. The proposed Warrior River Project would consist of two existing developments. The Lewis Smith and Bulkhead developments would operate in peaking mode. The total capacity for all developments is 211.05 MW, generating about 463,094 MWh of energy annually. The project works would include the following:

Lewis Smith Development. The Lewis Smith development, located on the Sipsey Fork of the Black Warrior River, consists of: (1) A total of 2,200 feet of water retaining structures which includes a 300-foot-high earth and rock fill dam, an uncontrolled spillway with fixed crest elevation 522 feet mean seal level (msl), and powerhouse consisting of (a) a 95-foot-long uncontrolled spillway, (b) a 350-foot-wide channel which originates at the spillway and discharges into Mill creek about 3,000 feet downstream of the spillway, and (c) a concrete intake located 120 feet upstream of the dam which provides flows to two 23-foot-diameter, 630-foot-long power tunnels; (2) a 35-mile-long, 21,200-acre reservoir at normal pool elevation 510 feet msl, and capacity of 1,390,000 acre-ft at normal pool elevation 510 feet msl., and 1,670,600 acre-feet at spillway crest elevation 522-ft msl; (3) a 193-foot-long concrete power house, housing two 111,500 horse power vertical fixed-blade turbines and generating units, each rated at 78.75 MW for a total rated capacity of 157.5 MW and having a maximum hydraulic capacity of 5,700 cfs for and total hydraulic capacity of 11,400 cfs; (4) trashracks located at the turbine intakes with 6-inch bar spacing; (5) a substation; and (6) other appurtenances.

Bankhead Development. The Bankhead development is located at the U.S. Army Corps of Engineers (Corps) Lock and Dam No. 17 on the Black Warrior River. The dam, a 1,230-foot-long gated spillway, and 78-mile-long reservoir are owned and operated by the Corps. The Bankhead development consists of a powerhouse and intake canal consisting of: (1) A 54-foot-wide by 100-foot-long gated intake canal; (2) a 135-foot-long powerhouse housing one 71,400 horse power vertical propeller turbine and generating unit, rated at 53.985 MW and having a maximum hydraulic capacity of 10,388 cfs; (3) thirty-five trashracks located at the turbine intakes with 6-inch bar spacing; (4) penstocks; (5) a substation; and (6) other appurtenances.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. 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, .211, .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.

All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply

with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:*

At this time we do not anticipate the need for preparing a draft environmental assessment. Recipients will have 60 days to provide the Commission with any written comments on the environmental assessment (EA). All comments filed with the Commission will be considered in the Order taking final action on the license applications. However, should substantive comments requiring re-analysis be received on the EA, we will consider preparing a subsequent EA. The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, terms and conditions, and prescriptions.	(May 2007).
Notice of Availability of the EA (single EA).	(September 2007).

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4342 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2301–022]

PPL Montana; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditons, and Preliminary Fishway Prescriptions

March 5, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2301–022.

c. *Date filed:* December 15, 2006.

d. *Applicant:* PPL Montana.

e. *Name of Project:* Mystic Lake Hydroelectric Project.

f. *Location:* The existing project is located on West Rosebud Creek in Stillwater and Carbon Counties, Montana. The project occupies about 674 acres of federal lands in the Custard National Forest managed by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jon Jourdonnais, PPL Montana, 45 Basin Creek Road, Butte, MT 59701; Telephone (406) 533–3443; e-mail *jhjourdonnais@pplweb.com.* Additional information on this project is available on the applicant's Web site: *http://www.mysticlakeproject.com*

i. *FERC Contact:* Steve Hocking, Telephone (202) 502–8753; e-mail *steve.hocking@ferc.gov.* Additional information on Federal Energy Regulatory Commission (FERC) hydroelectric projects is available on FERC's Web site: *http://www.ferc.gov/industries/hydropower.asp*

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on 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.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov* under the ''e-Filing'' link.

k. This application has been accepted for filing and is ready for environmental analysis.

l. *Project Description:* The existing project consists of the following: (1) A 368-foot-long, 45-foot-high, concrete arch dam/spillway; (2) 42-inch high timber flashboards on top of the arch spillway; (3) a 145-foot-long, 15-foot-high concrete core and earthfill dike with 1-foot-high flashboards; (4) Mystic Lake with a storage capacity of 47,000 acre-feet and a surface area of 446.7 acres at its normal maximum surface elevation of 7,673.5 feet above msl; (5) a 33-foot-long, 7-foot-high, by 9-foot-wide concrete intake structure at the left abutment of the dike; (6) a conduit from the intake structure to the powerhouse consisting of a 1,005-foot-long rock tunnel, a 9,012-foot-long, 57-inch steel pipeline with an inverted siphon near the mid-point of the pipeline, a surge tank, and a 2,566-foot-long by 42 to 48-inch diameter steel penstock; (7) a 60-foot-wide by 85-foot-long concrete powerhouse with two turbine-generator units with a total installed capacity of 11.25 megawatts; (8) two concrete tunnels that extend from the powerhouse into West Rosebud Creek; (9) a re-regulation dam about one mile downstream from the Mystic Lake powerhouse consisting of a 19-foot-high, 420-foot-long earthfill dike with a concrete spillway and flashboards; (10) West Rosebud Lake with a storage capacity of 470 acre-feet and a surface area of 49 acres at its normal maximum surface elevation of 6,397.4 feet above msl; (11) two 5.3-mile-long, 50-kilovolt transmission lines; (12) a 9,363-foot-long distribution line from the powerhouse to the arch dam and a 2,068-foot-long distribution line from the powerhouse to the surge tank; (13) an operator village adjacent to the powerhouse with four homes and three maintenance buildings; and (14) appurtenant facilities.

PPL Montana currently operates the project in both base load and peaking modes depending on water availability, electric demands, and existing license constraints. Typically, from mid-May to mid-August, inflows exceed the project's hydraulic capacity and the project is operated as a base load plant, continuously generating at maximum capacity. During this time, flows above the project's hydraulic capacity are captured in Mystic Lake which is gradually raised about 15 to 20 feet per month until it exceeds the project's current minimum recreation elevation of 7,663.5 feet msl. In most years, Mystic Lake is maintained about ten feet higher than the minimum recreation elevation during July and August.

After Labor Day, PPL Montana begins to slowly draft Mystic Lake, reducing its elevation by an average of 8 to 9 feet per month, until the lake is at or near its lowest elevation of 6,512.0 feet msl by the end of March. Drafting the lake permits PPL Montana to release more water into West Rosebud Creek than otherwise would be available from inflows from August through March. During the fall and early winter, PPL Montana employs limited peaking to maximize generation during high use periods, generally from 8 a.m. to 4 p.m. daily. In general, flow changes caused by peaking do not extend further than the project's re-regulation dam which creates West Rosebud Lake located about one mile downstream of the powerhouse.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protect, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .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.

All filings must: (1) Bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMARY TERMS AND CONDITONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:*

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Interventions, recommendations, preliminary terms and conditions, and fishway prescriptions due	May 4, 2007.
Reply comments due	June 18, 2007.
FERC issues single EA (without a draft)	August 31, 2007.
Comments on EA due	October 1, 2007.
Modified terms and conditions due	November 30, 2007.
Ready for Commission decision	February 2008.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in § 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4343 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance at Midwest ISO Meetings

March 5, 2007.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following Midwest ISO meetings:

- Advisory Committee (10 a.m.–4 p.m., EST)
  - March 14
  - May 16
  - June 20
  - July 18
  - August 15
  - September 19
  - October 17
  - November 14
  - December 12
- Board of Directors (8:30 a.m.–10 a.m., EST)
  - March 15
  - April 19
  - June 21
  - August 16
  - October 18
  - December 13
- Board of Directors Markets Committee (8 a.m.–10 a.m., EST)
  - March 14
  - May 16
  - June 20
  - July 18
  - August 15

- ○ September 19
- ○ October 17
- ○ November 14
- ○ December 12
- Midwest ISO Informational Meetings (12 noon–3 p.m., EST)
- ○ April 9
- ○ May 7
- ○ June 4
- ○ July 9
- ○ August 6
- ○ September 10
- ○ October 8
- ○ November 5
- ○ December 3

All of the meetings above will be held at: Midwest ISO Headquarters, 701 City Center Drive and, 630 West Carmel Drive, Carmel, IN 46032.

- Third Annual Midwest ISO Stakeholders' Meeting (10 a.m.–5 p.m., EST)
- ○ April 18, University Place Hotel & Conference Center, 850 West Michigan Street, Indianapolis, IN 46202.

Further information may be found at *http://www.midwestiso.org.*

The discussions at each of the meetings described above may address matters at issue in the following proceedings:

Docket No. ER02–2595, *et al., Midwest Independent Transmission System Operator, Inc.*
Docket No. ER04–375, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER04–458, *et al., Midwest Independent Transmission System Operator, Inc.*
Docket Nos. ER04–691, EL04–104 and ER04–106, *et al., Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER05–6, *et al., Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER05–752, *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*
Docket No. ER05–1083, *et al., Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER05–1085, *et al., Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–1138, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–1201, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–1230, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL05–103, *Northern Indiana Power Service Co.* v. *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*
Docket No. EL05–128, *Quest Energy, L.L.C. v. Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–18, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–27, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket Nos. EC06–4 and ER06–20, *LGE Energy LLC, et al.*
Docket No. ER06–360, *et al., Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER06–356, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–532, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL06–31, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. EL06–49, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER06–56, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–478, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–550, *Midwest Independent Transmission System Operator, Inc.*

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov,* or Christopher Miller, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–4341 Filed 3–9–07; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (Eastern Time) March 19, 2007.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the February 20, 2007 Board member meeting.
2. Thrift Savings Plan activity report by the Acting Executive Director.
   a. Monthly Participant Activity Report.
   b. Monthly Investment Performance Report.
   c. Legislative Report.
3. Dormant Accounts.
4. Behavior and Demographics Report.

Parts Closed to the Public

5. Personnel.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: March 8, 2007.

Thomas K. Emswiler,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 07–1176 Filed 3–8–07; 3:52 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–06AC]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Low Back Exposure Assessment Tool for Mining—NEW—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Federal Mine Safety & Health Act of 1977, Section 501, enables CDC/NIOSH to carry out research relevant to the health and safety of workers in the mining industry. Mining has one of the highest incidence rates for back pain of any industry, and back injuries are

consistently the leading cause of lost work days in the industry. The objective of this project is to develop a self-administered, paper and pencil risk assessment tool for the development of low back disorders specifically directed towards use in the mining industry. Many current methods of assessing the risk of low back disorders do not address stressors that are relatively unique to the mining environment, including the restricted vertical spaces in many coal mines that require workers to adopt stooping or kneeling postures for extended periods of their workday.

The low back exposure assessment tool for mining will assess various occupational exposures associated with development of back disorders in the literature (postural demands, lifting, whole body vibration exposure, individual and psychosocial issues), as well as specific mining stressors and will develop a score that will be used to assess the degree of risk for the job and the individual. The tool will be useful in both prioritizing jobs that need interventions to reduce low back disorder risk, and in evaluating the effectiveness of interventions through tool administration before and after the implementation of an intervention. There will be no cost to respondents other than their time. The total estimated annualized burden hours are 80.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Surface and Underground Miners	320 miners	1	15/60

Dated: March 5, 2007.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–4368 Filed 3–9–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Tribal Child Support Enforcement Direct Funding Request and Reports

OMB No. 0970–0218

Description: The final rule within 45 CFR part 309, published in the **Federal Register** on March 30, 2004, contains a regulatory reporting requirement that in order to receive funding for a Tribal IV–D program a Tribal or Tribal organization must submit a plan describing how the Tribe or Tribal organization meets or plans to meet the objectives of section 455(f) of the Social Security Act, including establishing paternity, establishing, modifying, and enforcing support orders, and locating noncustodial parents. The plan is required for all Tribes requesting funding; however, once a Tribe has met the requirements to operate a comprehensive program, a new plan is not required annually unless a Tribe makes changes to its title IV–D program. Tribes and Tribal organizations must respond if they wish to operate a fully funded program. In addition, any Tribe or Tribal organization participating in the program will be required to submit form OCSE 34A. This paperwork collection activity is set to expire in April 2007.

Respondents: Tribes and Tribal Organizations.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
45 CFR 309—Plan	33	1	480	15,840
Form OCSE 34A	49	4	8	1,568

Estimated Total Annual Burden Hours: 17,408.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 6, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–1144 Filed 3–9–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Immune Globulins for Primary Immune Deficiency Diseases: Antibody Specificity, Potency and Testing; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled: Immune Globulins for Primary Immune Deficiency Diseases: Antibody Specificity, Potency and Testing. The purpose of the public workshop is to discuss approaches to identify the most relevant antibody specificities in Immune Globulins for the prevention of infections in patients with primary immune deficiency diseases (PIDD), and current and potential potency tests for Immune Globulins. The public workshop will also include a discussion about the declining measles antibody levels in U.S. licensed Immune Globulins and the potential clinical impact on patients with PIDD. The public workshop sponsors are FDA, the Immune Deficiency Foundation, and the Plasma Protein Therapeutics Association.

Date and Time: The public workshop will be held on April 25, 2007, from 8 a.m. to 5 p.m., and April 26, 2007, from 8:30 a.m. to 11:30 a.m.

Location: The public workshop will be held at the Lister Hill Center Auditorium, Building 38A, National Institutes of Health, 8800 Rockville Pike, Bethesda, MD 20894.

Contact Person: Rhonda Dawson, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6129, FAX: 301–827–2843, e-mail: *rhonda.dawson@fda.hhs.gov*.

Registration: Mail or fax your registration information (including name, title, firm name, address, telephone and fax numbers) to the contact person by April 6, 2007. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space available basis beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Rhonda Dawson at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The public workshop will feature presentations by national and international experts from government, academic institutions, and industry. The first day of the workshop will include discussions on: (1) Epidemiology of serious infections in PIDD patients; (2) review of European and U.S. PIDD registry data; (3) surveillance questions to address the type, rate, and severity of infections in PIDD patients; (4) rationale for current potency tests for Immune Globulins; (5) antibody levels in current Immune Globulins, including those levels to emerging pathogens; and (6) the development of additional or other useful potency tests. The second day of the workshop will focus on the potential clinical impact on PIDD patients of declining measles antibody levels in U.S. licensed Immune Globulins.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page. A transcript of the public workshop will be available on the Internet at *http://www.fda.gov/cber/minutes/workshop-min.htm*.

Dated: March 5, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–4313 Filed 3–9–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Healthcare Integrity and Protection Data Bank for Final Adverse Information on Health Care Providers, Suppliers, and Practitioners (OMB No. 0915–0239)—Extension

Section 221 (a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 specifically directs the Secretary to establish a national health care fraud and abuse data collection program for the reporting and disclosure of certain final adverse actions taken against health care providers, suppliers, and practitioners. A final rule was published October 26, 1999, in the **Federal Register** to implement the statutory requirements of section 1128E of the Social Security Act (The Act) as added by section 221 (a) of HIPAA. The Act requires the Secretary to implement the national health care fraud and abuse data collection program. This data bank is known as the Healthcare Integrity and Protection Data Bank (HIPDB). It contains the following types of information: (1) Civil judgments against a health care provider, supplier, or practitioner in Federal or State court related to the delivery of a health care item or service; (2) Federal or State criminal convictions against a health care provider, supplier, or practitioner related to the delivery of a health care item or service; (3) actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, or practitioners; (4) exclusion of a health care provider, practitioner or supplier from participation in Federal or State health care programs; and (5) any other adjudicated actions or decisions that the Secretary shall establish by regulations. Access to this data bank is limited to

Federal and State Government agencies and health plans.

The reporting forms and the request for information forms (query forms) must be accessed, completed, and submitted to the HIPDB electronically through the HIPDB Web site at *http://www.npdb-hipdb.hrsa.gov.* All reporting and querying is performed through this secure Web site. Due to overlap in requirements for the HIPDB, some of the National Practitioner Data Bank's burden has been subsumed under the HIPDB.

Estimates of burden are as follows:

Regulation citation	Number of respondents	Frequency of responses	Hours per response (min.)	Total burden hours
61.6(a), (b) Errors & Omissions	172	4.3	15	184.9
61.6 Revisions/Appeal Status	107	23.25	30	1,243.9
61.7 Reporting by State Licensure Boards	275	70.3	45	14,499.4
61.8 Reporting of State Criminal Convictions	62	8	45	372
61.9 Reporting of Civil Judgments	54	13	45	526.5
61.10(b) Reporting Exclusions from participating in Federal and State Health Care Programs	10	441.4	45	3,310.5
61.11 Reporting of adjudicated actions/decisions	410	12.5	45	3,843.8
61.12 Request for Information—State Licensure Boards	1,000	67.5	5	5,622.8
61.12 Request for Information—State Certification Agencies	16	6	5	8
61.12 Request for Information States/District Attorneys & Law Enforcement	2,000	25	5	4,165
61.12 Request for Information—State Medicaid Fraud Units	47	50	5	195.8
61.12 Request for Information—Health Plans	2,841	263.8	5	62,429.7
61.12 Request for Information—Health Care Providers, Suppliers, Practitioners (Self-query)	37,925	1	25	15,799.6
61.12(a)(4) Request by Researchers for Aggregate Data	1	1	30	.5
61.15 Place Report in Dispute	459	1	5	38.2
61.15 Add a Subject Statement	238	1	45	178.5
61.15 Request for Secretarial Review	43	1	480	344
Entity Registration	2,500	1	60	2,500
Entity Registration—Update	451	1	5	37.6
Entity Reactivation	450	1	60	450
Authorized Agent Designation	100	1	15	25
Authorized Agent Designation—Update	250	1	5	20.8
Account Discrepancy	1,000	1	15	250
Electronic Funds Transfer Authorization	400	1	15	100
Total				116,146.5

Numbers in the table may not add up exactly due to rounding.

Send comments to Susan G. Queen, PhD, HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 5, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Development.

[FR Doc. E7–4411 Filed 3–9–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (44 U.S.C. 3506(c)(2)(A)), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Organ Procurement and Transplantation Network (OMB No. 0915–0286)—Extension

The Organ Procurement and Transplantation Network (OPTN) necessitates certain recordkeeping and reporting requirements in order to perform the functions related to organ transplantation under contract to HHS. OMB requires review and approval of recordkeeping and reporting requirements associated with the final rule governing the operation of the OPTN (42 CFR Part 121) related to Secretarial review and appeals. There are recordkeeping and reporting requirements associated with the process for filing appeals in the case where applicants are rejected for membership or designation in the OPTN. To date, no appeals have been filed. The burden requirements for this process are minimal. The estimate of burden for this process consists of preparing a letter requesting reconsideration and compiling supporting documentation.

The estimated annual burden is as follows:

Section of final rule	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
42 CFR 121.3(c)(4) Appeal for OPTN membership	2	1	2	3	6
42 CFR 121.9(d) Appeal for designation	2	1	2	6	12
Total	4		4		18

Send comments to Susan G. Queen, PhD, HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 5, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Development.

[FR Doc. E7–4412 Filed 3–9–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revised information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the National Flood Insurance Program (NFIP) Community Rating System (CRS) Coordinator's Manual, accompanying worksheets and application form. The CRS Coordinator's Manual is the primary document used by CRS participating communities that describes the CRS program and the community-based floodplain management activities performed by participating communities.

SUPPLEMENTARY INFORMATION: The NFIP CRS was established by Congress in section 541, Community Rating System and Incentives for Community Floodplain Management, of the National Flood Insurance Reform Act of 1994. The CRS was established to (1) Reduce flood losses; (2) facilitate accurate insurance rating, and; (3) promote the awareness of flood insurance. The CRS encourages these goals by providing flood insurance premium discounts to policy holders in those communities that implement activities and programs that directly support the goals stated above. Communities are only eligible to participate in the CRS if they have been found to be compliant with the floodplain management requirements of the NFIP, as determined by the applicable FEMA Regional Office. The data collected from CRS communities, as described in the CRS Coordinator's Manual and by using the worksheets, is used and is necessary to evaluate if the community is implementing the activities to which it has agreed.

Collection of Information

Title: Community Rating System (CRS) Program—Application Worksheets and Commentary.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0022.

Form Numbers: FEMA FORM 81–73, Community Rating System Application.

Abstract: CRS Application Cover Page, Recertification Worksheet and Modification/Cycle Cover Page are used by a community to apply or renew CRS program participation and specify what activities will be performed by the community. CRS Activity Worksheets are used by the community to provide details in the selected activities based on the CRS Coordinator's Manual.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Hour Burden: 8,450 hours.

ANNUAL HOUR BURDEN

Project/activity	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (hours) (C)	Annual responses (D) = (A × B)	Total annual hour burden (hours) (E) = (C × D)
Application Form/Worksheet	150	1	31	150	4,650
Maintenance Form/Worksheet	950	1	4	950	3,800
Total	1,100			1,100	8,450

Estimated Cost: There is no expected cost to the respondents. The estimated annual cost to the Federal Government is $2,288,792.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of

responses. Comments must be submitted on or before May 11, 2007.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 609, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact William H. Lesser, Program Specialist, Mitigation Division, Federal Emergency Management Agency, at (202) 646–2807 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: March 6, 2007.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–4430 Filed 3–9–07; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1687–DR]

Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1687–DR), dated March 3, 2007, and related determinations.

DATES: *Effective Date:* March 6, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the Public Assistance program and the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 3, 2007:

Dale, Dallas, Henry, Montgomery, and Wilcox Counties for Individual Assistance.

Coffee County for Public Assistance (already designated for Individual Assistance).

Henry and Wilcox Counties for Public Assistance.

All counties within the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–4431 Filed 3–9–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1687–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1687–DR), dated March 3, 2007, and related determinations.

DATES: *Effective Date:* March 3, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 3, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alabama resulting from severe storms and tornadoes on March 1, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d).

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance and Hazard Mitigation are later warranted, Federal funding under these programs will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, Department of Homeland Security, under Executive Order 12148, as amended, Gracia B. Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Alabama to have been affected adversely by this declared major disaster:

Coffee County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–4432 Filed 3–9–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1686–DR]

Georgia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1686–DR), dated March 3, 2007, and related determinations.

DATES: *Effective Date:* March 6, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the Public Assistance program and the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 3, 2007:

Baker, Crawford, McDuffie, Mitchell, and Taylor Counties for Individual Assistance.

Sumter County for Public Assistance (already designated for Individual Assistance).

Baker, Clay, Crawford, McDuffie, Mitchell, Muscogee, Stewart, and Taylor Counties for Public Assistance.

All counties within the State of Georgia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–4433 Filed 3–9–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1686–DR]

Georgia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1686–DR), dated March 3, 2007, and related determinations.

DATES: *Effective Date:* March 3, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 3, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Georgia resulting from severe storms and tornadoes during the period of March 1–2, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d).

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance and Hazard Mitigation are later warranted, Federal funding under these programs will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, Department of Homeland Security, under Executive Order 12148, as amended, Michael Bolch, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Georgia to have been affected adversely by this declared major disaster:

Sumter County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–4434 Filed 3–9–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1678–DR]

Oklahoma; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1678–DR), dated February 1, 2007, and related determinations.

DATES: *Effective Date:* March 5, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a

major disaster by the President in his declaration of February 1, 2007:

Cleveland and McClain Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–4435 Filed 3–9–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1673–DR]

Missouri; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1673–DR), dated December 29, 2006, and related determinations.

DATES: *Effective Date:* March 2, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 29, 2006:

Callaway, Camden, Marion, and Miller Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–4436 Filed 3–9–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5123–N–06]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Doctoral Dissertation Research Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* May 11, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, 202–708–3061, ext. 3852 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the Doctoral Dissertation Research Grant Program.

OMB Control Number: 2528–0213.

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for award in this statutorily created competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Numbers: SF–424, SF–424 Supplemental, HUD–424–CB, SF–LLL, HUD–27300, HUD–2880, HUD–2994, HUD–96010 and HUD–96011.

Members of the Affected Public: PhD students preparing their dissertations on HUD-related topics.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on a quarterly, semi-annual and annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	80	80	32	2560
Semi-Annual Reports	15	30	4	120
Final Reports	15	15	2	30
Recordkeeping	15	15	4	60

	Number of respondents	Total annual responses	Hours per response	Total hours
Total	125	140	42	2770

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 2, 2007.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

[FR Doc. E7–4307 Filed 3–9–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5123–N–05–]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Early Doctoral Student Research Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* May 11, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8234, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, 202–708–3061, ext. 3852 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected, and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the Early Doctoral Student Research Grant Program.

OMB Control Number: 2528–0216.

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for award in this statutorily created competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Numbers: SF–424, SF–424 Supplemental, HUD–424–CB, SF–LLL, HUD–27300, HUD–2880, HUD–2994, HUD–96010 and HUD–96011.

Members of the Affected Public: PhD students early in their doctoral studies preparing research papers on HUD-related topics.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on a quarterly, semi-annual and annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	80	80	32	2560
Semi-Annual Reports	15	30	4	120
Final Reports	15	15	2	30
Recordkeeping	15	15	4	60
Total	125	140	42	2770

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 2, 2007.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

[FR Doc. E7–4308 Filed 3–9–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5123–N–04]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Historically Black Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* May 11, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8234, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, 202–708–3061, ext. 3852 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected, and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the Historically Black Colleges and Universities (HBCU) Program.

OMB Control Number: 2528–0235.

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for award in this statutorily created competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Numbers: SF–424, SF–424 Supplemental, HUD–424–CB, SF–LLL, HUD–2880, HUD–2993, HUD–2994–A, HUD–40076, HUD–96010, HUD–96011 and HUD–27300.

Members of the Affected Public: Historically Black Colleges and Universities (HBCU).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on a quarterly, semi-annual and annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	105	105	200	21,000
Quarterly Report	75	300	24	7,200
Semi-Annual Reports	60	120	48	5,760
Final Reports	15	15	60	900
Recordkeeping	135	135	24	3,240
Total	390	675	356	38,100

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 2, 2007.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

[FR Doc. E7–4309 Filed 3–9–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4912–N–21]

Notice of Availability of a Draft Environmental Impact Statement for the Westpark Master Plan Redevelopment Project, City of Bremerton, WA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development (HUD) gives this notice to the public, agencies and Indian Tribes on the availability for public review and comment of the Draft Environmental Impact Statement for the redevelopment of the Westpark public housing community in Bremerton, WA. HUD gives this notice on behalf of the City of Bremerton acting as the Responsible Entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 24 CFR 58.4, and jointly the Bremerton Housing Authority (BHA) acting as lead agency for compliance with the Washington State Environmental Policy Act (SEPA). This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508.

Notice is also given that the City of Bremerton as Responsible Entity has decided to combine the National Historic Preservation Act, Section 106 process with the NEPA Environmental Impact Statement (EIS) in accordance with 36 CFR 800.8(c). Comments are also being requested on the Section 106 information presented in the Draft EIS as well as on the Section 106 process itself.

DATES: Written comments on the Draft EIS must be received by April 20, 2007. Written comments should be addressed to the individual named below under the heading **FOR FURTHER INFORMATION CONTACT**.

Public Meeting: A public meeting will be held during the comment period in order to ensure public participation. The public meeting will be held on March 22, 2007, from 5:30 p.m. to 7:30 p.m. The public comment meeting will be held at the Westpark Community Center, 79 Russell Road, Bremerton, WA.

FOR FURTHER INFORMATION CONTACT: Andrea Spencer, City of Bremerton Department of Community Development, 345 6th Street, Suite 600, Bremerton, WA 98337–1873; telephone number (360) 473–5283; fax number (360) 473–5278; e-mail *Andrea.Spencer@ci.bremerton.wa.us.*

Copies of the DEIS are available at the above address. The DEIS is also available on the internet and can be viewed or downloaded at: *http://ci.bremerton.wa.us.*

SUPPLEMENTARY INFORMATION: The Westpark public housing development was originally constructed in the early 1940s to provide temporary homes for defense workers and their families

during World War II. The 82-acre site is located in West Bremerton, and is bounded by Kitsap Way on the north, Oyster Bay Road on the east, and State Route 3 on the west. There are currently 631 public housing units on the site, a community center and other community facilities. The existing site is physically isolated and physically deteriorated, and in 2003 it was designated as ''blighted'' by the City of Bremerton for purposes of community renewal efforts pursuant to the state Community Renewal Law (Chapter 35.81 Revised Code of Washington).

The Westpark Redevelopment, sponsored by the Bremerton Housing Authority, would demolish all existing housing structures and infrastructure and redevelop the site as a mixed-use, mixed-income, pedestrian oriented, and a master planned community. It would contain approximately 759 housing units; 60,000 square feet of commercial uses in a 5-acre village center and in mixed-use buildings; and 28 acres of parks and open space. New housing would be for sale and for rent, single family and multi-family, and would incorporate low income, affordable and market rate units to meet a variety of housing needs. All existing public housing units will be replaced either on-site (190 units) or off-site (441), at locations in the City and Kitsap County; no net loss of low income housing units would occur. The project will require relocation of all existing residents. Alternatives to be considered in the EIS include No Action (involving no redevelopment) and a Design Alternative (with a larger retail area, the same number of housing units, and additional stormwater controls). Mitigation measures are identified in the DEIS.

Questions may be directed to the individual named above under the heading of **FOR FURTHER INFORMATION CONTACT**.

Dated: March 2, 2007.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. E7–4447 Filed 3–9–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; as Amended; Amendments to an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed amendment of an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), the Office of the Secretary of the Department of the Interior is issuing public notice of its intent to amend an existing Privacy Act system of records notice, Interior, OS–45, ''Security Clearance Files and Other Reference Files,'' to implement Homeland Security Presidential Directive 12 (HSPD–12). HSPD–12 requires Federal agencies to use a common identification credential for both logical and physical access to federally controlled facilities and information systems. Accordingly, the National Business Center, within the Office of the Secretary of the Department of the Interior, is implementing an identity management system to automate the process of issuing credentials to all Departmental employees, contractors, volunteers and other individuals who require regular, ongoing access to agency facilities and information systems and networks, based on sound criteria to verify an individual's identity, that are strongly resistant to fraud, tampering, counterfeiting, and terrorist exploitation, and that provide for rapid, electronic authentification of personal identity, by a provider whose reliability has been established through an official accreditation process. For this reason, it is renaming and renumbering Interior, OS–45, ''Security Clearance Files and Other Reference Files,'' as Interior, DOI–45: ''HSPD–12: Identity Management System and Personnel Security Files.''

DATES: *Effective Date:* U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the agency's intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this proposed amendment may do so by submitting comments in writing to the Office of the Secretary Privacy Act Officer, Sue Ellen Sloca, U.S. Department of the Interior, MS–120 SIB, 1951 Constitution Avenue, NW., Washington, DC 20240, or by e-mail to *Sue_Ellen_Sloca@nbc.gov*. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. The Department will publish a revised notice if changes are made based upon a review of comments received.

FOR FURTHER INFORMATION CONTACT: David VanderWeele, Security Specialist, NBC Security Services, MS–1229 MIB, 1849 C St., NW., Washington, DC 20240, or by e-mail to *David_A_Vanderweele@nbc.gov*.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is amending Interior, OS–45, ''Security Clearance Files and Other Reference Files'' to implement HSPD–12, and is renaming and renumbering it as Interior, DOI–45: ''HSPD–12: Identity Management System and Personnel Security Files.'' In the process, it is expanding the categories of individuals covered by the system to include all individuals who require regular, ongoing access to Departmental facilities and information systems and networks, and is expending the categories of records in the system to include additional personal identity verification (PIV) data such as fingerprints and copies of documents used to verify identification.

Note: This system notice also does not apply to individuals who require regular, ongoing access to facilities and information systems and networks managed by other Federal agencies on whose behalf the Department issues identification credentials, as a shared-service provider. Although data pertaining to these individuals are stored in the Department's identity management system, their records are covered, respectively, by their individual agency Privacy Act system of records notices.

Accordingly, the Department of the Interior proposes to amend the system notice for Interior, OS–45, ''Security Clearance Files and Other Reference Files'' in its entirety to read as follows:

Dated: March 7, 2007.

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer.

INTERIOR/DOI–45

SYSTEM NAME:

HSPD–12: Identity Management System and Personnel Security Files—Interior, DOI–45.

SYSTEM LOCATION:

Data covered by this system are maintained at the following locations:

(1) U.S. Department of the Interior, Office of the Secretary, National Business Center, 7301 West Mansfield Avenue, Mail Stop D–7200, Denver, CO 80225; U.S. Department of the Interior, Office of the Secretary, National Business Center, 1849 C St., NW., Mail Stop 1224 MIB, Washington, DC 20240.

(2) Bureau of Indian Affairs: Bureau of Indian Affairs, Office of Human Capital

Management, 1011 Indian School Road, NW., Mail Stop 64, Albuquerque, NM 87104.

(3) Bureau of Indian Education: Bureau of Indian Affairs, Office of Human Resources, P.O. Box 769, Albuquerque, NM 87103.

(4) Bureau of Land Management: Bureau of Land Management, Office of Law Enforcement and Security, 1620 L Street, NW., Washington, DC 20036.

(5) Bureau of Reclamation: Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225.

(6) Minerals Management Service: Minerals Management Service, 381 Elden Street, Mail Stop 2050, Herndon, VA 20170.

(7) National Park Service: National Park Service, Office of Human Resources, 1201 Eye Street, NW., 12th Floor, Washington, DC 20005–5912.

(8) Office of Surface Mining, Reclamation and Enforcement: Office of Surface Mining, Reclamation and Enforcement, 1951 Constitution Avenue, NW., SIB, Washington, DC 20240.

(9) Office of the Inspector General: Office of the Inspector General, 12030 Sunrise Valley Drive, Suite 350, Mail Stop 5341, Reston, VA 20191.

(10) Office of the Secretary/National Business Center: See (1), above.

(11) Office of the Solicitor: Office of the Solicitor, Division of Administration, 1849 C St., NW., Mail Stop 6556 MIB, Washington, DC 20240.

(12) U.S. Fish and Wildlife Service: U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Arlington, VA 22203.

(13) U.S. Geological Survey: U.S. Geological Survey, 250 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who require regular, ongoing access to Departmental facilities, information systems and networks, and/or information classified in the interest of national security, including applicants for employment or contracts with the Department of the Interior, Departmental employees, contractors, students, interns, volunteers, affiliates, and individuals formerly in any of these positions. The system also covers individuals authorized to perform or use services provided in Departmental facilities (e.g., Credit Union, Fitness Center, etc.)

Note: This system notice does not apply to occasional visitors or short-term guests to whom the Department issues temporary identification and credentials. These records are covered by Interior/DOI–46, ''HSPD–12: Physical Security System Files.'' This system notice also does not apply to individuals who require regular, ongoing access to facilities and information systems and networks managed by other Federal agencies on whose behalf the Department issues identification credentials, as a shared-service provider. Although data pertaining to these individuals are stored in the Department's identity management system, their records are covered, respectively, by their individual agency Privacy Act system of records notices. Additionally, this system notice does not apply to individuals accused of security violations or found to be in violation. Records relating to personnel and building security violations will be covered by Interior/OS–18: ''Security Complaints and Investigations Files.''

(2) Employees of independent agencies, councils and commissions (which are provided administrative support by the Department of the Interior), whose duties have been designated ''special sensitive,'' ''critical sensitive,'' ''noncritical sensitive'' or ''clearance for FEMA special access program.''

(3) Individuals who require regular, ongoing access to facilities and information systems and networks managed by other Federal agencies on whose behalf the Department provides enrollment services but not identification credentials.

Note: Information on these individuals is maintained for the minimum time required to process it before secure transmission to another agency's identity management system through a third party enrollment broker. Records pertaining to these individuals are covered, respectively, by their individual agency Privacy Act system of records notices.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Copies of forms SF 85, SF 85P, SF 85P–S, SF 86, SF 86A, SF 86C, and FD 258 as supplied by individuals covered by the system.

(2) Name, former names, birth date, birth place, Social Security Number, signature, home address, e-mail address, phone numbers, employment history, residential history, education and degrees earned, names of associates and references and their contact information, citizenship, names of relatives, birthdates and places of relatives, citizenship of relatives, names of relatives who work for the Federal government, criminal history, mental health history, drug use, financial information, fingerprints, summary report of investigation, results of suitability decisions, level of security clearance, date of issuance of security clearance, and requests for appeal.

(3) Copies of letters of transmittal between the Department of the Interior and the Office of Personnel Management concerning the covered individual's background investigation, and copies of certification of clearance status and briefings and/or copies of debriefing certificates signed by the individual, as appropriate. Card files contain case file summaries, case numbers and dispositions of case files following review.

(4) Copies of personal identity verification (PIV) application forms as supplied by individuals covered by the system.

(5) Records maintained on individuals issued credentials by the Department include the following data fields: Full name, Social Security Number; date of birth; signature; image (photograph); fingerprints; hair color; eye color; height; weight; home address; work address; e-mail address; agency affiliation (i.e., employee, contractor, volunteer, etc.); telephone numbers; PIV card issue and expiration dates; personal identification number (PIN); results of background investigation; PIV request form; PIV registrar approval signature; PIV card serial number; emergency responder designation; copies of ''I–9'' documents (e.g., driver's license, passport, birth certificate, etc.) used to verify identification or information derived from those documents such as document title, document issuing authority, document number, or document expiration date; level of national security clearance and expiration date; computer system user name; user access and permission rights, authentication certificates; and digital signature information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive orders 10450, 10865, 12333, and 12356; sections 3301 and 9101 of title 5, U.S. Code; sections 2165 and 2201 of title 42; U.S. Code; sections 781 to 887 of title 50, U.S. Code; parts 5, 732, and 736 of title 5, Code of Federal Regulations; Homeland Security Presidential Directive 12, Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004; 5 U.S.C. 301; Federal Information Security Act (Pub. L. 104–106, sec. 5113); Electronic Government Act (Pub. L. 104–347, section 203); the Paperwork Reduction Act of 1995 (44 U.S.C. 3501); the Government Paperwork Elimination Act (Pub. L. 105–277, 44 U.S.C. 3504); and the Federal Property and Administrative Act of 1949, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

THE PRIMARY PURPOSES OF THE SYSTEM ARE:

(1) To document and support decisions regarding

(a) Clearance for access to classified information;

(b) Suitability, eligibility, and fitness for service of applicants for Federal employment and contract positions, including students, interns, or volunteers to the extent their duties require regular, ongoing access to Departmental facilities and information systems and networks; and

(2) To verify the identity of individuals issued common identification credentials by the Department in compliance with the HSPD–12 directive.

(3) To ensure the safety and security of Departmental facilities and information systems and networks, and their occupants and users.

Note: This system interfaces with the Department's physical security system, covered by Interior/DOI–46, ''HSPD–12: Physical Security Files,'' and the Department's logical security system, covered by Interior/DOI–47, ''HSPD–12: Logical Security Files (Enterprise Access Control Service / EACS).'' This system will also interface with the Department's Federal Payroll and Personnel System (FPPS), covered by Interior/DOI–85, ''Payroll, Attendance, Retirement, and Leave Records.''

DISCLOSURES OUTSIDE THE DEPARTMENT OF THE INTERIOR MAY BE MADE:

(1) To the Office of Personnel Management for matters concerned with oversight activities (necessary for the Office of Personnel Management to carry out its legally-authorized Government-wide personnel management programs and functions.)

(2)(a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(3) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the congressional office about the individual.

(4) To the Federal Protective Service and appropriate Federal, State, local or foreign agencies responsible for investigating emergency response situations or investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license, when DOI becomes aware of a violation or potential violation of a statute, rule, regulation, order or license.

(5) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

(6) To Federal, State, or local agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee, contractor, etc., or the issuance of a security clearance, license, contract, grant or other benefit.

(7) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2903 and 2904.

(8) To state and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation.

(9) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs, on DOI's behalf, services requiring access to these records.

(10) To the Office of Management and Budget when necessary to the review of private relief legislation pursuant to OMB Circular No. A–19.

(11) To other Federal agencies through third party enrollment brokers serving as links in the secure chain of custody for the HSPD–12 process when the Department has entered into agreements with these agencies to provide enrollment services to their employees, contractors, etc. but not identification credentials.

Note: In all such instances, the data being disclosed to these agencies through the enrollment brokers is data pertaining to their own employees, contractors, etc., and not data pertaining to Departmental employees, contractors, etc.

(12) To the Federal Bureau of Investigation for the National Agency Check with Inquiries (NACI) background investigation.

(13) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper files and in electronic media.

RETRIEVABILITY:

Records are retrievable by name of employee or covered individual, Social Security Number, other ID number, PIV card serial number, image (photograph), or fingerprint.

SAFEGUARDS:

Access to records covered by the system will be permitted only to authorized personnel in accordance with requirements found in the Departmental Privacy Act regulations (43 CFR 2.51). Persons given roles in the PIV process must complete training

specific to their roles to ensure they are knowledgeable about how to protect individually identifiable information regardless of how and where it is stored. Paper records are stored in locked file cabinets in a secure area. Electronic records in the identity management system are maintained with safeguards meeting the requirements of 43 CFR 2.51 for automated records, which conform to Office of Management and Budget and Departmental guidelines reflecting the implementation of the Federal Information Security Management Act. The electronic data are protected through user identification, passwords, database permissions, encryption and software controls. Such security measures establish different degrees of access levels for different types of users. An audit trail is maintained and reviewed periodically to identify unauthorized access. A Privacy Impact Assessment was completed to ensure that Privacy Act requirements and personally identifiable information safeguard requirements are met.

RETENTION AND DISPOSAL:

Although paper records relating to individuals covered by the system are generally retained and disposed of in accordance with General Records Schedule 18, Item 22, approved by the National Archives and Records Administration, a separate records schedule, identified as item 6600 of the Office of the Secretary Consolidated Subject-Function Code Records Disposition Schedule is under development. This schedule prescribes that records are destroyed upon notification of death or not later than five years after separation or transfer of employee, whichever is applicable.

Additionally, in accordance with HSPD–12, PIV Cards are deactivated within 18 hours of notification regarding cardholder separation, loss of card, or expiration. The information on PIV Cards is maintained in accordance with General Records Schedule 11, Item 4. PIV Cards are destroyed by cross-cut shredding no later than 90 days after deactivation.

SYSTEM MANAGER(S) AND ADDRESS:

(1) HSPD–12 System Manager:

Security Manager, U.S. Department of the Interior, Office of the Secretary, National Business Center, 1849 C St., NW., Mail Stop 1229 MIB, Washington, DC 20240.

(2) Bureau Personnel Security System Managers:

(a) Bureau of Indian Affairs:

Security Program Supervisor, Bureau of Indian Affairs, Office of Human Capital Management, 1011 Indian School Road, NW., Mail Stop 64, Albuquerque, NM 87104.

(b) Bureau of Indian Education:

Personnel Security Specialist, Bureau of Indian Education, Office of Human Resources, P.O. Box 769, Albuquerque, NM 87103.

(c) Bureau of Land Management:

Chief Security and Intelligence, Bureau of Land Management, Office of Law Enforcement and Security, 1620 L Street, NW., Washington, DC 20036.

(d) Bureau of Reclamation:

Security Specialist, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225.

(e) Minerals Management Service:

Personnel Security Specialist, Minerals Management Service, 381 Elden Street, Mail Stop 2050, Herndon, VA 20170.

(f) National Park Service:

Security Officer, National Park Service, Office of Human Resources, 1201 Eye Street, NW., 12th Floor, Washington, DC 20005–5912.

(g) Office of Surface Mining, Reclamation and Enforcement:

Personnel Security Officer, Office of Surface Mining, Reclamation and Enforcement, 1951 Constitution Avenue, NW., SIB, Washington, DC 20240.

(h) Office of the Inspector General:

Security Specialist, Office of the Inspector General, 12030 Sunrise Valley Drive, Suite 350, Mail Stop 5341, Reston, VA 20191.

(i) Office of the Secretary/National Business Center:

Security Manager, National Business Center, MS–1224 MIB, 1849 C St., NW., Washington, DC 20240.

(j) Office of the Solicitor:

Director of Administrative Services, Division of Administration, Office of the Solicitor, 1849 C St., NW., MS–6556, Washington, DC 20240.

(k) U.S. Fish and Wildlife Service:

Personnel Security Manager, U.S. Fish and Wildlife Service, 4501 N. Fairfax Dr., 3rd Fl., Arlington, VA 22203.

(l) U.S. Geological Survey:

Bureau Security Manager, U.S. Geological Survey, 250 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192.

NOTIFICATION PROCEDURE:

A request for notification of the existence of electronic records pertaining to the HSPD–12 credentialing process shall be addressed to the HSPD–12 System Manager identified in (1) above. A request for notification of the existence of paper records pertaining to the personnel security management process shall be addressed to the appropriate Bureau Personnel Security System Manager identified in (2), above. All such requests for notification must be in writing, signed by the requester, include the requester's bureau and office affiliation and work address, if an employee, or the name and address of the bureau and office with whom the requester is associated for purposes of identity credentialing, and address of the facility or name of the system that the requester needed access to, to facilitate location of applicable paper records, if inquiring about paper records, and comply with the content requirements of 43 CFR 2.60.

Note: Individuals who require regular, ongoing access to facilities and information systems and networks managed by other Federal agencies on whose behalf the Department issues identification credentials, as a shared-service provider, requesting notification of the existence of identity management and personnel security records pertaining to themselves, must contact the appropriate party identified in this section of the Privacy Act system of records notice published by the agency with which they are affiliated.

RECORD ACCESS PROCEDURE:

A request for access to or copies of electronic records pertaining to the HSPD–12 credentialing process shall be addressed to the HSPD–12 System Manager identified in (1) above. A request for access to or copies of paper records pertaining to the personnel security management process shall be addressed to the appropriate Bureau Personnel Security System Manager identified in (2), above. All such requests must be in writing, signed by the requester, include the requester's bureau and office affiliation and work address, if an employee, or the name and address of the bureau and office with whom the requester is associated for purposes of identity credentialing, and address of the facility or name of the system that the requester needed access to, to facilitate location of applicable paper records, if inquiring about paper records, and comply with the content requirements of 43 CFR 2.63.

Note: Individuals who require regular, ongoing access to facilities and information systems and networks managed by other Federal agencies on whose behalf the Department issues identification credentials, as a shared-service provider, requesting access to or copies of identity management and personnel security records pertaining to themselves, must contact the appropriate party identified in this section of the Privacy Act system of records notice published by the agency with which they are affiliated.

CONTESTING RECORDS PROCEDURE:

A request for amendment of electronic records pertaining to the HSPD–12 credentialing process shall be addressed to the HSPD–12 System Manager identified in (1) above. A request for amendment of paper records pertaining to the personnel security management process shall be addressed to the appropriate Bureau Personnel Security System Manager identified in (2), above. All such requests must be in writing, signed by the requester, include the requester's bureau and office affiliation and work address, if an employee, or the name and address of the bureau and office with whom the requester is associated for purposes of identity credentialing, and address of the facility or name of the system that the requester needed access to, to facilitate location of applicable paper records, if inquiring about paper records, and comply with the content requirements of 43 CFR 2.71.

Note: Individuals who require regular, ongoing access to facilities and information systems and networks managed by other Federal agencies on whose behalf the Department issues identification credentials, as a shared-service provider, requesting amendment of identity management and personnel security records pertaining to themselves, must contact the appropriate party identified in this section of the Privacy Act system of records notice published by the agency with which they are affiliated.

RECORD SOURCE CATEGORIES:

Information is obtained from a variety of sources including the employee, contractor, or applicant via use of the SF–85, SF–85P, SF–86, SF–87A and FD 258 and personal interviews; employers' and former employers' records; other Federal agencies supplying data on covered individuals; FBI criminal history records and other databases; financial institutions and credit reports; medical records and health care providers; educational institutions. Other Federal agencies providing HSPD–12 enrollment services to Department of the Interior employees, contractors, etc. through third party enrollment brokers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–4407 Filed 3–9–07; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974, as Amended; Amendment of an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed amendment of an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to amend an existing Privacy Act system of records notice, Interior, DOI—30, ''Enterprise Access Control Service (EACS),'' to implement Homeland Security Presidential Directive 12 (HSPD–12). HSPD–12 requires federal agencies to use a common identification credential for both logical and physical access to federally controlled facilities and information systems. Accordingly, the National Business Center, within the Office of the Secretary of the Department of the Interior, is planning to link, via Web services, its enterprise information technology directory, the Enterprise Access Control Service (EACS), with the identity management system (operated by the National Business Center) which automates the process of issuing HSPD–12 compliant credentials to all Departmental employees, contractors, volunteers and other individuals who require regular, ongoing access to agency facilities, systems and networks, based on sound criteria to verify an individual's identity, that are strongly resistant to fraud, tampering, counterfeiting, and terrorist exploitation, and that provide for rapid, electronic authentification of personal identity, by a provider whose reliability has been established through an official accreditation process. For this reason, it is renaming and renumbering Interior, DOI–30, ''Enterprise Access Control Service (EACS)'' as Interior, DOI–47: ''HSPD–12: Logical Security Files (Enterprise Access Control Service/EACS).''

DATES: *Effective Date:* 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the agency's intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this proposed amendment may do so by submitting comments in writing to the Office of the Secretary Privacy Act Officer, Sue Ellen Sloca, U.S. Department of the Interior, MS–120 SIB, 1951 Constitution Avenue, NW., Washington, DC 20240, or by e-mail to *Sue_Ellen_Sloca@nbc.gov*. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. The Department will publish a revised notice if changes are made based upon a review of comments received.

FOR FURTHER INFORMATION CONTACT: Richard A. Delph, Office of the Chief Information Officer, Office of the Secretary, Department of the Interior, 625 Herndon Parkway, Herndon, VA 20170 or by e-mail to *Richard_Delph@ios.doi.gov*.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is amending Interior, DOI–30, ''Enterprise Access Control Service (EACS),'' to implement HSPD–12, and is renaming and renumbering it as Interior, DOI–47: ''HSPD–12: Logical Security Files (Enterprise Access Control Service/EACS).'' In the process, it is expanding the categories of individuals covered by the system to include all individuals authorized to access DOI systems and networks, e.g., volunteers and other individuals who require regular, ongoing access to Departmental information systems and networks, individuals who have been issued HSPD–12 compliant credentials from other Federal agencies who require access to Departmental information systems and networks, etc.

Accordingly, the Department of the Interior proposes to amend the system notice for Interior, DOI–30, ''Enterprise Access Control Service (EACS)'' in its entirety to read as follows:

Dated: March 7, 2007.

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer.

INTERIOR/DOI–47

SYSTEM NAME:

HSPD–12: Logical Security Files (Enterprise Access Control Service/EACS)—Interior, DOI–47

SYSTEM LOCATION:

(1) Data covered by this system are maintained at two primary master sites at the following locations under the Department of the Interior (DOI), Office of the Secretary, Office of the Chief Information Officer, at:

(a) The Enterprise Hosting Center, Reston, VA, and

(b) The Enterprise Hosting Center, Denver, CO.

(2) DOI bureau and office replicas of the master database of the EACS are located at strategic Departmental locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who require access to Departmental networks, information systems, and e-mail services, including Departmental employees, contractors, students, interns, volunteers, etc.

Note: All of these individuals are required to have HSPD–12 compliant credentials issued from the National Business Center, within the Office of the Secretary of the Department of the Interior, if they are employed by DOI for more than 180 days.

(2) Individuals who have been issued HSPD–12 compliant credentials from other Federal agencies who require access to Departmental networks, information systems and e-mail services.

CATEGORIES OF RECORDS IN THE SYSTEM:

The following information may be retained in EACS: User full legal name, system login name, work e-mail address, web home page address, work address, work phone number, other contact information, user access and permission rights, password hash values, HSPD–12 authentication, digital signature, encryption, and/or other NIST specified certificates, along with the date and time of signature retained on the signed document, and supervisor's name.

Note: This list is not intended to be a full list of all information currently stored in the EACS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; the Paperwork Reduction Act of 1995 (44 U.S.C. 3501); the Government Paperwork Elimination Act (Pub. L. 105–277, 44 U.S.C. 3504); and Homeland Security Presidential Directive 12, Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

THE PRIMARY PURPOSES OF THE SYSTEM ARE:

(1) To provide a common authoritative directory service for the purpose of ensuring the security of DOI computer networks, resources and information and protecting them from unauthorized access, tampering or destruction;

(2) To authenticate and verify that all persons accessing DOI computer networks, resources and information are properly authorized to access them;

(3) To ensure that persons signing official digital documents are indeed the persons represented and to provide for non-repudiation of the use of an electronic signature; and

(4) To enable an individual to encrypt and decrypt documents for secure transmission.

Note: This system interfaces with the Department's identify management system and personnel security files, covered by Interior/DOI–45, ''HSPD–12: Identity Management System and Personnel Security Files.''

DISCLOSURES OUTSIDE THE DEPARTMENT OF THE INTERIOR MAY BE MADE:

(1) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs, on DOI's behalf, services requiring access to these records.

(2) To the Federal Protective Service and appropriate Federal, State, local or foreign agencies responsible for investigating emergency response situations or investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license, when DOI becomes aware of a violation or potential violation of a statute, rule, regulation, order or license.

(3) (a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(4) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the congressional office about the individual.

(5) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

(6) To representatives of the General Services Administration or the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2903 and 2904.

(7) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic media on hard disks and magnetic tapes.

RETRIEVABILITY:

Records are retrievable from EACS by any defined field within the record. These fields include, but are not limited to: user name, full legal name, digital certificate, and Web home address or e-mail address.

SAFEGUARDS:

The computer systems in which records are stored are located in computer facilities that are secured by alarm systems and off-master key access. EACS access granted to

individuals is password-protected. In the event that EACS is used to validate a user's authentication certificate against existing data within the system, access to the user's authentication certificate will require the use of a Personal Identification Number (PIN) known only to the user. Each person granted access to the system must be individually authorized to use the system. A Privacy Act Warning Notice will appear on the monitor screen when first displayed. Backup tapes are transported in a locked container under armed guard escort and are stored in a locked and controlled room in a secure, off-site location. A Privacy Impact Assessment was completed to ensure that Privacy Act requirements and personally identifiable information safeguard requirements are met.

RETENTION AND DISPOSAL:

Records relating to persons covered by this system are retained in accordance with a separate records schedule, identified as item 6600 of the Office of the Secretary Consolidated Subject-Function Code Records Disposition Schedule currently under development.

SYSTEM MANAGER(S) AND ADDRESS:

(1) EACS Manager, Office of the Chief Information Officer, Office of the Secretary, Department of the Interior, 625 Herndon Parkway, Herndon, VA 20170.

(2) Bureau Security Managers:

a. Bureau of Indian Affairs: Director, Office of Information Technology Security & Privacy, Office of the Chief Information Officer—Indian Affairs, 625 Herndon Parkway, Herndon, VA 20170.

b. Bureau of Indian Education: Director, Office of Information Technology Security & Privacy, Office of the Chief Information Officer—Indian Affairs, 625 Herndon Parkway, Herndon, VA 20170.

c. Bureau of Land Management: Division Chief, IT Security, Bureau of Land Management, Information Resources Management, 1849 C St., NW., Mail Stop 700LS, Washington, DC 20240.

d. Bureau of Reclamation: Deputy Chief Information Officer, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225.

e. Minerals Management Service: IT Specialist, Minerals Management Service, 381 Elden Street, Mail Stop 2200, Herndon, VA 20170.

f. National Park Service: Security Program Manager, National Park Service, 1201 Eye Street, NW., Washington, DC 20005.

g. Office of Surface Mining, Reclamation and Enforcement: Logical Security Officer, Office of Surface Mining, Reclamation and Enforcement, 1951 Constitution Ave., NW., Mail Stop 344 SIB, Washington, DC 20240.

h. Office of the Inspector General: Logical Security Manager, U.S. Geological Survey, 12030 Sunrise Valley Drive, Suite 230, Reston, VA 20191.

i. Office of the Secretary/National Business Center: Logical Security Manager, National Business Center, 7301 W. Mansfield Ave., D 2130, Denver, CO 80235.

j. Office of the Solicitor: Chief Information Officer, Division of Administration, Office of the Solicitor, 1849 C St., NW., Mail Stop 6556 MIB, Washington, DC 20240.

k. U.S. Fish and Wildlife Service: AD IRTM, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., 3rd Fl., Arlington, VA 22203.

l. U.S. Geological Survey: Bureau Chief Technology Officer, U.S. Geological Survey, 8987 Yellow Brick Road, Baltimore, MD 21237.

NOTIFICATION PROCEDURE:

An individual requesting notification of the existence of records on himself or herself should address his/her request to the appropriate Bureau Security Manager identified in (2), above. The request must be in writing and signed by the requester. It must include the requester's full name, bureau and office affiliation, and work address. (See 43 CFR 2.60.)

RECORD ACCESS PROCEDURE:

An individual requesting access to records on himself or herself should address his/her request to the appropriate Bureau Security Manager identified in (2), above. The request must be in writing and signed by the requester. It must include the requester's full name, bureau and office affiliation, and work address. (See 43 CFR 2.63.)

CONTESTING RECORDS PROCEDURE:

An individual requesting amendment of records on himself or herself should address his/her request to the appropriate Bureau Security Manager identified in (2), above. The request must be in writing and signed by the requester. It must include the requester's full name, bureau and office affiliation, and work address. (See 43 CFR 2.71.)

RECORD SOURCE CATEGORIES:

Information is obtained from individuals covered by the system, supervisors, and designated approving officials, certificate issuing authorities, and network systems officials, as well as the National Business Center's identity management system (covered by Interior, DOI–45: ''HSPD–12: Identity Management System and Personnel Security Files).''

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–4408 Filed 3–9–07; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; as Amended; Deletion of an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed deletion of an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), the Office of the Secretary of the Department of the Interior is issuing public notice of its intent to delete an existing Privacy Act system of records notice, Interior, DOI–15, ''Authenticated Computer Access and Signature System.'' It was previously published in the **Federal Register** on January 5, 2005 (70 FR 1262). Records covered by this notice are being incorporated into an amendment of Interior, OS–45, ''Security Clearance Files and Other Reference Files,'' which is being updated to implement Homeland Security Presidential Directive 12 (HSPD–12), and is being renamed and renumbered as Interior, DOI–45, ''HSPD–12: Identity Management System and Personnel Security Files.'' HSPD–12 requires Federal agencies to use a common identification credential for both logical and physical access to federally controlled facilities and information systems.

DATES: *Effective Date:* 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the agency's intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Because records covered by this notice are still being collected and maintained by the Department of the Interior, this deletion notice will be effective at the end of the comment period for Interior, DOI–45, HSPD–12: ''Identity Management System and Personnel Security Files,'' which is being published concurrently with this deletion notice, unless comments are

received which would require a contrary determination vis-à-vis Interior, DOI–45. Should the Department receive comments that require that it republish Interior, DOI–45, this deletion notice will be effective on the date on which the revised notice for Interior, DOI–45 becomes effective.

FOR FURTHER INFORMATION CONTACT: Sue Ellen Sloca, Office of the Secretary Privacy Act Officer, 1951 Constitution Avenue, NW., MS–120 SIB, Washington, DC 20240, at 202–208–6045, or by e-mail to *sue_ellen_sloca@nbc.gov.*

Signed: March 7, 2007.

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer.

[FR Doc. E7–4413 Filed 3–9–07; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974, as Amended; Amendment of an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed amendment of an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to amend an existing Privacy Act system of records notice, Interior, OS–01, ''Computerized ID Security System,'' to implement Homeland Security Presidential Directive 12 (HSPD–12) and to clarify its interpretation of 5 U.S.C. 6106. HSPD–12 requires federal agencies to use a common identification credential for both logical and physical access to federally controlled facilities and information systems. Accordingly, the National Business Center, within the Office of the Secretary of the Department of the Interior, is integrating its computerized smart-card physical security system with the identity management system which automates the process of issuing credentials to all Departmental employees, contractors, volunteers and other individuals who require regular, ongoing access to agency facilities, systems and networks based on sound criteria to verify an individual's identity, that are strongly resistant to fraud, tampering, counterfeiting, and terrorist exploitation, and that provide for rapid, electronic authentification of personal identity, by a provider whose reliability has been established through an official accreditation process. It is also expanding the coverage of this system to include all locations, Departmentwide, both Federal buildings and Federally-leased space, where paper-based physical security logs and registers have been established, in addition to or in place of smart-card access control systems. For this reason, it is renaming and renumbering this Privacy Act system notice as Interior, DOI–46: ''HSPD–12: Physical Security Files.''

DATES: *Effective Date:* 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the agency's intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this proposed amendment may do so by submitting comments in writing to the Office of the Secretary Privacy Act Officer, Sue Ellen Sloca, U.S. Department of the Interior, MS–120 SIB, 1951 Constitution Avenue, NW., Washington, DC 20240, or by e-mail to *Sue_Ellen_Sloca@nbc.gov*. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. The Department will publish a revised notice if changes are made based upon a review of comments received.

FOR FURTHER INFORMATION CONTACT: David VanderWeele, Security Specialist, NBC Security Services, MS–1229 MIB, 1849 C St., NW., Washington, DC 20240, or by e-mail to *David_A_Vanderweele@nbc.gov.*

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior (DOI) is amending Interior, OS–01, ''Computerized ID Security System'' to implement HSPD–12, and is renaming and renumbering it as Interior, DOI–46: ''HSPD–12: Physical Security Files.'' In the process, it is expanding the categories of individuals covered by the system to include all individuals who have access to DOI facilities, and the categories of records covered by the system notice to include additional personal identity verification (PIV) data such as fingerprints. It is also clarifying its interpretation of 5 U.S.C. 6106 by deleting the note that follows the list of the routine uses of the records maintained in the system. This note concerned disclosures within DOI of data pertaining to the date and time of entry and exit of an agency employee working in the District of Columbia.

Accordingly, the Department of the Interior proposes to amend the system notice for Interior, OS–01, ''Computerized ID Security System'' in its entirety to read as follows:

Dated: March 7, 2007.

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer.

INTERIOR/DOI–46

SYSTEM NAME:

HSPD–12: Physical Security Files—Interior, DOI–46.

SYSTEM LOCATION:

(1) Data covered by this system are maintained at the following main locations:

(a) U.S. Department of the Interior, Office of the Secretary, National Business Center, Computer Center, 1849 C Street, NW., Washington, DC 20240; and

(b) U.S. Department of the Interior, Office of the Secretary, National Business Center, 7301 W. Mansfield Ave., MS D–2130, Denver, CO 80235–2300.

(2) Portions of the data covered by this system are also maintained at other Department of the Interior locations, both Federal buildings and Federally-leased space, where staffed guard stations have been established in facilities that have installed a smart card ID system, and/or paper-based physical security logs and registers, as well as the physical security office(s) of those locations. A list of these locations (as applicable to each bureau) is maintained by each bureau's Security Manager, whose address is provided under item (2) in System Manager and Address, below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who require regular, ongoing access to Departmental facilities, including Departmental employees, contractors, students, interns, volunteers, affiliates, and individuals formerly in any of these positions. The system also includes individuals authorized to perform or use services provided in Departmental facilities (e.g., Credit Union, Fitness Center, etc.) NOTE: All of these individuals are required to have HSPD–12 compliant credentials issued from the National Business Center, within the Office of the Secretary of the Department of the Interior, if they are employed by DOI for more than 180 days.

(2) Individuals who have been issued HSPD–12 compliant credentials from

other Federal agencies who require access to Departmental facilities.

(3) Visitors and other individuals who require infrequent access to Department facilities including services provided in Departmental facilities (e.g., Departmental Museum, Indian Arts and Crafts Shop, etc.)

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records maintained on individuals issued HSPD–12 compliant credentials by the Department and by other Federal agencies include the following data fields: full name, Social Security Number; date of birth; signature; image (photograph); fingerprints; hair color; eye color; height; weight; home address; work address; e-mail address; agency affiliation (i.e., employee, contractor, volunteer, etc.); telephone number; personal identity verification (PIV) card issue and expiration dates; personal identification number (PIN); results of background investigation; PIV request form; PIV registrar approval signature; PIV card serial number; emergency responder designation; copies of ''I–9'' documents (e.g., driver's license, passport, birth certificate, etc.) used to verify identification or information derived from those documents such as document title, document issuing authority, document number, or document expiration date; level of national security clearance and expiration date; computer system user name; user access and permission rights, authentication certificates; and digital signature information.

(2) Records maintained on visitors and other individuals who require infrequent access to Department facilities include the following data fields: Full name, signature; image (photograph), Social Security Number (or one of the following: Driver's License number, ''Green Card'' number, Visa number, or other ID number), images of relevant ID document(s), U.S. Citizenship (yes or no/logical data field), date of entry, time of entry, location of entry, time of exit, location of exit, purpose for entry, agency point of contact, company name, security access category, and access status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Federal Information Security Act (Pub. L. 104–106, sec. 5113); Electronic Government Act (Pub. L. 104–347, sec. 203); the Paperwork Reduction Act of 1995 (44 U.S.C. 3501); the Government Paperwork Elimination Act (Pub. L. 105–277, 44 U.S.C. 3504); Homeland Security Presidential Directive 12, Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004; Federal Property and Administrative Act of 1949, as amended; 5 U.S.C. 301; and Presidential Memorandum on Upgrading Security at Federal Facilities, June 28, 1995.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purposes of the system are:

(1) To ensure the safety and security of DOI facilities and their occupants in which the system is installed.

(2) To verify that all persons entering DOI facilities or other Government facilities with smart card systems are authorized to enter them.

(3) To verify that all persons entering DOI facilities or other Government facilities without smart cards are authorized to enter them.

Note: This system interfaces with the Department's identify management system and personnel security files, covered by Interior/DOI–45, ''HSPD–12: Identity Management System and Personnel Security Files.''

Disclosures outside the Department of the Interior may be made:

(1) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs, on DOI's behalf, services requiring access to these records.

(2) To the Federal Protective Service and appropriate Federal, State, local or foreign agencies responsible for investigating emergency response situations or investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license, when DOI becomes aware of a violation or potential violation of a statute, rule, regulation, order or license.

(3) To another agency with a similar HSPD–12 (PIV/smart card) system when a person with identification credentials issued by the Department desires access to that agency's facilities.

(4) (a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(5) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the congressional office about the individual.

(6) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

(7) To representatives of the General Services Administration or the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2903 and 2904.

(8) To another agency with a similar HSPD–12 (PIV/smart card) system when it controls access to facilities occupied by the agency.

(9) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic media and in paper files.

RETRIEVABILITY:

Records are retrievable by name, Social Security Number, other ID number, image (photograph), fingerprint, organization/office of assignment, agency point of contact, company name, security access, category, date of entry, time of entry, location of entry, time of exit, location of exit, ID security card issue date, ID security card expiration date, and ID security card serial number.

SAFEGUARDS:

Access to records covered by the system will be permitted only to authorized personnel in accordance with requirements found in the Departmental Privacy Act regulations (43 CFR 2.51). Paper records are stored in locked file cabinets in a secure area. Electronic records are maintained with safeguards meeting the requirements of 43 CFR 2.51 for automated records, which conform to Office of Management and Budget and Departmental guidelines reflecting the implementation of the Federal Information Security Management Act. The computer servers in which records are stored are located in computer facilities that are secured by alarm systems and off-master key access. The computer servers themselves are password-protected. Access granted to individuals at guard stations is password-protected; each person granted access to the system at guard stations must be individually authorized to use the system. A Privacy Act Warning Notice appears on the monitor screen when records containing information on individuals are first displayed. Data exchanged between the servers and the client PCs at the guard stations and badging office are encrypted. Backup tapes are stored in a locked and controlled room in a secure, off-site location. A Privacy Impact Assessment was completed to ensure that Privacy Act requirements and personally identifiable information safeguard requirements are met.

RETENTION AND DISPOSAL:

Records relating to persons covered by this system are retained in accordance with General Records Schedule 18, Item No. 17. Unless retained for specific, ongoing security investigations:

(1) Records relating to individuals other than employees are destroyed two years after ID security card expiration date.

(2) Records relating to date and time of entry and exit of employees are destroyed two years after date of entry and exit.

(3) All other records relating to employees are destroyed two years after ID security card expiration date.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Security Manager, Physical Security Office, Division of Employee and Public Services, National Business Center, MS–1224, 1849 C Street, NW, Washington, DC 20240.

(2) Bureau Physical Security Managers:

(a) Bureau of Indian Affairs: Indian Affairs Homeland Security Coordinator, 1849 C St., NW., Mail Stop 4160 MIB, Washington, DC 20240.

(b) Bureau of Indian Education: Indian Affairs Homeland Security Coordinator, 1849 C St., NW., Mail Stop 4160 MIB, Washington, DC 20240.

(c) Bureau of Land Management: Chief Security and Intelligence, Bureau of Land Management, Office of Law Enforcement and Security, 1620 L Street, NW., Washington, DC 20036.

(d) Bureau of Reclamation: Reclamation Security Officer, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225.

(e) Minerals Management Service: IT Specialist, Minerals Management Service, 381 Elden Street, Mail Stop 2050, Herndon, VA 20170.

(f) National Park Service: Law Enforcement, Security and Emergency Service Manager, National Park Service, Security and Intelligence Branch, 1201 I (Eye) St., NW., 10th Floor, Washington, DC 20005.

(g) Office of Surface Mining, Reclamation and Enforcement: Security Officer, Office of Surface Mining, Reclamation and Enforcement, 1951 Constitution Ave., NW., Mail Stop 344 SIB, Washington, DC 20240.

(h) Office of the Inspector General: Support Services Supervisor, Office of the Inspector General, 12030 Sunrise Valley Drive, Suite 350, Mail Stop 5341, Reston, VA 20191.

(i) Office of the Secretary/National Business Center: Office of the Secretary/National Business Center: Security Manager, National Business Center, Mail Stop 1224 MIB, 1849 C St., NW., Washington, DC 20240.

(j) Office of the Solicitor: Director of Administrative Services, Division of Administration, Office of the Solicitor, 1849 C St., NW., Mail Stop 6556 MIB, Washington, DC 20240.

(k) U.S. Fish and Wildlife Service: Security and Emergency Manager, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Arlington, VA 22203.

(l) U.S. Geological Survey: Bureau Security Manager, U.S. Geological Survey, 250 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192.

NOTIFICATION PROCEDURE:

An individual requesting notification of the existence of records on himself or herself maintained at either of the two main system locations should address his/her request to the Security Manager identified in (1), above. A request for notification of the existence of physical security records located at any other location should be addressed to the appropriate Bureau Security Manager identified in (2), above. The request must be in writing, signed by the requester, and include the requester's bureau and office affiliation and the address of the facility to which the requester needed access to facilitate location of the applicable records. (See 43 CFR 2.60.)

RECORD ACCESS PROCEDURE:

An individual requesting access to records maintained on himself or maintained at either of the two main system locations should address his/her request to the Security Manager identified in (1), above. A request for access to physical security records located at any other location should be addressed to the appropriate Bureau Security Manager identified in (2), above. The request must be in writing, signed by the requester, and include the requester's bureau and office affiliation and the address of the facility to which the requester needed access to facilitate location of the applicable records. (See 43 CFR 2.63.)

CONTESTING RECORDS PROCEDURE:

An individual requesting amendment of a record maintained on himself or herself at either of the two main system locations should address his/her request to the Security Manager identified in (1), above. A request for amendment of physical security records located at any other location should be addressed to the appropriate Bureau Security Manager identified in (2), above. The request must be in writing, signed by the requester, and include the requester's bureau and office affiliation and the address of the facility to which the requester needed access to facilitate location of the applicable records. (See 43 CFR 2.71.)

RECORD SOURCE CATEGORIES:

Information is obtained from individuals covered by the system,

supervisors, and designated approving officials, as well as records supplied by the National Business Center's identity management system, other Federal agencies issuing HSPD–12 compliant cards, and HSPD–12 compliant cards carried by individuals seeking access to Departmental and other Federal facilities occupied by agency employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–4414 Filed 3–9–07; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Post-delisting Monitoring Plan for Eggert's Sunflower (Helianthus eggertii)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the Post-delisting Monitoring Plan for Eggert's sunflower (*Helianthus eggertii*) (Monitoring Plan). The status of Eggert's sunflower will be monitored over a 5-year period from 2006 through 2010, through annual evaluation of information routinely being collected by seven agencies that have entered into long-term management agreements with us covering 27 populations of Eggert's sunflowers, combined with a total census of these populations during the second and fifth year of the monitoring period.

ADDRESSES: Copies of the Monitoring Plan are available by request from the Field Supervisor, Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 38501 (telephone 931–528–6481; fax: 931–528–7074). This Monitoring Plan is also available on the World Wide Web at *http://www.fws.gov/cookeville*.

FOR FURTHER INFORMATION CONTACT: Geoff Call, Recovery Coordinator, at the above Cookeville address, at *geoff_call@fws.gov*, or at 931/528–6481, extension 213.

SUPPLEMENTARY INFORMATION:

Background

Eggert's sunflower is a perennial member of the aster family (Asteraceae) known only from Alabama, Kentucky, and Tennessee. The species is commonly associated with the barrens/woodland ecosystem. It occurs on rolling-to-flat uplands and in full sun or partial shade. It is often found in open fields or in thickets along woodland borders and with other tall herbs and small trees. It persists in, and may even invade, roadsides, power line rights-of-way, or fields that have suitable open habitat.

Eggert's sunflower was listed as threatened under the Endangered Species Act (Act) on May 22, 1997 (62 FR 27973). At the time of listing, there were 34 known Eggert's sunflower sites occurring in 1 site in 1 county in Alabama, 13 sites in 5 counties in Kentucky, and 20 sites in 8 counties in Tennessee. When the Recovery Plan for this species was finalized in 1999, there was 1 known site in Alabama, 27 sites in 6 counties in Kentucky, and 203 sites in 12 counties in Tennessee. Presently, there are 287 known Eggert's sunflower sites distributed across 3 counties in Alabama, 9 counties in Kentucky, and 15 counties in Tennessee.

On August 18, 2005, we published a final rule removing Eggert's sunflower from the Federal List of Endangered and Threatened Wildlife and Plants (70 FR 48482). Our decision to delist this species was based on a review of all available data, which indicated that the species was more widespread and abundant than was documented at the time of listing, was more resilient and less vulnerable to certain activities than previously thought, and is now protected on Federal, State, and county lands.

Section 4(g)(1) of the Act requires that we implement a system, in cooperation with the States, to monitor all species that have been delisted, or removed from the Federal List of Endangered and Threatened Wildlife and Plants, due to recovery for at least 5 years following delisting. The purpose of this post-delisting monitoring is to verify that a species delisted due to recovery remains secure from risk of extinction after it no longer has the protections of the Act. In keeping with that mandate, we developed this Monitoring Plan in cooperation with the States of Alabama, Kentucky, and Tennessee. We are responsible for compliance with section 4(g) and must remain actively engaged in all phases of the post-delisting monitoring.

The Draft Post-delisting Monitoring Plan for Eggert's sunflower was available for public comment from August 18, 2005 through September 19, 2005 (70 FR 48577). The only response we received was from the State of Tennessee, which supported the plan. Since we had no additional information provided to us during the comment period, we have finalized the Post-delisting Monitoring Plan with no changes from the draft.

The Monitoring Plan is designed to track the population status of Eggert's sunflower by using information routinely collected by our partners on a yearly basis as well as a total population census during the second and fifth years of the monitoring period for the 27 populations that occur on public lands. We will also annually evaluate the effectiveness of the Cooperative Management Agreements in protecting Eggert's sunflower populations on these public lands.

If we determine at the end of the 5-year post-delisting monitoring period that ''recovered'' status is still appropriate and factors that led to the listing of Eggert's sunflower, or any new factors, remain sufficiently reduced or eliminated, monitoring may be reduced or terminated. If data show that the species is declining or if one or more factors that have the potential to cause a decline are identified, we will continue monitoring beyond the 5-year period and may modify the Monitoring Plan based on an evaluation of the results of the initial Monitoring Plan, or reinitiate listing if necessary.

Author

The primary author of this proposed rule is Geoff Call (see **ADDRESSES** section).

Authority

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

Dated: December 19, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E7–4367 Filed 3–9–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Buck Island, Green Cay, and Sandy Point National Wildlife Refuges in the U.S. Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service, intend to gather information necessary to prepare a comprehensive conservation plan and associated environmental documents for Buck Island, Green Cay, and Sandy Point

National Wildlife Refuges. We furnish this notice in compliance with our comprehensive conservation planning policy to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: To ensure consideration, we must receive your written comments by April 11, 2007.

ADDRESSES: Send your comments or requests for more information to Ms. Susan Silander, Refuge Manager, Caribbean Islands National Wildlife Refuge Complex, P.O. Box 510, Boquerón, PR 00622; *Telephone:* 787/851–7258; or electronically to: *susan_silander@fws.gov*.

SUPPLEMENTARY INFORMATION: With this notice, we initiate the process for developing a comprehensive conservation plan for Buck Island, Green Cay, and Sandy Point National Wildlife Refuges with headquarters in Boquerón, Puerto Rico.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

We establish each unit of the National Wildlife Refuge System with specific purposes. We use these purposes to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses will occur on these refuges. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation efforts of these important wildlife habitats, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

We will conduct a comprehensive conservation planning process that will provide opportunity for Tribal, State, and local governments; agencies; organizations; and the public to participate in issue scoping and public comment. We request input for issues, concerns, ideas, and suggestions for the management of the Buck Island, Green Cay, and Sandy Point National Wildlife Refuges, with headquarters in Boquerón, Puerto Rico. We invite anyone interested to respond to the following two questions:

1. What problems or issues do you want to see addressed in the comprehensive conservation plan?

2. What improvements would you recommend for the Buck Island, Green Cay, and Sandy Point National Wildlife Refuges?

We have provided the above questions for your optional use; you are not required to provide information to us. Our Planning Team developed these questions to gather information about individual issues and ideas concerning these refuges. Our Planning Team will use comments it receives as part of the planning process; however, we will not reference individual comments in our reports or directly respond to them.

We will also give the public an opportunity to provide input at an open house and public scoping meetings during 2007, to identity issues to be addressed in the plan. These events will be advertised through local media outlets. You may also submit comments anytime during the planning process by writing to the address in the **ADDRESSES** section. All information provided voluntarily by mail, phone, or at public meetings becomes part of our official record (i.e., names, addresses, letters of comment, input recorded during meeting).

We will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those regulations. All comments we receive on our environmental assessment become part of the official public record. We will handle requests for such comments in accordance with the Freedom of Information Act, NEPA [40 CFR 1506.6(f)], and other Departmental and Service policies and procedures. When we receive a request, we generally will provide comment letters with the names and addresses of the individuals who wrote the comments.

Buck Island Refuge was established in 1969, and consists of 45 acres. It is an unstaffed refuge administered as part of the Caribbean Islands National Wildlife Refuge Complex. The island was transferred to the Fish and Wildlife Service due to its ''value for migratory birds.'' However, little nesting occurs due to the presence of introduced rates. Visitors to the refuge may see red-billed tropic birds, frigate birds, terns, laughing gulls, and other species in the vicinity of the island.

Green Cay Refuge was established in 1977, and consists of 14 acres. It is an unstaffed refuge administered as part of the Caribbean Islands National Wildlife Refuge Complex. The island provides critical habitat for one of only two remaining natural populations of the endangered St. Croix ground lizard. Its extirpation from the mainland of St. Croix is generally attributed to the introduction of the small Indian mongoose. Outcrops of lava, tuffs, and breccias are prominent geological features. The island is closed to the public due to fragile habitat and easily disturbed wildlife, such as the St. Croix ground lizard.

Sandy Point Refuge was established in 1984, and consists of 360 acres. It is a staffed refuge administered as part of the Caribbean Islands National Wildlife Refuge Complex. The island hosts the largest nesting population of endangered leatherback sea turtles under United States jurisdiction. Approximately 11,000 people visit the refuge annually.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: February 8, 2007.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E7–4369 Filed 3–9–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Cabo Rojo National Wildlife Refuge, Boquerón, PR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service, intend to gather information necessary to prepare a comprehensive conservation plan and associated

environmental documents for the Cabo Rojo National Wildlife Refuge. We furnish this notice in compliance with our comprehensive conservation planning policy to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: To ensure consideration, we must receive your written comments by April 11, 2007.

ADDRESSES: Send your comments or requests for more information to Ms. Susan Silander, Refuge Manager, Caribbean Islands National Wildlife Refuge Complex, P.O. Box 510, Boquerón, PR 00622; *Telephone:* 787/851–7258; *or electronically to: susan_silander@fws.gov*.

SUPPLEMENTARY INFORMATION: With this notice, we initiate the comprehensive conservation plan for Cabo Rojo National Wildlife Refuge with headquarters in Boquerón, Puerto Rico.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

We establish each unit of the National Wildlife Refuge System with specific purposes. We use these purposes to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses will occur on this refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuge's establishing purposes and the mission of the National Wildlife Refuge System.

We will conduct a comprehensive conservation planning process that will provide opportunity for tribal, State, and local governments; agencies; organizations; and the public to participate in issue scoping and public comment. We request input for issues, concerns, ideas, and suggestions for the management of the Cabo Rojo National Wildlife Refuge in Boquerón, Puerto Rico. We invite anyone interested to respond to the following two questions:

1. What problems or issues do you want to see addressed in the comprehensive conservation plan?

2. What improvements would you recommend for the Cabo Rojo National Wildlife Refuge?

We have provided the above questions for your optional use; you are not required to provide information to us. Our Planning Team developed these questions to gather information about individual issues and ideas concerning this refuge. Our Planning Team will use comments it receives as part of the planning process; however, we will not reference individual comments in our reports or directly respond to them.

We will also give the public an opportunity to provide input at an open house and public scoping meetings during 2007, to identity issues to be addressed in the plan. These events will be advertised through local media outlets. You may also submit comments anytime during the planning process by writing to the address in the **ADDRESSES** section. All information provided voluntarily by mail, phone, or at the public meeting becomes part of our official record (i.e., names, addresses, letters of comment, input recorded during meeting).

We will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those regulations. All comments we receive on our environmental assessment become part of the official public record. We will handle requests for such comments in accordance with the Freedom of Information Act, NEPA [40 CFR 1506.6(f)], and other Departmental and Service policies and procedures. When we receive a request, we generally will provide comment letters with the names and addresses of the individuals who wrote the comments.

The Cabo Rojo National Wildlife Refuge was established in 1974 when 587 acres of land were transferred from the Foreign Broadcast Information Service of the Central Intelligence Agency to the U.S. Fish and Wildlife Service. The 1,249-acre Cabo Rojo Salt Flats, previously under private ownership, were purchased and added to the refuge in 1999 for a total of 1,836 acres.

The refuge land was used for cattle ranching, agriculture, and salt production for almost two centuries prior to Service ownership. During that time, much of the native vegetation was replaced by exotic and invasive plants from other regions.

Management of the refuge focuses on restoring native forest vegetation, managing hydrologic conditions in the salt flats, controlling exotic and invasive species, and providing suitable habitat for neotropical migratory birds and native species, such as the endangered yellow-shouldered blackbird.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: February 8, 2007.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E7–4371 Filed 3–9–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Watercress Darter National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment for Watercress Darter National Wildlife Refuge in Jefferson County, Alabama.

SUMMARY: The Fish and Wildlife Service intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment for Watercress Darter National Wildlife Refuge. This notice is furnished in compliance with the Service's comprehensive conservation planning policy to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: To ensure consideration, comments must be received by April 26, 2007.

ADDRESSES: Address comments, questions, and requests for more information to Mountain Longleaf National Wildlife Refuge, P.O. Box

5087, Fort McClellan, AL 36205; Telephone 256–848–6833.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

Each unit of the National Wildlife Refuge System is established with specific purposes. These purposes are used to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses will occur on the refuge. The planning process is a means for the Service and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuge's establishing purposes and the mission of the National Wildlife Refuge System.

A comprehensive conservation planning process will be conducted that will provide opportunities for tribal, State, and local governments; agencies; organizations; and the public to participate in issue scoping and public comment. The Service invites anyone interested to respond to the following questions:

1. What problems or issues do you want to see addressed in the comprehensive conservation plan?

2. What improvements would you recommend for the Watercress Darter National Wildlife Refuge?

The above questions have been provided for your optional use. You are not required to provide any information. The Planning Team developed these questions to gather information about individual issues and ideas concerning the refuge. The Planning Team will use comments it receives as part of the planning process; however, it will not reference individual comments or directly respond to them.

Open house style meeting(s) will be held throughout the scoping phase of the comprehensive conservation plan development process. Special mailings, newspaper articles, and other media announcements will be used to inform the public and State and local government agencies of the opportunities for input throughout the planning process.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); and other appropriate Federal laws and regulations. All comments received become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and Service and Departmental policies and procedures.

Watercress Darter National Wildlife Refuge was established in 1980 to protect the endangered watercress darter and its habitat. Refuge objectives are to: Protect the watercress darter and its habitat; provide habitat for a natural diversity of wildlife and plants; and provide opportunity for compatible outdoor recreation, environmental education, and interpretation.

(Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.)

Dated: February 8, 2007.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E7–4372 Filed 3–9–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

The Three Affiliated Tribes of the Fort Berthold Indian Reservation Amendment to Their Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes an amendment to the Liquor Ordinance of the Three Affiliated Tribes of the Fort Berthold Indian Reservation of North Dakota (Tribe). This amendment brings the existing Liquor Ordinance of the Tribe which regulates and controls the possession, sale and consumption of liquor within the Tribe's reservation into conformance with a change in state law. The Liquor Ordinance allows for possession and sale of alcoholic beverages within the Three Affiliated Tribes of the Fort Berthold Indian Reservation, and increases the ability of the tribal government to control the Tribe's liquor distribution and possession. At the same time it will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective on March 19, 2007.

FOR FURTHER INFORMATION CONTACT: Jim Steele, Regional Tribal Government Officer, Great Plains Regional Office, Bureau of Indian Affairs, 115 4th Avenue, SE., MC100, Aberdeen, SD 57401, *Telephone:* (605) 226–7343, *Telefax:* (605) 226–7446; or Ralph Gonzales, Office of Indian Services, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC 20240; *Telephone:* (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Three Affiliated Tribes of the Fort Berthold Indians Tribal Council adopted this amendment to their Liquor Ordinance by Resolution No. 06–131–NH on October 12, 2006. The purpose of this amendment is to bring their current Liquor Control Ordinance into conformance with a recent change to state law.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs. I certify that this amendment to the Liquor Ordinance of the Three Affiliated Tribes of the Fort Berthold Indians was duly adopted by the Three Affiliated Tribes of the Fort Berthold Indians Tribal Council on October 12, 2006.

Dated: March 2, 2007.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

The Three Affiliated Tribes of the Fort Berthold Indians of North Dakota Amendment reads as follows:

Section 5: Dispensing Prohibited on Certain Days

A person may not dispense or permit the consumption of alcohol beverage on a licensed premise between the hours two a.m. and twelve noon on Sundays, between the hours of two a.m. and eight a.m. on all other days of the week, or on Christmas Day or after six p.m. on Christmas Eve. In addition a person may not provide off-sale after one a.m. on Thanksgiving Day.

[FR Doc. E7–4366 Filed 3–9–07; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–910–07–1120–PH–24–1A]

Notice of Utah Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) 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's (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah Resource Advisory Council (RAC) will meet May 1–2, 2007.

ADDRESSES: On May 1, the RAC will meet at 10 a.m. at the Price Field Office of the BLM, 125 South 600 West, Price, Utah, for a field tour. On May 2, from 8 a.m. until 2 p.m., the RAC will be meeting at the Emery County Courthouse, 75 East Main, Castle Dale.

FOR FURTHER INFORMATION CONTACT: Contact Sherry Foot, Special Programs Coordinator,Utah State Office, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah, 84145–0155; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: On May 1, the Utah BLM Resource Advisory Council will meet for a field tour of Nine Mile Canyon. Nine Mile Canyon was nominated as a National Register of Historic Places-Archaeologist District. Presentations on the history of the nomination, its resources and characteristics will be given. On May 2, the RAC will be given presentations from the Field Offices on recreation site fee proposals, an overview of Utah BLM issues, and an update on the Factory Butte temporary restriction order. A public comment period, where members of the public may address the RAC, is scheduled from 12:45 p.m.–1:15 p.m. Written comments may be sent to the Bureau of Land Management address listed above. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: March 6, 2007.

Selma Sierra,

State Director.

[FR Doc. E7–4418 Filed 3–9–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–1430–EU; A–033531, AA–086554]

Notice of Realty Action: Direct Sale of Reversionary Interest of Recreation and Public Purposes Patent; Eagle River, AK; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Correction.

SUMMARY: The Bureau of Land Management published a document in the **Federal Register** of February 22, 2007, concerning the direct sale of the reversionary interest held by the United States in 3.9 acres of land located in Eagle River, Alaska. The document contained an accurate legal description, but inaccurate lot numbers in the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Robert Lloyd, BLM Anchorage Field Office, (907) 267–1246.

Correction

In the **Federal Register** of February 22, 2007, in FR Doc. E7–2953, on page 8010, in the first and second column, correct ''Lots 7 and 11'' to ''Lots 7 and 10'' as follows:

The subject lands, lots 7 and 10, comprise two of the 13 lots owned by the church in this location. Lots 7 and 10 are the only lots that contain a reversionary clause. The church has fee title to the remaining properties that surround lots 7 and 10.

Dated: February 22, 2007.

Mike Zaidlicz,

Acting Field Manager.

[FR Doc. 07–1142 Filed 3–9–07; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–910–5850–EU–CACA–48476]

Notice of Realty Action: Competitive Sale of Public Lands in Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell 51 parcels of public land in the Riverside County, California, aggregating approximately 274.37 acres. The sale will be conducted as a competitive sealed bid auction, in which interested bidders must submit written sealed bids equal to or greater than the appraised fair market value of the land. The sale will be completed under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719) and the implementing regulations at 43 CFR 2710 and 2720. The purpose of the sale is to dispose of lands which are difficult and uneconomic to manage as part of the public lands.

DATES: Comments regarding the proposed sale must be received by BLM on or before April 26, 2007. Sealed bids must be received no later than 3 p.m., Pacific Standard Time (PST), June 18, 2007, at the address specified below. Other deadline dates for payments, arranging payments, and payment by electronic transfers, are specified in the terms and condition of sale described herein.

ADDRESSES: Comments regarding the proposed sale should be submitted to BLM, to the attention of the Palm Springs—South Coast Field Manager, at the following address: California Desert District, Bureau of Land Management, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553. Sealed bids must be submitted to this address. More detailed information regarding the proposed sale and the lands involved, including maps and current appraisal for each parcel may be reviewed during normal business hours between 8 a.m. and 4 p.m. at the California Desert District Office.

FOR FURTHER INFORMATION CONTACT: Janet Eubanks, Realty Specialist or Tom Gey, Realty Specialist (951) 697–5200 or via e-mail at *janet_eubanks@ca.blm.gov* or *thomas_gey@ca.blm.gov*.

SUPPLEMENTARY INFORMATION: The following public lands in the Coachella Valley, in Riverside County, California have been identified as available for sale

under the 1980 BLM California Desert Conservation Area Plan, as amended, and are proposed for sale. The public lands proposed for sale consist of 51 separate parcels, with a total acreage of approximately 274.37 acres. Parcel 1, described below, contains approximately 21.12 acres, which includes the area encumbered by a right of way for a road and flood control channel which bisects the parcel. Parcels 2 through 51, described below, are each approximately 5 acres in size.

San Bernardino Meridian, California

Parcel 1 T. 3 S., R.5 E., sec. 12, lots 33, 34, 35 and S½ of lots 29 to 31, inclusive.
Parcel 2 T. 3 S., R.5 E., sec. 12, W½SW¼NW¼SE¼.
Parcel 3 T. 3 S., R.6 E., sec. 6, S½SE¼SW¼SW¼.
Parcel 4 T. 3 S., R.6 E., sec. 6, N½SE¼SE¼SE¼.
Parcel 5 T. 3 S., R.6 E., Sec. 8, E½NW¼NE¼NW¼
Parcel 6 T. 4 S., R.7 E., sec. 4, lot 5.
Parcel 7 T. 4 S., R.7 E., sec. 4, lot 7.
Parcel 8 T. 4 S., R.7 E., sec. 4, lot 8.
Parcel 9 T. 4 S., R.7 E., sec. 4, lot 11.
Parcel 10 T. 4 S., R.7 E., sec. 4, lot 15.
Parcel 11 T. 4 S., R.7 E., sec. 4, lot 13.
Parcel 12 T. 4 S., R.7 E., sec. 4, lot 17.
Parcel 13 T. 4 S., R.7 E., sec. 4, lot 21.
Parcel 14 T. 4 S., R.7 E., sec. 4, lot 22.
Parcel 15 T. 4 S., R.7 E., sec. 4, lot 27.
Parcel 16 T. 4 S., R.7 E., sec. 4, lot 31.
Parcel 17 T. 4 S., R.7 E., sec. 4, lot 29.
Parcel 18 T. 4 S., R.7 E., sec. 4, lot 30.
Parcel 19 T. 4 S., R.7 E., sec. 4, lot 35.
Parcel 20 T. 4 S., R.7 E., sec. 4, lot 43.
Parcel 21 T. 4 S., R.7 E., sec. 4, lot 42.
Parcel 22 T. 4 S., R.7 E., sec. 4, lot 45.
Parcel 23 T. 4 S., R.7 E., sec. 4, lot 56.
Parcel 24 T. 4 S., R.7 E., sec. 4, lot 57.
Parcel 25 T. 4 S., R.7 E., sec. 4, lot 60.
Parcel 26 T. 4 S., R.7 E., sec. 4, lot 61.
Parcel 27 T. 4 S., R.7 E., sec. 4, lot 62.
Parcel 28 T. 4 S., R.7 E., sec. 4, N½NW¼NE¼SE¼.
Parcel 29 T. 4 S., R.7 E., sec. 4, N½SE¼NW¼SE¼.
Parcel 30 T. 4 S., R.7 E., sec. 4, N½NE¼SE¼SE¼.
Parcel 31 T. 4 S., R.7 E., sec. 4, S½SW¼NW¼SE¼.
Parcel 32 T. 4 S., R.7 E., sec. 4, N½NW¼SW¼SE¼.
Parcel 33 T. 4 S., R.7 E., sec. 4, S½SW¼NW¼SE¼.
Parcel 34 T. 4 S., R.7 E., sec. 4, N½SW¼SW¼SE¼.
Parcel 35 T. 4 S., R.7 E., sec. 4, S½SW¼SW¼SE¼.
Parcel 36 T. 4 S., R.7 E., sec. 4, N½NE¼SW¼SE¼.
Parcel 37 T. 4 S., R.7 E., sec. 4, N½SW¼NE¼SW¼.
Parcel 38 T. 4 S., R.7 E., sec. 4, S½NW¼SE¼SW¼.
Parcel 39 T. 4 S., R.7 E., sec. 4, N½SW¼SE¼SW¼.
Parcel 40 T. 4 S., R.7 E., sec. 4, S½SW¼SE¼SW¼.
Parcel 41 T. 4 S., R.7 E., sec. 4, N½SE¼NW¼SW¼.
Parcel 42 T. 4 S., R.7 E., sec. 4, S½SE¼NW¼SW¼.
Parcel 43 T. 4 S., R.7 E., sec. 4, S½NE¼SW¼SW¼.
Parcel 44 T. 4 S., R.7 E., sec. 4, N½SE¼SW¼SW¼.
Parcel 45 T. 4 S., R.7 E., sec. 4, S½SE¼SW¼SW¼.
Parcel 46 T. 4 S., R.7 E., sec. 4, S½SW¼SW¼SW¼.
Parcel 47 T. 4 S., R.7 E., sec. 14, N½SW¼SE¼SE¼.
Parcel 48 T. 4 S., R.7 E., sec. 14, N½SW¼SE¼SW¼.
Parcel 49 T. 4 S., R.7 E., sec. 14, N½SE¼SE¼SW¼.
Parcel 50 T. 4 S., R.7 E., sec. 14, S½SE¼SE¼SW¼.
Parcel 51 T. 3 S., R. 4 E., sec. 4, E½NW¼SW¼SE¼.

The proceeds from the sale of the parcels will be deposited into the Federal Land Disposal Account, pursuant to the Federal Land Transaction Facilitation Act. With the exception of parcel 1, the lands identified for sale have no known mineral value and the proposed sale would include the conveyance of both the surface and mineral interests of the United States. The United States would reserve geothermal resources under parcel 1. A bid to purchase a parcel will constitute an application for conveyance of the mineral interest and in conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the mineral interest. The terms and conditions applicable to this sale are as follows:

1. All parcels will be conveyed with a reservation of a right-of-way to the United States for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

2. All parcels will be conveyed subject to valid existing rights. Parcels may be subject to applications for rights of way received prior to publication of this Notice if processing the application would not adversely affect the marketability or appraised value of a parcel. Encumbrances of record, appearing in the BLM public files for the parcels proposed for sale, are available for review during the hours stated above Monday through Friday at the California Desert District Office.

3. All parcels will be conveyed subject to 33-foot easements along all sides of the parcel, in favor of Riverside County, for roads, public utilities and flood control purposes.

4. All parcels will also be conveyed subject to such additional easements as may be necessary to authorize existing and proposed roads, public utilities and flood control facilities based on Riverside County's transportation and land management plans.

5. No warranty of any kind, express or implied, is given by the United States as to the title, physical condition or potential uses of the lands proposed for sale; and the conveyance of any parcel will not be on a contingency basis. To the extent required by law, all such parcels are subject to the requirements of Section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA) (42 U.S.C. 9620(h)).

6. All purchasers/patentees, by accepting a patent, covenant and agree to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentees use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, state, and local laws and regulations that are now or may in the future become applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or state environmental laws, off, on, into or under land, property and other interest of the United States; (5) Activities by which solids or hazardous substances or waste, as defined by Federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and state law. This covenant shall be construed as running with the parcel of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

7. Interested bidders may submit sealed bids for one or more parcels but a separate sealed bid must be submitted for each parcel. Sealed bids must be for not less than the federally approved fair market value. Sealed bids must be received at the California Desert District Office no later than 3 p.m. PST, June 18, 2007. Sealed bid envelopes must be marked on the lower front left corner with the BLM Serial Number for the parcel, the parcel number and the date. For example: CACA 48476-parcel 1, May 31, 2007.

8. Each sealed bid must include a certified check, money order, bank draft, or cashiers check made payable in U.S. dollars to the order of the Bureau of Land Management, for 10 percent of the amount of the bid.

9. The highest qualifying bid for any parcel will be declared the high bid and the high bidder will receive written notice. Bid results will also be posted on the Internet at *http://www.ca.blm.gov/ca/cdd/landsale.*

10. Bidders submitting matching high bid amounts for the same parcel will be provided an opportunity to submit supplemental bids. The Palm Springs South Coast Field Manager will determine the method of supplemental bidding, which may be by oral auction or additional sealed bids.

11. The remainder of the full bid price for each parcel must be paid within 180 calendar days of the competitive sale date of June 19, 2007, in the form of a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the Bureau of Land Management. Personal checks will not be accepted. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM.

12. The BLM will return checks submitted by unsuccessful bidders by U.S. mail.

13. The BLM may accept or reject any or all offers, or withdraw any parcel of land or interest therein from sale, if, in the opinion of the BLM authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable law or is determined to not be in the public interest.

14. Under Federal law, the public lands may only be conveyed to U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold properly, or an entity legally capable of conveying and holding lands under the laws of the State of California. Certification of qualifications, including citizenship or corporation or partnership, must accompany the sealed bid.

Additional Information: If not sold, any parcel described in this Notice may be identified for sale later without further legal notice. Unsold parcels may be offered for sale by sealed bid, internet auction, or oral auction. Upon publication of this notice and until the completion of the sale, the BLM is no longer accepting land use applications affecting the parcels identified for sale. However, land use applications may be considered after completion of the sale for parcels that are not sold provided the authorization will not adversely affect the marketability or value of the parcel. In order to determine the value, through appraisal, of the parcels of land proposed to be sold, certain extraordinary assumptions may have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable local government policies laws, and regulations that would affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or projected uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals will be the responsibility of the buyer. 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.

Information concerning the sale, including the reservations, sale procedures and conditions, CERCLA and other environmental documents will be available for review at the California Desert District Office. Most of this information will be available on the Internet at *http://www.ca.blm.gov/ca/cdd/landsale.*

Public Comments: The general public and interested parties may submit comments regarding the proposed sale to the attention of the Palm Spring-South Coast Field Manager at the California Desert District Office address on or before April 26, 2007. Any adverse comments regarding the proposed sale will be reviewed by the California BLM State Director or other authorized official of the Department, who may sustain, vacate, or modify this realty action in whole or in part. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment-including your personal identifying information-may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 2711.1–2(a) and (c))

Dated: January 12, 2007.

J. Anthony Danna,

Deputy State Director, Natural Resources (CA–930).

[FR Doc. E7–4420 Filed 3–9–07; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–ES; N–75746; 7–08807]

Notice of Realty Action: Termination of Recreation and Public Purposes Segregation for N–59347; Recreation and Public Purposes Act Classification of Public Lands in Clark County, Nevada for N–75746

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 25 acres of public land in Clark County, Nevada. The City of Las Vegas proposes to use the land for a public park. This land disposal action has been coordinated with the unit of local government in whose jurisdiction such lands are located for Joint Selection purposes pursuant to Sec. 4 (d)(1) of the Southern Nevada Public Lands Management Act, Pub. L. 105–263, (112 Stat. 2345).

DATES: Interested parties may submit written comments regarding the proposed lease/conveyance or classification of the lands until April 26, 2007.

ADDRESSES: Please submit written comments to the Las Vegas Field Manager, Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130–2301.

FOR FURTHER INFORMATION CONTACT: Rebecca L. Rury, Realty Specialist,

Bureau of Land Management, Las Vegas Field Office, at (702) 515–5087.

SUPPLEMENTARY INFORMATION: The purpose of this Notice of Realty Action is to terminate the segregation of the 15 acres of land in N–59347 described below and to include this land in the 25 acre R&PP application N–75746. These 15 acres of public land were classified, effective April 15, 1996, for school purposes and segregated under the R&PP Act pursuant to application N–59347 filed by the Clark County School District, 61 FR 6258 (Feb. 16, 1996). This application was rejected due to inactivity for an extended period of time, and the case was closed on May 18, 2004:

Mount Diablo Meridian, Nevada

T. 20 S., R. 59 E., sec. 12, NW¼SW¼SW¼, W½NE¼SW¼SW¼.

The area described contains approximately 15 acres in Clark County.

The following described 25 acres of public land in application N–75746 has been examined and found suitable for lease and subsequent conveyance for recreational or public purposes under the provision of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*):

Mount Diablo Meridian, Nevada

T. 20 S., R. 59 E., sec. 12, W½NE¼SW¼SW¼, NW¼SW¼SW¼, W½SW¼SW¼SW¼, E½SE¼SW¼SW¼, except for that portion lying north and east of the centerline of Cliff Shadows Parkway.

The area described contains approximately 25 acres in Clark County.

The land is not required for any Federal purpose. Lease/conveyance is consistent with the Las Vegas Resource Management Plan, dated October 5, 1998, and would be in the public interest. The lease/conveyance, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the lands under applicable law and such regulations as the Secretary of the Interior may prescribe.

The lease/conveyance will be subject to:

1. All valid existing rights;

2. Rights-of-way N–57071, N–74487, N–75351, and N–79090 for public utility purposes granted to Nevada Power Company, its successors, or assigns pursuant to the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1761);

3. Right-of-way N–66292 for water pipeline purposes granted to Las Vegas Valley Water District, its successors, or assigns pursuant to FLPMA (43 U.S.C. 1761);

4. Right-of-way N–75403 for public utility purposes granted jointly to Southwest Gas Corporation and Kern River Gas Transmission Company, their successors, or assigns pursuant to the Act of February 25, 1920 (30 U.S.C. 185);

5. Right-of-way N–61323 for Las Vegas Beltway purposes granted to Clark County, its successors, or assigns pursuant to FLPMA (43 U.S.C. 1761); and

6. Right-of-way N–80986 for roadway purposes granted to Bardon Materials, its successors, or assigns pursuant to FLPMA (43 U.S.C. 1761).

Detailed information concerning this action is available for review in the office of the Bureau of Land Management, Las Vegas Field Office, at the address listed above.

On March 12, 2007, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a public park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or whether the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this classification action will become the final determination of the Department of the Interior May 11, 2007. The lands will not be available for lease/conveyance until after the classification becomes effective.

(Authority: 43 CFR Part 2741)

Dated: February 8, 2007.

Philip Rhinehart,

Acting Assistant Field Manager, Non-Renewable Resources, Las Vegas, NV.

[FR Doc. E7–4417 Filed 3–9–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 24, 2007.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 27, 2007.

J. Paul Loether,

Chief, National Register of Historic Places/National, Historic Landmarks Program.

CALIFORNIA

Los Angeles County

McNally, Andrew, House, 654 E. Mariposa St., Altadena, 07000245

DELAWARE

Sussex County

West Woods Methodist Episcopal Church, West Woods Rd., W. of Millsboro Hwy., Gumboro, 07000246

GEORGIA

Catoosa County

Blackford—Gray House, 319 Gray St., Graysville, 07000247

KANSAS

Crawford County

Raymond Community Home, 301 Osage St., Girard, 07000255

Doniphan County

Highland Christian Church, (Highland, Doniphan County, Kansas MPS), 102 E. Main St., Highland, 07000250
Highland Presbyterian Church, (Highland, Doniphan County, Kansas MPS), 101 South Ave., Highland, 07000248
Highland Water Tower, (Highland, Doniphan County, Kansas MPS), Jct. N. Genesee and W. Illinois Sts., Highland, 07000249
Wynkoop, A.L., House, (Highland, Doniphan County, Kansas MPS), 307 West Pennsylvania, Highland, 07000251

Sedgwick County

Johnson Drug Store Building, 2329 E. Central, Wichita, 07000254
Keep Klean Building, 810 E. Third, Wichita, 07000252
Stoner Apartment Building, 938–940 North Market, Wichita, 07000253

OKLAHOMA

Coal County

Keel Creek Bridge, OK 31 over Keel Creek, Coalgate, 07000257

Jackson County

Perryman Ranch Headquarters, 0.2 mi. E. of jct. of Cty. Rds. N193 and E159, Duke, 07000260

Oklahoma County

Douglass High School, Old, 600 N. High Ave., Oklahoma City, 07000259

Pontotoc County

Meaders, F.W., House, 521 South Broadway, Ada, 07000258

OREGON

Multnomah County

Baruh—Zell House, 3131 SE Talbot Rd., Portland, 07000256
Goldsmith, Alan and Barbara, House, 4140 SW Greenleaf Court, Portland, 07000261
Lane—Miles Standish Company Printing Plant, 1539 NW 19th Ave., Portland, 07000262
Wilson—Chambers Mortuary, 430 N. Killingsworth St., Portland, 07000263

RHODE ISLAND

Providence County

Earnscliffe Woolen—Paragon Worsted Company Mill Complex, 25 and 39 Manton Ave., Providence, 07000265
Howard, Ebenezer, House, 1264 Round Top Rd., Burrillville, 07000264

TEXAS

Bee County

Beeville Post Office, 111 N. St. Mary's St., Beeville, 07000272

Cooke County

Nelson Farmstead, 7729 FM 678, Gainesville, 07000270

Johnson County

Smith Ranch, FM 916, 1 mi. W of TX 174, Rio Vista, 07000271

San Augustine County

San Augustine Commercial Historic District, Roughly bounded by Main St., Montgomery St., Congress St., Broadway, Columbia St., property lines and Golden Way, San Augustine, 07000269

Tarrant County

Kress Building, 604 Main St., Fort Worth, 07000266

VIRGINIA

Goochland County

Tinsley Tavern, 2791 Elk Island Rd., Columbia, 07000276

Isle Of Wight County

Ivy Hill Cemetery, W. of N. Church St., Smithfield, 07000275

Loudoun County

Purcellville Historic District, Roughly bounded by W&OD Trail, S. 32nd St., W. F and E. G Sts., and Maple Ave., Purcellville, 07000277

Louisa County

Boxley Place, 103 Ellisville Dr., Louisa, 07000273

Norfolk Independent City

Zion Methodist Church, 2729 Bowden's Ferry Rd., Norfolk (Independent City), 07000274.

[FR Doc. E7–4317 Filed 3–9–07; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities Under OMB Review; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Recreation Survey, New Melones Lake Project, Sonora, CA. The ICR describes the nature of the information collection and its expected cost and hour burden.

DATES: OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment must be received on or before April 11, 2007.

ADDRESSES: Please send your comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov*. A copy of your comments should also be directed to the Bureau of Reclamation, *Attention:* E. Vasquez, CC 419, 7794 Folsom Dam Road, Folsom, CA 95630, or directed via e-mail to *evasquez@mp.usbr.gov.* Please reference OMB No. 1006–NEW in your comments.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed forms contact Ms. Elizabeth Vasquez at the above address, or at (916) 989–7192.

SUPPLEMENTARY INFORMATION: *Title:* Recreation Survey, New Melones Lake Project, Sonora, CA.

Abstract: The purpose of the on-site recreation survey is to characterize existing users, characterize their use of the New Melones Project, assess their satisfaction with their experience and the facilities, and find out what other opportunities or facilities they would like to see developed at the New Melones Lake Project. The purpose of the regional telephone survey is to characterize regional population, their outdoor recreation use, the demand for various types of outdoor recreation activities, trends in outdoor recreation use, and the extent to which the regional population uses New Melones Lake Project, Sonora, CA. The on-site survey and the regional telephone survey shall describe the recreational preferences of visitors to the New Melones Lake Project and provide guidance on what recreational planning objectives should be included in the New Melones Lake Project RMP/EIS.

OMB No. 1006–NEW

Frequency: One-time voluntary survey.

Respondents for On-site Survey: Persons who recreate at New Melones Lake Project.

Respondents for Telephone Survey: Residents of Sonora and Tuolumne counties.

Estimated Total Number of Respondents: 1,750.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 438 hours.

Estimate of Burden for Each Form:

Form	Burden estimate per form (*in minutes*)	Number of *respondents*	Annual burden on respondents (*in hours*)
On-site survey	15	1,250	313
Telephone survey	15	500	125
Total		1,750	438

Comments

A notice allowing the public a 60-day comment period was published in the **Federal Register** on May 2, 2006 (71 FR 25857, May 2, 2006). No comments were received in response to the 60-day comment period. The Public now has a second chance to comment.

Comments are Invited on

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

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

(c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents.

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. Reclamation will display a valid OMB control number on the survey forms.

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.

Michael R. Finnegan,

Area Manager, Central California Area Office, Mid-Pacific Region.

[FR Doc. E7–4406 Filed 3–9–07; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 05–22]

Planet Trading, Inc., d/b/a/ United Wholesale Distributors, Inc.; Denial of Application

On February 15, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Planet Trading, Inc., (Respondent) of Orlando, Florida. The Show Cause Order proposed to deny Respondent's pending application for a DEA Certificate of Registration as a distributor of the list I chemicals ephedrine and pseudoephedrine on the ground that Respondent's registration would be inconsistent with the public interest. Show Cause Order at 1, *see also* 21 U.S.C. 823(h).

More specifically, the Show Cause Order alleged that both ephedrine and pseudoephedrine are ''commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance.'' Show Cause Order at 1. The Show Cause Order alleged that ''DEA knows by experience'' that a ''gray market'' exists ''in which certain pseudoephedrine and ephedrine products are distributed only to convenience stores and gas stations, from where they have a high incidence of diversion'' into the illicit manufacture of methamphetamine. *Id.* at 2. Relatedly, the Show Cause Order alleged that only ''[a] very small percentage'' of legitimate sales of list I chemical products occur in gray market retailers and that the average gray market retailer ''could expect to sell * * * only about $10.00 to $30.00 worth of pseudoephedrine products'' a month. *Id.* at 3. The Show Cause Order also alleged that the expected sales for combination ephedrine products are ''only one-fourth of'' this amount. *Id.*

The Show Cause Order alleged that during a pre-registration investigation, Respondent's president advised DEA investigators that his firm distributes sundry items and tobacco products to convenience stores, gas stations, and small independent groceries, which constitute the gray market for list I chemical products. *Id.* at 2. The Show Cause Order further alleged that during an interview, Respondent stated that he had ''little or no background in handling list I chemical products.'' *Id.* The Show Cause Order also alleged that Respondent told the investigators that he intended to sell list I products that were marketed in bottles and not blister packs because the latter ''were not good sellers.'' *Id.*

The Show Cause Order also alleged that Respondent intended to store the list I products in a warehouse ''with all other items [and] without any additional security installed.'' *Id.* at 3. The Show Cause Order further alleged that ''[b]ecause [Respondent's] customers are allowed to serve themselves from the warehouse shelves, all customers will have unescorted access to the list I chemicals stored in the warehouse.'' *Id.*

Finally, the Show Cause Order alleged that Respondent's ''proposed sales of combination ephedrine and pseudoephedrine products are inconsistent with the known legitimate market and known end-user demand for products of this type,'' and thus Respondent ''would be serving an illegitimate market for [these] product[s].'' *Id.* The Show Cause Order concluded by alleging that because Respondent's owner had ''no experience handling list I chemicals'' and its warehouse has ''insufficient security,'' its ''registration would likely lead to increased diversion of list I chemicals.'' *Id.*

Respondent, through its owner Mr. Vihang Patel, requested a hearing. The case was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner, who conducted a hearing in Tampa, Florida, on November 1, 2005. At the hearing, both parties put on witnesses and introduced documentary evidence. Following the hearing, the Government submitted proposed findings of fact and conclusions of law.

On April 25, 2006, the Administrative Law Judge submitted her decision which recommended that Respondent's application be denied. Neither party filed exceptions. The record was then forwarded to me for final agency action.

Having considered the record as a whole, I hereby issue this decision and final order. I adopt the ALJ's decision in

its entirety and conclude that Respondent's registration would be inconsistent with the public interest. I therefore order that Respondent's application be denied.

Findings

Respondent, a Florida corporation, sells sundry items and tobacco products to convenience stores, gas stations, and small independent groceries. Respondent does not make deliveries. Rather, it operates a walk-in warehouse which is located in an Orlando, Florida industrial park. Respondent's President is Mr. Vihang Patel; Mr. Patel and his two brothers each own one-third of the corporation. *See* ALJ Dec. at 9–10.

On August 27, 2003, Mr. Patel applied on Respondent's behalf for a DEA Certificate of Registration to distribute list I chemicals. Gov. Ex. 1. As relevant here, Respondent sought the registration to distribute pseudoephedrine and ephedrine.[1] *Id.*

Methamphetamine and the Market for List I Chemicals

As explained in numerous DEA final orders, both pseudoephedrine and ephedrine currently have therapeutic uses. *See, e.g., Tri-County Bait Distributors*, 71 FR 52160, 52161 (2006).[2] Both chemicals are, however, regulated under the Controlled Substances Act because they are precursor chemicals which are easily extracted from non-prescription products and used in the illicit manufacture of methamphetamine, a Schedule II controlled substance. *See* 21 U.S.C. 802(34); 21 CFR 1308.12(d).

Methamphetamine is a powerful and highly addictive central nervous system stimulant. *See, e.g., Tri-County Bait Distributors*, 71 FR at 52161. The illegal manufacture and abuse of methamphetamine pose a grave threat to this country. Methamphetamine abuse has destroyed numerous lives and families and ravaged communities. Moreover, because of the toxic nature of the chemicals which are used to make the drug, the illegal manufacture of methamphetamine causes serious environmental harms. *Id., see also* Tr. 12.

The illicit manufacture of methamphetamine is an increasing problem in the State of Florida. According to the testimony of a DEA Special Agent, during the period October 1, 2004, through September 30, 2005, law enforcement authorities seized 340 clandestine laboratories statewide. Tr. 10–11. A DEA Diversion Investigator (DI) further testified that the illicit manufacture of methamphetamine is an especially serious problem in central Florida and the panhandle. *Id.* at 26.

The record further establishes that there is both a traditional market and a non-traditional (or gray) market for pseudoephedrine and ephedrine products. According to the declaration of Jonathan Robbin, who has testified as an expert on statistical analysis of these markets in numerous proceedings, pseudoephedrine products sold in the traditional market typically contained 30 mg. of the chemical, are manufactured ''in combination with other active ingredients,'' and are sold in blister packs of 24, 36, or 96 count. Gov. Ex. 10, at 3–4. Ephedrine products sold in the traditional market typically contain 12.5 mg. of ephedrine and 200 mg. of guaifenesin and are sold in boxes of either 24 or 60 tablets. *Id.* at 4. By contrast, the products sold in the non-traditional market typically contain 60 mg. of pseudoephedrine, which is not combined with any other active ingredient, and are sold in bottles containing 60, 100, and 120 tablets. *Id.* at 5; *see also* Gov. Ex. 6, at 12. Moreover, the ephedrine products sold in the non-traditional market typically contain 25 mg. of ephedrine combined with 200 mg. of guaifenesin and are sold in bottles containing 60 tablets. Gov. Ex. 10, at 6.

According to the Government's expert witness, who has examined both the 1997 and 2002 United States Economic Censuses, approximately 97 percent of all non-prescription drugs are sold in pharmacies, supermarkets, large discount and general merchandise stores, or through electronic shopping/mail order houses. *Id.* at 4. The data also show that non-prescription drug sales accounted for only 2.6% (in the 2002 Economic Census) ''of the overall sales of all convenience stores that handle'' these products and only 0.6% of the total sales of convenience stores. *Id.* at 4–5. The Government's expert further testified that the sale of pseudoephedrine products comprise ''only about 2.6% of the [Health and Beauty Care] category of merchandise or 0.05% of total in-store (non-gasoline) sales that occur at convenience stores. *Id.* The Government's expert further stated that combination ephedrine products ''have about half the over-the-counter sales volume'' of pseudoephedrine products. *Id.* According to the Government's expert, the normal expected sales range to meet legitimate demand for pseudoephedrine products at a non-traditional retailer is ''between $0 and $40 per month, with an average of $20.60''; the expected sales range for combination ephedrine products at a convenience store is ''between $0 and $25, with an average of $12.58'' per month. *Id.* at 8.

Finally, the Government's expert recounted numerous instances in which wholesale distributors sold massive quantities of pseudoephedrine and ephedrine products to convenience stores and other non-traditional retailers. *See id.* at 8–14. The expert further concluded that the massive sales of these products cannot be explained by persons buying them for non-FDA approved uses such as ''weight loss or energy enhancement.'' *Id.* at 16. As the Government's expert concluded, DEA has found that these massive sales are ''indicative of diversion to illicit use.'' *Id.* at 17.

According to DI Mark J. Rubbins, who served as Chief of the Domestic Chemical Control Unit of the Office of Diversion Control, ''[n]on-traditional stores * * * tend to knowingly sell [list I products] in large quantities to 'smurfers.' '' Gov. Ex. 6, at 6. DI Rubbins further explained that smurfers ''are groups of individuals affiliated with methamphetamine traffickers that frequent these establishments at different times or on different dates, with the aim of buying out a store's supply of over-the-counter medications.'' *Id.* at 6–7.

DI Rubbins further testified that certain list I products have been ''disproportionately represented in clandestine lab seizures around the United States.'' *Id.* at 12. The pseudoephedrine products are Mini Thin, Mini Twin, Unique, Action-Pseudo, Revive, OTC-Pseudo, and Twin-Pseudo; the ephedrine products are Max Brand, Xtreme, Xtreme Relief Dual, Mini Two-Way, and Max Brand *Id.* at 11–12. In addition, the brand names MinTwin 2-Way and Heads-Up are used to sell both pseudoephedrine and ephedrine tablets. *Id.* at 12. With respect to the pseudoephedrine products, DI Rubbins stated that these products are preferred by illicit methamphetamine producers because pseudoephedrine is their only active ingredient and they are packaged in ''large bottle sizes.'' *Id.* Moreover, blister packs are not preferred by methamphetamine producers because it is more ''time consuming'' to extract the product from its packaging. Tr. 35.

[1] Respondent also sought to distribute phenylpropanolamine (PPA), a product which is the subject of an FDA rulemaking which proposes to reclassify the drug as not generally safe and effective. *See* 70 FR 75988, 75994 (2005). Respondent no longer seeks registration to distribute PPA products.

[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).

The Pre-Registration Investigation and Respondent's Testimony

On January 27, 2004, a DI visited Respondent's facility and met with Mr. Vihang Patel, Respondent's president, to conduct a pre-registration investigation. Tr. 29. During the inspection, Mr. Patel provided the DI with a list of the list I chemicals products his firm intended to sell. Gov. Ex. 5.The list included numerous products that are preferred by illicit methamphetamine producers including bottle sizes of Ephedrine Two-Way, MiniThin Two-Way, and Max Brand Two-Way.[3] *Id.* at 2. Additionally, the list included a number of products that do not contain list I chemicals such as Goody Powder, Goody Body Pain Powder, BC Arthritis Powder, and BC Powder. *Id.* at 1. Moreover, at the hearing Mr. Patel demonstrated a general lack of knowledge as to whether particular products contained either pseudoephedrine or ephedrine. When asked during cross-examination whether certain products (Nyquil, Dayquil, Tylenol Cold, Tylenol Sinus, Tylenol Allergy, Advil Cold, Tylenol PM) contained pseudoephedrine, Mr. Patel answered: ''I'm not sure if any one of them does or not. We have to * * * go to the chemical contents, or ingredients of that particular product.'' Tr. 106. When asked whether any of these products contained ephedrine, Mr. Patel stated: ''I think they do.'' *Id.* at 107. However, none of the products contain ephedrine.

During the inspection, Mr. Patel told the DI that ''he would be selling bottles'' and that ''he would not be selling blister packs because his customers didn't like them or want them.'' *Id.* at 50. At the hearing, however, Mr. Patel testified that he was no longer interested in selling gray market products but only traditional allergy and cold medicines such as Nyquil and Tylenol Sinus. *Id.* at 91, 96.

Mr. Patel also told the DI that he had been ''an aeronautical engineer for eleven years,'' and that he ''had minimal experience'' in selling listed chemicals. *Id.* at 38. According to the record, Respondent's experience involved working on weekends in a similar business owned by his family that is located in Lakeland, Florida. *Id.*

Discussion

Under 21 U.S.C. 823(h), an applicant to distribute list I chemicals is entitled to be registered unless the registration would be ''inconsistent with the public interest.'' 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 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).

In this case, I acknowledge that factors two and three would not bar granting Respondent a registration. I conclude, however, that Respondent lacks effective controls against diversion (factor one), lacks relevant experience in the distribution of list I chemicals (factor four), and intends to distribute list I chemicals to the gray market (factor five), a market in which the risk of diversion is substantial. Consistent with DEA precedents, I thus hold that Respondent's registration would be inconsistent with the public interest.

Factor One—Maintenance of Effective Controls Against Diversion

I concur with the ALJ that the Government has not proved that Respondent would fail to provide adequate physical security for the list I chemicals stored at its facility. However, '' 'prior agency rulings have applied a more expansive view of factor one than mere physical security.' '' *D & S Sales*, 71 FR 37607, 37610 (2006) (quoting *OTC Distribution Co.*, 68 FR 70538, 70542 (2003)). A registrant is ''required to exercise a high degree of care in monitoring its customers' purchases'' of list I chemical products to prevent diversion. *Id.* Relatedly, DEA has repeatedly revoked the registrations of list I chemical distributors for selling quantities of products that clearly exceeded legitimate demand and were likely diverted into the illicit manufacture of methamphetamine. *See T. Young Associates, Inc.*, 71 FR 60567, 60572–73 (2006); *D & S Sales*, 71 FR at 37611–12; *Joy's Ideas*, 70 FR at 33198–99; *Branex, Inc.*, 69 FR 8682, 8693–96 (2004).

Here, I conclude that it is likely that Respondent would not properly monitor its customers' purchases. Both during the pre-registration investigation and at the hearing, Respondent's president demonstrated a lack of familiarity with OTC drug products. During the pre-registration investigation, he represented that certain products contained list I chemicals when they did not. At the hearing, he did not know which products contained which chemicals and again referred to products (Tylenol PM and Tylenol Arthritis) that do not contain either ephedrine or pseudoephedrine as if they did. Respondent's president further admitted that he would have to check the ingredients of the particular product to be sure of whether it contained a list I chemical. In short, his lack of such basic product knowledge does not inspire confidence that his firm would know which products must be monitored to ensure that they were not being purchased in excessive quantities and being diverted into the illicit manufacture of methamphetamine. I thus conclude that this factor support a finding that granting Respondent a registration would be inconsistent with the public interest.

Factors Two and Three—Compliance With Applicable Laws and the Applicant's Prior Record of Relevant Criminal Convictions

There is no evidence that Respondent is not in compliance with applicable Federal, State, or local laws. Furthermore, there is no evidence that Respondent, or any person affiliated with it, has ever been convicted of a crime under either Federal or State laws relating to controlled substances or listed chemicals. I thus conclude that both factors weigh in favor of granting Respondent's application.

Factor Four—The Applicant's Past Experience in the Distribution of Listed Chemicals

DEA precedent establishes that ''an applicant's lack of experience in distributing list I chemicals creates a greater risk of diversion and thus weighs heavily against the granting of an application.'' *Tri-County Bait Distributors*, 71 FR at 52163. According to the record, Respondent itself has no experience in distributing list I chemicals. The ALJ found, however,

[3] Ephedrine Two-Way tablets are manufactured by ProActive Labs Inc.; MiniThin Two-Way tablets are manufactured by B.D.I. Pharmaceutical. Gov. Ex. 5, at 2. Because of the extent to which these products have been found in illicit methamphetamine labs, DEA has sent numerous warning letters to both of these firms. *See D & S Sales*, 71 FR 37607, 37608 (2006).

that Respondent's president does have ''some limited experience'' working on weekends at another firm which distributes list I chemicals. ALJ Dec. at 15.

Distributors of list I chemicals are subject to a comprehensive and complex regulatory scheme. *See* 21 CFR Pts. 1309 & 1310. Moreover, as I explained in *Tri-County Bait Distributors*, merely working as a sales clerk does not establish that an applicant has relevant experience. 71 FR at 52163. Rather, for an applicant's (or its key employee's) experience to be relevant, the applicant must have been actively involved in the fulfillment of a registrant's regulatory obligations and demonstrate adequate knowledge of list I products.

While this standard may not have been clear at the time of the hearing, I nonetheless conclude that a remand is unnecessary. As explained above (and as the ALJ found), Respondent's president ''has little knowledge of which products on his proposed product list contained ephedrine or pseudoephedrine.'' ALJ Dec. at 15–16. Thus, even if Respondent's president had established that he had performed regulatory obligations, his lack of knowledge of basic product information would still lead me to conclude that his experience was inadequate. I thus hold that this factor supports a finding that Respondent's registration would be inconsistent with the public interest.

Factor Five—Other Factors That Are Relevant to and Consistent With Public Health and Safety

Numerous DEA orders recognize that convenience stores and gas stations constitute the non-traditional retail market for legitimate consumers of products containing pseudoephedrine and ephedrine. *See, e.g., Tri-County Bait Distributors*, 71 FR at 52161; *D & S Sales*, 71 FR at 37608–09; *Branex, Inc.*, 69 FR at 8690–92. DEA orders also establish that the sale of list I chemical products by non-traditional retailers is an area of particular concern in preventing diversion of these products into the illicit manufacture of methamphetamine. *See, e.g., Joey Enterprises*, 70 FR 76866, 76867 (2005). As *Joey Enterprises* explains, ''[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.'' *Id. See also TNT Distributors, Inc.*, 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''); *OTC Distribution Co.*, 68 FR 70538, 70541 (2003) (noting ''over 20 different seizures of [gray market distributor's] pseudoephedrine product at clandestine sites,'' and that in an 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'').

Significantly, all of Respondent's proposed customers participate in the non-traditional market for ephedrine and pseudoephedrine products. DEA orders recognize 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 at 33199 (finding that the risk of diversion was ''real'' and ''substantial''); *Jay Enterprises, Inc.*, 70 FR 24620, 24621 (2005) (noting ''heightened risk of diversion'' should application be granted). Under DEA precedents, an applicant's proposal to sell into the non-traditional market weighs heavily against the granting of a registration under factor five. So too here.

Because of the methamphetamine epidemic's devastating impact on communities and families throughout the country, DEA has repeatedly denied an application when an applicant proposed to sell into the non-traditional market and analysis of one of the other statutory factors supports the conclusion that granting the application would create an unacceptable risk of diversion. Thus, in *Xtreme Enterprises, Inc.*, 67 FR 76195, 76197 (2002), my predecessor denied an application observing that the respondent's ''lack of a criminal record, compliance with the law and willingness to upgrade her security system are far outweighed by her lack of experience with selling list I chemicals and the fact that she intends to sell ephedrine almost exclusively in the gray market.'' More recently, I have denied applications explaining that an applicant's ''lack of a criminal record and any intent to comply with the law and regulations are far outweighed by his lack of experience and the company's intent to sell ephedrine and pseudoephedrine exclusively to the gray market.'' *Jay Enterprises*, 70 FR at 24621. *Accord Prachi Enterprises, Inc.*, 69 FR 69407, 69409 (2004).

Here, Respondent clearly lacks effective controls against diversion, its key employee has only limited experience in the wholesale distribution of list I chemical products during which he apparently learned very little about the products he seeks to carry, and yet it intends to distribute these products to non-traditional retailers, a market in which the risk of diversion is substantial.[4] *See Taby Enterprises of Osceola, Inc.*, 71 FR 71557, 71559 (2006). Given these findings, it is indisputable that granting Respondent's application would be ''inconsistent with the public interest.'' 21 U.S.C. 823(h).

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(h), and 28 CFR 0.100(b) & 0.104, I order that the application of Planet Trading, Inc., d/b/a United Wholesale Distributors, Inc., for a DEA Certificate of Registration as a distributor of list I chemicals be, and it hereby is, denied. This order is effective April 11, 2007.

Dated: February 28, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 07–1103 Filed 3–9–07; 8:45 am]

BILLING CODE 4410–09–P

[4] Initially, Respondent also sought to sell high strength, high count list I products including several brands that DEA has frequently found during seizures of illicit methamphetamine laboratories. *See* Gov. Exh. 5, at 2. *See also OTC Distribution*, 68 FR at 70541, *MDI Pharmaceuticals*, 68 FR at 4236. At the hearing, however, Respondent expressed a willingness to carry only smaller packages of traditional cold and allergy medicines. *See* ALJ Dec. at 11. For the reasons stated above, I nonetheless conclude that the Government has shown that Respondent's registration would be inconsistent with the public interest.

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, 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. 3506(c)(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 Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Current Population Survey (CPS).'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 11, 2007.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll-free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of the official Government statistics on employment and unemployment for over 60 years. The labor force information gathered through the survey is of paramount importance in keeping track of the economic health of the Nation. The survey is the only source of data on total employment and unemployment, with the monthly unemployment rate obtained through this survey being regarded as one of the most important economic indicators. Moreover, the survey also yields data on the basic status and characteristics of persons not in the labor force. The CPS data are used monthly, in conjunction with data from other sources, to analyze the extent to which the various components of the American population are participating in the economic life of the Nation and with what success.

The labor force data gathered through the CPS are provided to users in the greatest detail possible, consistent with the demographic information obtained in the survey. In brief, the labor force data can be broken down by sex, age, race and ethnic origin, marital status, family composition, educational level, and other characteristics. Through such breakdowns, one can focus on the employment situation of specific population groups as well as on the general trends in employment and unemployment. Information of this type can be obtained only through demographically oriented surveys such as the CPS.

The basic CPS data also are used as an important platform on which to base the data derived from the various supplemental questions that are administered in conjunction with the survey. By coupling the basic data from the monthly survey with the special data from the supplements, one can get valuable insights on the behavior of American workers and on the social and economic health of their families.

There is wide interest in the monthly CPS data among Government policymakers, legislators, economists, the media, and the general public. While the data from the CPS are used in conjunction with data from other surveys in assessing the economic health of the Nation, they are unique in various ways. They provide a measurement of total employment, including farm work, self-employment and unpaid family work, while the other surveys are generally restricted to the nonagricultural wage and salary sector. The CPS provides data on all jobseekers, and on all persons outside the labor force, while payroll-based surveys cannot, by definition, cover these sectors of the population. Finally, the CPS data on employment, unemployment, and on persons not in the labor force can be linked to the demographic characteristics of the many groups that make up the Nation's population, while the data from other surveys are usually devoid of demographic information.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- 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.
- 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.

III. Current Action

Office of Management and Budget clearance is being sought for the Current Population Survey (CPS).

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Current Population Survey (CPS).

OMB Number: 1220–0100.

Affected Public: Households.

Total Respondents: 55,000 per month.

Frequency: Monthly.

Total Responses: 660,000.

Average Time Per Response: 7 minutes.

Estimated Total Burden Hours: 77,000 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 7th day of March 2007.

Mark Staniorski,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E7–4330 Filed 3–9–07; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, March 15, 2007.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTER TO BE CONSIDERED:

1. NCUSIF Dividend and Insurance Premium.
2. Appeals from Cinfed Federal Credit Union and Emergy Federal Credit union of the Regional Director's Denials of Conversion from Multiple Common Bonds to Community Charters.
3. Proposed Rule: Parts 748, 749, and 750 of NCUA's Rules and Regulations, Disaster Preparedness and Records Preservation Program.
4. Proposed Rule: Part 716 of NCUA's Rules and Regualtions, Model Privacy Form.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 07–1175 Filed 3–8–07; 3:15 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–36585]

Issuance of Environmental Assessment and Finding of No Significant Impact to Byproduct Materials License 53–27775–01 for Covance Clinical Research Unit, Inc., Honolulu, HI

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of environmental assessment and finding of no significant impact for license amendment.

FOR FURTHER INFORMATION CONTACT: Rachel S. Browder, M.S., Health Physicist, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, Arlington, Texas 76011. Telephone: (817) 276–6552; fax number: (817) 860–8188; or by e-mail: *rsb3@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to NRC Byproduct Materials License No. 53–27775–01, which was originally issued on July 13, 2004, pursuant to 10 CFR part 30. This license is held by Covance Clinical Research Unit, Inc., (Licensee), and authorizes the possession and use of carbon-14 in pre-packaged capsules at the Licensee's laboratory located at 401 Kamakee Street, in Honolulu, Hawaii (the facility), a commercial area of Honolulu. The facility in which all licensed radioactive materials were kept and used is a room approximately 7′ x 12.5′ with a ceiling height of 8.5′, and contains a sink and ventilation hood.

By letter dated October 10, 2006, the Licensee stated that use of carbon-14 had been discontinued at their facility, and accordingly requested that the facility be released for unrestricted use, and that the NRC license be terminated.

The NRC has prepared an Environmental Assessment (EA) in support of the 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 is to approve the Licensee's October 10, 2006, license amendment request to release the facility for unrestricted use and terminate the license. Licensed activities at the facility were limited to conducting research trials, in which a pre-packaged, pharmaceutical capsule with approximately 100 microcuries (μCi) of tagged carbon-14 was given to each trial subject. The licensee conducted three separate research trials under the license, with the final trial being conducted in February 2006. Each trial consisted of approximately eight to nine subjects. Upon completion of each trial, the facility (where the subjects remained during each trial) was surveyed and documented to contain less than background levels of radiation.

The subjects remained at the facility until approximately 80–90% of the excretion was collected. The uptake, excretion and distribution of the pharmaceutical in the respective subjects were observed and measured. The samples were collected by the licensee and analyzed by a liquid scintillation counter, and subsequently disposed of in the sanitary sewerage. The total activity of carbon-14 ordered by the licensee was 5,089 μCi, of which 2,494 μCi was used during the Phase one trials. The remainder of the radioactive material was either returned to the sponsor or transferred to a licensed recipient.

Based on the use of the radioactive materials in accordance with 10 CFR 30.36(g), the Licensee was not required to submit a decommissioning plan to the NRC since any decommissioning activities and procedures implemented were consistent with those approved for routine operations.

The Need for the Proposed Action: The Licensee has ceased licensed activities at the facility and seeks to release the facility for unrestricted use and subsequent license termination.

Environmental Impacts of the Proposed Action: The historical review of licensed activities conducted at the facility documents that the activities involved the use of only carbon-14 as a tagged pharmaceutical in a pre-packaged capsule. The quantity amount in each capsule was approximately 100 μCi and the last use of licensed material was conducted in February 2006. During the research trials, the Licensee disposed of the excretion samples into the sanitary sewerage in accordance with the regulatory requirements in 10 CFR 20.2003.

The licensee has requested termination of the license because all work with radioactive materials at the facility have been discontinued. The proposed release of the licensee's facility for unrestricted use does not effect any environmental resource, since there are no remediation requirements for the facility or potential release of radioactive materials to the environment.

The Licensee conducted a final status survey of the facility during August 2006. The final status survey report was submitted on October 10, 2006, as part of the license amendment request. The submitted results were not statistically significant from background and therefore, the net results did not contain any activity above background. The NRC allows licensees to demonstrate compliance with the radiological criteria for unrestricted use as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee's results did not contain any activity above background and therefore were below any NRC criteria and were 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 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 licensee's 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 license are in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of any residual radioactivity in the laboratory 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 deny 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 release of the facility meets the requirements of 10 CFR 20.1402 for unrestricted use. 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 use 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 Contacted: NRC provided a draft of this EA to the State of Hawaii for review on January 22, 2006. The State of Hawaii did not provide any comments to the draft EA.

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 amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm.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. NRC, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities,'' NUREG–1496, July 1997 (ML042310492, ML042320379, and ML042330385).

2. NRC, ''Consolidated NMSS Decommissioning Guidance,'' NUREG–1757, Volume 1, Revision 1, September 2003 (ML053260027).

3. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination.''

4. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''

5. Jacobs, Mark, Covance Clinical Research Unit, Inc., Decommissioning Report, October 10, 2006 (ML062900229).

6. Browder, Rachel S., Acknowledgment of Receipt of Final Status Survey, October 31, 2006 (ML063040400).

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 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 Arlington, Texas, this 2nd day of March 2007.

For the Nuclear Regulatory Commission.

D. Blair Spitzberg,

Chief, Fuel Cycle Decommissioning Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. E7–4415 Filed 3–9–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Draft 2007 Report to Congress on the Costs and Benefits of Federal Regulations

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of availability and request for comments.

SUMMARY: The Office of Management and Budget (OMB) requests comments on its 2007 Draft Report to Congress on the Costs and Benefits of Federal Regulations. The full Draft Report is available at *http://www.whitehouse.gov/omb/inforeg/regpol-reports_congress.html,* and is divided into four chapters. Chapter I examines the costs and benefits of major Federal regulations issued in fiscal year 2006 and summarizes the costs and benefits of major regulations issued between September 1996 and 2006. It also discusses regulatory impacts on State, local, and tribal governments, small business, wages, and economic growth. Chapter II examines trends in regulation since OMB began to compile benefit and cost estimates records in 1981. Chapter III provides an update on implementation of the Information Quality Act, and Chapter IV summarizes agency compliance with the Unfunded Mandates Reform Act.

DATES: To ensure consideration of comments as OMB prepares this Draft Report for submission to Congress, comments must be in writing and received by June 11, 2007.

ADDRESSES: We are still experiencing delays in the regular mail, including first class and express mail. To ensure that your comments are received, we recommend that comments on this draft report be electronically mailed to *OIRA_BC_RPT@omb.eop.gov,* or faxed to (202) 395–7245. You may also submit comments to Mabel Echols, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10201, 725 17th Street, NW., Washington, DC 20503. All comments submitted in response to this notice will be made available to the public, including by posting them on OMB's Web site. For this reason, please

do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information.

FOR FURTHER INFORMATION CONTACT: Mabel Echols, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10201, 725 17th Street, NW., Washington, DC 20503. Telephone: (202) 395–3093.

SUPPLEMENTARY INFORMATION: Congress directed the Office of Management and Budget (OMB) to prepare an annual Report to Congress on the Costs and Benefits of Federal Regulations. Specifically, Section 624 of the FY 2001 Treasury and General Government Appropriations Act, also known as the ''Regulatory Right-to-Know Act,'' (the Act) requires OMB to submit a report on the costs and benefits of Federal regulations together with recommendation for reform. The Act states that the report should contain estimates of the costs and benefits of regulations in the aggregate, by agency and agency program, and by major rule, as well as an analysis of impacts of Federal regulation on State, local, and tribal governments, small businesses, wages, and economic growth. The Act also states that the report should go through notice and comment and peer review.

Steven D. Aitken,

Acting Administrator, Office of Information and Regulatory Affairs.

[FR Doc. E7–4375 Filed 3–9–07; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27747; 813–284]

SA Investment Partners LLC, et al.; Notice of Application

March 5, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act, except section 9, and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain investment funds formed for the benefit of eligible current and former employees of Sidley Austin LLP and its affiliates from certain provisions of the Act. Each fund will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

APPLICANTS: SA Investment Partnership LLC (the ''Investment Fund''), and Sidley Austin LLP and any entity controlling, controlled by, or under common control with Sidley Austin LLP (the ''Firm'').

FILING DATES: The application was filed on July 26, 2000, and amended on March 8, 2001, March 23, 2001, November 14, 2003, and November 13, 2006. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on, March 30, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; *Applicants:* One South Dearborn, Chicago, IL 60603.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876 or Julia Kim Gilmer, Branch Chief, at (202) 551–6821, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Firm is a law firm organized as a Delaware limited liability partnership. The Investment Fund is a Delaware limited liability company. Applicants may offer additional pooled investment vehicles to the same class of investors eligible to invest in the Investment Fund (the ''Subsequent Funds,'' and together with the Investment Fund, the ''Funds'') which will be substantially similar in all material respects to the Investment Fund except for investment objectives and strategies, operational differences related to the form of organization, and differences which reflect revisions to applicable law. Each Subsequent Fund, if any, will be structured as a general partnership, limited partnership or limited liability company, although a Subsequent Fund could be structured as a corporation, trust or other entity. The Funds will operate as non-diversified, closed-end management investment companies.

2. The Funds will enable Eligible Investors to participate in investment opportunities that come to the attention of the Firm. Each entity in which a Fund invests is referred to as a ''Portfolio Company.'' Participation as investors in a Fund will allow Eligible Investors (defined below) to diversify their investments and to have the opportunity to participate in investments that might not otherwise be available to them or that might be beyond their individual means.

3. Interests in each Fund (''Interests'') will be offered and sold in reliance upon the exemption from registration contained in Section 4(2) of the Securities Act of 1933 (the ''Securities Act'') or Regulation D under the Securities Act. Interests will be offered solely to investors who, at the time of the offer, are: (a) Eligible Employees (defined below); (b) trusts of which the trustees and/or grantors are Eligible Employees or of which the sole beneficiaries are Eligible Employees and their immediate family members (spouses, parents, brothers, sisters, children, spouses of children, and grandchildren) (''Eligible Trusts''); (c) entities, all of the voting power of which is controlled by Eligible Employees [1] (together with Eligible Trusts, ''Qualified Investment Vehicles''); (d) spouses of Eligible Employees; and (e) the Firm (collectively, ''Eligible Investors'').

4. ''Eligible Employees'' are current or former partners of the Firm, lawyers and other professionals employed by the Firm, and certain current or former

[1] The inclusion of entities controlled by an Eligible Employee in the definition of Eligible Investor is intended to enable Eligible Employees and their immediate family members to make investments in the Funds through private investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion and control over these investment vehicles, thereby creating a close nexus between the Firm and these investment vehicles.

employees of the Firm involved in managing the day-to-day affairs of the Funds.[2] An Eligible Employee must be either an accredited investor who meets the income requirements in rule 501(a)(6) of regulation D under the Securities Act, or, one of a maximum of 35 people (collectively, ''Non-Accredited Investors'') who: (a) Meets the sophistication requirements in rule 506(b)(2)(ii) of regulation D under the Securities Act, has a graduate degree, a minimum of five years of legal or business experience, and compensation of at least $150,000 in the prior year and a reasonable expectation of at least $150,000 in each of the two immediately succeeding years;[3] or (b) meets the definition of a knowledgeable employee in rule 3c–5 under the Act (with a Fund treated as though it were a covered company for purposes of the rule. Qualified Investment Vehicles that are not accredited investors must (a) have an Eligible Employee or a spouse of an Eligible Employee as the settlor, and the Eligible Employee as principal investment decision maker, and (b) be counted as one of the 35 Non-Accredited Investors.[4] A spouse of an Eligible Employee must be an accredited investor who meets the requirements of rule 501(a)(5) or 501(a)(6) of regulation D under the Securities Act. Any other Eligible Investor must be an accredited investor as defined in rule 501(a) of Regulation D. Prior to offering Interests in a Fund to an Eligible Employee or a spouse of an Eligible Employee, the Managing Members (defined below) must reasonably believe that such individual has such knowledge, sophistication, and experience in business and financial matters to be capable of evaluating the merits and risks of participating in the Fund, is able to bear the economic risk of the investment and is able to afford a complete loss of the investment. Each investor in a Fund shall be a (''Member'') of such Fund.

5. Administration of the Funds, including the screening of investment opportunities, will be vested in one or more (''Managing Members'') who are also Eligible Investors. Managing Members may delegate certain functions to one or more investment committees consisting of partners or employees of the Firm or delegate investment decisions to one or more advisers (each, an ''Adviser''). An Adviser will either be an individual that is a Managing Member, or an entity that is wholly-owned by the Firm.[5] An Eligible Investor who is a Managing Member will not receive any form of compensation for acting as a Managing Member.

6. The Investment Fund will bear its own expenses. No fees or compensation shall be paid to the Firm by the Funds, except for the reimbursement of direct out of pocket costs of disbursements and expenses incurred on behalf of such Funds. These direct out of pocket expenses will not include any markup or profit component.

7. Each Eligible Investor will receive a copy of the organizational documents and offering memorandum for a Fund, which will disclose the Fund's specific investment objective and strategies and other material terms of the Fund, before investing in such Fund. Each Fund will send its Members an annual report regarding its operations which will contain audited financial statements. Each Fund will also transmit a report to each Member containing information on that Member's distributive share of income, gains, losses, credits and other items for federal and state income tax purposes, resulting from operations of the Fund that year. Members will not be entitled to redeem their Interests in the Investment Fund, but the Investment Fund may in the future be restructured to periodically repurchase Interests from Members. Subsequent Funds may also periodically repurchase Interests from Members. Except in the case of death, a Member will not be permitted to transfer or assign his or her Interest in the Investment Fund absent approval of a Managing Member. No fee will be charged in connection with the sale or a Fund's repurchase of Interests of the Funds.

8. A Member may be required to withdraw from a Fund if that Member's continued participation would subject the Fund to possible adverse tax consequences, or violate applicable law or regulations. Upon withdrawal, the Member shall receive an amount equal to the Member's net capital contributions (capital contributions less all distributions received to the date of withdrawal) plus interest from the date each capital contribution was made at the prime rate.

9. A Fund will not acquire any security issued by a registered investment company if immediately after the acquisition such Fund would own more than 3% of the total outstanding voting securities of the registered investment company.

10. A Fund or Member will not borrow from any person if such borrowing would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of the Fund (other than short term paper). Any borrowing by a Fund will be non-recourse to the Fund's Members.

11. The applicants reserve the right to impose vesting provisions on a Member's investments in a Fund. In an investment program that provides for vesting, all or a portion of a Member's Interests would be treated as unvested, and vesting would occur over a specified period of time. To the extent a Member's Interests are or become vested, the termination of the Member's association or employment with the Firm would not affect the Member's rights with respect to the vested Interests. The portion of a Member's Interests that are unvested at the time of the termination of a Member's association or employment with the Firm may be subject to repurchase or cancellation by the Fund. Upon any repurchase or cancellation of all or a portion of a Member's Interests, the Fund will at a minimum pay to the Member the lesser of (a) the amount actually paid by the Member to acquire the Interests (plus interest at or above the prime rate, as determined by the Managing Members); and (b) the fair market value of the Interests determined at the time of repurchase or cancellation, as the case may be, as determined in good faith by the Managing Members. Any interest owed to a Member pursuant to (a) above will begin to accrue at the end of the investment period.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b)

[2] Any such former partners, lawyers or employees will maintain a sufficiently close nexus with the Firm so as to preserve the community of interest between the Eligible Employee and the Firm.

[3] In addition, such Eligible Employee may not invest or commit to invest (as applicable) in any year more than 10% of such person's income from all sources for the immediately preceding year, in the aggregate in a Fund and in all other Funds in which that Eligible Employee has previously invested.

[4] If such Qualified Investment Vehicle is an entity other than a trust, the reference to ''settlor'' shall be construed to mean a person who created the vehicle, alone or together with others and who contributed funds or other assets to the vehicle.

[5] An Adviser will register as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') if required. Any performance fee or carried interest payable by a Fund to an Adviser (a) will be charged only if permitted by rule 205–3 under the Advisers Act if paid to an Adviser registered under the Advisers Act, and (b) will comply with section 205(b)(3) of the Advisers Act (with the Fund treated as if it were a business development company solely for the purpose of that section) if paid to an Adviser not registered under the Advisers Act. A 'carried interest' is an allocation to an Adviser based on the net gains in addition to the amount allocable to the Adviser that is in proportion to its capital contributions, if any.

provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits an investment company that is not registered under section 8 of the Act from selling or redeeming its securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request relief under sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to the extent necessary to permit a Fund: (a) To purchase, from the Firm or any affiliated person thereof, securities or interests in properties acquired for the account of the Firm or any affiliated person thereof; (b) to sell, to the Firm or any affiliated person thereof, securities or interests in properties previously acquired by the Funds; (c) to invest in companies, partnerships, or other investment vehicles offered, sponsored or managed by the Firm or any affiliated person thereof; (d) to invest in securities of issuers for which the Firm or any affiliated person thereof have performed services and from which they may have received fees; (e) to purchase interests in any company or other investment vehicle: (i) In which the Firm or its partners or employees own 5% or more of the voting securities, or (ii) that is otherwise an affiliated person of the Fund or the Firm (or any affiliated person of the Fund); and (f) to participate as a selling security holder in a public offering in which the Firm or any affiliated person thereof acts as or represents as counsel a member of the selling group or the issuer or underwriter.

4. Applicants state that an exemption from Section 17(a) is consistent with the purposes of the Act and the protection of investors. Applicants state that the risks associated with a Fund engaging in transactions with affiliated parties will be disclosed to Eligible Investors. Applicants state that Eligible Investors, as financially sophisticated persons, will be able to understand and evaluate the risks associated with those dealings. Applicants also assert that the community of interest among the Members and the Firm will serve to reduce the risk of abuse in transactions involving a Fund and the Firm or any affiliated person thereof.

5. Section 17(d) and rule 17d–1 thereunder prohibit any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request relief under section 17(d) and rule 17d–1 to the extent necessary to permit a Fund to engage in transactions in which an affiliated person of the Fund or an affiliated person of such person participates as a joint, or a joint and several participants with such Fund.

6. Applicants submit that compliance with section 17(d) would cause the Funds to forgo investment opportunities simply because a Member, the Firm, or another affiliated person of a Fund made, or is concurrently making, an investment. Applicants also state that because certain attractive investment opportunities often require that each participant make available funds in an amount that may be substantially greater than that available to one Fund alone, there may be attractive opportunities that a Fund may be unable to take advantage of except as a co-participant with other persons, including affiliated persons. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

7. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–2 allows an investment company to act as self-custodian, subject to certain requirements. Applicants request an exemption from section 17(f) and rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) Compliance with paragraph (b) of the rule may be achieved through safekeeping in the locked files of the Firm, a partner of the Firm, or a senior administrator of the Firm; (b) for purposes of paragraph (d) of the rule, (i) employees of the Firm will be deemed employees of the Funds, (ii) officers and Managing Members of a Fund will be deemed to be officers of such Fund, and (iii) the Managing Members of a Fund will be deemed to be the board of directors of such Fund; and (c) instead of the verifications procedure under paragraph (f) of the rule, the verification will be effected quarterly by no fewer than two employees of the Firm. Applicants state that they expect that many of the Funds' investments are most suitably kept in the Firm's files where they can be referred to as necessary.

8. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Paragraph (g) of rule 17g–1 sets forth certain materials relating to the fidelity bond that must be filed with the Commission and certain notices relating to the fidelity bond that must be given to each member of the investment company's board of directors. Paragraph (h) of rule 17g–1 provides that an investment company must designate one of its officers to make the filings and give the notices required by paragraph (g). Paragraph (j) of rule 17g–1 exempts a joint insured bond provided and maintained by an investment company and one or more other parties from section 17(d) of the Act and the rules thereunder, but also requires, in 17g–1(j)(3), that the board of directors of such company satisfy the fund governance standards in rule 0–1(a)(7).

9. Applicants request an exemption from section 17(g) and rule 17g–1 to the extent necessary to permit the Managing Members, who would all be considered interested persons of the Funds, to take the actions and make the approvals set forth in rule 17g–1. Applicants could not comply with rule 17g–1 absent such relief. Applicants also request an exemption from the requirements of 17g–1(g) and (h) because applicants

believe that they are burdensome and unnecessary as applied to the Funds. The Managing Members will retain the materials required to be filed under 17g–1(g) and designate a person to maintain such records. Finally, applicants request an exemption from section 17g–1(j)(3) because the Funds will not have boards of directors. Additionally, in light of the purpose of the Funds and the community of interest among the Funds, and between the Funds and the Managing Members, applicants believe that little purpose would be served by this requirement.

10. Section 17(j) and paragraph (b) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the requirements of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Funds and would serve little purpose in light of the community of interests among the Members of the Funds by virtue of their common association with the Firm.

11. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e) of the Act, and the rules and regulations thereunder, that registered investment companies file with the Commission and mail their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to a Fund and would entail administrative and legal costs that outweigh any benefit to the Members. Applicants request exemptive relief to the extent necessary to permit a Fund to report annually to its Members in the manner described in the application. Applicants also request an exemption from section 30(h) of the Act to the extent necessary to exempt the Managing Members and any other persons who may be deemed to be members of an advisory board of a Fund from filing Forms 3, 4, and 5, under Section 16 of the Securities Exchange Act of 1934, as amended (''Exchange Act'') with respect to their ownership of Interests in a Fund. Applicants assert that, because there is no trading market for Interests and the transferability of Interests is severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to file them.

12. Rule 38a–1 requires investment companies to adopt, implement and periodically review written policies and procedures reasonably designed to prevent violation of the federal securities laws, appoint a chief compliance officer and maintain certain records. The Funds will comply with rule 38a–1(a), (c) and (d), except that the Managing Members of each Fund will fulfill the responsibilities assigned to a Fund's board of directors under the rule, and since all Managing Members would be considered interested persons of the Funds, approval by a majority of the disinterested directors required by rule 38a–1 will not be obtained.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction to which a Fund is a party otherwise prohibited by section 17(a) or section 17(d) and Rule 17d–1 (the ''Section 17 Transactions'') will be effected only if the Managing Members determine that: (a) The terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Members of the participating Fund and do not involve overreaching of the Fund or its Members on the part of any person concerned, and (b) the Section 17 Transaction is consistent with the interests of the Members of the participating Fund, the Fund's organizational documents and the Fund's reports to its Members. In addition, the Managing Members will record and preserve a description of Section 17 Transactions, their findings, the information or materials upon which their findings are based and the basis therefore. All such records will be maintained for the life of a Fund and at least six years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. If purchases or sales are made by a Fund from or to a Portfolio Company affiliated with the Fund by reason of a partner or employee of the Firm (a) serving as officer, director, general partner or investment adviser of the Portfolio Company, or (b) having a 5% or more investment in the Portfolio Company, such individual will not participate in the Fund's determination of whether or not to effect the purchase or sale.

3. The Managing Members will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Funds, or any affiliated person of such a person, promoter, or principal underwriter.

4. The Managing Members will not make available to the Members of a Fund any investment in which a Co-Investor (as defined below), with respect to any Fund, has or proposes to acquire the same class of securities of the same issuer, where the investment may involve a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Fund and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment: (a) Gives the Managing Members of the participating Fund holding such investment sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the participating Fund holding such investment has the opportunity to dispose of its investment prior to or concurrently with, on the same terms as, and on a *pro rata* basis with, the Co-Investor. The term (''Co-Investor'') with respect to any Fund, means any person who is: (a) An ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Fund, (b) the Firm and any entities controlled by the Firm, (c) a current or former partner or employee of the Firm, (d) an investment vehicle offered, sponsored, or managed by the Firm or an affiliated person of the Firm, or (e) a company in which the Firm or a Managing Member acts as an officer, director, or general partner, or has a similar capacity to control the sale or disposition of the company's securities.

The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent, (b) to immediate family members of the Co-Investor or a trust established for any such family member, (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Exchange Act, or (d) when the investment is composed of securities that are national market

system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder.

5. The Managing Members of each Fund will send to each Member who had an Interest in that Fund, at any time during the fiscal year then ended, Fund financial statements. Such financial statements shall be audited by independent accountants in accordance with United States generally accepted accounting principles. At the end of each fiscal year, the Managing Members will make a valuation or have a valuation made of all of the assets of the Fund as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, within 90 days after the end of each tax year of the Fund, or as promptly as practicable thereafter, the Managing Members shall send a report to each person who was a Member at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Member of his or her federal and state income tax returns and a report of the investment activities of the Fund during such year.

6. Each Fund and its Managing Members will maintain and preserve, for the life of each such Fund and at least six years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements and annual reports of such Fund to be provided to its Members, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4291 Filed 3–9–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55397; File No. 4–208]

Intermarket Trading System; Notice of Filing and Immediate Effectiveness of the Twenty Fourth Amendment to the ITS Plan Relating to the Elimination of the ITS Plan

March 5, 2007.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on February 27, 2007, the ITS Participants, through the ITS Operating Committee, submitted to the Securities and Exchange Commission (''Commission'') a proposed amendment (''Twenty Fourth Amendment'') to the restated ITS Plan.[3] The purpose of the Twenty Fourth Amendment is to eliminate the ITS Plan concurrent with the Trading Phase Date.[4] Pursuant to Rule 608(b)(3)(ii) under the Act,[5] the ITS Participants designated the amendment as concerned solely with the administration of the Plan. As a result, the Twenty Fourth Amendment has become effective upon filing with the Commission. At any time within 60 days of the filing of the amendment, the Commission may summarily abrogate the amendment and require that such amendment be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission is publishing this notice to solicit comments from interested persons.

I. Description and Purpose of the Proposed Amendment

The purpose of the proposed amendment is to eliminate the ITS Plan concurrent with the Trading Phase Date. The ''Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934'' (''NMS Linkage Plan'')[6] remains in effect until June 30, 2007.[7]

A. Governing or Constituent Documents

Not applicable.

B. Implementation of Amendment

The ITS Participants have manifested their approval of the proposed amendment by means of their execution of the Twenty Fourth Amendment. The Twenty Fourth Amendment has become effective upon filing.

C. Development and Implementation Phases

Not applicable.

D. Analysis of Impact on Competition

The Participants believe that the proposed amendment does not impose any burden on competition.

E. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

F. Approval by Sponsors in Accordance With Plan

Under section 4(c) of the restated ITS Plan, the requisite approval of the amendment is achieved by execution of the amendment on behalf of each ITS Participant. The amendment is so executed.

G. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

H. Terms and Conditions of Access

Not applicable.

I. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

J. Method of Frequency of Processor Evaluation

Not applicable.

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The ITS Plan is a National Market System (''NMS'') plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

The ITS Participants currently include the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Chicago Stock Exchange, Inc. (''CHX''), the Nasdaq Stock Market LLC (''Nasdaq''), the National Association of Securities Dealers, Inc. (''NASD''), the National Stock Exchange, Inc. (''NSX''), the New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (''Participants'').

[4] Trading Phase Date is the required date for full operation of Regulation NMS-compliant trading systems of all automated trading centers that intend to qualify their quotations for trade-through protection under Rule 611. *See* Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006). *See also* Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007) (extending the Trading Phase Date until March 5, 2007).

[5] 17 CFR 242.608(b)(3)(ii).

[6] The NMS Linkage Plan participants include Amex, BSE, CBOE, CHX, Nasdaq, NSX, NYSE, NYSE Arca, and PHLX. The NASD is not participating in the NMS Linkage Plan. The current ITS technology is being used to effectuate the NMS Linkage Plan. *See* Securities Exchange Act Release No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006) (approving the NMS Linkage Plan).

[7] NMS Linkage Plan participants that wish to extend the term could agree to do so, subject to Commission approval. See Section 11 of the NMS Linkage Plan.

K. Dispute Resolution

Not applicable.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. 4–208 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. 4–208. 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 Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the Plan Amendment also will be available for inspection and copying at the principal office of the ITS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. 4–208 and should be submitted on or before April 2, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4326 Filed 3–9–07; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55395; File No. SR–CBOE–2007–25]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Fees for the CBOE Stock Exchange

March 2, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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. CBOE designated this proposal as one establishing or changing a due, fee, or other charge applicable only to its members pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to establish fees applicable to the CBOE Stock Exchange (''CBSX''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 5, 2007, CBOE intends to launch CBSX, which will serve as a stock trading facility of CBOE. This filing proposes to set forth the fee schedule for CBSX. Specifically, the CBSX fee schedule lists certain fees from the CBOE fee schedule that are applicable to CBSX users (these include facility fees and connectivity charges). The CBSX fee schedule also contains transaction fees for CBSX. These transaction fees are based on whether the executing member is ''taking'' liquidity or ''making'' liquidity in connection with the transaction. Takers will be charged a rate that varies between $0.26 to $0.29 per 100 shares executed based on the amount of total volume executed by that user during the month. Orders that are ''routed'' to other market centers will be charged the same rate as the Taker rate. Makers will receive a rebate of $0.24 per 100 shares, except that Remote Market-Makers and Designated Primary Market-Makers will receive enhanced rebates if they meet certain market quality bid/ask standards that are calculated on a monthly basis. Cross transactions will be free. Lastly, CBSX will rebate users 50% of monthly tape revenue received from the Consolidated Tape Association and Nasdaq UTP Plans. The proposed fees will not take effect until March 5, 2007.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any

[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)(2).
[5] 15 U.S.C. 78f(b).
[6] 15 U.S.C. 78f(b)(4).

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and Rule 19b–4(f)(2) thereunder [8] because it establishes or changes a due, fee, or other charge applicable only to Exchange members. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2007–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–25 and should be submitted on or before April 2, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4292 Filed 3–9–07; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55408; File No. SR–CHX–2007–02]

Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend the CHX Fee Schedule on a Retroactive Basis to Clarify the Application of a Credit Against Specialist Fixed Fees

March 6, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 12, 2007, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared substantially by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Participant Fees and Credits (''Schedule''), on a retroactive basis, to clarify application of a monthly specialist fixed fee credit. The text of the proposed rule change is available at the Exchange, *http://www.chx.com/rules/proposed_rules.htm*, and 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. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 seeks to amend the Schedule on a retroactive basis to clarify application of a monthly specialist fixed fee credit.

On November 21, 2006, the Exchange amended the Schedule, providing for a monthly specialist fixed fee credit of $25,000, to be in effect while the Exchange completed implementation of its new trading model and issues were transitioned from being traded by CHX specialists to a market maker model.[3]

At that time, the Exchange envisioned that the credit would be applied on a cumulative basis for November and December of 2006, so that the November credit would be $25,000 and the December credit would be $50,000. Subsequently, at the December 12, 2006 meeting of its Board of Directors, the Exchange determined that it would make the credit available for the month of January 2007, but that the credit for January would be reduced to $25,000. The proposed rule language in the instant proposed rule change clarifies the total amount of the credit available for each month.[4]

[3] *See* Securities Exchange Act Release No. 55070 (January 9, 2007), 72 FR 2049 (January 17, 2007) (SR–CHX–2006–37).

[4] Thus, the credit for November 2006 is $25,000; the credit for December 2006 is $50,000; and the credit for January 2007 is $25,000.

The monthly credit is applied against the first $25,000 (or $50,000, in the case of December 2006) in monthly specialist fixed fees otherwise due the CHX from a participant firm. If the participant firm's fixed fee liability is less than the credit amount, the CHX would apply a credit equal to the amount of the fixed fee liability, but would not issue a refund to such participant firm for the remaining balance of the credit, nor would the CHX carry forward the balance of the credit for application to future fixed fee liabilities.[5]

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members and will result in an additional credit for CHX specialist firms impacted by the Exchange's transition to its new trading model. The proposed rule change is consistent with Section 6(b)(5) of the Act because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by permitting the Exchange to provide incentives for its specialist firms to support the transition to new technology that will result in fully automated executions.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

[5] For example, if a specialist firm's monthly fixed fee liability for November 2006 was $32,000, the CHX would apply the $25,000 credit and the firm would be billed for the remaining balance of $7,000 in net fixed fees. If a specialist firm's fixed fee liability was $10,000, the CHX would apply a credit of $10,000, offsetting the entire liability, and the CHX would not bill the specialist firm for any fixed fees. The CHX would not issue a refund of $15,000 to the specialist firm on account of the unused portion of the available credit and the unused portion would not be available to offset fixed fee liabilities in future months.

[6] 15 U.S.C. 78f(b).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2007–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2007–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2007–02 and should be submitted on or before March 27, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4325 Filed 3–9–07; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55405; File No. SR–NASDAQ–2007–020]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish a Directed Order Type

March 6, 2007.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 2, 2007, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. Nasdaq has designated this proposal as non-controversial under Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend Nasdaq Rule 4611 to update and codify the requirements applicable to Nasdaq members that provide sponsored access to other firms and customers to the Nasdaq execution system.

The text of the proposed rule change is below. Proposed new language is

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

italicized; proposed deletions are in brackets.[6]

* * * * *

4750. NASDAQ MARKET CENTER—EXECUTION SERVICES

4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on a national securities exchange other than Nasdaq.

(a)–(e) No change.

(f) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(8) No change.

(9) ''Directed Orders'' are orders that are directed to an exchange other than Nasdaq as directed by the entering party without checking the Nasdaq book. If unexecuted, the order (or unexecuted portion thereof) shall be returned to the entering party. This option may only be used for orders with time-in-force parameters of IOC.

Directed Orders may be designated as intermarket sweep orders by the entering party to execute against the full displayed size of any protected bid or offer (as defined in Rule 600(b) of Regulation NMS under the Act). A broker-dealer that designates an order as an intermarket sweep order has the responsibility of complying with Rules 610 and 611 of Regulation NMS.

(g)–(i) No change.

* * * * *

4755. Order Entry Parameters

(a) System Orders

(1)

(A) No Change.

(B) A System order may also be designated as Reserve Order, a Pegged Order, a Non-Displayed Order, a Minimum Quantity Order, an Intermarket Sweep Order, a Price to Comply order, a Price to Comply Post order, [or] a Discretionary Order, *or a Directed Order.*

(C) No Change.

(2)–(4) No change.

* * * * *

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 changes and discussed any comments it received regarding the proposal. 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

Nasdaq proposes to create a new order type—the Directed Order—for use by its members in compliance with their obligations under Regulation NMS.[7] Directed Orders will be entered by a Nasdaq member and sent to a market center other than Nasdaq without checking the Nasdaq book. The entering member will select the market center to receive the order This functionality existed in Nasdaq's former Brut and INET facilities in the form of a ''Thru'' order that members used to route trading interest directly to the New York Stock Exchange or American Stock Exchange to avoid trading through those markets.[8] If unexecuted, the order (or unexecuted portion thereof) shall be returned to the entering party. This option may only be used for orders with time-in-force parameters of IOC.

This order will provide additional flexibility and functionality to Nasdaq's system and to members that wish to use the system to comply with their obligation to avoid trading through any Protected Quotation within the meaning of Rule 600(b)(58) of Regulation NMS.[9] Directed Orders may be designated as intermarket sweep orders (as defined in Rule 600(b)(30) of Regulation NMS [10]) and therefore will provide Nasdaq member's the ability to execute against the full displayed size) of any Protected Bid or Protected Offer (as defined in Rule 600(b)(57) of Regulation NMS [11]) in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified in the intermarket sweep order.

Nasdaq members will be required to comply with the requirements of Rules 610 and 611 of Regulation NMS [12] when designating Directed Orders as intermarket sweep orders. A broker-dealer that designates an order as an intermarket sweep order has the responsibility of complying with Rules 610 and 611 of Regulation NMS. When Nasdaq's execution system receives a Directed Order that is designated as an intermarket sweep order, Nasdaq's system will pass that order to NASDAQ Execution Services, LLC, Nasdaq's broker-dealer subsidiary. Nasdaq Execution Services has connectivity to route to all automated trading centers displaying protected quotations.[13] Nasdaq Execution Services will accept orders only from Nasdaq, which in turn accepts orders only from Nasdaq members. Because Nasdaq Execution Services will be routing orders strictly on behalf of Nasdaq members, and Nasdaq members that designate Directed Orders as intermarket sweep orders are obligated to comply with Rules 610 and 611 of Regulation NMS, Nasdaq Execution Services will not perform additional validations to ensure that orders are properly designated as intermarket sweep orders.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general, and with Section 6(b)(5) of the Act,[15] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating 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.

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 purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

[6] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at nasdaq.complinet.com/nasdaq/display/index.html.

[7] *See* 17 CFR 242.600 *et seq.*

[8] *See* former NASD Rules 4903(b) and 4956(a).

[9] 17 CFR 242.600(b)(58).

[10] 17 CFR 242.600(b)(30).

[11] 17 CFR 242.600(b)(57).

[12] 17 CFR 242.610; 17 CFR 242.611.

[13] See Responses to Frequently Asked Questions, posted on the nasdaqtrader.com Web site at *http://www.nasdaqtrader.com/trader/tradingservices/regnms_faqs.pdf.*

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed 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 the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 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) [18] 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 waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.[19] The Commission believes that the proposed rule change will facilitate the ability of Nasdaq members to utilize Nasdaq's automated system to comply with their respective obligations under Regulation NMS.

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.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required 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. The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to grant this request.

[18] 17 CFR 19b–4(f)(6)(iii).

[19] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2007–020 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–NASDAQ–2007–020. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also 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–NASDAQ–2007–020 and should be submitted on or before April 2, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4328 Filed 3–9–07; 8:45 am]

BILLING CODE 8010–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55406; File Nos. SR–NASD–2006–131; SR–NYSE–2006–111; SR–Amex–2007–05]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; New York Stock Exchange LLC; American Stock Exchange LLC; Order Approving Proposed Rule Changes To Increase the Frequency of the Short Interest Reporting Requirements

March 6, 2007.

On December 4, 2006, December 7, 2006, and January 10, 2007, respectively, the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange LLC (''NYSE''), and the American Stock Exchange LLC (''Amex'') (collectively, the ''SROs''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'' or the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule changes as described below:

○ NASD proposed to increase the frequency of the short interest reporting requirements under NASD Rule 3360 from monthly to twice per month. Currently, NASD Rule 3360, Short-Interest Reporting, requires members to maintain a record of total short positions in all customer and proprietary firm accounts in OTC Equity Securities [3] and securities listed on a national securities exchange if not reported to another self-regulatory organization and to regularly report such information in the manner prescribed by NASD.[4] Thus, no changes to the text of NASD rules are required by this proposed rule change.

○ NYSE proposed an amendment to NYSE Rule 421.10 (Short Positions), which would increase the frequency of the short interest reporting requirements under Rule 421.10 from monthly to twice per month. In addition, NYSE proposed additional amendments to the Rule 421.10's text in light of recent changes to NYSE organizational

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Rule 3360 provides that the term ''OTC Equity Securities'' refers to any equity security that is not listed on The Nasdaq Stock Market or a national securities exchange.

[4] Non-self-clearing broker-dealers generally are considered to have satisfied their reporting requirement by making appropriate arrangements with their respective clearing organizations. *See* NASD *Notice to Members* 03–08 (January 2003).

structure and to reflect the adoption of the Commission's Regulation SHO.[5]

○ Amex proposed to increase the frequency of the short interest reporting requirements from monthly to twice a month, and to codify the short interest reporting requirement authorized by Amex Rule 30. The proposed amendment would incorporate the short interest reporting requirements into new Amex Rule 30A.

The SROs proposed an implementation date of 180 days (six months) following Commission approval of the filing in order to allow firms sufficient time to make any systems changes necessary to comply with the new requirements.

The proposed rule changes were published in the **Federal Register** on February 1, 2007.[6] The Commission received one comment, which was submitted in support of this proposal. Prior to the proposal, NASD had received two comments that also supported the proposal. This order approves the rule change.

Discussion and Commission Findings

A. Comments

The Commission specifically asked whether the proposed 180 day implementation period should be shortened. The Commission received one comment letter.[7] The commenter supported the NYSE and NASD proposals[8] because she favored regulation of short sales generally. However, the commenter believed that the implementation period should be shortened.

Prior to filing with the Commission, NASD solicited comments on its proposed rule change in NASD *Notice to Members* 05–63 (September 2005) and received two comments.[9] Of the two comment letters received, both were in favor of the proposed rule change. One commenter noted that minimal programming and costs would be required to implement this proposal, but recommended six months for implementation of the proposal.[10] The other commenter indicated that increases or decreases in short interest positions are significant indicators of investor sentiment.[11] As such, the commenter stated that timelier reporting of short interest data provides additional relevant information and more accurate indications of changes in investor outlook.[12]

In response to these comments and in recognition of technological and systems changes that may be required to implement the proposed rule change, the Commission finds that the 180 day implementation period proposed by the SROs will provide members adequate time to make any necessary changes.

B. Related Issues

Short positions required to be reported under the SROs' rules are those resulting from ''short sales'' as the term is defined in Rule 200 of Regulation SHO,[13] with certain exceptions related to Exchange Act Rule 10a–1.[14] Commission staff has instructed the SROs to review these exceptions to short interest reporting to determine whether further rulemaking is appropriate.

C. Commission Findings

After a review of the rule proposals and the comments, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and national securities associations, and in particular Sections 6(b)(5)[15] and 15A(b)(6)[16] of the Act, which require, among other things, that NASD, NYSE, and Amex rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule changes will provide additional and more timely information related to short selling.[17]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (SR–NASD–2006–131; SR–NYSE–2006–111; SR–Amex–2007–05) be, and it hereby are,approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4293 Filed 3–9–07; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 242.200 through 242.203.

[6] Securities Exchange Act Release No. 55170 (January 26, 2007), 72 FR 4756 (February 1, 2007).

[7] Letter from Carol McCrory, Visitiing Assistant Professor of Legal Skils, Stetson University College of Law (Jan. 30, 2007) (commenting on SR–NASD–2006–131 and SR–NYSE–2006–111).

[8] *See id.* The letter did not comment on the Amex proposal.

[9] Comments were received from the following: Lisa Morel-Misener of Cognos Incorporated, dated October 27, 2005 and Christopher Charles of Wulff Hansen & Co., dated November 15, 2005.

[10] *See supra* note 9, Wulff Hansen & Co. letter.

[11] *See supra* note 9, Cognos Incorporated letter.

[12] *Id.*

[13] 17 CFR 242.200.

[14] 17 CFR 240.10a–1. NASD Rule 3360(b)(1) excludes positions that meet the requirements of subsections (e)(1), (6), (7), (8), and (10) of Rule 10a–1 and NYSE Rule 421.10 currently excludes positions resulting from sales specified in subsections (1), (6), (7), (8), (9) and (10) of paragraph (e) of Rule 10a–1. NYSE's proposal removes subsection (9). To conform with the NASD and NYSE rules, Amex Rule 30A as proposed excludes positions resulting from sales specified in Rule 10a–1(e) (1), (6), (7), (8) or (10).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78o–3(b)(6).

[17] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55398; File No. SR–NYSE–2007–25]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 123D (Openings and Halts In Trading)

March 5, 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 March 2, 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 and II below, which Items have been prepared substantially by the Exchange. The Exchange has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Exchange Rule 123D to add new section (3) to enable the Exchange to halt trading in a security whose price may be about to fall below $1.00 per share, without delisting the security, so that the security may continue to trade on other markets that deal in bids, offers, orders, or indications of interest in sub-penny prices, until the price of the security has recovered sufficiently to

[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).

permit the Exchange to resume trading in minimum increments of no less than one penny or the issuer is delisted for failing to correct the price condition within the time provided under NYSE rules. The text of the proposed rule change is available at *http://www.nyse.com,* NYSE and 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. 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

Regulation NMS, adopted by the Commission in April 2005,[5] provides that each trading center intending to qualify for trade-through protection under Regulation NMS Rule 611 (''Rule 611'')[6] is required to have a Regulation NMS-compliant trading system fully operational by March 5, 2007 (the ''Trading Phase Date'').[7]

Regulation NMS Rule 612 (''Rule 612''),[8] permits markets to accept bids, offers, orders, and indications of interest in increments smaller than a $0.01 per share, but not less than $0.0001 per share, for stocks priced below $1.00 per share and to quote and trade such stocks in sub-pennies. Markets may choose not to accept such bids, offers, orders or indications of interest and the NYSE has done so, maintaining a minimum trading and quoting variation of $0.01 per share for all securities trading below $100,000 per share.[9]

However, the Commission has said that Rule 611's proscription against trade-throughs extends to quotes which include a sub-penny component in stocks priced below $1.00 per share, provided they are better priced by a minimum of $0.01 per share.[10] Rule 612 requires a market that routes an order to another market in compliance with Rule 611 and receives a sub-penny execution to accept the sub-penny execution, report that execution to the customer, and compare, clear and settle that trade.

The Exchange states that, currently, there are no markets quoting or trading NYSE-listed securities that are priced under $1.00 per share in sub-penny increments. The Exchange's trading system does not currently accommodate sub-penny trading, nor can it recognize a quote disseminated by another market center if such quote has a sub-penny component. The Exchange had previously determined that it would not be cost effective to make the changes that would allow its trading system to fully accommodate sub-penny trading. In making this determination, the Exchange weighed the resource allocation choices that would be necessary against the fact that only a very small number of securities listed on the Exchange have fallen below $1.00 in the last three years.

The Exchange has been investigating whether there are systemic or other approaches that would allow it to deal with sub-penny executions made on markets to which we have routed an order, while not necessitating all the changes that would be required to fully trade in sub-pennies. No acceptable approach has yet been discovered.

The Exchange is proposing an approach which will allow it to avoid trading a security on NYSE when its price falls below $1.00 per share, while permitting it to remain listed on the Exchange so that it could continue to be traded by other markets on an unlisted trading privileges (''UTP'') basis, including NYSE Arca. This would involve ''halting'' trading on NYSE, not for a ''regulatory'' reason (as that would require other markets to stop reporting trades as well), but rather for an ''operational'' (*i.e.,* non-regulatory) reason. NYSE Rule 123D(2) contemplates such a non-regulatory halt for systems, equipment or communication facility problems or for other technical reasons and, in the Exchange's view, this is a related situation, since it relates to the Exchange's systemic inability to properly accommodate these sub-penny prices. Existing Rule 123D(2) contemplates halts which are relatively brief in duration, whereas a halt for the purposes described herein could potentially endure for a number of months.[11] More significantly, Rule 123D currently requires Floor Official approval to implement a trading halt of any kind, whether regulatory or operational. However, the proposed halt will have to occur automatically, so it must be specified to occur without Floor Official approval. For this reason the Exchange is proposing to codify this new non-regulatory halt in a new subsection (3) or Rule 123D. The Exchange is seeking to expand the use of the operational halt in order to prevent a problem that the Exchange knows would occur if the price of the stock fell below a $1.00 per share.[12]

Because the Exchange must halt trading before a security in fact trades below $1.00 per share, the new rule will trigger the halt whenever a security trading on the Exchange is reported on the consolidated tape during normal trading hours as having traded at a price of $1.05 per share or less, or if a security would open on the Exchange at a price of $1.05 per share or less. In any such event, trading in the security on the Exchange shall be immediately halted. Once halted for such reason, trading shall not be resumed on the Exchange until the security has traded on another automated trading center as defined in Rule 600(b)(4) under the Act[13] for at least one entire trading day at a price or prices that are at all times at or above $1.10 per share. Any such resumption of trading shall occur at the beginning of a trading day, so that normal opening procedures can apply. As noted above, in contrast to other trading halts, a sub-penny trading halt is automatic as it does not require the approval of any Floor Officials.[14] However, if a

[5] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[6] 17 CFR 242.611.

[7] *See* Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007).

[8] 17 CFR 242.612.

[9] *See* NYSE Rule 62.

[10] Order Exempting Certain Sub-Penny Trade-Throughs From Rule 611 of Regulation NMS Under the Securities Exchange Act of 1934. *See* Securities and Exchange Commission Release No. 54678 (October 31, 2006), 71 FR 65018 (November 6, 2006).

[11] Section 802.01C of the NYSE Listed Company Manual sets out a minimum price criteria for capital or common stock. Currently, that section provides that a company will be considered to be below compliance standards if the average closing price of a security is less than $1.00 over a consecutive 30 trading-day period. Once notified, the company must bring its share price and average share price back above $1.00 within six months. Alternatively, if a company determines that it will cure the price condition by taking an action that will require approval of its shareholders, it must obtain the necessary shareholder approval by a date no later than its next annual meeting, and must implement the action promptly thereafter. The price condition will be deemed cured if the price promptly exceeds $1.00 per share, and the price remains above the level for at least the following 30 trading days.

[12] The Exchange will notify its members that the description of ''Equipment Changeover'' will now include a halt for this new non-regulatory halt.

[13] *See* 17 CFR 242.600(b)(4).

[14] Specifically, designated Exchange staff will actively monitor the conditions of the securities and immediately implement the trading halt when the conditions of the securities require such halt without any Floor Official approval. The Exchange will investigate the possibility of creating a systemic modification to automate this process.

Continued

determination is made by a Floor Official that a trade that triggered a halt because of a ''Sub-penny trading'' condition was made in error or otherwise was an anomaly, trading of the security on the Exchange will resume immediately.

When a halt is called under NYSE Rule 123D, a condition indication is disseminated over the consolidated tape. The condition under new Rule 123D(3) will be denominated as a ''Sub-penny trading'' condition. However, steps will be taken to undertake the system development necessary to enable the dissemination of such a condition description but the changes will not be completed by March 5, 2007, the date when this change must be in place. Accordingly, through September 7, 2007, or the date the systems are able to disseminate such condition, if earlier, should a Sub-penny trading halt be required prior to the system being ready to disseminate such condition notification, the Exchange will in lieu thereof disseminate the ''Equipment Changeover'' condition (used when a halt is called pursuant to NYSE Rule 123D(2)), and will clarify as soon as practicable that the halt is due to a ''Sub-penny trading'' condition on the NYSE's Web site.[15]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[16] of the Act, in general, and furthers the objectives of Section 6(b)(5)[17] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

NYSE has asked that the Commission waive the 30-day operative delay and five-day pre-filing requirement contained in Rule 19b–4(f)(6)(iii) under the Act.[20] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it expands the Exchange's current use of trading halts for operational reasons to preemptively prevent operational problems on the Exchange and enable the Exchange to comply with Rule 612. The proposal is also consistent with the public interest and the protection of investors because it will permit Exchange-listed securities whose price falls below $1.05 per share to continue to quote and trade on an UTP basis, including in sub-penny increments, while recognizing the current limitations of the Exchange's systemic capacities in that regard.

Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[21]

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–2007–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–25 and should be submitted on or before April 2, 2007.

Telephone conversation on March 5, 2007 between Deanna Logan, Director, NYSE and David Liu, Senior Special Counsel, Division of Market Regulation, Commission.

[15] *See also supra* note 12.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] CFR 240.19b–4(f)(6)(iii). Rule 19b–4(f)(6) also requires the self-regulatory organization to give the Commission 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. NYSE gave the Commission written notice of its intention to file the proposed rule change on February 26, 2007, four business days prior to filing. The Commission is granting the Exchange's request for a waiver of the five-day pre-filing requirement.

[21] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4327 Filed 3–9–07; 8:45 am]

BILLING CODE 8010–01–P

[22] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10821 and #10822]

Alabama Disaster #AL–00007

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1687–DR), dated 03/03/2007.

Incident: Severe Storms and Tornadoes.

Incident Period: 03/01/2007.

Effective Date: 03/03/2007.

Physical Loan Application Deadline Date: 05/02/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 12/03/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/03/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Coffee.

Contiguous Counties (Economic Injury Loans Only): Alabama: Covington, Crenshaw, Dale, Geneva, and Pike.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
Businesses With Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10821B and for economic injury is 108220.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008.)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–4364 Filed 3–9–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10819 and #10820]

Georgia Disaster #GA–00008

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1686–DR), dated 03/03/2007.

Incident: Severe Storms and Tornadoes.

Incident Period: 03/01/2007 through 03/02/2007.

Effective Date: 03/03/2007.

Physical Loan Application Deadline Date: 05/02/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 12/03/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/03/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Sumter.

Contiguous Counties (Economic Injury Loans Only): Georgia: Crisp, Dooly, Lee, Macon, Marion, Schley, Terrell, and Webster.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
Businesses With Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10819B and for economic injury is 108200.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008.)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–4363 Filed 3–9–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Maine District Advisory Council; Public Meeting

The U.S. Small Business Administration Maine District Advisory Council, located in the geographical area of Augusta, Maine will hold a public meeting on Tuesday, March 27, 2007, starting at 10 a.m. The meeting will be held at Husson College, Center for Family Business, One College Circle, Bangor, ME 04401.

The purpose of the meeting is to discuss the following topics: (1) SBA Small Business Week; (2) Lender update (centralized processing, participating and lender forms); (3) Updates by SCORE; Maine Small Business Development Center and Women's Business Center; (4) An overview of SBA's Alternate Work Site in Bangor, Maine presented by Herb Thomas, Senior Area Manager.

For further information, write or call Mary McAleney, District Director, U.S. Small Business Administration, Maine District Office, 68 Sewall Street, Room

512, Augusta, Maine 04330, (207) 622–8386 phone, (207) 622–8277 fax.

Matthew L. Teague,

Committee Manager Officer.

[FR Doc. E7–4377 Filed 3–9–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region IV Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region IV Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Wednesday, March 14, 2007, at 10 a.m. The meeting will take place at Wake Tech CC Business & Industry Center (BIC), Millpond Village, 3434 Kildaire Farm Road, Room 118, Cary, NC 27518. The purpose of the meeting is to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Mike Ernandes, in writing or by fax, in order to be placed on the agenda. Mike Ernandes, Public Information Officer, SBA, Charlotte District Office, 6302 Fairview Road, Suite 300, Charlotte, NC 28210–2227, phone (704) 344–6588, Ext. 1135 and fax (202) 401–4637, e-mail: *Mike.ernandes@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–4376 Filed 3–9–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region III Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region III Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a National Regulatory Fairness Hearing on Friday, March 16, 2007, at 10 a.m. The forum will take place at the EPA East Building, Ceremonial Hearing Room, 1201 Constitution Avenue, NW., Room 1153, Washington, DC 20460. The purpose of the meeting is for Business Organizations, Trade Associations, Chambers of Commerce and related organizations serving small business concerns to report experiences regarding unfair or excessive Federal regulatory enforcement issues affecting their members.

For further information, please contact Martin Gold. Martin Gold, SBA, Deputy National Ombudsman, 409 3rd Street, Suite 7125, Washington, DC 20416, phone (202) 205–7549 and fax (202) 401–4432, e-mail: *Martin.gold@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–4378 Filed 3–9–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2003–15660]

Notice of Request for Renewal of a Currently Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice; correction.

SUMMARY: The Office of the Secretary published a document in the **Federal Register** on February 14, 2007, concerning a request for a renewal of a currently approved information collection. We are correcting the document as set forth below.

FOR FURTHER INFORMATION CONTACT: Ms. Vivian Jones, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–0283.

Correction

In the February 14, 2007, **Federal Register** [72 FR 7110–7111] correct the Estimated total burden on respondents. And add the Average Annual Burden per respondent to read:

Estimated Number of Respondents: 26.

Total Annual Response: 1380.

Estimated Total Burden on Respondents: 4789.

Issued in Washington, DC, on March 5, 2007.

John DiLuccio,

Director, Resource Directorate.

[FR Doc. E7–4409 Filed 3–9–07; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

[DOT Docket No. OST–2007–27407]

National Surface Transportation Infrastructure Financing Commission

AGENCY: Department of Transportation (DOT).

ACTION: Notice of intent to form an advisory committee.

SUMMARY: Pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–115, Aug. 10, 2005, the Secretary of Transportation is establishing a National Surface Transportation Infrastructure Financing Commission. This commission shall analyze future highway and transit needs and the finances of the Highway Trust Fund, and shall make recommendations regarding alternative approaches to financing transportation infrastructure, as directed in section 11142 of SAFETEA–LU. The purpose of this notice is to indicate the DOT's intent to charter this Commission as a Federal Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Jack Wells, Chief Economist, U.S. Department of Transportation, 202–366–9224, *jack.wells@dot.gov.*

Background

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144). Section 11142(a) of SAFETEA–LU established the National Surface Transportation Infrastructure Financing Commission and charged it to analyze future highway and transit needs and the finances of the Highway Trust Fund and to make recommendations regarding alternative approaches to financing transportation infrastructure. These recommendations must address, but are not limited to, the following topics: (a) The levels of revenue that the Federal Highway Trust Fund will require to maintain and improve the condition and performance of the Nation's highway and transit systems and to ensure that Federal levels of investment in highways and transit do not decline in real terms; and (b) the extent, if any, to which the Highway Trust Fund should be augmented by other mechanisms or funds as a Federal means of financing highway and transit infrastructure investments (SAFETEA–LU, section 11142(b)(2)).

A. Notice of Intent To Establish an Advisory Committee

In accordance with the requirements of the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), an agency of the Federal government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a Federal advisory committee. The purpose of this notice is to indicate the DOT's intent to create a Federal advisory committee to make policy recommendations to Congress as directed in section 111142 of SAFETEA–LU.

B. Name of Committee

National Surface Transportation Infrastructure Financing Commission (''the Financing Commission'')

C. Purpose and Objective

The Financing Commission will analyze future highway and transit needs and the revenue sources of the Highway Trust Fund and shall make recommendations regarding alternative approaches to financing transportation infrastructure.

The Financing Commission will not exercise program management or regulatory development responsibilities, and will make no decisions directly affecting the programs on which it provides advice. The Financing Commission will provide policy advice to the Secretary of Transportation, the Secretary of the Treasury, and the U.S. Congress from a knowledgeable and independent perspective.

D. Balanced Membership Plans

The Financing Commission shall consist of not more than 15 members, appointed by the Secretary of Transportation (in consultation with the Secretary of the Treasury), the Chair and Ranking Minority Members of the House Ways and Means Committee, and the Chair and Ranking Minority Members of the Senate Finance Committee, as required by Section 11142(c)(1)(A)–(E) of Public Law 109–59. Members are knowledgeable in the fields of public transportation finance or highway and transit programs, policy, and needs, and include representatives of interested parties, such as State and local governments, transportation providers, and the financial community.

Commission meetings must be open to the public except where closed or partially-closed, as determined proper and consistent with the exemptions of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure. Any member of the public is welcome to attend the Financing Commission meetings, and, as provided in FACA, may contact and communicate with the Financing Commission directly. Time will be set aside during meetings for this purpose, consistent with the Financing Commission's need for sufficient time to complete its deliberations.

E. Duration

Not later than 2 years after the date of its first meeting, the Financing Commission shall transmit its final report to the Secretaries of Transportation and the Treasury, and to Congress, as required by Section 11142(h) of Public Law 109–59. The Financing Commission shall terminate on the 180th day following the date of report transmittal.

F. Notice of Establishment

(Authority: Section 11142(a) of Pub. L. 109–59)

Mary E. Peters,

Secretary.

[FR Doc. E7–4410 Filed 3–9–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Danbury Municipal Airport, Danbury, CT; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Danbury, CT under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of federal and non-Federal responsibilities in Senate Report No. 96–52 (1980). On September 9, 2006, the FAA determined that the noise exposure maps submitted by the City of Danbury under part 150 were in compliance with applicable requirements. On February 15, 2007, the Airports Division Manager approved the Danbury Municipal Airport noise compatibility program. All 3 of the proposed program elements were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Danbury Municipal Airport noise compatibility program is February 15, 2007.

FOR FURTHER INFORMATION CONTACT: Richard Doucette, Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (781) 238–7613.

Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Danbury Municipal Airport, Danbury, CT noise compatibility program, effective February 15, 2007.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps.

The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR), part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered

by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action.

Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The Danbury Municipal Airport, Danbury, CT submitted to the FAA, on June 30, 2006 (revised September 6, 2006), noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from 2002 through 2006. The Danbury Municipal Airport, Danbury, CT noise exposure maps were determined by FAA to be in compliance with applicable requirements on September 9, 2006. Notice of this determination was published in the **Federal Register** on September 19, 2006.

The Danbury Municipal Airport, Danbury, CT study contains a proposed noise compatibility program comprised of actions designed for implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 2007. The Danbury Municipal Airport, Danbury, CT requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on September 6, 2006, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 3 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The Airports Division Manager therefore approved the overall program effective February 15, 2007.

Of the 3 proposed program elements, all were approved. All 3 program elements were administrative in nature. They included a Pilot Education Program, Community Outreach Efforts, and Future Updates of Noise Exposure Maps. Various noise abatement and land use measures from the 1987 NCP were restated in the Record of Approval, so that all measures now in effect would be documented in the most recent Record of Approval.

FAA's determination are set forth in detail in a Record of Approval endorsed by the Airport's Division Manager on February 15, 2007. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Danbury Municipal Airport, Danbury, CT.

Issued in Burlington, Massachusetts, on February 15, 2007.

LaVerne F. Reid,

Manager, Airports Division, FAA New England Region.

[FR Doc. 07–1128 Filed 3–9–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–07]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 2, 2007.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2007–27290] by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626, Tim Adams (202) 267–8033 or Frances Shaver (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 1, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2007–27290.

Petitioner: Evergreen International Aviation, Inc.

Section of 14 CFR Affected: 14 CFR Appendix I to part 121 subsection V(A).

Description of Relief Sought: To allow safety sensitive employees to transfer between Evergreen International Aviation, Inc., Evergreen International Airlines, Inc., Evergreen Air Center, Evergreen Helicopters, Inc., Evergreen Helicopters of Alaska, Inc., and Evergreen Helicopters International, Inc. without complying with pre-employment drug testing.

[FR Doc. E7–4305 Filed 3–9–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In January 2007, there were five applications approved. This notice also includes information on nine applications, one approved in November 2005, one approved in March 2006, one approved in April 2006, one approved in August 2006, one approved in October 2006, and four approved in December 2006, inadvertently left off the November 2005, March 2006, April 2006, August 2006, October 2006, and December 2006 notices, respectively. Additionally, eight approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: South Jersey Transportation Authority, Atlantic City, New Jersey.

Application Number: 05–04–U–00–ACY.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue to be Used in this Decision: $31,301.

Charge Effective Date: February 1, 2006.

Estimated Charge Expiration Date: November 1, 2006.

Class of Air Carriers not Required to Collect PFC'S: No change from previous decision.

Brief Description of Project Approved for Use: Environmental design mitigation.

Decision Date: November 3, 2005.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, New York Airports District Office, (516) 227–3812, extension 231.

Public Agency: Louisville Regional Airport Authority, Louisville, Kentucky.

Application Number: 06–04–C–00–SDF.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,267,315.

Earliest Charge Effective Date: September 1, 2013.

Estimated Charge Expiration Date: October 1, 2013.

Class of Air Carriers not Required to Collect PFC'S: Air taxi/commercial operators filing, or required to file, FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Louisville International Airport.

Brief Description of Projects Approved for Collection and Use:

Emergency operations center.
Southwest perimeter road.
Repair airfield pavement joints.
Airfield cable, LED light fixtures and signage installation.
Airfield pavement repairs.
Purchase Oshkosh high-speed snow plow.
Purchase M–B high-speed snow broom.
Purchase Mack high-speed snow plow.
Purchase Oshkosh high-speed snow broom.
Purchase proximity gear.
PFC implementation and administration.

Brief Description of Withdrawn Project: Purchase rescue vehicle.

Date of withdrawal: March 13, 2006.

Decision Date: March 16, 2006.

For Further Information Contact: Tommy DuPree, Memphis Airports District Office, (901) 322–8185.

Public Agency: Savannah Airport Commission, Savannah, Georgia.

Application Number: 06–06–C–00–SAV.

Application Type: Impose and use a PFC.

PCF Level: $4.50.

Total PCF Revenue Approved in this Decision: $3,203,972.

Earliest Charge Effective Date: May 1, 2013.

Estimated Charge Expiration Date: November 1, 2013.

Class of Air Carriers not Required to Collect PFC's Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Savannah/Hilton Head International Airport.

Brief Description of Projects Approved for Collection and Use:

Security enhancements.
Relocate airfield lighting controls (air traffic control tower).
Runway safety area improvements.
Airfield lighting improvements (phase 1).
Replace aircraft rescue and firefighting bridge.
Terminal expansion (design and construction).
Apron expansion (design and construction).
Airfield lighting improvements—vault (phase II).
Taxiway E milling.
Loading bridges and bag lifts.
Relocate runway 36 localizer.
PFC implementation and administration.
Runways redesignation.

Brief Description of Project Partially Approved for Collection and Use: General aviation connector taxiways.

Determination: Corporate and private hangars are not eligible development at small hub and larger airports. In addition, utilities associated with ineligible development are also ineligible. The approved amount has been reduced from that requested due to the ineligible portions of the project.

Brief Description of Withdrawn Project: Relocate airfield maintenance road.

Date of withdrawal: April 17, 2006.

Decision Date: April 21, 2006.

For Further Information Contact: Daniel Gaetan, Atlanta Airports District Office, (404) 305–7146.

Public Agency: Cities of Dallas and Fort Worth acting by and through the Dallas-Forth Worth International Airport Board, Dallas-Fort Worth, Texas.

Applications Number: 06–09–C–00–DFW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $36,868,000.

Earliest Charge Effective Date: December 1, 2032.

Estimated Charge Expiration Date: September 1, 2034.

Class of Air Carriers not Required to Collect PFC's: All Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Dallas-Fort Worth International Airport.

Brief Description of Projects Approved for Collection and Use:

Construct southeast perimeter taxiway system.

Decision Date: August 22, 2006.

For Further Information Contact: Rick Compton, Texas Airports Development Office, (817) 222–5608.

Public Agency: City of Redmond, Oregon.

Application Number: 06–05–C–00–RDM.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $645,420.

Earliest Charge Effective Date: March 1, 2007.

Estimated Charge Expiration Date: May 1, 2009.

Class of Air Carriers not Required to Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Roberts Field.

Brief Description of Projects Approved for Collection and Use:

Construct snow removal equipment facility, phase 2.
Terminal emergency power supply.
Pavement condition index study.
Airfield electrical improvements.
Airport master plan update.
General aviation ramp rehabilitation.
Terminal expansion phase 1—design.
Terminal Drive relocation including storm water drainage outfalls.
Terminal expansion phase 2—design.
Service road construction including taxiway A transition.

Decision Date: October 19, 2006.

For Further Information Contact: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Rhode Island Airport Corporation, Warwick, Rhode Island.

Application Number: 06–05–C–00–PVD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $31,826,316.

Earliest Charge Effective Date: January 1, 2011.

Estimated Charge Expiration Date: April 1, 2013.

Class of Air Carriers not Required to collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at T.F. Green State Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

In-line explosive detection system.
Security screening checkpoint expansion.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Aircraft rescue and firefighting vehicle.
Taxiway T rehabilitation.
PFC implementation/administration.

Decision Date: December 14, 2006.

For Further Information Contact: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: Salt Lake City Department of Airports, Salt Lake City, Utah.

Application Number: 06–10–C–00–SLC.

Application Type: Impose and use a PFC.

Total PFC Revenue Approved in this Decision: $75,362,174.

Earliest Charge Effective Date: December 1, 2007.

Estimated Charge Expiration Date: September 1, 2009.

Class of Air Carriers not Required to Collect PFC'S: Air taxi/commercial operators filing or required to file FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Salt Lake City International Airport (SLC).

Brief Description of Projects Approved for Collection at SLC and Use at SLC at a $4.50 PFC Level:

Airport passenger loading bridge acquisitions.
Passenger loading bridge refurbishment program.
TU–2 bag claim and circulation.
TU–1 bag claim and circulation.
Sterile corridor expansion.
TU–1 security screening.
Modifications for explosive detection system.
Runway 17/35 overlay.
Runway 14/32 overlay.
Taxiway R overlay.
Airfield lighting control system.
Concourse apron rehabilitation.
Taxiway K resurface.
Taxiway centerline light trench pavement reconstruction.
Airport property security fence (phase I).
Airport property security fence (phase II).
Land acquisition for airport compatibility and approach protection.

Brief Description of Projects Approved for Collection at SLC and Use at SLC at a $3.00 PFC Level:

Maintenance equipment.
Concourse E elevator replacement.
Protective bollards—terminal fronts.
Apron deicing modifications.
Midfield pump station and outfall drain line.
Prehistoric site cultural resource investigation and data recovery.
Airfield/airspace system capacity analysis.
Planning analysis for airport development.

Brief Description of Projects Approved for Collection at SLC and Use at Tooele Valley Airport at a $3.00 PFC Level:

Land acquisition for airport compatibility and approach protection.
Taxilane.

Brief Description of Projects Approved for Collection at SLC and Use at Salt Lake City Municipal Airport No. 2 at a $3.00 PFC Level:

Apron rehabilitation.
Secondary fuel containment.
Tie-down apron reconstruction.
Master plan update.

Brief Description of Disapproved Project:

Water main loop extension—2200 North.

*Determination:*The public agency's application did not provide sufficient information to determine the eligibility of the project. The application also did not demonstrate that the project would make a significant contribution to reducing current or anticipated congestion or meet the PFC objective of preserving or enhancing capacity at SLC.

Decision Date: December 20, 2006.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: City of Boise, Idaho.

Application Number: 06–04–C–00–BOI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $5,377,736.

Earliest Charge Effective Date: August 1, 2018.

Estimated Charge Expiration Date: August 1, 2019.

Class of Air Carriers not Required to Collect PFC's: Part 135 air taxi/commercial operators who conduct operations in air commerce carrying persons for compensation or hire, except air taxi/commercial operators, public or private charters, with seating of 10 or more.

Determination: Approved. Based on information submitted in the public

agency's application, The FAA has determined that the approved lass accounts for less than 1 percent of the total annual enplanements at Boise Air Terminal.

Brief Description of Projects Approved for Collection and Use:

Taxiway J rehabilitation.
Airfield lighting and electrical building.
Baggage system modifications.
Concourse B improvements.
Concourse B apron rehabilitation and expansion.

Decision Date: December 29, 2006.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Ports of Douglas County and Chelan County, East Wenatchee, Washington.

Application Number: 07–07–C–00–EAT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $176,755.

Earliest Charge Effective Date: February 1, 2007.

Estimated Charge Expiration Date: May 1, 2008.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Acquire Davis property.
Phase 1 instrument landing system/environmental assessment.
Phase 2 instrument landing system/runway 12/30 shift.
Acquire Houtz/Yonaka property, plus easements.
Repave airport fire station access road.
Purchase 3 airport fire department airpacs.

Decision Date: December 29, 2006.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: South Jersey Transportation Authority, Atlantic City, New Jersey.

Application Number: 07–05–C–00–ACY.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $5,418,189.

Earliest Charge Effective Date: April 1, 2007.

Estimated Charge Expiration Date: June 1, 2009.

Class of Air Carriers not Required to Collect PFC's: Nonscheduled/on-demand air carriers with less than 1,200 annual enplaned passengers filing FAA Form 1800–31.

Determination: Approved. Based on information submitted to the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Atlantic City International Airport.

Brief Description of Projects Approved for Collection and Use:

Acquire snow removal equipment.
Acquire aircraft rescue and firefighting vehicle.
Security project—phase I through II.
Environmental mitigation—phase III.
Install weather reporting equipment.
Acquire interactive training system.
Install of common use terminal equipment.

Decision Date: January 3, 2007.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, New York Airports District Office, (516) 22–3812, extension 231.

Public Agency: City and County of Twin Falls, Idaho.

Application Number: 07–03–C–00–TWF.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $560,416.

Earliest Charge Effective Date: June 1, 2007.

Estimated Charge Expiration Date: October 1, 2011.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators utilizing aircraft having a seating capacity of less than 20 passengers.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Joslin Field—Magic Valley Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Runway 7/25 pavement rehabilitation.
Taxilane reconstruction.
Update airport master plan study.
Taxiway and taxilane rehabilitation.
Acquire snow plow and snow removal equipment.
Construct snow removal equipment storage building.
Security enhancement project.
Taxilane reconstruction.
Construction of taxilanes 10, 11, and 12.
Taxiway Delta extension.
Acquire sweeper, snow plow, and snow blower.
Apron rehabilitation.
Access road rehabilitation.
Runway 12 safety area.

Decision Date: January 8, 2007.

For Further Information Contact: Trang Tran, Seattle Airports District Office, (425) 227–1662.

Public Agency: Chisholm-Hibbing Airport Authority, Hibbing, Minnesota.

Application Number: 07–02–C–00–HIB.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $461,737.

Earliest Charge Effective Date: May 1, 2007.

Estimated Charge Expiration Date: November 1, 2017.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Chisholm-Hibbing Airport.

Brief Description of Projects Approved for Collection and Use:

Aircraft rescue and firefighting vehicle.
Aircraft rescue and firefighting building addition.
Medium approach lighting system/taxiway lighting.
Update airport layout plan.
Land acquisition—three parcels.
Drainage and safety area improvements.
Land acquisition—one parcel.
Deer fence and drainage improvements.
Truck with sander and snow plow.
Terminal security improvements.
Pavement rehabilitation.
Install security fencing.
High speed rotary snow blower.
Pavement rehabilitation.
Install emergency generator.
Land acquisition.
Obstruction removal.
Loader with broom and ramp plow.
Update master plan and airport layout plan.
Truck mounted deicer.
Easement for clear zone.
Skid loader with snow blower.
Runway safety area improvements.

Decision Date: January 10, 2007.

For Further Information Contact: Nancy Nistler, Minneapolis Airports District Office, (612) 713–4353.

Public Agency: City of Santa Barbara, California.

Application Number: 07–06–C–00–SBA.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $4,944,000.

Earliest Charge Effective Date: December 1, 2007.

Estimated Charge Expiration Date: October 1, 2009.

Class of Air Carriers not Required to Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Santa Barbara Municipal Airport.

Brief Description of Projects Approved for Collection and Use: Schematic design and design development for airline terminal improvements.

Decision Date: January 12, 2007.

For Further Information Contact: Chuck McCormick, Los Angeles Airports District Office, (310) 725–3626.

Public Agency: County of Eagle, Eagle, Colorado.

Application Number: 07–06–C–00–EGE.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $5,581,125.

Earliest Charge Effective Date; September 1, 2018.

Estimated Charge Expiration Date: July 1, 2024.

Brief Description of Projects Approved for Collection and Use:

Construct aircraft deicing facility.

Acquire development land.

Terminal road improvements.

Decision Date: January 17, 2007.

For Further Information Contact: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PVC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
04–03–02–MFE; McAllen, TX	01/08/07	$2,422,037	$6,133,439	04/01/07	11/01/11
03–04–C–01–ILM; Wilmington, NC	01/11/07	12,785,647	11,585,647	04/01/18	05/01/17
02–02–C–01–SFO; San Francisco, CA	01/12/07	224,034,821	224,034,821	01/01/06	01/01/06
06–07–C–01–GJT; Grand Junction, CO	01/23/07	6,355,297	8,330,000	08/01/19	08/01/23
96–01–C–01–RST; Rochester, MN	01/31/07	1,160,582	1,117,326	04/01/99	04/01/99
99–02–C–02–GRB; Green Bay, WI	01/31/07	3,028,496	2,468,496	03/01/02	03/01/02
93–01–C–06–RHI; Rhinelander, WI	01/31/07	210,219	204,771	04/01/96	04/01/96
95–02–U–02–RHI; Rhinelander, WI	01/31/07	(*)	(*)	04/01/96	04/01/96

*Non applicable.

Issued in Washington, DC, on March 5, 2007.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 07–1129 Filed 3–9–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(I)(1). The actions relate to a proposed highway project, Greensboro-High Point Road Improvements, from US 311 (I–74) to Hilltop Road (SR 1424) in Greensboro, North Carolina, Guilford County, North Carolina. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(I)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before September 10, 2007. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Clarence W. Coleman, P.E., Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Ste. 410, Raleigh, North Carolina 27601–1418; Telephone: (919) 856–4350 extension 133; e-mail: *clarence.coleman@fhwa.dot.gov.* FHWA North Carolina Division Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time). You may also contact Gregory J. Thorpe, PhD, Project Development and Environmental Analysis Branch Manager, North Carolina Department of Transportation (NCDO), 1 South Wilmington Street (Delivery), 1548 Mail Service Center, Raleigh, North CArolina 27699–1548; Telephone (919) 733–3141, *gthorpe@dot.state.nc.us.* NCDOT—Project Development and Environmental Analysis Branch Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of North Carolina: Greensboro-High Point Road Improvements, Federal Air No. STP–4121(1), Guilford County, North Carolina. the proposed action will improve 12.7 km (7.9 miles) of the Greensboro-High Point Road from the northbound ramp terminal of the US 311 bypass (future I–74) interchange in High Point to the Hilltop Road intersection in Greensboro, North Carolina. Portions of the selected alternative (Corridor 2) widen existing roadways and portions construct a four to six-land facility on new location. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on May 15, 2006, in the FHWA Record of Decision (ROD) issued on December 30, 2006, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or NCDOT at the addresses provided above. The FHWA FEIS and ROD can be viewed at the NCDOT—Project Development and Environmental Analysis Branch, 1 South Wilmington Street, Raleigh, North Carolina; NCDOT—Division 7 Construction Engineer Office, 1584 Yanceyville Street, Greensboro, North Carolina and Greensboro MPO Office,

300 West Washington Street, Greensboro, North Carolina.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 et seq.].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Wild and Scenic Rivers [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(I)(1).

Issued on: February 28, 2007.

Clarence W. Coleman,

Operations Engineer, Raleigh, North Carolina.

[FR Doc. 07–1143 Filed 3–9–07; 8:45 am]

BILLING CODE 1143–RY–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NTHSA–2007–27505]

Federal Motor Vehicle Safety Standards: New Pneumatic Tires for Vehicles Other Than Passenger Cars

AGENCY: National Highway Traffic Safety Administration, DoT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document responds to a petition for rulemaking regarding Federal motor vehicle safety standard (FMVSS) No. 119, *Pneumatic Tires for Vehicles Other Than Passenger Cars*. Pacific Coast Retreaders (PCR), a distributor of new truck tires that are manufactured in China, petitioned the agency on February 1, 2006, to amend FMVSS No. 119, paragraph S5.1, Tire and rim matching information (b). Specifically, PCR petitioned the agency to accept tire load rating data for two bias ply truck tire sizes, 10–20 and 11–22.5, from the Chinese tire standardization organization Guo Biao 9744–1997 (GB 9744). NHTSA has determined that this petition is moot with regard to the 10–20 size tires because the maximum load rating labeled on these tires, in the single and dual wheel configurations, meets the requirements of FMVSS No. 119. With regard to the 11–22.5 size tires, the agency denies the request by the petitioner that FMVSS No. 119, paragraph S5.1(b) be amended to include the GB 9744 maximum load rating for this single tire size. The agency does not consider amending the standard to include the specifications of a tire standardization organization for one tire size.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Daniel, Office of Crash Avoidance Standards, NVS–122, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–4921, facsimile (202) 366–7002, electronic mail *sam.daniel@dot.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

PCR, a distributor of new truck tires manufactured in China, petitioned the agency on February 1, 2006, to accept the Chinese tire marking standards for two bias ply truck tire sizes, 10–20 and 11–22.5. The petitioner stated that the requirements in FMVSS No. 119, paragraph S5.1(b) are outdated and ''are well behind the changes in the intermodal transportation industry.'' The petitioner further stated that the Chinese tire marking standards from GB 9744 are not included in the list of marking standards referenced by NHTSA in FMVSS No. 119. However, PCR did not explicitly request that the GB 9744 publication be added to FMVSS No. 119.

The petitioner provided a copy of a page from the Chinese GB 9744 publication with information on the tire load limits at various cold inflation pressures, similar to a page of truck tire load-pressure values from the publications listed in paragraph S5.1(b) of FMVSS No. 119. The publications that are already listed are as follows: Tire and Rim Association (TRA); European Tyre and Rim Technical Organization (ETRTO); Japan Automobile Tyre Manufacturers Association, Inc. (JATMA); Deutsche Industrie Norm; British Standards Institution; Scandinavian Tire and Rim Organization (STRO); and the Tyre and Rim Association of Australia. The table on the page from the GB 9744 publication specifies a maximum load rating of 2,160 kg (4,752 pounds) for the 10–20 size tire load range F (12 ply-rated) in the dual wheel (four tires per axle) configuration. However, the Tire and Rim Association (TRA), which is the United States voluntary standards organization, in its 2005 Year Book specifies a maximum load rating of 2,180 kg (4,805 pounds) for the same tire size and configuration. The TRA publication also lists the value of the maximum load rating for the 11–22.5

size tire at 2,180 kg (4,805 pounds) for the load range F tires mounted on 15 degree drop center rims, whereas the GB 9744 document lists the value of the maximum load rating at 2,160 kg (4,752 pounds), according to the petitioner, or 20 kg pounds less than the TRA value.

The petition states that the two subject tire sizes are used in the intermodal transportation industry on dual axle, dual wheel (8 tires and rims) trailers and container chassis with a total load rating for the two axles of 15,455 kg (34,000 pounds). Based on the maximum tire load rating, the TRA maximum load capacity for eight 10–20 or 11–22.5 bias ply, load range F tires is 17,436 kg (38,440 pounds) and the maximum load capacity for eight similar tires based on the GB 9744 data obtained from the petitioner is 17,280 kg (38,016 pounds). Both load capacities are, according to the petitioner, well above the maximum allowable load limit (34,000 pounds) for the intermodal trailers and container chassis. The petitioner further stated that the small difference in maximum load rating between the GB 9744 and the TRA specifications is inconsequential to motor vehicle safety.

FMVSS No. 119 establishes the safety performance requirements for tires used on vehicles other than passenger cars. The requirements for tire endurance, strength, high speed performance, treadwear indicators, and tire markings are specified in paragraph S6 of the standard and are tested in accordance with the conditions and procedures specified in paragraph S7.

Paragraph S5.1(b) of FMVSS No. 119 lists the publications that may be used by tire manufacturers for rim matching, tire size, and maximum tire load rating with corresponding inflation pressure. Paragraph S6.6, Maximum load rating, requires that the maximum load rating labeled on a tire in accordance with paragraph S6.5, Tire markings, meet or exceed the lowest load rating value specified in the publications listed in Section 5.1(b) for that tire size.

B. Discussion

FMVSS No. 119 allows tire manufacturers to use any one of the seven publications in S5.1(b) to obtain rim, and tire load and inflation pressure information for the labeling requirements of paragraph S6.5.

The petitioner provided one page of the GB 9744 publication, which included one of the two bias ply tire sizes discussed in the petition. The agency does not recognize specifications for one or two tire sizes from a technical reference year book, but would consider recognition of an entire standardization publication.

If the organization that publishes GB 9744 would like its publication to be considered for inclusion in the list of publications in FMVSS No. 119, paragraph S5.1(b), that organization is invited to submit information to NHTSA. The type of information contained in these publications includes its membership, objectives, and the organizations that provide technical support, in addition to its tire and rim specifications. PCR submitted a petition for rulemaking requesting that GB 9744 maximum tire load ratings for two tire sizes be accepted by NHTSA. However, PCR did not indicate whether it had any communication with the organization that publishes GB 9744 prior to submitting the petition. NHTSA does not consider recognizing tire standardization organizations upon the request of tire distributors.

The petitioner believes that the agency is accepting tire markings (paragraph S6.5, Tire markings) from sources that are not on the list in paragraph S5.1(b). The agency does not accept tire maximum load ratings that do not comply with the requirements in paragraph S6.6, which state that the maximum load rating for a particular tire size must be equal to or greater than the lowest maximum load rating for that tire size published in the list of technical reference year books in paragraph S5.1(b).

C. Agency Determination

After review of the tire specifications from the sources listed in FMVSS No. 119, the Scandinavian Tire and Rim Technical Organization publication has the lowest values for the maximum load rating of the 10–20 size tire with 2,305 kg (5,071 pounds) for the single application rating and 2,120 kg (4,664 pounds) for the dual rating. The GB 9744 values for the maximum load rating for 10–20 bias ply tire, load range F, 2,465 kg (5,434 pounds) for the single rating and 2,160 kg (4,752 pounds) for the dual rating, are greater than the values specified in the Scandinavian Tire and Rim Technical Organization publication for that size tire. Tire manufacturers may label the 10–20 size tires with the GB 9744 value for the rated maximum load without violating the requirements of FMVSS No. 119, S6.6 Maximum load rating. Therefore, PCR's petition is moot with regard to the 10–20 tire size.

The Tire and Rim Association value for maximum load rating is the lowest value for 11–22.5 size tires 2,180 kg (4,805 pounds) specified in the publications listed in paragraph S5.1(b) of FMVSS No. 119. The documents forwarded to the agency by the petitioner do not include maximum load data for the 11–22.5 tire size, but NHTSA was informed by the petitioner that the 11–22.5 tire size has the same maximum load rating as the 10–20 tire size. Therefore, labeling an 11–22.5 size tire with the GB 9744 value for maximum load rating would not comply with the standard as currently written.

The PCR petition with respect to the 11–22.5 size tires is denied because the agency does not consider adding specifications for a single tire size to the accepted reference documents in paragraph S5.1(b) of FMVSS No. 119.

Issued: March 6, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–4301 Filed 3–9–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permit Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ann Mazzullo, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reason for Delay''

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume special permit applications.

Meaning of Application Number Suffixes

N—New application

M—Modification request

X—Renewal

PM—Party to application with modification request

Issued in Washington, DC, on March 6, 2007.

Delmer F. Billings,

Director, Office of Hazardous Materials Safety, Special Permits & Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
	New Special Permit Applications		
14314–N	North American Automotive Hazmat Action Committee	1	07–31–2007
14330–N	Chemical & Metal Industries, Inc., Hudson, Co	4	03–31–2007
14343–N	Valero St. Charles, Norco, LA	1	04–30–2007
14385–N	Kansas City Southern Railway Company, Kansas City, MO	4	03–31–2007
14397–N	UltraCell Corporation, Livermore, CA	1	03–31–2007
14402–N	Lincoln Composites, Lincoln, NE	1	12–31–2007
14398–N	Lyondell Chemical Company, Houston, TX	4	03–31–2007
	Modification to Special Permits		
10481–M	M–Engineering Limited, Bradford, West Yorkshire	4	03–31–2007
11447–M	SAES Pure Gas, Inc., San Louis Obispo, CA	4	03–31–2007

[FR Doc. 07–1130 Filed 3–9–07; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 671]

Rail Capacity and Infrastructure Requirements

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board will hold a public hearing beginning at 9 a.m. on Wednesday, April 11, 2007, at its new offices in Washington, DC. The purpose of the public hearing will be to examine issues related to rail traffic forecasts and infrastructure requirements. Persons wishing to speak at the hearing should notify the Board in writing.

DATES: The public hearing will take place on Wednesday, April 11, 2007. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should identify the party, the proposed speaker, the time requested, and the topic(s) to be covered, as soon as possible but no later than March 21, 2007. Each speaker should also file with the Board his/her written testimony by April 4, 2007. Written submissions by interested persons who do not wish to appear at the hearing will also be due by April 4, 2007.

ADDRESSES: All notices of intent to participate and testimony may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the Board's *http://www.stb.dot.gov* Web site, at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, Attn: STB Ex Parte No. 671, 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245–0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: In recent years, there has been growing recognition that rail capacity in the United States has become constrained. Those capacity constraints come at the same time as many forecasts predict that rail freight demands will continue to grow over the next twenty years. Railroads experienced a more than 50% increase in traffic from 1990 to 2003, and traffic is projected to continue to increase as the economy grows.[1] Some forecasters predict that multimodal freight tonnage in the United States will rise by nearly 70% between 1998 and 2020.[2] The convergence of increased demand with constrained capacity has highlighted the need to address what further infrastructure investment will be required to meet these demands. While some railroads have announced significant infrastructure investment plans, some observers have questioned whether that investment alone will be sufficient to meet the rail transport needs of a growing economy.

In regulating the railroad industry, the Board is called upon, among other things, to ensure the development and continuation of a sound rail transportation system with effective competition and coordination between rail carriers and other modes. Pursuant to that objective, the Board will hold a public hearing as a forum for interested persons to provide views and information about: Freight traffic forecasts; the extent of the capacity constraints and the ability of the railroads to meet the rising demand; the infrastructure investment needed to ensure that the Nation's freight rail system continues to operate in an efficient and reliable manner; possible solutions to the challenges presented by growing rail traffic and limited capacity; and the potential role of public-private partnerships and innovative financing tools in meeting these challenges. We look forward to hearing from all parties affected by these issues, including carriers, shippers, port administrators, state entities and federal agencies.

Date of Hearing. The hearing will begin at 9 a.m. on Wednesday, April 11, 2007, in the 1st floor hearing room at the Board's new headquarters at 395 E Street, SW., in Washington, DC, and will continue, with short breaks if necessary, until every person scheduled to speak has been heard.

Notice of Intent To Participate. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should identify the party, the proposed speaker, the time requested, and topic(s)

[1] Congressional Budget Office Report, *Freight Rail Transportation: Long-Term Issues,* at 4–5 (January 2006).

[2] *Id.* at 6, *citing,* Federal Highway Administration, *Freight Analysis Framework* (October 2002).

to be covered, as soon as possible, but no later than March 21, 2007.

Testimony. Each speaker should file with the Board his/her written testimony by April 4, 2007. Also, any interested person who wishes to submit a written statement without appearing at the April 11 hearing should file that statement by April 4, 2007.

Board Releases and Live Audio Available Via the Internet. Decisions and notices of the Board, including this notice, are available on the Board's Web site at *http://www.stb.dot.gov.* This hearing will be available on the Board's Web site by live audio streaming. To access the hearing, click on the ''Live Audio'' link under ''Information Center'' at the left side of the home page beginning at 9 a.m. on April 11, 2007.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: March 6, 2007.

Vernon A. Williams,

Secretary.

[FR Doc. E7–4421 Filed 3–9–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34951 (Sub-No. 1)]

Portland & Western Railroad, Inc.—Trackage Rights Exemption—BNSF Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Petition for partial revocation.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in *Portland & Western Railroad, Inc.—Trackage Rights Exemption—BNSF Railway Company,* STB Finance Docket No. 34951 (STB served Nov. 22, 2006) [1] to permit them to expire on May 30, 2016, in accordance with the agreement of the parties, subject to the employee protective conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

DATES: The exemption will be effective on April 11, 2007. Petitions to stay must be filed by March 22, 2007. Petitions to reopen must be filed by April 2, 2007.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34951 (Sub-No. 1) must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center Plaza, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

FOR FURTHER INFORMATION CONTACT: Julia Farr, (202) 245–0359. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write, 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 and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 5, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E7–4423 Filed 3–9–07; 8:45 am]

BILLING CODE 4915–01–P

[1] On November 3, 2006, Portland & Western Railroad, Inc. (PNWR), filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). That notice covered the agreement by BNSF Railway Company (BNSF) to grant overhead trackage rights to PNWR over BNSF's rail lines between: (a) Milepost 10.0 in Vancouver, WA, on the BNSF Fallbridge Subdivision, and milepost 0.69 (Main Track 1) and milepost 0.91 (Main Track 2) in Portland, OR; and (b) milepost 132.5 and milepost 136.5 in Vancouver, WA, on the BNSF Seattle Subdivision, a total distance of approximately 13.31 miles. The trackage rights operations under the exemption were scheduled to be consummated on or after November 13, 2006.

DEPARTMENT OF THE TREASURY

Terrorism Risk Insurance Program; Recordkeeping Requirements for Insurers Compensated Under the Program

AGENCY: Departmental Offices, Terrorism Risk Insurance Program Office, 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 Terrorism Risk Insurance Program Office is seeking comments regarding Recordkeeping Requirements for Insurers Compensated Under the Program.

DATES: Written comments should be received on or before May 11, 2007 to be assured of consideration.

ADDRESSES: Submit comments by e-mail to *triacomments@do.treas.gov* or by mail (if hard copy, preferably an original and two copies) to: Terrorism Risk Insurance Program, Public Comment Record, Suite 2100, Department of the Treasury, 1425 New York Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. All comments should be captioned with ''PRA Comments—Recordkeeping Requirements for Insurers Compensated Under the Program''. Please include your name, affiliation, address, e-mail address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to: Terrorism Risk Insurance Program Office at (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

OMB Number: 1506–0197.

Title: Terrorism Risk Insurance Program—Recordkeeping Requirements for Insurers Compensated Under the Program.

Abstract: Sections 103(a) and 104 of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297) (as extended by the Terrorism Risk Insurance Extension Act of 2005, Pub. L. 109–144) authorize the Department of the Treasury to administer and implement the Terrorism Risk Insurance Program established by the Act. In 31 CFR part 50, subpart F (Sec. 50.50–50.55) Treasury established requirements and procedures for insurers that file claims for payment of the Federal share of compensation for insured losses resulting from a certified act of terrorism under the Act. Section 50.60 allows Treasury access to records of an insurer pertinent to amounts paid as the Federal share of compensation for insured losses in order to conduct investigations, confirmations and audits. Section 50.61 requires insurers to retain all records as are necessary to fully disclose all

material matters pertaining to insured losses. The collection of information addressed in this notice is the recordkeeping requirement in § 50.61.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit, Federal Government.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 8.3 hours.

Estimated Total Annual Burden Hours: 833 hours.

Request for Comments: 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. 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.

Dated: March 6, 2007.

Jeffrey S. Bragg,

Director, Terrorism Risk Insurance Program.

[FR Doc. E7–4358 Filed 3–9–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Terrorism Risk Insurance Program; Litigation Management Submissions

AGENCY: Departmental Offices, Terrorism Risk Insurance Program Office, 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Terrorism Risk Insurance Program Office is seeking comments regarding Litigation Management Submissions.

DATES: Written comments should be received on or before May 11, 2007 to be assured of consideration.

ADDRESSES: Submit comments by e-mail to *triacomments@do.treas.gov* or by mail (if hard copy, preferably an original and two copies) to: Terrorism Risk Insurance Program, Public Comment Record, Suite 2100, Department of the Treasury, 1425 New York Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. All comments should be captioned with ''PRA Comments—Litigation Management Submissions''. Please include your name, affiliation, address, e-mail address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to: Terrorism Risk Insurance Program Office at (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

OMB Number: 1506–0196.

Title: Terrorism Risk Insurance Program—Litigation Management Submissions.

Form: Treasury TRIP–03.

Abstract: Section 103(a) and 104 of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297) authorize the Department of the Treasury to administer and implement the temporary Terrorism Risk Insurance Program established by the Act. Section 107 contains specific provisions designed to manage litigation arising out of or resulting from a certified act of terrorism. The Terrorism Risk Insurance Extension Act of 2005, Public Law 109–144, added section 107(a)(6) to TRIA, which provides that procedures and requirements established by the Secretary under 31 CFR 50.82, as in effect on the date of issuance of that section in final form [July 28, 2004], shall apply to any Federal cause of action described in section 107(a)(1).

Section 50.82 of the regulations requires insurers to submit to Treasury for advance approval certain proposed settlements involving an insured loss, any part of the payment of which the insurer intends to submit as part of its claim for Federal payment under the Program. The collection of information in the notice of proposed settlement in Section 50.83 that insurers must submit to implement the settlement approval process prescribed by Section 50.82.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit, Federal Government.

Estimated Number of Respondents: 100

Estimated Time per Respondent: 12.86 hours.

Estimated Total Annual Burden Hours: 5,141 hours.

Request for Comments: 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. 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.

Dated: March 6, 2007.

Jeffrey S. Bragg,

Director, Terrorism Risk Insurance Program.

[FR Doc. 07–1135 Filed 3–9–07; 8:45 am]

BILLING CODE 4811–42–M

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee March 2007 Public Meeting

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for March 20, 2007.

Date: March 20, 2007.

Time: Public Meeting Time: 9 a.m. to 12 p.m.

Location: United States Mint; 801 Ninth Street, NW., Washington, DC 20220; 2nd floor.

Subject: Review candidate designs for the Dr. Norman E. Borlaug Congressional Gold Medal (Pub. L. 109–395), the 2008 First Spouse Bullion Coins (Pub. L. 109–145), and other general business.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

Public Law 108–15 established the CCAC to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advise the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

(Authority: 31 U.S.C. 5135(b)(8)(C).)

Dated: March 7, 2007.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E7–4311 Filed 3–9–07; 8:45 am]

BILLING CODE 4810–37–P

Corrections

Federal Register
Vol. 72, No. 47
Monday, March 12, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare an Environmental Impact Statement for a Proposed Dredged Material Management Plan for Lorain Harbor, OH

Correction

In notice document 07–1007 beginning on page 9934 in the issue of Tuesday, March 6, 2007, make the following correction:

On page 9934, in the third column, on the 21st line, ''2914'' should read ''2014''.

[FR Doc. C7–1007 Filed 3–9–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

49 CFR Part 37

[Docket OST–2006–26035]

RIN 2105–AC86

Transportation for Individuals With Disabilities; Adoption of New Accessibility Standards

Correction

In rule document E6–16680 beginning on page 63263 in the issue of Monday, October 30, 2006, make the following correction:

§ 37.9 [Corrected]

On page 63265, in the second column, in § 37.9(c)(1), in the fifth and sixth lines, ''[insert effective date of this amendment]'' should read ''November 29, 2006''.

[FR Doc. Z6–16680 Filed 3–9–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 450 and 500

Federal Transit Administration

49 CFR Part 613

[Docket No. FHWA–2005–22986]

RIN 2125–AF09; FTA RIN 2132–AA82

Statewide Transportation Planning; Metropolitan Transportation Planning

Correction

In rule document 07–493 beginning on page 7224 in the issue of Wednesday, February 14, 2007 make the following correction:

§ 450.324 [Corrected]

On page 7278, in the first column, in § 450.324(h), in the ninth and tenth lines, ''[Insert date 270 days after effective date]'' should read ''December 11, 2007''.

[FR Doc. C7–493 Filed 3–9–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
March 12, 2007

Part II

Department of Defense

Department of the Army, Corps of Engineers

Reissuance of Nationwide Permits; Notice

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

[ZRIN 0710–ZA02]

Reissuance of Nationwide Permits

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final notice.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is reissuing all existing nationwide permits (NWPs), general conditions, and definitions, with some modifications. The Corps is also issuing six new NWPs, two new general conditions, and 13 new definitions. The effective date for the new and reissued NWPs will be March 19, 2007. These NWPs will expire on March 18, 2012. The NWPs will protect the aquatic environment and the public interest while effectively authorizing activities that have minimal individual and cumulative adverse effects on the aquatic environment.

DATES: The NWPs and general conditions will become effective on March 19, 2007.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO, 441 G Street NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202–761–4922 or by e-mail at *david.b.olson@usace.army.mil* or access the U.S. Army Corps of Engineers Regulatory Home Page at *http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.*

SUPPLEMENTARY INFORMATION:

Background

In the September 26, 2006, issue of the **Federal Register** (71 FR 56258), the U.S. Army Corps of Engineers (Corps) published its proposal to reissue 43 existing nationwide permits (NWPs) and issue six new NWPs. The Corps also proposed to reissue its general conditions and add one new general condition.

The Corps proposal is intended to simplify the NWP program while continuing to provide environmental protection, by ensuring that the NWPs authorize only those activities that have minimal individual and cumulative adverse effects on the aquatic environment and satisfy other public interest factors.

As a result of the comments received in response to the September 26, 2006, proposal, we have made a number of changes to the NWPs, general conditions, and definitions to further clarify the permits, facilitate their administration, and strengthen environmental protection. These changes are discussed in the preamble.

The Corps is reissuing the 43 existing NWPs, issuing six new NWPs, reissuing 26 existing general conditions, and issuing one new general condition. The Corps is also reissuing many of the NWP definitions, and providing 13 new definitions. The effective date for these NWPs, general conditions, and definitions is March 19, 2007. These NWPs, general conditions, and definitions expire on March 18, 2012.

While the Administrative Procedure Act requires a substantive rule to be published in the **Federal Register** at least 30 days before its effective date, exceptions to this requirement can be made for good cause (5 U.S.C. 553(d)(3)). We are utilizing this good cause exception to reduce hardships on the regulated public.

Grandfather Provision for Expiring NWPs

In accordance with 33 CFR 330.6(b), activities authorized by the current NWPs issued on January 15, 2002, that have commenced or are under contract to commence by March 18, 2007, will have until March 18, 2008, to complete the activity under the terms and conditions of the current NWPs.

Clean Water Act Section 401 Water Quality Certifications (WQC) and Coastal Zone Management Act (CZMA) Consistency Determinations

In the September 26, 2006, **Federal Register** notice and concurrent with letters from Corps Districts to the appropriate state agencies, the Corps requested initial 401 certifications and CZM consistency determinations. This began the Clean Water Act section 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency determination processes.

Today's **Federal Register** notice begins the 60-day period for states, Indian Tribes, and EPA to complete their WQC process for the NWPs. This **Federal Register** notice also provides a 60-day period for coastal states to complete their CZMA consistency determination processes. This 60-day period will end on May 11, 2007.

While the states, Indian Tribes, and EPA complete their WQC processes and the states complete their CZMA consistency determination processes, the use of an NWP to authorize a discharge into waters of the United States is contingent upon obtaining individual water quality certification or a case-specific WQC waiver. Likewise, the use of an NWP to authorize an activity within, or outside, a state's coastal zone that will affect land or water uses or natural resources of that state's coastal zone, is contingent upon obtaining an individual CZMA consistency determination, or a case-specific presumption of CZMA concurrence. We are taking this approach to reduce the hardships on the regulated public that would be caused by a substantial gap in NWP coverage if we were to wait 60 days before these NWPs would become effective.

After the 60-day period, the latest version of any written position take by a state, Indian tribe, or EPA on its WQC for any of the NWPs will be accepted as the state's final position on those NWPs. If the state, Indian tribe, or EPA takes no action by May 11, 2007, WQC will be considered waived for those NWPs.

After the 60-day period, the latest version of any written position take by a state on its CZMA consistency determination for any of the NWPs will be accepted as the state's final position on those NWPs. If the state takes no action by May 11, 2007, CZMA concurrence will be presumed for those NWPs.

Discussion of Public Comments

I. Overview

In response to the September 26, 2006, **Federal Register** notice, we received more than 22,500 comments. We reviewed and fully considered all comments received in response to that notice.

General Comments

Many commenters provided general support for the proposal, and some of them stated that the changes are a step forward in improving consistency in the NWP program. Some commenters said that the proposed NWPs provide a balance between environmental protection and allowing development to occur. One commenter said that the NWP program provides sufficient environmental protection, through its general conditions and the ability for the district engineer to exercise discretionary authority to require individual permits. Several commenters stated that the proposed NWPs are simpler, clearer, and easier to understand. Three commenters said that further streamlining is necessary. One commenter recommended adopting a standard numbering system for paragraphs and subparagraphs within the NWP text. Three commenters said that the Corps should retain appropriate references to general conditions in the text of NWPs, for purpose of clarification.

To the extent that it is feasible, we have adopted a standard format for the

NWPs. Some NWPs require different formats, to make them easier to read and provide further clarification. For the most part, it is not necessary to retain references to general conditions in the text of the NWPs, except for general condition 27, Pre-Construction Notification, because most general conditions apply to all NWPs.

In contrast, a few commenters said that the proposed NWPs are not simpler and clearer. Three commenters declared that the proposed NWPs are more like individual permits than general permits. A number of commenters asserted that the proposed NWPs will significantly increase costs and delays for permit applicants. Four commenters said that the attempt at clarification and simplicity will reduce the flexibility of the NWP program.

The NWPs issued today are not similar to individual permits. The NWPs provide a streamlined form of Department of the Army authorization for those activities that result in minimal individual and cumulative adverse effects on the aquatic environment and satisfy other public interest review factors. In 2003, the average processing time for NWPs was 27 days and for individual permits it was 144 days. In response to comments received as a result of the September 26, 2006, **Federal Register** notice, we have modified some of the proposed NWPs to address provisions that could have unnecessary negative effects on regulatory efficiency and environmental protection.

Other commenters expressed general opposition to the proposal, and said that the proposal weakens protection for waters and should be withdrawn. Many of these commenters objected to the goals of ''streamlining'' or ''improving regulatory efficiency,'' stating that the focus of the NWPs should be on compliance with the Clean Water Act. Some commenters expressed opposition to the issuance of the NWPs, and said that activities proposed for NWP authorization should be individually subjected to a public notice and comment process. One commenter suggested that pre-construction notifications should be posted on district web sites for at least 30 days before an NWP verification is issued, to allow for public comment on those proposed activities.

The NWPs issued today comply with the requirements of the Clean Water Act. When the Clean Water Act was amended in 1977, Congress recognized the importance of general permits for the effective and efficient implementation of section 404. We do not agree that pre-construction notifications should be posted on the Internet for a public comment period. The review of pre-construction notifications by district engineers is sufficient for effective environmental protection. Some NWP activities require coordination with other Federal and/or State agencies, which provides a supplemental level of environmental protection. The activities authorized by NWPs have minimal adverse effects and are limited, within each permit, to narrowly defined categories of similar activities. Notice and opportunity for public comment on the authorization of these activities through NWPs is provided as part of the NWP promulgation process. The Corps believes this is the appropriate level of public notice and comment for these types of activities. Further, when reviewing pre-construction notifications, district engineers will exercise discretionary authority to require individual permits for those activities that they determine may result in more than minimal adverse effects on the aquatic environment or do not satisfy other public interest review factors, and thus warrant a more thorough individual review through a public notice and comment process.

Some commenters stated that the NWPs should require consideration of less damaging alternatives, and others said that the Corps did not provide sufficient scientific justification for proposed changes to the NWPs, or demonstrate that NWP activities result in minimal adverse environmental effects. One commenter said that there is not sufficient emphasis on avoidance of impacts to waters of the United States. Another commenter objected to using NWPs to expand existing projects, stating that it discourages avoidance and minimization.

The NWPs authorize only those activities that result in minimal individual and cumulative adverse effects on the aquatic environment, and thus do not include a formal process for consideration of less damaging alternatives. General condition 20, Mitigation, requires permittees to avoid and minimize adverse effects to the maximum extent practicable on the project site. The Corps believes this ensures sufficient consideration of alternatives for the types of low-impact projects that are eligible for authorization through NWPs. The Corps notes that expansion of existing projects may support the goals of avoidance and minimization, in contrast to the alternative of developing new sites, which may involve more substantial adverse impacts. The 404(b)(1) Guidelines contain flexibility for those activities that result in minimal adverse effects on the aquatic environment. Compliance with the National Environmental Policy Act and the Section 404(b)(1) Guidelines is accomplished through decision documents prepared by the Corps. These decision documents contain findings that the NWPs result in minimal adverse effects, and are based on available data at the national scale. Division engineers issue supplemental decision documents for use of NWPs within Corps district boundaries.

Several commenters said that the NWPs do not protect small wetlands and waterbodies enough, and one commenter said that the proposed permits do not support the ''no overall net loss'' goal for wetlands. In contrast, one commenter stated that the proposal provides adequate protection to the environment and supports the ''no overall net loss'' of wetlands goal.

The NWPs protect all jurisdictional waters, including small wetlands and other waterbodies, through their terms and conditions, such as acreage limits and linear foot limits. The NWPs also support the ''no overall net loss goal'' through mitigation requirements, including aquatic resource restoration, establishment, enhancement, and preservation activities that may be required as compensatory mitigation. As noted above, general condition 20, Mitigation, also includes requirements for on-site avoidance and minimization.

Two commenters objected to allowing district engineers to issue waivers that allow permittees to exceed the limits of NWPs, stating that such waivers do not support the minimal adverse effects requirement. Two commenters said that the NWPs authorize unlimited impacts to waters of the United States. One commenter remarked that acreage limits should be consistent for all NWPs. One commenter stated that the acreage limits in the proposed NWPs are sufficient to ensure minimal adverse effects. Three commenters asserted that the acreage limits of the proposed NWPs are too low, and they reduce the effectiveness of the NWP program. One commenter said that the low acreage limits for the NWPs lessen incentives to reduce impacts to waters, since many projects that previously qualified for NWP authorization now require individual permits. Another commenter stated that the acreage limits for all NWPs should be based on appropriate scientific and environmental criteria.

Many of the NWPs have acreage limits, and most of those that do not are self-limiting due to the nature of the authorized activity (e.g., NWP 1 for aids to navigation or NWP 10 for mooring

buoys). Acreage limits in NWPs cannot be waived by the district engineer. Linear foot limits in some permits can be waived, but only for intermittent and ephemeral (not perennial) streams. Two NWPs (i.e., NWPs 13 and 36) have cubic yard limits that may be waived. Those NWPs that contain provisions allowing district engineers to waive linear foot or cubic yard limits require the district engineer to make a written determination of minimal adverse effects. In such cases, the permittee cannot assume that a waiver was granted if the district engineer does not affirm that waiver in writing (see general condition 27). The Corps believes these limited waiver provisions are appropriate because activities that exceed the limits may still have minimal adverse impacts and it may require a site-specific evaluation by the district engineer to decide if they do. Other NWPs that do not have limits typically provide environmental benefits, such as aquatic resource restoration activities authorized by NWP 27 or hazardous and toxic waste cleanup activities authorized by NWP 38.

NWPs 21, 49, and 50 are a special case, in that they authorize activities for which review of environmental impacts, including impacts to aquatic resources, is separately required under other Federal authorities (e.g., Surface Mining Control and Reclamation Act (SMCRA) permits for coal mining activities). The Corps believes it would be unnecessarily duplicative to separately require the same substantive analyses through an individual permit application as are already required under SMCRA. However, through the pre-construction notification review process, the district engineer will consider the analyses prepared for the SMCRA permit and exercise discretionary authority to require an individual permit in cases where the district engineer determines, after considering avoidance and reclamation activities undertaken pursuant to SMCRA, that the residual adverse effects are not minimal. The project sponsor is required to obtain written verification prior to commencing work.

The acreage limits for the NWPs are established so that they authorize most activities that result in minimal adverse effects on the aquatic environment. We acknowledge that there may be some activities that exceed the acreage limits and still have minimal impacts but the Clean Water Act requires us to ensure that all projects authorized by NWPs have minimal impacts, not that all minimal-impact projects can be authorized by NWPs. Activities that are not authorized through NWPs may be authorized through regional general permits or individual permits.

One commenter stressed that the NWPs must be reissued in time, so that there is no gap between the expiration date of the current NWPs and the effective date of the new NWPs. Two commenters recommended administratively extending the current NWPs until the effective date of the new NWPs, through 5 U.S.C. 558(c), which is used to administratively extend National Pollutant Discharge Elimination System (NDPES) permits issued under Section 402 of the Clean Water Act.

We cannot use 5 U.S.C. 558(c) to administratively extend the NWPs, since that provision of the Administrative Procedures Act applies only to activities of ''a continuing nature'' such as discharges of effluents authorized by National Pollutant Discharge Elimination System permits issued under Section 402 of the Clean Water Act. The vast majority of activities authorized by NWPs are construction activities, with specific start and end dates, either for the discharge of dredged or fill material into waters of the United States, or structures or work in navigable waters of the United States. In general, these NWP activities are not of a continuing nature, and do not meet the requirements of 5 U.S.C. 558(c). The grandfather provision at 33 CFR 330.6(b) can be used to continue the authorization for those NWP activities that are under construction, or under contract to begin construction, after the NWP expires. This provision of the NWP regulations allows the permittee up to one year to complete the authorized NWP activity. Today's reissued and new permits will become effective on March 19, 2007, the day after the existing permits expire. Thus there will be no gap in coverage. The Corps expects that some States may be able to make their final Section 401 water quality certifications for all or some permits by this date. In cases where the State has not completed a 401 water quality certification by this time, the Corps will issue provisional verifications and permittees will be required to obtain individual State certifications prior to commencing discharges into waters of the United States.

Compliance With Section 404(e) of the Clean Water Act and the 404(b)(1) Guidelines

Several commenters said that the proposed NWPs are contrary to the intent of section 404(e) to provide an expedited, streamlined permit program for activities that have minimal environmental impacts.

The NWPs continue to provide a streamlined authorization process for those activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Those activities that do not qualify for NWP authorization may be authorized by regional general permits or individual permits.

Many commenters asserted that the NWPs result in more than minimal adverse effects on the aquatic environment, individually and cumulatively. Several commenters said that the NWPs do not comply with the 404(b)(1) Guidelines. One commenter said that the Corps should provide quantitative statistics on actual impacts, to predict cumulative impacts resulting from the NWPs. Two commenters believe that the draft decision documents do not adequately demonstrate that NWPs will result in minimal individual and cumulative impacts to waters of the United States. They said that there is not sufficient documentation to support estimates of the number of times an NWP will be used, the acres impacted, and the acres mitigated. They also stated that there should be more specific evaluations of particular types of waters, as well as landscape considerations. Four commenters said that the Corps cannot rely on mitigation to ensure minimal adverse effects, stating that the evaluation of minimal adverse effects must be completed prior to issuing a general permit. Therefore, the Corps cannot rely on mitigation that will be offered by permittees when making its finding under the 404(b)(1) Guidelines.

When we issue the NWPs, we fully comply with the requirements of the 404(b)(1) Guidelines at 40 CFR 230.7, which govern the issuance of general permits under section 404. For the section 404 NWPs, each decision document contains a 404(b)(1) Guidelines analysis. Section 230.7(b) of the 404(b)(1) Guidelines requires only a ''written evaluation of the potential individual and cumulative impacts of the categories of activities to be regulated under the general permit.'' Since the required evaluation must be completed before the NWP is issued, the analysis is predictive in nature. The estimates of potential individual and cumulative impacts, as well as the projected compensatory mitigation that will be required, are based on the best available data from the Corps district offices, based on past use of NWPs. In our decision documents, we also used readily available national data on the status of wetlands and other aquatic

habitats in the United States, and the potential impacts of the NWPs on those waters.

The 404(b)(1) Guidelines at 40 CFR 230.7 do not prohibit the consideration of mitigation when making the predictive evaluation of potential individual and cumulative impacts that may be authorized by an NWP. The practice of using compensatory mitigation to ensure minimal adverse individual and cumulative adverse effects is an important component of the NWP program (see 33 CFR 330.1(e)(3)).

Two commenters said that the Corps cannot rely on regional conditioning and discretionary authority to ensure minimal adverse effects. One commenter objected to the ability of the district engineer to exercise discretionary authority to impose conditions on NWP activities. Another commenter stated that in order to ensure minimal adverse effects, pre-construction notification should be required for all NWPs. A number of commenters said that many of the NWPs do not authorize activities that are similar in nature. They said that the Corps is required to explain why activities authorized by an NWP are similar in nature to warrant authorization under a single NWP.

The pre-construction notification review process and discretionary authority are important tools to help ensure that the NWPs authorize only those activities with minimal individual and cumulative adverse effects. If the district engineer reviews a pre-construction notification and determines that the impacts are more than minimal, discretionary authority will be exercised and either the NWP will be conditioned to require mitigation or other actions to ensure minimal adverse effects or an individual permit will be required. The Corps disagrees that pre-construction notification is necessary for all NWP activities. However, the Corps has expanded the scope of activities requiring pre-construction notification. Specifically, all activities conducted under NWPs 7, 8, 17, 21, 29, 31, 33, 34, 37, 38, 39, 40, 42, 44, 45, 46, 49, and 50 now require pre-construction notification, regardless of acreage impacted. This will enable district engineers to better ensure that these permits authorize only activities with minimal impacts.

These NWPs satisfy the requirement under Section 404(e) of the Clean Water Act that the categories of authorized activities be similar in nature. The ''similar in nature'' provision does not require NWP activities to be identical to each other. We believe that the ''categories of activities that are similar in nature'' requirement of section 404(e) is to be interpreted broadly, for practical implementation of this general permit program. Nationwide permits, as well as other general permits, are intended to reduce administrative burdens on the Corps and the regulated public, by efficiently authorizing activities that have minimal adverse environmental effects. For each NWP that authorizes activities under Section 404 of the Clean Water Act, the 404(b)(1) Guidelines analysis provides a brief explanation as to why the activities authorized by that NWP are similar in nature.

One commenter said that consideration of impacts resulting from general permits should not be limited to the aquatic environment. This commenter said that Section 404(e) of the Clean Water Act requires permitted activities to have minimal impacts on the environment as a whole.

In addition to the requirement that there be no more than minimal adverse effects on the aquatic environment, activities authorized by NWPs must also result in minimal adverse effects with regards to the Corps public interest factors (see 33 CFR 330.1(d)), which include other components of the environment.

Compliance With the National Environmental Policy Act

Many commenters said that the Corps must complete an Environmental Impact Statement for the proposed NWPs. One commenter remarked that the EIS must consider the individual impacts of the NWPs, as well as their cumulative impacts. One comment asserted that mitigation cannot be used to justify using an environmental assessment for NEPA compliance, instead of an Environmental Impact Statement.

The NWPs authorize activities that have minimal individual and cumulative adverse effects on the aquatic environment and satisfy other public interest review factors. The NWPs do not reach the level of significance required for an EIS. The Corps complies with the requirements of the NEPA by preparing an environmental assessment for each NWP. When an NWP is issued, a Finding of No Significant Impact is also issued.

The use of mitigation to make a Finding of No Significant Impact is a standard practice for NEPA compliance. For the purposes of NEPA, mitigation includes avoiding impacts, minimizing impacts, rectifying impacts through repairing or restoring the affected environment, reducing or eliminating impacts over time through preservation and maintenance activities, and compensating for impacts by replacing or providing resources or environments (see 40 CFR 1508.20). Through the requirements of general condition 20, Mitigation, the review of pre-construction notifications by district engineers, and regional and special conditions imposed on the NWPs by division and district engineers, NWP activities use all these forms of mitigation so that the adverse effects of the NWPs do not reach the level of significance that requires an Environmental Impact Statement.

Several commenters stated that the draft decision documents do not satisfy the requirements of the National Environmental Policy Act (NEPA). Some commenters said that the analyses in the decision documents are not based on realistic data. One commenter noted that the average impact is often much less than the acreage limit for the NWP, and said that the mitigation ratios seem too high. One commenter said that the environmental assessments in draft decision documents must contain site-specific analyses. Two commenters asserted that the cumulative effects analyses in the decision documents are inadequate. One commenter said that the cumulative effects analysis should include information on the past use of NWPs, as well as information on other development activities expected to have impacts on protected resources.

We believe the data in the draft decision documents comply with the requirements of NEPA. The estimates of the projected use of the NWPs, the acres impacted, and the amount of compensatory mitigation are based on available data from Corps district offices, and other sources of data, such as surveys. Those data are based on pre-construction notifications and other requests for NWP verifications for activities that do not require pre-construction notification. For those NWP activities that do not require notification, it is necessary to derive estimates. For the decision documents, we must use predictive data, since the future use of an NWP is speculative. Likewise, we cannot provide site-specific information for these environmental assessments, because there are no specific sites or projects associated with the proposed issuance of an NWP. Authorized impacts are usually much less than the acreage limit for an NWP because of the avoidance and minimization required by the terms and conditions of the NWPs. The compensatory mitigation data provided in the decision documents include preservation.

On June 24, 2005, the Council on Environmental Quality issued guidance on the consideration of past actions for cumulative effects analyses. According to this guidance, the cumulative effects analysis needs to consider relevant past actions that can be used to analyze reasonably foreseeable effects that have ''a continuing, additive, and significant relationship to those effects.'' The guidance also recommends that agencies look at the present effects of past actions that are relevant because of significant cause-and-effect relationships with the effects for the proposed action and its alternatives. Except for a few activities, the NWPs do not authorize activities of a continuing nature. In general, they authorize construction activities with specific start and end dates. The NWPs can be issued for only a period of five years or less, and once an NWP expires, it cannot be used to authorize activities in waters of the United States. An activity must then be authorized by the reissued NWP, another NWP, a regional general permit, or an individual permit. The cumulative effects analysis is more properly focused on the permits that can be used to authorize regulated activities, not past permits that have expired. Therefore, the cumulative effects analysis for the NWP issuance needs to focus on the reasonably foreseeable cumulative effects that are expected to occur during the five year period the NWPs are valid. We use information on past use of the NWPs to estimate how often an NWP will be used during the period it will be valid, and to estimate the impacts and compensatory mitigation resulting from the use of that NWP.

One commenter requested clarification as to whether the draft decision documents included an environmental assessment, an EIS, or another type of NEPA document. Two commenters remarked that the Corps failed to solicit public comment on the environmental assessments for the proposed NWPs. Two commenters objected to the Finding of No Significant Impact (FONSI) in each draft decision document, stating that it is inappropriate to do a FONSI for a proposed action. Another commenter concurred with the FONSI found in each NWP decision document. One commenter said that the draft decision documents accurately analyzed anticipated environmental effects of the proposed NWPs.

A draft environmental assessment was prepared for each of the proposed NWPs. The draft environmental assessment was in the draft decision document, along with the draft statement of findings and, if the NWP authorized activities under Section 404 of the Clean Water Act, a draft Section 404(b)(1) Guidelines analysis. Those draft decision documents were available for public review and comment at the same time as the proposed NWPs, general conditions, and definitions. A number of commenters who commented on the proposed NWPs also commented on the draft decision documents. Commenters could also provide input on the draft FONSI in each decision document.

Compliance With the Endangered Species Act

In the September 26, 2006, **Federal Register** notice, we stated that we will conduct Endangered Species Act Section 7(a)(2) consultation for the NWPs. Since the issuance of the September 26, 2006, proposal, the Corps has been working with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) to develop an analysis plan to guide the formal programmatic Section 7 consultation for the NWPs. As soon as the analysis plan is completed, the Corps will request programmatic Endangered Species Act Section 7(a)(2) consultation with the USFWS and NMFS. Prior to the effective date of these NWPs, the Corps will issue a section 7(d) determination for the NWP Program.

Two commenters said the Corps must conduct Endangered Species Act consultation before the NWPs are issued. One of these commenters said that the Corps must conduct programmatic section 7 consultation for the NWP program, with mandatory district-by-district formal consultations. One commenter requested a timeline for the programmatic Section 7 consultation with the USFWS and NMFS. Another commenter asked for clarification whether Section 7 ESA consultation will be conducted for each NWP authorization or the NWP program as a whole. One commenter objected to the Corps conducting section 7 consultation for coal mining activities authorized by the Surface Mining Control and Reclamation Act.

The programmatic ESA consultation will be conducted for the NWP program as a whole, and will be concluded as expeditiously as possible. To address ESA compliance while programmatic consultation is being conducted, a revised Section 7(d) determination will be issued for the NWP program before the effective date of these NWPs. The Section 7(d) determination discusses how the issuance of these NWPs will not foreclose any options. The requirements of general condition 17 and 33 CFR 330.4(f) will ensure compliance with the ESA. We anticipate that the programmatic consultation will result in a biological opinion that provides tools that districts can use to better address potential impacts to the endangered and threatened species that occur in their areas of regulatory jurisdiction. Corps districts will conduct their own formal Section 7 consultations as necessary. The programmatic consultation will be conducted for the NWP program; its applicability to NWP 21 and other NWPs will be addressed as part of the programmatic consultation itself.

One commenter said that the Corps cannot rely on permit applicants to notify them in cases where ESA consultation is necessary. Two commenters said that the proposed changes to general condition 17, which requires district engineers to notify prospective permittees of their ''no effect'' or ''may affect'' determinations within 45 days of receipt of a complete pre-construction notification, violates the ESA since the Corps will be unable to make its decision based on the best available science. Two commenters said that the Corps must require pre-construction notifications for all NWP activities to help ensure compliance with the requirements of the ESA. Two other commenters stated that species-specific regional conditions must be imposed on the NWPs to protect endangered and threatened species.

Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and in such cases shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. This requirement applies even when a pre-construction notification would not otherwise be required. In such cases, this condition also prohibits the prospective permittee from conducting the NWP activity until the district engineer notifies him or her that the requirements of the ESA have been fulfilled and the activity is authorized by NWP. The ESA regulations at 50 CFR part 402 do not require ESA consultation for those activities that will not affect endangered or threatened species or destroy or modify designated critical habitat. In some districts, regional conditions will be imposed on the NWPs to protect listed species and critical habitat.

The notification requirement in general condition 17 does not violate the ESA. Forty-five days is generally

sufficient to screen proposed activities for potential effects to endangered and threatened species or designated critical habitat, and determine if section 7 consultation is necessary. The notification requirement will help improve ESA compliance by keeping the prospective permittee aware of the status of his or her pre-construction notification and preclude applicants from assuming that they can proceed after the 45 day pre-construction notification period has ended, if they have not heard back from the Corps that ESA requirements have been fulfilled and the activity is authorized. Districts will continue to develop regional conditions to further protect endangered and threatened species, as well as critical habitat.

Linear Foot Limits for Stream Bed Impacts

In the September 26, 2006, **Federal Register** notice, we proposed to modify several NWPs to include ephemeral streams in the 300 linear foot limits for losses of stream beds. We also proposed to allow district engineers to issue written waivers to the 300 linear foot limit for intermittent and ephemeral streams, upon making a determination that the adverse effects on the aquatic environment will be minimal. Many commenters objected to including ephemeral streams in the 300 linear foot limit for stream beds for NWPs 29, 39, 40, 42, and 43. Many other commenters supported the proposed change. A large number of commenters objected to allowing district engineers to waive the 300 linear foot limit, stating that miles of stream bed could be lost, resulting in more than minimal adverse environmental effects. A few commenters supported the proposed waiver. One commenter said that limits to filling or excavating ephemeral streams should be addressed through the regional conditioning process, instead of the national terms and conditions of the NWPs. Another commenter recommended imposing a higher linear foot limit for losses of ephemeral streams.

Ephemeral streams are important components of the stream network. Applying the 300 linear foot limit to ephemeral stream beds will help ensure that the applicable NWPs will authorize activities with minimal individual and cumulative adverse effects on the aquatic environment. The ability of district engineers to issue written waivers of the 300 linear foot limit for intermittent and ephemeral stream beds provides flexibility in the administration of the NWP program. In cases where the 300 linear foot limit is waived, the acreage limit of the NWP still applies. We believe it is more appropriate to limit losses of ephemeral stream beds through the national NWP terms and conditions, to provide consistent protection for those waters across the country. Regional differences in the values applied to ephemeral stream functions and services can be addressed through the waiver process. We believe the 300 linear foot limit, in conjunction with the waiver process, provides sufficient flexibility for the NWP program while ensuring minimal adverse effects.

Three commenters recommended that the Corps modify its definition of ''ephemeral stream'' to simplify the process of distinguishing between ephemeral and intermittent streams instead of applying the 300 linear foot limit to ephemeral streams. Another commenter indicated that the difficulty of distinguishing between ephemeral and intermittent streams is sufficient justification for including ephemeral streams in the 300 linear foot limit. In contrast, several commenters stated that including ephemeral streams in the 300 linear foot limit would not simplify the administration of the NWP program, because it would result in a large number of individual permits, as well as substantial increases in the Corps workload. Two commenters asked the Corps to establish criteria for determining when a waiver of the 300 linear foot limit can be issued. One commenter stated that the 300 linear foot limit should not apply to filling or excavating drainage ditches. One of these commenters said that an acreage limit should be applied to streams, instead of a linear foot limit.

Modifying the definition of ''ephemeral stream'' is not an appropriate alternative to modifying the 300 linear foot limit. The definitions of ''ephemeral stream'' and ''intermittent stream'' that were first promulgated for the NWPs in 2000 are based on the hydrologic differences between those stream types, especially the differences in how the stream bed interacts with the water table. We do not agree that the changes to the 300 linear foot limit will result in a large increase in the number of individual permits processed per year. Under the current NWPs, district engineers could exercise discretionary authority and require individual permits if proposed impacts to ephemeral streams would be more than minimal. We do not believe it would be appropriate to establish national criteria for determining when a waiver of the 300 linear foot limit would be applied. These determinations should be made on a case-by-case basis by district engineers, depending upon assessments of site-specific conditions. Even though the acreage limits of NWPs 29, 39, 40, 42, and 43 also apply to losses of stream bed, the linear foot limit is a useful tool for ensuring minimal adverse effects to these linear aquatic ecosystems. The 300 linear foot limit for filling and excavating stream beds does not apply to ditches constructed in wetlands, or to ditches constructed in uplands that are determined to be waters of the United States. However, the 300 linear foot limit does apply to ditches that are constructed by modifying streams through channelization or other activities.

Pre-Construction Notification

Many commenters objected to the proposal to add or expand pre-construction notification requirements for several NWPs, and a few of these commenters said that lowering the pre-construction notification threshold will substantially increase the Corps workload. Several commenters stated that increasing the number of activities that require pre-construction notification will result in additional delays and costs for permit applicants. In contrast, a number of commenters said that pre-construction notification should be required for all NWP activities, so that site-specific concerns can be more effectively addressed. One commenter asserted that the use of the pre-construction notification process and the use of discretionary authority should be limited, to provide more certainty to the NWP authorization process. Another commenter said that the decision to lower pre-construction notification thresholds should be left to division engineers and the regional conditioning process, to provide more flexibility for the NWP program.

Modifying NWPs 39, 40, 42, and 43 to require pre-construction notification for all activities will help ensure that these NWPs authorize only those activities that result in minimal individual and cumulative adverse effects on the aquatic environment and other public interest review factors, such as flood hazards and floodplain values. Corps districts have already been receiving large numbers of verification requests for NWP 39, 40, 42, and 43 activities that do not require pre-construction notification, so we believe that this change will not result in a substantial increase in our workload. In addition, the modified pre-construction notification threshold will facilitate compliance with the Endangered Species Act and Section 106 of the National Historic Preservation Act, by better ensuring notice of activities that

may have a higher likelihood of affecting endangered or threatened species, designated critical habitat, or historic properties. We do not agree that it is necessary to require pre-construction notifications for all NWP activities, because many NWP activities have negligible effects on the aquatic environment and the public interest review factors. We have focused the pre-construction notification requirements on those activities that have the potential for adverse effects that may require additional scrutiny by district engineers, including ESA and/or NHPA consultation.

The pre-construction notification and discretionary authority processes provide flexibility to the Corps regulatory program, by allowing the Corps to focus its limited resources on activities that have the potential to have more than minimal adverse effects on the aquatic environment. We believe that the proposed changes to the pre-construction notification thresholds are necessary for effective implementation of the NWP program, and to address issues of concern at the national level.

One commenter objected to the increased use of the pre-construction notification process and the waivers of limits, such as the 300 linear foot limit for the loss of intermittent and ephemeral stream beds for certain NWPs, to authorize activities by NWP. Another commenter said that it is an administrative burden to require the use of NWP 33 with other NWPs when in-stream construction activities need to occur in dry conditions. This commenter said that NWP 33 should only be used when temporary work is done in waters of the United States, and no other NWP is needed to authorize permanent structures or fills for the activity. One commenter recommended requiring pre-construction notifications for filling waters of the United States that are five or more feet deep, because of the effects on the hydrologic balance of a region.

The ability to waive limits after the review of a pre-construction notification and a written determination that the adverse effects of a particular NWP activity will be minimal provides flexibility to the NWP program, and allows the Corps to focus more of its resources on those activities that require individual permits and may have substantial adverse effects on the aquatic environment and the public interest. In the final NWPs, we have addressed the concern regarding the requirement to use NWP 33 for all temporary construction, access, and dewatering activities. Those changes are discussed in further detail for each applicable NWP. Many NWP activities that result in a discharge of dredged or fill material into waters of the United States, regardless of water depth, require pre-construction notification, which will allow district engineers to review those activities on a case-by-case basis and assess potential effects on the hydrologic balance of the area in the vicinity of the proposed work.

One commenter said that the pre-construction notification process should be modified to require notification of Indian Tribes, to provide them with the opportunity to comment on proposed activities that may result in the violation of Indian rights. This commenter also said that if the Indian Tribe identifies a potential conflict with Federally-protected Indian rights, the use of the NWPs should not be allowed.

The regional conditioning process, as well as government-to-government consultation between Tribes and the Corps districts where Tribal lands are located, are more appropriate mechanisms to address this commenter's concerns, since there are over 580 Federally-recognized tribes, and each Tribe is likely to have different concerns regarding the implementation of the NWP program. General condition 16 states that no NWP activity may impair reserved Tribal rights. Activities that do impair reserved Tribal rights are not authorized by NWPs. Regional conditions are an effective mechanism for addressing the concerns of a specific Indian Tribe, and can be used to facilitate working relationships between the Corps and the Tribe to help the Corps fulfill its trust responsibilities.

Clean Water Act Jurisdiction

On June 19, 2006, the Supreme Court issued its decision in the case of *Rapanos et ux, et al,* v. *United States.* Many commenters cited this decision, as well as other court decisions, and said that the proposed NWPs exceed the Corps jurisdictional authority under Section 404 of the Clean Water Act. Several commenters said that ephemeral streams are not subject to Clean Water Act jurisdiction and should not be covered in the NWPs. Another commenter asserted that intermittent streams are not waters of the United States.

The Rapanos decision, as well as other court decisions made in the past several years, raises questions about the jurisdiction of the Clean Water Act, including Section 404, over some intermittent and ephemeral streams and their adjacent wetlands. The Corps will assess jurisdiction regarding such waters on a case-by-case basis in accordance with evolving case law and any future guidance that may be issued by appropriate Executive Branch agencies (e.g., the Corps, U.S. Environmental Protection Agency). Under the current regulations and guidance, intermittent and ephemeral streams may meet the regulatory definition of ''waters of the United States'' and be subject to Clean Water Act jurisdiction. Regulatory jurisdiction over these waterbodies will be determined on a case-by-case basis by district engineers, in accordance with current and future regulations and guidance.

One commenter said that when applying the NWP acreage limits to wetlands, the Corps should not include all wetlands, just those subject to Clean Water Act jurisdiction. One commenter stated that a clearer definition of ''navigable waters'' is needed. Another commenter said that ditches are not waters of the United States, and impacts to ditches should instead be addressed through state programs. A commenter stated that the Corps must promulgate regulations to define ''waters of the United States'' for the purposes of implementing the NWP program.

The acreage limits of the NWPs apply only to losses of waters of the United States, including jurisdictional wetlands (see the definition of the term ''loss of waters of the United States'' in the ''Definitions'' section of the NWPs). Similarly, linear foot limits apply only to jurisdictional streams. Ditches may also be subject to jurisdiction under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, if they meet the regulatory definitions of ''waters of the United States'' and/or ''navigable waters of the United States.'' Waters of the United States are defined at 33 CFR part 328 and navigable waters of the United States are defined at 33 CFR part 329.

Regional Conditioning of Nationwide Permits

One commenter stated that regional conditions are unnecessary, and result in too much restriction of the NWPs. A commenter remarked that placing too many regional conditions on the NWPs is contrary to E.O. 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews. One commenter said that regional conditions should not be redundant with the requirements of other agencies, and the streamlining objective of the NWPs should be maintained.

Regional conditions are necessary to account for regional differences in aquatic resource functions, services, and values and to ensure that the NWPs

authorize only those activities that have minimal individual and cumulative adverse effects on the aquatic environment and other public interest review factors. Regional conditions are important tools for protecting endangered and threatened species, designated critical habitat for those species, essential fish habitat, historic properties, and other important resources. As a general matter, we agree that regional conditions should not duplicate the requirements of other agencies, but the Corps often has the responsibility to comply with other statutes and regulations administered by other agencies.

Two commenters said that there needs to be clearer rules for the adoption of regional conditions for the NWPs. A couple of commenters indicated that districts need to provide justifications for proposed regional condition, and make that information available to the public. Three commenters said that regional conditions should not be limited to further restricting the use of the NWPs. One commenter said that regional conditions should not be based on district boundaries. Instead, they should be based on ecoregions or other ecologically-delineated areas. Another commenter recommended that the Corps work with other agencies to develop a list of high value wetlands in which NWPs cannot be used.

Regional conditions may only further condition or restrict the applicability of an NWP (see 33 CFR 330.1(d)). In areas where environmental conditions and other circumstances warrant less restrictive general permit conditions, district engineers may issue regional general permits to authorize similar activities, as long as those general permits meet applicable requirements. The regulations governing the adoption of regional conditions are provided at 33 CFR 330.5(c). We believe it is necessary to provide flexibility to division engineers to determine the necessity and appropriateness of regional conditions to address concerns regarding the use of NWPs in a particular area. The notices issued by Corps districts soliciting public comment on proposed regional conditions are required to include statements concerning the environmental factors or other public interest factors resulting in the need for regional conditions (see 33 CFR 330.5(c)(1)). Regional conditions may be based on geographic areas other than district boundaries. Regional conditions may be imposed on the use of NWPs in watersheds, counties, states, ecoregions, or other types of areas. General condition 19, designated critical resource waters, provides a national list of high value waters. Districts can coordinate with other agencies to develop lists of high value wetlands within their district boundaries.

Data Collection

One commenter said that the supporting data used by the Corps falls short of the standards required by the Data Quality Act of 2001, and the Office of Management and Budget's ''Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies.'' This commenter stated that the Corps should provide data on aquatic resource functions to support its minimal impact determinations.

The data used for the NWP decision documents are the best available data at a national scale. The estimated impacts and mitigation provided in the decision documents were developed by reviewing and analyzing permit data from our district offices, as well as through consideration of how proposed changes to the NWPs would affect the amounts of authorized impacts and mitigation. Data on aquatic resource functions is generally not available. The National Wetland Inventory examines wetland status and trends for the conterminous United States, but information on wetland quality and function is not available.

Three commenters expressed concern about tracking permanent and temporary impacts to waters of the United States and recommended that the Corps implement a national tracking and monitoring system. This system would also facilitate the sharing of information with cooperating resource agencies and help improve decision making.

We are in the process of transitioning to a new automated information system (AIS) for the Corps regulatory program. The new AIS is version 2.0 of the ''OMBIL Regulatory Module'' (ORM 2.0). This national tracking and monitoring system will improve and standardize data collection for the Corps regulatory program, and will assist in decision-making for permit actions and other types of regulatory activities, such as jurisdictional determinations. ORM 2.0 will be spatially enabled, using geographic information systems and other analytical tools that will provide more efficient and effective processing of permit applications, jurisdictional determinations, and other tasks. Cumulative impact analysis will also be supported by ORM 2.0. The structure of ORM 2.0 will also be standard among Corps districts, providing for more consistent information collection and storage, and will be readily available for analysis and reporting. The standard structure of ORM will also promote consistency in Regulatory Program implementation.

ORM 2.0 will help improve data collection for the NWP program, as well as other types of permits issued by the Corps. Data collection will be more standard among permit types, especially for impact and mitigation data. We will continue to collect data on authorized losses of waters of the United States, including resource type, acreage, and impact type. ORM 2.0 incorporates several additional AIS resources to assist in the tracking of all required compensatory mitigation, including the amount, type (e.g., reestablishment), and source (i.e., permittee-responsible mitigation, mitigation bank, or in-lieu fee).

ORM 2.0 will also facilitate compliance with the Endangered Species Act, the National Historic Preservation Act, and the essential fish habitat provisions of the Magnuson-Stevens Fishery Management and Conservation Act. Screening tools based on available data for those resources will help Corps personnel identify activities that may affect those resources and require further consultation. The available resource data will be provided by other agencies, through data sharing agreements. Available data sets from the national, state, and local levels can be utilized by ORM 2.0.

ORM 2.0 is capable of supporting electronic interagency coordination. For activities that typically require interagency coordination and consultation, agencies will have the option of receiving electronic coordination notices and consultation requests and of responding to the Corps via a link to ORM 2.0. Agencies will be required to enter into a Memorandum of Agreement supporting the use of electronic communications for permit activities.

ORM 2.0 will also include time tracking features to help remind Corps project managers when the end of the 45-day pre-construction notification review will occur. Monitoring and enforcement activities will also be supported by ORM 2.0, including the tracking of when monitoring reports for compensatory mitigation projects are due.

ORM 2.0 will also support an electronic permit application, thereby allowing prospective permittees to submit their pre-construction notifications electronically to the appropriate Corps district. Permit

applicants will be able to check the status of their permit applications through the electronic permit Web site.

Other Issues

One commenter said that the Corps should stop issuing NWPs until effective compensatory mitigation is provided for those permits. Several commenters stated that the Corps places too much reliance on compensatory mitigation, citing recent studies that concluded that compensatory mitigation projects often fail to achieve their objectives. A couple of commenters asserted that the Corps should not rely on compensatory mitigation to ensure minimal individual and cumulative adverse effects. Another commenter objected to the more stringent requirements for compensatory mitigation for NWP activities, stating that compensatory mitigation for small impacts tends to be more expensive than the costs to plan and construct the proposed activity requiring NWP authorization.

Compensatory mitigation is an important mechanism to help ensure that the NWPs authorize activities that result in minimal individual and cumulative adverse effects on the aquatic environmental. We acknowledge that the ecological success of compensatory mitigation projects varies widely. Some compensatory mitigation projects fail to meet their objectives, while others do result in successful replacement of aquatic resource functions that are lost as a result of activities authorized by NWPs. We are committed to improving compliance for compensatory mitigation required for Department of the Army permits, including NWPs. District engineers have the flexibility to determine when compensatory mitigation should be required for activities authorized by NWPs. If it is not appropriate or practicable to require compensatory mitigation for a particular activity, and that activity will result in minimal adverse effects on the aquatic environment, then the district engineer may determine that compensatory mitigation is not necessary. Otherwise, if the proposed activity will result in more than minimal adverse effects on the aquatic environment after determining that compensatory mitigation is not appropriate or practicable, then an individual permit would be required.

One commenter said that the NWPs do not distinguish between different types of waters, but combine waters when applying the acreage limit for the NWP. This commenter stated that the Corps needs to recognize that different types of waters often have different functions.

The NWPs do recognize different types of waters. The terms and conditions of NWPs are often based on the characteristics of different types of waters. For example, NWP 39 does not authorize discharges of dredged or fill into non-tidal wetlands adjacent to tidal waters.

One commenter said that the requirement for NWP activities to be single and complete projects should not be removed, citing the proposed changes to NWPs 13, 15, 18, and 19. This commenter stated that the requirement for single and complete projects does not appear outside of the Corps definition at 33 CFR 330.2(i). One commenter objected to the removal of the requirement in several NWPs to submit an avoidance/minimization statement with the pre-construction notification.

The requirement that NWPs authorize single and complete projects applies to all NWPs. Limiting the NWPs to authorize only single and complete projects is a long-standing practice, and we are adding a new general condition (GC 28) to clarify that the NWPs only authorize single and complete projects.

The requirement for an avoidance/minimization statement that was in NWPs 39, 43, and 44 is not necessary, because we have modified NWP 39 to require pre-construction notification for all activities, and we are requiring pre-construction notification for all construction and expansion of storm water management facilities under NWP 43. In addition, general condition 20 requires permittees to avoid and minimize adverse effects to waters of the United State to the maximum extent practicable on the project site. When reviewing a pre-construction notification, the district engineer will determine whether sufficient avoidance and minimization of impacts to waters of the United States has occurred, and whether the activity complies with general condition 20. It is the responsibility of the district engineer to make this determination, and we do not believe it is appropriate to place that burden on the prospective permittee by requiring the submittal of a statement with the pre-construction notification.

One commenter recommended that the Corps adopt an administrative appeal process for activities authorized by NWPs, which would provide for third party appeals. Another commenter said that compliance inspections should be conducted for a certain number of NWP activities per year. One commenter said that the Corps needs to do more enforcement and monitoring of activities authorized by NWPs.

We do not believe it would be appropriate or necessary to establish an administrative appeal process for the NWP program, since the NWPs authorize only those activities that have minimal individual and cumulative adverse effects on the aquatic environment. The administrative appeal process at 33 CFR part 331 applies only to individual permits and jurisdictional determinations, and does not provide for third party administrative appeals.

Performance measures established for the Regulatory Program require our district offices to conduct compliance inspections for a proportion of general permit activities occurring in a given year.

One commenter said that the Corps should retain a separate NWP for aggregate mining activities (the current NWP 44), and provide greater acreage limits, since the proposed modification of NWP 44 will have little utility for the aggregate mining industry.

We do not believe it would be appropriate to issue another NWP for aggregate mining activities, with greater acreage limit. The acreage limit for NWP 44 is intended to ensure that this NWP authorizes only those activities with minimal individual and cumulative adverse effects on the aquatic environment. This NWP authorizes aggregate mining activities.

Two commenters said that all references to excavation in the NWPs should cite 33 CFR 323.3(d) to clarify that not all excavation activities require section 404 permits. One commenter suggested adding a new general condition which would require submittal of a delineation of non-jurisdictional wetlands with the pre-construction notification for those NWPs authorizing development activities, so that states could be notified of these activities. One commenter said that NWPs should not authorize activities in springs, seeps, headwater streams, and fens.

Many excavation activities result in discharges of dredged material that require section 404 permits. When reviewing pre-construction notifications, district engineers will determine whether an excavation activity results in a discharge of dredged material and requires a section 404 permit, or whether a permit is not needed. It is not appropriate for the Corps to require prospective permittees to submit delineations of areas that are not waters of the United States with their pre-construction notifications. States that regulate these non-jurisdictional aquatic habitats should

address those concerns through their permit processes. The NWPs can be regionally conditioned to restrict or prohibit NWP activities in springs, seeps, headwater streams, and fens.

One commenter requested that the Corps reissue NWP 26, which authorized discharges into headwaters and isolated waters, in accordance with the limits described in the December 13, 1996 **Federal Register** notice.

There are no plans to reissue NWP 26. This NWP expired on June 7, 2000. We have issued NWPs that have replaced NWP 26.

Water Quality Certification/Coastal Zone Management Act Consistency Determination Issues

One commenter said that the Corps should provide an opportunity for state and Tribal water quality certification agencies to participate early in the NWP reissuance process, to reduce potential conflicts during the water quality certification process. Another commenter requested clarification regarding enforcement of the NWPs, in cases where a provisional NWP verification is issued, but the permittee proceeds with work without receiving the individual water quality certification. This commenter asked whether the Corps or the state would initiate an enforcement action. One commenter objected to use of provisional NWP verifications in cases where water quality certification has not yet been issued for a particular NWP activity.

We cannot begin coordination for water quality certification at an earlier time in the NWP reissuance process. States and Tribes need to see the proposed permit and general condition language, which is not available until the publication of the proposal in the **Federal Register**, in order to proceed with the certification process. We believe there is generally adequate time to complete the water quality certification process, however, where there is not, the Corps will issue only provisional verifications until the State or Tribe has completed its certification process; in this case, permittees are required to obtain individual certification directly from the State or Tribe before commencing work.

If a provisional NWP verification is issued, the activity is not authorized by NWP until the required water quality certification is obtained or waived. If the project proponent begins the work before water quality certification is obtained or waived, the district engineer has full authority to initiate an enforcement action for the discharge of dredged or fill material into waters of the United States without a valid permit, in violation of the Clean Water Act. The district engineer will use his or her discretion, when determining whether to pursue an enforcement action. The use of provisional NWP verifications is necessary to provide timely responses to prospective permittees in cases where the State or Tribe has not yet completed its certification process. In addition, some States prefer not to issue general certifications for some or all NWPs. These States require a review of individual PCNs before issuing water quality certification for a particular activity.

Discussion of Comments and Final Permit Decisions

Nationwide Permits

NWP 1. *Aids to Navigation.* There were no changes proposed for this NWP, and no comments were received. This NWP is reissued without change.

NWP 2. *Structures in Artificial Canals.* There were no changes proposed for this NWP, and no comments were received. This NWP is reissued without change.

NWP 3. *Maintenance.* We proposed to modify this NWP by removing the provisions for the restoration of uplands damaged by discrete events. We also proposed to add maintenance dredging or excavation of intakes, outfalls, and canals, which was authorized by NWP 7.

Several commenters expressed support for the proposed changes to this NWP. One commenter objected to the removal of the explicit references to the ''water quality'' and ''management of water flows'' general conditions, stating that the removal of those references would change the intent of the NWP. One commenter recommended removing the language regarding the disposal of excavated material in upland areas, since it implies that excavation activities are regulated by the Corps under Section 404 of the Clean Water Act. Several commenters recommended adding language to clarify that excavation activities, or incidental fallback, do not require a section 404 permit. One commenter said that the definition of ''currently serviceable'' should remain in the text of this NWP, instead of moving it to the ''Definitions'' section.

Even though explicit references to general conditions were removed from its text, all general conditions, including those general conditions cited above, are still applicable to this NWP. The terms of this NWP require permittees to deposit and retain dredged or excavated materials in an upland area, unless the district engineer authorizes the use of another area. This term does not suggest that excavation activities not involving discharges of fill or dredge material into Section 404 waters are regulated by the Corps. Instead, it specifies the type of site that may receive dredged or excavated material under this NWP for activities that do require Section 404 authorization. Excavation activities in waters of the United States require section 404 permits if they result in a discharge of dredged or fill material into those waters (see 33 CFR 323.2(d)). Activities that result in only incidental fallback do not require permits. Since the definition of ''currently serviceable'' is used in NWPs 41 and 47, it is more appropriate to have the definition in the ''Definitions'' section, for easier reference.

A couple of commenters objected to moving the provision authorizing the repair, rehabilitation, or replacement of structures or fills destroyed or damaged by discrete events to proposed NWP A, which requires pre-construction notification for all activities. These commenters said that the proposed change would hinder the ability of utility companies and transportation departments to quickly repair utility lines, roads, and other important infrastructure damaged or destroyed by severe storms. One commenter suggested adding another note to this NWP, to refer potential applicants to NWP 45 in cases where structures that have been made non-functional by some discrete event may qualify for repair, rehabilitation, or replacement.

We have restored the language authorizing the repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms or other discrete events in paragraph (a) of NWP 3, and removed it from proposed NWP A (now designated as NWP 45). Because of this change, it is no longer appropriate to add a note to this NWP to refer to NWP 45.

One commenter suggested that this NWP should not be used to authorize additional or new work, fill, riprap or structures that was not part of the original authorization. One commenter stated that the continued maintenance, repair, restoration, and replacement of a structure may represent ongoing impacts that are more than minimal, and may preclude restoration of environmental features at the project site. This commenter said that those types of activities should require on-going mitigation. Another commenter said that this NWP should not be reissued, since its use results in more than minimal adverse impacts to the

aquatic environment. Another commenter suggested that this NWP should not authorize replacement of structures and fill, and that it should be restricted to repair or rehabilitation activities involving 50 percent or less of a structure. One commenter said that this NWP should authorize modifications to older structures that would help improve the aquatic environment. This commenter also recommended replacing the use of riprap with less environmentally damaging alternatives, such as bioengineered structures.

This NWP does not authorize any significant increase in the original structure or fill. Only minor deviations necessary to conduct repairs and maintenance, or the placement of the minimum necessary riprap to protect the structure, are eligible for authorization under this NWP. Because of the nature of activities authorized by this NWP, as a general rule compensatory mitigation should not be required for these maintenance activities. If a Department of the Army permit was required to construct the original structure or fill, appropriate compensatory mitigation would have been required by the district engineer when the permit was issued, to offset the loss of aquatic resource functions and services resulting from the authorized work. Additional compensatory mitigation is usually unnecessary to maintain those structures or fills. The terms and conditions for NWP 3, plus any regional conditions imposed by division engineers, will ensure that this NWP authorizes only those activities with minimal individual and cumulative adverse effects on the aquatic environment. We believe that this NWP should continue to authorize the replacement of structures or fills, or rehabilitation activities, since those activities usually result in minimal adverse effects on the aquatic environment. As for modifying this NWP to authorize changes to structures that would improve the aquatic environment, we believe it would be more appropriate for district engineers to authorize such changes through other permits. Changes to structures would require more thorough evaluation to ensure that net improvements to the aquatic environment will occur. The use of bioengineering methods to protect existing structures may not be very effective, because of the environmental conditions, such as water flows, near these structures. Riprap is usually the most effective means of protecting these structures, and the terms of this NWP require minimization of the footprint of the riprap. District engineers can consider bioengineering on a case-by-case basis, and authorize such activities as appropriate.

One commenter said that this NWP should not authorize the maintenance of bank stabilization structures that are more than 300 feet long. One commenter suggested dividing paragraph (b) into two subparagraphs. One subparagraph would authorize debris and sediment removal and the other subparagraph would authorize riprap. This commenter also indicated that this NWP should be modified to limit the removal of sediment to the minimum necessary to ''restore the bed of the waterway to its natural grade.''

This NWP authorizes only activities that repair or return an activity to previously existing conditions. We do not believe it is necessary to further restrict this NWP to limit maintenance of bank stabilization structures. Dividing paragraph (b) into two subparagraphs is not needed, since the riprap is typically used to protect the structure once the accumulated sediment has been removed. The purpose of this NWP is to authorize restoring structures or fills to their original condition. It may not be possible to determine the ''natural grade'' of the waterway, and this may not have been the condition at the time the structure or fill was originally authorized. Therefore, we believe the current language is more appropriate.

Several commenters recommended modifying this NWP to authorize both permanent and temporary impacts of maintenance activities, since the requirement to submit a pre-construction notification for temporary impacts would significantly increase regulatory and administrative burdens on the applicants and the Corps, without any environmental benefits or added value to the process.

We agree, and have added a new paragraph (c) to this NWP to address temporary structures, fills, and work necessary to conduct the maintenance activities authorized by this NWP.

Several commenters objected to the requirement to provide information about original design capacities and configurations of the structures and canals as part of the pre-construction notification for the proposed activity. These commenters stated that this information may not exist or be readily available, particularly for old facilities and structures. These commenters recommended that the information be required only where it is reasonably available. Alternatively, the commenters proposed retaining the language regarding the project not causing more than minimal changes to the flow characteristics of the stream, or increased flooding, instead of specifically requiring original design information.

The provision to require information regarding the original design capacities and configurations of structures and other features is only applicable when maintenance dredging is proposed. We believe that this information can be developed fairly easily, since the capacities and configurations of the outfalls, intakes, impoundments, and canals can be developed or inferred by examining the existing facilities, in cases where historical documentation is not available.

Several commenters expressed opposition to the terms of the NWP that limit the removal of sediment to the minimum necessary to restore the waterway to the approximate dimensions that existed when the structure was built. Another commenter recommended changing the language to require restoration of the project to its original design conveyance capacity.

The current language is adequate to ensure that this NWP authorizes necessary sediment removal activities that result in minimal adverse effects on the aquatic environment. We believe that the limits for the removal of sediments should be established with regard to the conditions of the waterway itself at the time of project construction rather than to the specifications of the structures.

One commenter requested clarification as to whether the 200 foot limit on the removal of accumulated sediment is subject to the ½ acre limit found in other NWPs.

This NWP does not have a ½ acre limit. If this NWP is used with another NWP to authorize a single and complete activity, then the activity is subject to the requirements of general condition 24, Use of Multiple Nationwide Permits. If this NWP is used with an NWP with a ½ acre limit, such as NWP 39, then the ½ acre limit would apply to the single and complete project.

One commenter requested the addition of ''flood conveyance channels'' to paragraph (b) of this NWP, instead of requiring the use of NWP 31. Another commenter stated that additional routine maintenance activities, which are authorized by NWPs 31 and 43, should be consolidated under NWP 3. One commenter suggested adding language to clarify that this NWP authorizes emergency repairs of submarine fiber optic cables.

NWP 31 is being reissued to authorize maintenance activities for existing flood control facilities, including flood conveyance channels. Therefore, we do not believe it is necessary to modify NWP 3 to authorize those activities. We are also reissuing NWP 43 to authorize maintenance activities for storm water management facilities. Emergency repairs of submarine fiber optic cables may be authorized by this NWP, provided the activity meets its terms and conditions.

One commenter indicated that small sediment removal projects should not require pre-construction notification. Another commenter stated that pre-construction notification should not be required for the placement of riprap to protect structures. A few other commenters said that pre-construction notification should not be required for activities authorized by paragraph (b) of this NWP. In contrast, one commenter suggested that pre construction notification should be required for all activities covered under NWP 3.

We believe that the pre-construction notification requirements for this NWP are appropriate. Pre-construction notification is required for those activities that may have the potential to cause more than minimal adverse effects on the aquatic environment.

One commenter recommended that sediments should be sampled to project depth prior to dredging, and that sandy sediment suitable for nearshore disposal should be returned to the littoral system down drift of the project site.

Regulatory Guidance Letter 06–02 establishes that testing of dredge material is not required when there is reason to believe that no contaminants are present in the material. Therefore, a standard requirement to sample and test sediments to be dredged under NWP 3 would not be appropriate. The nearshore disposal of sandy sediments should be addressed through separate authorizations, such as individual permits, since those activities may have more than minimal adverse environmental effects.

One commenter indicated that significant wetland habitat development has been observed on sediments left in place for many years within canals associated with outfall and intake structures. That commenter stated that exempting maintenance activities in such canals from the 200 linear foot restriction may have a significant impact on the wetland habitats in these channels. Another commenter suggested that the placement of riprap or any other bank stabilization material in, or the removal of accumulated sediment from, any special aquatic site should be prohibited.

Since this NWP only authorizes activities that restore an area to its previous condition, we do not believe it is appropriate to prohibit the maintenance of structures or fills simply because a special aquatic site may have formed in these areas. District engineers will review pre-construction notifications to determine if the placement of riprap or the removal of accumulated sediments in special aquatic sites would cause more than minimal impact, and use discretionary authority to address situations where they would.

One commenter stated that affected tribes should be informed of all pre-construction notifications for this NWP that involve in-water work and be provided 30 days to provide comments. This commenter also suggested that while bioengineered projects are less environmentally damaging than riprap and offer benefits to salmon, the presence of wood in some bank protection structures has the potential to interfere with treaty fishing access by preventing the use of nets.

Coordination of proposed NWP 3 activities with Indian tribes is more appropriately addressed through government-to-government consultations with Corps districts. General condition 16, Tribal Rights, does not allow an activity or its operation to impair reserved tribal rights, including but not limited to, reserved water rights and treaty fishing and hunting rights. Compliance with this general condition, along with coordination with interested Indian Tribes, will help protect tribal rights.

One commenter suggested that the placement of riprap should be the minimum necessary to protect the structure, in order to reduce adverse effects to habitat-forming processes within waterbodies, such as salmon habitat. Another commenter said that this NWP should not authorize maintenance work on culverts that fail to meet appropriate standards for the upstream and downstream passage of fish, or culverts that do not allow for the downstream passage of substrate and wood.

The terms and conditions of this NWP limit the placement of riprap to the minimum necessary to provide adequate erosion protection. Other NWP general conditions, such as general condition 17 for endangered species, may provide additional protection for species of concern, as well as their habitat. General condition 2 prohibits activities which could disrupt the necessary life cycle movements of aquatic species.

One commenter stated that pre-construction notifications should be required for all NWP 3 activities to ensure compliance with its terms and conditions. Another commenter stated that the Corps should carefully review all maintenance applications to ensure that the area impacted is not larger than needed to complete the maintenance activities, and that no additional impacts are authorized or conducted.

We do not agree that pre-construction notification should be required for all activities. The terms and conditions of this NWP are adequate to ensure that it authorizes only those activities with minimal adverse effects on the aquatic environment. Where there are concerns for the aquatic environment, division engineers can regionally condition this NWP to require pre-construction notification or other measures.

One commenter said that streams near roads may migrate from their original location and compromise the road. This commenter said that for those situations, this NWP should authorize relocation of the stream back to its original location. The commenter also indicated that small channel realignments should be authorized to properly convey the water into culverts.

This NWP does not authorize new stream channelization or stream relocation projects. Those activities may be authorized by other Department of the Army permits.

This NWP is reissued with the modifications discussed above.

NWP 4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.* We proposed to remove the provision for shellfish seeding, since we proposed to modify NWP 27 to authorize this activity. No comments were received. This NWP is reissued as proposed.

NWP 5. *Scientific Measurement Devices.* We proposed to remove the pre-construction notification requirement for discharges of 10 to 25 cubic yards for the construction of small weirs and flumes, but retain the 25 cubic yard limit for such construction.

Several commenters supported this NWP and the proposed removal of the pre-construction notification requirement on the basis that activities authorized under this NWP result in minimal impacts. Another commenter agreed with the removal of the pre-construction notification requirement for discharges of 10 to 25 cubic yards for construction of weirs and flumes because it will facilitate the implementation of water quality improvement projects sponsored by Federal, State, and local agencies, as well as the scientific community. Two

commenters objected to the removal of the pre-construction notification threshold. One commenter recommended conditioning this NWP to ensure that authorized activities do not interfere with the movements of organisms within watercourses or prevent ingress or egress of aquatic organisms.

Based on our past experience with this NWP, we believe the removal of the pre-construction notification requirement for discharges of 10 to 25 cubic yards for the construction of small weirs and flumes is appropriate. Project proponents are required to comply with all applicable general conditions, including general condition 2, Aquatic Life Movements, which prohibits activities from substantially disrupting life cycle movements of aquatic organisms. Further, we believe the district engineer's authority to issue case-specific special conditions and to impose regional conditions to require pre-construction notifications for certain activities, such as activities involving specified quantities of fills for the construction of small weirs and flumes, is adequate to address local concerns regarding potential adverse effects to the movement of aquatic organisms.

One commenter said that the NWP should have a condition requiring all temporary devices to be removed when the devices will no longer be used. This commenter also asked whether this NWP authorizes the installation of single measurement devices or multiple measurement devices.

The removal of temporary fills is required by general condition 13. The NWP authorizes single and complete scientific measurement device projects. Scientific measurement devices with independent utility can be authorized by separate NWP authorizations.

This NWP is reissued as proposed.

NWP 6. *Survey Activities.* We proposed to modify this NWP to add exploratory trenching to the list of authorized activities and to authorize the construction of temporary pads used for survey activities, provided the discharge does not exceed 25 cubic yards.

Two commenters supported the proposed modifications and one commenter said that the NWP would result in more than minimal impacts to the aquatic environment. One commenter stated that there should be a ¼ acre limit for exploratory trenching. This commenter also suggested imposing a 25 cubic yard limit on all activities authorized by this NWP.

It has been our experience that exploratory trenching results in minimal adverse effects on the aquatic environment, and this NWP has been conditioned to require restoration of the trenched area upon completion of work. Since most impacts associated with exploratory trenches are temporary, an acreage limit is not necessary. Division engineers may impose regional conditions to require pre-construction notifications or specific limits for certain activities. District engineers may also exercise discretionary authority and require an individual permit if a proposed activity would result in more than minimal adverse effects on the aquatic environment. It is unnecessary to impose a 25 cubic yard limit on all discharges authorized by this NWP, since most of these discharges are temporary. Temporary fills must be removed upon completion of the work, in accordance with the requirements of general condition 13. Any permanent fills are likely to be small in size, because of the types of activities authorized by this NWP.

One commenter suggested adding language regarding the backfilling of the exploratory trench. Some commenters stated that the definition of ''exploratory trenching'' should include more prescriptive details such as benchmarks, width, and depth.

We are conditioning this NWP to require permittees to backfill the top 6 to 12 inches of exploratory trenches constructed in wetlands with topsoil from the trench. This change will bring consistency with the terms of other NWPs that authorize trenching activities. We do not believe that it is necessary to include prescriptive limits on the trench dimensions. However, division engineers may choose to establish such limits through regional conditions.

One commenter suggested that the 25 cubic yard limit for discharges associated with temporary pads should be removed. Another said that the 25 cubic yard limit should apply to the cumulative amount of material for multiple drill sites. Two commenters said that limits should be placed on the amount of such discharges because a state may not issue water quality certification for this NWP.

The 25 cubic yard limit is necessary to help ensure that the NWP authorizes only activities with minimal adverse effects on the aquatic environment. It also provides a suitable limit on the quantity of discharge necessary for construction of these temporary pads. The cubic yard limit for temporary pads applies to a single and complete project, as defined at 33 CFR 330.2(i). If a state does not issue water quality certification for this NWP, an individual water quality certification must be obtained or waived for each activity before it is authorized in that state.

One commenter stated the NWP should also authorize temporary access roads. Such work may qualify for the 404(f) exemption for temporary mining roads or could be authorized by NWP 33.

The NWP is reissued with the modification discussed above.

NWP 7. *Outfall Structures and Associated Intake Structures.* We proposed to move maintenance dredging and excavation activities to NWP 3. We also proposed to change the title of this NWP to more clearly describe what it authorizes.

Several commenters supported moving maintenance dredging and excavation activities to NWP 3, while one commenter objected to the proposed change. One commenter said this NWP should require pre-construction notification only for section 10 activities, since Clean Water Act authorization for these structures is already provided through the permit process under Section 402 of the Clean Water Act. One commenter stated that construction and maintenance of outfall structures should not include bank stabilization structures.

Outfall structures and associated intake structures require section 404 authorization if they involve discharges of dredged or fill material into waters of the United States. Sections 404 and 402 of the Clean Water Act address different types of discharges. In addition, the permitting criteria under section 404 differ from those of section 402. In addition, some activities authorized by this NWP may be exempt from section 402 permit requirements. The pre-construction notification requirement is necessary to ensure that activities authorized by this NWP will have no more than minimal adverse impacts to the aquatic environment. Bank stabilization activities are not authorized by this NWP but may be authorized by NWP 13 or other types of permits.

One commenter suggested adding a provision to require intake structures constructed for withdrawing cooling water to adhere to requirements contained in Section 316(b) of the Clean Water Act. Another commenter suggested that this NWP should include a reference to the U.S. Environmental Protection Agency's section 316(b) implementation initiative and require incorporation of Best Technology Available methods developed from this initiative. This commenter also said that intake structures should utilize passive screens with openings not to exceed one centimeter (or one millimeter in waters

having anadromous fish), with a maximum intake velocity of 0.5 feet per second.

Section 316(b) of the Clean Water Act is implemented through (and only applies to) permits issued pursuant to Section 402. Thus, any structure that is in compliance with regulations issued under the NPDES program (Section 402) must also be in compliance with regulations issued under Section 316(b). Specific suggestions regarding technology choices for intake structures are more appropriately addressed through other permit authorities, such as the 402 program. Activities authorized by this NWP may require other Federal, State, or local permits or licenses.

One commenter suggested adding modifications of existing intakes as an authorized activity, for cases where intake structure modifications are required by rules recently promulgated under Section 316(b) of the Clean Water Act. Another commenter recommended adding a note to refer applicants to NWP 3 for future maintenance activities.

In the first sentence of this NWP, we have added the phrase ''or modification'' after the word ''construction. It is important to note that this NWP only authorizes the construction or modification of intake structures that are associated with outfall structures. This would include cooling water intake structures where the heated cooling water is subsequently discharged back into the waterbody from which is was withdrawn. Adding a note referencing NWP 3 for future maintenance activities is inappropriate, since there may be outfall structure maintenance activities that do not qualify for NWP 3 authorization.

One commenter requested clarification that this NWP authorizes only those activities that require permits under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. This commenter said that the current text of this NWP indicates that all outfall and associated intake structures that require section 402 permits would also require an NWP authorization.

This NWP authorizes outfall structures and associated intake structures that require authorization under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. If the construction or modification of an outfall structure or associated intake structure that requires a section 402 permit does not involve discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States, then a Corps permit is not required.

One commenter recommended conditioning this NWP to require intake structures to be marked in a manner that will reduce hazards to navigation during and after construction. Another commenter said that this NWP should not authorize dredging operations during fish spawning seasons. One commenter said that this NWP should prohibit the stockpiling of excavated materials where sediment may erode to surface waters. A commenter asserted this NWP should be conditioned to prohibit exposure of surface waters to wet concrete, which may be toxic to aquatic organisms.

General condition 1 states that any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained. This condition adequately addresses potential hazards to navigation. Maintenance dredging associated with outfall structures and their intake structures may be authorized by NWP 3 or another type of permit. General condition 3 states that activities in spawning areas that occur during the spawning seasons must be avoided to the maximum extent practicable. General condition 12 addresses requirements for soil erosion and sediment controls. Although concrete may be toxic under certain circumstances, it is generally not considered to have toxic pollutants present in toxic amounts. Therefore, its use is not generally prohibited by general condition 6, Suitable Materials.

One commenter said that agency coordination should be required for the construction of intake structures, because those structures may impinge and entrain larval fish.

We do not believe it is necessary to require agency coordination for the construction of intake structures. For cooling water intake structures, this issue is already addressed by the Section 402 program. For other types of intakes, it would be more appropriate to address concerns regarding the impingement and entrainment of larval fish through regional conditions or special conditions. Division and district engineers, in consultation with resource agencies, can develop species-specific regional or special conditions to protect larval fish.

This NWP is reissued with the modification discussed above.

NWP 8. *Oil and Gas Structures on the Outer Continental Shelf.* We proposed to clarify that pre-construction notification is required for all activities authorized by this NWP. No comments were received. This NWP is reissued as proposed.

NWP 9. *Structures in Fleeting and Anchorage Areas.* There were no changes proposed for this NWP. One commenter said that moorage structures may preclude the continued exercise of Tribal fishing rights. This commenter also asked that the Corps consult with Indian Tribes that utilize these areas for fishing, and requested that pre-construction notification be required for all activities authorized by this NWP.

General condition 16 states that NWP activities cannot impair reserved tribal rights. Division and district engineers can consult with Tribes to develop regional conditions that will further ensure that tribal rights are not impaired by this NWP. Division engineers can regionally condition this NWP to require coordination with Tribes when proposed activities may affect Tribal lands or trust resources.

The NWP is reissued without change.

NWP 10. *Mooring Buoys.* There were no changes proposed for this NWP. One commenter stated that individual mooring buoys can interfere with the exercise of Tribal fishing rights and should not be authorized by NWP. This commenter also said that pre-construction notification should be required for all activities authorized by this NWP, and the Corps should consult with Indian Tribes with usual and accustomed fishing grounds. Another commenter suggested limiting mooring buoys to areas outside of Federal navigation channel or dredged material placement areas.

General condition 16 states that NWP activities cannot impair reserved tribal rights. Division and district engineers can consult with Tribes to develop regional conditions that will ensure that tribal fishing rights are not impaired by activities authorized by this NWP. District and division engineers will consider the need to add regional conditions or case-specific conditions where necessary to protect tribal rights. Prohibiting the placement of mooring buoys in Federal navigation channels or dredged material placement areas is not desirable. There are occasions where it may be appropriate to place mooring buoys in these areas on a permanent or temporary basis, where the adverse effects on navigation and other public interest review factors are minimal. Mooring buoys authorized by this NWP must comply with general condition 1, Navigation. Division engineers may also add regional conditions to this NWP to prohibit the placement of mooring buoys in certain Federal navigation channels or other areas of concern.

The NWP is reissued without change.

NWP 11. *Temporary Recreational Structures.* There were no changes proposed for this NWP. One commenter suggested that temporary buoys, markers, small floating docks, and similar structures can interfere with the exercise of treaty fishing access and, therefore, in an area subject to treaty fishing, notification to affected tribes is required. The commenter further stated that regional conditions should be added to require that such structures shall be removed from salmon spawning areas prior to commencement of the spawning season. Another commenter suggested that temporary recreation structures may come into conflict with Tribal fisheries and that pre-construction notification should be required. In addition, consultation with Indian Tribes with usual and accustomed fishing grounds in the area should also be conducted.

This NWP cannot authorize any activity that may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights (see general condition 16). District and division engineers will consider the need to add regional conditions or case-specific conditions where necessary to protect such tribal rights.

One commenter recommended conditioning the NWP to require temporary recreation structures to be removed within seven days after the use has been discontinued, instead of the 30 days specified in the NWP. One commenter asserted that the required approval from the reservoir manager should be in writing.

Shorter time periods for removal can be imposed through regional conditioning, or through special conditions provided in NWP verifications. The process for approving buoys or markers at Corps of Engineers reservoirs is at the discretion of the reservoir manager.

The NWP is reissued without change.

NWP 12. *Utility Line Activities.* We proposed to modify this NWP by removing the provisions authorizing the construction of permanent and temporary access roads and simplifying the pre-construction notification thresholds. Several commenters supported all proposed changes to this NWP.

One commenter recommended modifying this NWP to explicitly include utility line relocation, in addition to utility line construction, maintenance, and repair. Two commenters suggested reducing the authorized duration of temporary sidecasting. One of these commenters said that four weeks is sufficient time for temporary sidecasting, and the other commenter recommended a time limit of 30 days. One commenter said that this NWP should require all trenched material to be returned to the trench as backfill, not just the upper 6 to 12 inches, to sustain groundwater hydrology and prevent drainage of wetlands and other waters of the United States. One commenter requested that total impacts at the site be limited to 3/10 acre.

This NWP authorizes the relocation of utility lines, which is covered by the construction, maintenance, and repair activities authorized by this NWP. We believe that three months is an appropriate time frame for temporary sidecasting of excavated material into waters of the United States. Division engineers can regionally condition this NWP to reduce the authorized period of temporary sidecasting, to further ensure minimal adverse effects. In response to a pre-construction notification, district engineers can add special conditions to the NWP authorization to reduce the length of time temporary sidecasting is authorized. We do not agree that it is necessary to require that all trenched material be returned to the trench to maintain pre-construction hydrology. The NWP explicitly prohibits backfilling the trench in a manner that would result in a french drain effect, and drain nearby waters. We believe the 1/2 acre limit for this NWP is sufficient to ensure that it authorizes only those activities that result in minimal individual and cumulative adverse effects on the aquatic environment. This limit applies to the total discharges associated with the single and complete project.

Several commenters supported the proposed pre-construction notification thresholds for this NWP, stating that they are simpler than the current thresholds and would capture many of those utility line activities that required pre-construction notification under the 2002 NWP. A couple of commenters recommended retaining the pre-construction notification thresholds of the NWP 12 issued in 2002. A number of commenters said that the pre-construction notification for temporary losses of greater than 1/10 acre of water of the United States should be eliminated. Some of these commenters stated that this pre-construction notification threshold is confusing, because it is not consistent with the definition of ''loss of waters of the United States.'' Other commenters recommended changing the phrasing of this pre-construction notification threshold from ''temporary loss'' to ''temporary impact'' to provide consistent terminology for the NWPs. Several commenters said that the 1/10 acre pre-construction notification threshold for temporary losses should be eliminated, because it is not necessary to ensure minimal adverse effects and it is not consistent with the pre-construction notification thresholds of other NWPs. One commenter indicated that the pre-construction notification threshold for temporary losses would result in a dramatic increase in the numbers of pre-construction notifications submitted to the Corps. Another commenter stated that this pre-construction notification threshold would remove incentives for project proponents to minimize temporary impacts. Several commenters said that requiring pre-construction notifications for temporary losses greater than 1/10 acre would increase the number of wetland delineations required to be submitted with those notifications.

One commenter asked if an activity resulting in impacts of 1/10 acre or less to special aquatic sites, including wetlands, would require pre-construction notification. Another commenter said that there may be utility line activities resulting in the loss of less than 1/10 acre that may result in more than minimal adverse effects on the aquatic environment. One commenter objected to the removal of the pre-construction notification requirement for activities that include mechanized landclearing of forested wetlands, stating that this may result in significant habitat loss of forested wetlands and a significant permanent loss of forested wetland functions. One commenter recommended requiring pre-construction notifications for activities that may impact fish passage.

We are restoring the pre-construction notification thresholds that were in the NWP 12 issued in 2002, so that district engineers will be able to conduct case-by-case review for certain utility line activities that have the potential to result in more than minimal adverse effects on the aquatic environment. Pre-construction notification will be required if any of the following criteria are met: (1) The activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6)

permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. Discharges resulting in temporary losses of waters only will no longer trigger a pre-construction notification requirement, unless they trigger one of the criteria above.

Division engineers can regionally condition this NWP to require pre-construction notification for other utility line activities, if there are concerns for the aquatic environment or public interest that warrant lower pre-construction notification thresholds, such as endangered or threatened species, or impacts to forested wetlands. General condition 2, Aquatic Life Movements, requires permittees to not disrupt necessary life cycle movements of aquatic organisms, such as fish.

Several commenters requested that the definition of single and complete project, as applied to utility line projects, be modified to state that the 1/10 acre pre-construction notification threshold applies to the entire utility line and not to each separate water or wetland crossing.

The requirement to submit a pre-construction notification for those utility line activities listed in the ''Notification'' paragraph of this NWP applies to a single and complete project, as defined at 33 CFR 330.2(i). In the case of a utility line, a single and complete project consists of a single crossing of a water of the United States, or more than one crossing at the same location (see the definition of ''single and complete project'').

Several commenters expressed opposition to the proposed removal of access roads from this NWP, especially the construction of temporary access roads, which would require authorization under NWP 33 and require pre-construction notification for all activities. One commenter supported the use of NWPs 14 and 33 for utility line access roads, because it would provide greater flexibility in the locations where these roads could be built. Most of these commenters expressed concern that requiring pre-construction notification for all temporary access road construction activities will significantly increase the regulatory burdens on permittees and most likely cause substantial delays in utility line projects. One commenter said that access roads should be retained in this NWP, with a ½ acre limit for the utility lines and a ½ acre limit for the access road. Several commenters stated that requiring authorization of permanent access roads through NWP 14 could result in impacts greater than ½ acre at the site of a single and complete project. One commenter said that utility line substations should be authorized by another NWP, because these facilities can be constructed at a more distant location from the utility line.

After considering these comments, as well as the probable negative effects that this proposed change would have on essential services such as the distribution of energy to the public, we have decided to retain authorization of permanent and temporary access roads in NWP 12. We have added a paragraph to authorize access roads, using language from the NWP 12 issued in 2002. We are also putting Note 2 back into this NWP. This note states that access roads used for both construction and maintenance are authorized by this NWP. This note has been adapted from the NWP 12 issued in 2002, but revised to clarify that temporary access roads may be authorized by NWP 12, provided the area is restored to pre-construction elevations and revegetated as appropriate. To address concerns about temporary impacts to waters of the United States associated with utility line activities, we are adding explicit requirements to remove all temporary fills in their entirety, return affected areas to pre-construction elevations, and revegetate affected areas as appropriate.

The ½ acre limit for this NWP applies to each single and complete utility line activity. There are not separate acreage limits for utility lines and access roads. Retaining authorization of access roads in this NWP, as well as authorization for utility line substations, will help provide effective authorization for utility line activities.

One commenter recommended reformatting this NWP to be consistent with other NWPs. Another commenter suggested that the phrase ''provided the activity does not result in the loss of greater than ½ acre of those waters'' be deleted, since the ½ acre limit is indicated in the first paragraph of this NWP. One commenter said that mitigation should be required for all NWP activities. Another commenter stated that the NWP should clarify that mitigation banks may be used to provide compensatory mitigation for permanent adverse effects authorized by this NWP.

The format of this NWP need not be consistent with the other NWPs, because of the authorized activities. We are retaining the reference to the ½ acre limit in the paragraph that authorizes utility line substations, to make it clear that any losses associated with this activity are included in the ½ acre limit. A similar reference to the ½ acre limit is also provided in the paragraph authorizing access roads. Mitigation requirements for this NWP will be established in accordance with general condition 20, Mitigation. This general condition states that mitigation banks may be used to provide compensatory mitigation for activities authorized by NWPs.

One commenter suggested adding language to this NWP that would require sand and gravel excavated from a lake bed during trench excavation to be temporarily sidecast in a manner such that it would not be buried by material with finer grain sizes. Another commenter stated that this NWP should not be used to authorize utility line activities in streams that support salmon.

Concerns for potential impacts to lake substrate are more appropriately addressed through either the special conditions added to an NWP authorization by the district engineer, or by regional conditioning of the NWP by division engineers. Potential impacts to salmon are also more appropriately addressed through regional conditions or the review of pre-construction notifications, including the district engineer's use of discretionary authority and the addition of special conditions to the NWP authorization.

One commenter said that this NWP should be conditioned to require placement of the utility line in the right-of-way of existing or proposed roads or at the narrowest section of wetlands or streams. This commenter also stated that the number of stream crossings should be limited to the minimum necessary.

These concerns are addressed by general condition 20, Mitigation, which requires avoidance and minimization on the project site to the maximum extent practicable. It is not appropriate to condition this NWP to require utility lines to be placed in existing rights-of-way or at the narrowest sections of waters of the United States. Often it is not feasible to limit utility lines to these areas, and practicable alternatives are usually rather limited. Many utility lines need to be installed in areas without roads.

One commenter said that this NWP should require communication or power poles to be upgraded to current standards to avoid detrimental impacts to migratory birds. This commenter also stated that this NWP should not authorize wind generating turbines.

Design requirements for communication or power poles relative to migratory birds are more appropriately addressed through other

regulatory programs. Wind generating turbines are not considered to be utility lines. To the extent that the construction of wind generating turbines requires Department of the Army authorization, those activities may be authorized by individual permits, regional general permits, or other NWPs (e.g., NWP 25).

NWP 12 is reissued with the modifications discussed above.

NWP 13. *Bank Stabilization.* We proposed to modify this NWP to authorize bank stabilization activities in special aquatic sites, provided the prospective permittee submits a pre-construction notification.

Several commenters expressed support for the proposed changes to this NWP. Several commenters stated that this NWP will result in more than minimal adverse effects to the aquatic environment, particularly for headwater streams, and that individual permits should be required for these activities. Other commenters stated that the linear limits of this NWP should be reduced and that the waivers to the linear foot and cubic yard limits should be removed to ensure that the NWP authorizes only those activities with minimal adverse effects on the aquatic environment. Several commenters stated that bank stabilization projects in excess of 500 feet or involving more than one cubic yard per running foot should be evaluated as individual permits, with opportunity for public review.

The terms and conditions of this NWP, especially the pre-construction notification requirements, will help ensure that this NWP authorizes only those activities that result in minimal individual and cumulative adverse effects on the aquatic environment. The 500 linear foot and the one cubic yard limits must be waived in writing by the district engineer, or the NWP cannot be used to authorize activities that exceed these limits. Bank stabilization activities are often necessary to help protect property, as well as water quality. In response to a pre-construction notification the district engineer can add special conditions to the NWP authorization to ensure minimal adverse effects, or exercise discretionary authority and require another type of permit, such as an individual permit, for the activity. Division engineers can regionally condition this NWP to protect high value waters and other important resources.

One commenter recommended modifying the text of this NWP to clarify that authorized activities are not limited to rivers and streams, but that this NWP can also be used in coastal areas. Several commenters stated that this NWP should not authorize impacts to special aquatic sites. One commenter recommended requiring a written waiver from the district engineer to authorize discharges of dredged or fill material into special aquatic sites. A few commenters said that mitigation should always be required for activities authorized by this NWP.

This NWP can be used to authorize bank stabilization activities in all waters of the United States, including rivers, streams, and coastal areas. We do not believe it is necessary to modify the text of this NWP to list the types of waterbodies in which it can be used. Because many streams include or are bordered by special aquatic sites, precluding use of this permit in these areas significantly limits its usefulness. It may be beneficial to watersheds to stabilize eroding banks, even though small amounts of fringe wetlands or mudflats may be impacted by a bank stabilization activity. Therefore, bank stabilization activities involving discharges of dredged or fill material into special aquatic sites may be authorized by this NWP but pre-construction notification is required for all such activities, which will provide an opportunity for the district engineer to review those activities to ensure that any adverse effects on the aquatic environment are minimal. For additional assurance, we have added a new paragraph (d) to require a written waiver from the district engineer if the activity involves discharges of dredged or fill material into special aquatic sites. If a written waiver is not issued by the district engineer, then this NWP does not authorize such discharges. In response to a pre-construction notification, the district engineer will exercise discretionary authority if the proposed bank stabilization activity is in a special aquatic site and will result in more than minimal adverse effects on the aquatic environment. Division engineers may also regionally condition this NWP to prohibit discharges of dredged or fill material into special aquatic sites, where there are concerns for the aquatic environment or other public interest review factors.

We do not believe compensatory mitigation should be required for all bank stabilization activities. In cases where the bank stabilization activity affects a special aquatic site, it may be appropriate for the district engineer to require compensatory mitigation. For bank stabilization activities in other waters of the United States, the district engineer may determine that it is not necessary to require compensatory mitigation.

Several commenters stated that pre-construction notification should be required for all activities authorized by this NWP. One commenter suggested adding language to clarify that any requests for waivers of limits for this NWP would be approved or denied during the 45-day pre-construction notification review period. Another commenter requested that additional language be added to the text of the NWP to clarify that bank stabilization activities are authorized unless prohibited by the district engineer following review of the pre-construction notification.

We do not agree that it is necessary to require pre-construction notification for all activities authorized by this NWP. Many small bank stabilization activities are conducted each year that result in minimal adverse effects on the aquatic environment. We have modified paragraph (a)(2) of general condition 27 to clarify that NWP activities that require written waivers of limits are not authorized unless the district engineer issues the written waiver. In other words, a default NWP authorization does not occur after 45 days if the proposed activity requires a written waiver. The modification to general condition 27 is sufficient to address this concern, and it is not necessary to modify the text of this NWP. In the case of this NWP, all activities that require a pre-construction notification also require a written waiver. The Corps will do its best to process requests for such waivers within 45 days.

One commenter stated that this NWP should not be used to authorize bank stabilization activities in waters of the United States inhabited by anadromous fish. One commenter stated that use of wood in bank stabilization projects may interfere with tribal rights, such as treaty fishing access, and therefore affected tribes should be notified of requests to use this NWP. Several commenters said interagency coordination should be conducted on all NWP 13 pre-construction notifications.

Division engineers can regionally condition this NWP to restrict or prohibit its use in waters inhabited by anadromous fish. General condition 16, Tribal Rights, states that activities authorized by NWP cannot impair reserved treaty rights. Division and district engineers should consult with Tribes to develop regional conditions where necessary to ensure that tribal rights are adequately protected by this NWP. Division engineers can regionally condition this NWP to require coordination with Tribes when proposed NWP activities may affect Tribal lands or trust resources. General

condition 27, Pre-Construction Notification, sets out the requirements and procedures for interagency coordination for all NWPs; we do not believe additional requirements are necessary for this permit.

A number of commenters requested clarification as to whether the linear and running foot limits in this NWP are applicable to the length of the bank or the length of the stream channel. Several commenters stated that the prohibition against stream channelization should be retained, while others recommended that it be removed because many bank stabilization activities could be considered stream channelization projects. One commenter stated that this NWP should not be used to authorize hardening of bank surfaces. A number of commenters also stated NWP 13 should only authorize vegetative or bioengineered stabilization methods and not bank hardening methods. One commenter recommended modifying this NWP to encourage bioengineered methods, or placement of riprap above the ordinary high water mark or high tide line, by not requiring pre-construction notification for such activities. Two commenters said that this NWP should be limited to bioengineering, living shoreline, or vegetative bank stabilization techniques, and that individual permits should be required for bank stabilization activities involving the placement of rip-rap and other hard armoring techniques.

The linear foot and cubic yard limits apply to the length of the bank. We have modified paragraph (b) of this NWP to clarify that the 500 linear foot limit applies to the length of the bank stabilization activity, not the length of the stream segment. We are retaining paragraph (g), since stream channelization activities may result in more than minimal adverse effects on the aquatic environment. Bank stabilization activities differ from stream channelization activities in several ways. Bank stabilization reduces or eliminates erosion to prevent the loss of structures or adjacent property, and typically only one side of a stream is stabilized. The location and cross-section shape of the waterway is generally unaffected except for material placed along the stabilized bank. Stream channelization alters the length, location, and/or cross section shape of a stream channel. Stream channelization changes the hydraulic flow characteristics of the stream, reduces channel complexity and diversity, and can include bank stabilization on one or both banks of the channelized waterway. Stream channelization substantially reduces natural stream functions, while bank stabilization by itself does not.

We do not agree that this NWP should be limited to vegetative or bioengineering techniques. In many areas, those techniques will not provide adequate protection to the bank, especially in those waters where banks are subjected to substantial wave energy, such as coastal shorelines. In those areas, hard bank stabilization techniques may be the only feasible option. The pre-construction notification requirements in this permit apply to specific situations not directly related to the type of bank stabilization used (e.g., hard or vegetative). We do not believe that the use of bank hardening methods, in and of itself, requires a pre-construction notification, nor do we believe that pre-construction notification requirements should be waived simply because a project that exceeds the 500 foot or one cubic yard limit, or that involves discharges into special aquatic sites, uses vegetative or bioengineering techniques. However, for such projects, the use of more environmentally friendly methods may well be a factor in the district engineer's decision regarding whether or not to grant the requested waiver.

One commenter suggested that in order to make the one cubic yard per running foot limit more practical for bank construction methods in streams of significant size, this limit should only apply to the amount of material placed from the ordinary high water mark to the streambed, and not to anything below or above those planes. Alternatively, the commenter suggested that this limit could be adjusted to increase proportionally with increasing channel depth at the ordinary high water mark, so that stream magnitude is taken into account. One commenter indicated that the language limiting the placement of erodible material may discourage plantings on riprap, since the soil used for those plantings could be washed away during high flows. One commenter said that NWP 13 should not be used with other permits. Another commenter suggested that this NWP be conditioned to prohibit the use of waste concrete for bank stabilization material, since it may adversely affect the environment. One commenter recommended modifying paragraph (d) (now designated as paragraph (e)) to state that the placement of material may not impair surface water flow into or out of any water of the United States. In the September 26, 2006, **Federal Register** notice, this paragraph referred only to wetlands.

The cubic yard limit for this NWP, along with the waiver provision, is adequate to provide flexibility while protecting the aquatic environment and ensuring that authorized activities result in minimal adverse effects. We are retaining the language in paragraph (a), to help protect water quality. Bank stabilization projects involving the installation of plant materials on riprap may be authorized by this NWP, but erodible materials should be properly stabilized within the riprap or stabilized by other means. This NWP can be used with other NWPs to authorize single and complete projects that result in minimal individual and cumulative adverse effects on the aquatic environment, provided the permittee complies with general condition 24, Use of Multiple Nationwide Permits. General condition 6, Suitable Material, addresses the use of suitable material for discharges of dredged or fill material into waters of the United States. This general condition prohibits the use of materials that contain toxic pollutants in toxic amounts. We have modified paragraph (e) by replacing the word ''wetland'' with ''water of the United States'' to help ensure that surface water flows are maintained.

This NWP is reissued with the modifications discussed above.

NWP 14. *Linear Transportation Projects.* We proposed to modify this NWP to limit stream channel modifications to the minimum necessary to protect the linear transportation project and state that the NWP does not authorize temporary construction, access, and dewatering activities necessary to construct the linear transportation project.

Several commenters supported our proposal to change the first sentence of this NWP to refer to ''linear transportation projects'' instead of ''linear transportation crossings.'' One commenter said that this sentence should be consistent with the definition of ''single and complete project.''

We are retaining the proposed language in the first sentence of this NWP. However, in the case of linear transportation projects, a ''single and complete project'' consists of a single crossing of a water of the United States, or more than one crossing at the same location (see the definition of ''single and complete project'').

One commenter recommended reducing the acreage limit to ⅓ acre. One commenter said that this NWP should not be used in tidal waters. Another commenter stated there should be a condition requiring culverts to allow for unimpeded upstream and downstream passage of fish as well as

the passage of substrate and wood expected to be carried by 100 year flow events.

We do not agree that it is necessary to reduce the acreage limit to ⅓ acre for all activities authorized by this NWP. The ½ acre limit for losses of non-tidal waters and the ⅓ acre limit for losses of tidal waters, in addition to the pre-construction notification requirements and other general conditions, will ensure that this NWP authorizes linear transportation projects that result in minimal adverse effects on the aquatic environment. General condition 2, Aquatic Life Movements, states that no activity may disrupt the necessary life cycle movements of aquatic species, including those species that normally migrate through the area. General condition 9, Management of Water Flows, states that, to the maximum extent practicable, the activity must not restrict or impede the passage of normal or high flows, unless the primary purpose is to impound water.

A large number of commenters objecting to the removal of the language regarding authorization of temporary construction, access, and dewatering activities necessary to construct the linear transportation project, because NWP 33 requires pre-construction notification for all activities. One commenter suggested that the Corps expressly state that all activities authorized previously under this NWP remain authorized.

We have decided not to remove the language authorizing the temporary construction, access, and dewatering activities from this NWP. In addition, we have added a new paragraph to this NWP to help ensure that temporary impacts associated with NWP 14 activities are minimized, and that temporary fills are removed and affected areas are returned to pre-construction elevations and revegetated as appropriate.

One commenter said that this NWP should not authorize the construction of new transportation or spur projects, because potential future development activities might occur after the transportation project is constructed. One commenter stated that the NWP should be applicable only to the expansion, modification or improvement of existing linear transportation projects. One commenter recommended modifying the pre-construction notification thresholds to clarify whether temporary losses require pre-construction notification.

This NWP authorizes the construction, expansion, modification, or improvement of linear transportation projects that result in minimal individual and cumulative adverse effects on the aquatic environment. It does not prohibit new projects simply because there may be future development activities. It would be impractical to condition use of this NWP on consideration of hypothetical effects of potential future activities. Such effects will be addressed through applicable permitting requirements if and when future activities are proposed.

The acreage-based pre-construction notification threshold applies only to permanent losses of waters of the United States. However, pre-construction notification is also required for any discharges of dredged or fill material into special aquatic sites, whether those discharges are permanent or temporary.

One commenter stated that this NWP should not authorize bridge footings, because they result in a significant impact to stream habitat and that edge habitat is lost to hardened banks. One commenter asked whether this NWP authorizes cul-de-sacs and hammerhead turnarounds.

Bridge footings are necessary to construct certain types of linear transportation projects, and they usually result in minimal adverse effects on the aquatic environment. The pre-construction notification thresholds for this NWP will ensure that district engineers will review those activities with bridge footings that have the potential to result in more than minimal adverse effects on the aquatic environment. Bridge footings are generally confined to narrow stream segments, so only small amounts of edge habitat will be lost as a result of the construction of a bridge footing. In addition general condition 3, Spawning Areas, prohibits the physical destruction of important spawning areas that could result from these activities. Discretionary authority will be asserted in those cases where the construction of bridge footings will result in more than minimal individual and cumulative adverse effects on the aquatic environment. Cul-de-sacs and hammerhead turnarounds may be authorized by this NWP, as they are part of the street network used for transportation.

Another commenter recommended adding storm water management features to the list of examples of activities authorized by this NWP. One commenter requested clarification as to whether stream modifications, encroachments, and relocations associated with highway construction are authorized. We received several comments on the proposed language limiting stream channel modifications to the minimum necessary to construct or protect linear transportation projects. One commenter objected to the proposal, stating that it would limit public transportation safety requirements by adding unnecessary restrictions.

Storm water management features are authorized by this NWP, provided they are integral features of the linear transportation project. If they are not, then they may be authorized by NWP 43, regional general permits, or individual permits. Stream channel modifications are authorized by this NWP provided they are minimized and conducted in the immediate vicinity of the project. Otherwise, they require authorization under another NWP, a regional general permit, or an individual permit. This provision allows most linear transportation projects to use this NWP while ensuring that they result in minimal adverse effects on the aquatic environment.

Two commenters requested further clarification on the meaning of the phrase ''minimum necessary.'' Another commenter recommended modifying this NWP to require these activities to result in no changes to the course or hydrology of streams.

The phrase ''minimum necessary'' refers to minimizing the loss of waters of the United States needed to protect the project. This is determined based on case specific circumstances such as the environmental setting and the nature of the project. General condition 9, Management of Water Flows, requires maintenance of the course, condition, capacity, and location of open waters, such as streams, to the maximum extent practicable. The construction of linear transportation projects over streams usually results in some unavoidable changes to stream morphology, but the conditions of the NWP authorization require such impacts to be minimized to the maximum extent practicable.

Three commenters recommended adding a 300 linear foot limit to this NWP, and another commenter suggested a 2,000 linear foot limit. One commenter recommended a 200 linear foot limit.

This NWP does not have a linear foot limit for stream bed impacts. Instead, the acreage limits for this NWP are sufficient to ensure that this NWP authorizes only those activities that result in minimal individual and cumulative adverse effects on the aquatic environment. A 200 linear-foot limit was previously removed from NWP 14 to eliminate varied interpretations and to simplify the basis for use of the permit.

This NWP is reissued with the modifications discussed above.

NWP 15. *U.S. Coast Guard Approved Bridges.* There were no changes proposed for this NWP. One commenter asked why this permit only applies to U.S. Coast Guard approved bridges and not all bridges. The commenter suggested that the Corps simplify the permit by revising it to include construction, repair, seismic retrofit, or widening of any bridge, regardless of whether it spans navigable waters. Another commenter suggested modifying this NWP to allow the use of another NWP to authorize the causeways and approach fills.

The authority to authorize bridges or causeways across navigable waters of the United States is held by the U.S. Coast Guard. This NWP provides authorization under Section 404 of the Clean Water Act for discharges of dredged or fill material into waters of the United States associated with the construction of those bridges. The construction, repair, seismic retrofit, or widening of these bridges must be approved by the U.S. Coast Guard. The environmental review conducted by the U.S. Coast Guard during its authorization process will normally suffice for those related activities that require the section 404 authorization provided by this NWP. District engineers can exercise discretionary authority when the adverse effects to the aquatic environment may be more than minimal. Bridges constructed across section 404 waters may be authorized by NWP 14, a regional general permit, or an individual permit. For the purposes of clarification, the last sentence of this NWP is revised to read as follows: ''Causeways and approach fills are not included in this NWP and will require a separate Section 404 permit.''

This NWP is reissued with the modification discussed above.

NWP 16. *Return Water From Upland Contained Disposal Areas.* We proposed to rearrange the text of this NWP so that it will be consistent with the format of the other NWPs. No substantive changes were proposed to the text of the NWP. One commenter recommended that the permit require the issuance of a National Pollutant Discharge Elimination System permit under Section 402 of the Clean Water Act, in case the return water contains pollutants entrained in the dredged material. This commenter expressed concern that the discharge would not be properly considered through the water quality certification process under Section 401 of the Clean Water Act. One commenter said that the last sentence should be modified to acknowledge that incidental fallback would not require a section 404 permit.

Return water from upland contained disposal areas is administratively defined as a discharge of dredged or fill material subject to section 404. Therefore, section 401 water quality certification is the appropriate process for determining whether the discharges associated with the return water comply with the appropriate water quality standards. It is not necessary to qualify the citation of 33 CFR 323.2(d). District engineers will use that definition to determine whether section 404 permits are required for dredging activities. We believe that the inclusion of the citation provides a more complete description of activities that may constitute a discharge of dredged material.

The NWP is reissued without change.

NWP 17. *Hydropower Projects.* We proposed to rearrange the text of this NWP, without modifying any of its terms or its scope. One commenter stated that the NWP should not apply to hydropower projects exempt from Federal Energy Regulatory Commission licensing requirements. This commenter remarked that an individual permit should be required to ensure that impacts to aquatic resources are evaluated.

We are retaining the applicability of this NWP to hydropower projects that are exempt from the licensing requirements of the Federal Energy Regulatory Commission. We believe the pre-construction notification process will provide adequate means for district engineers to assess the impacts to the aquatic environment and, if necessary, exercise discretionary authority and require an individual permit for a particular activity. In addition, division and district engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

The NWP is reissued as proposed.

NWP 18. *Minor Discharges.* We proposed to modify this NWP by applying the 1/10 acre limit to all losses of waters of the United States, not just special aquatic sites.

Several commenters expressed support for the proposed revisions. A few commenters said that this NWP does not comply with the ''similar in nature'' requirement for general permits. Other commenters asserted that the cumulative impacts resulting from the use of this NWP would not be minimal. Another commenter said that this NWP should not authorize discharges into waters inhabited by species of anadromous salmon.

We believe that the minor scope and nature of the types of discharge activities authorized by this NWP are sufficient to establish that the activities are similar in nature. We also maintain that the discretion vested in district engineers to issue case-specific special conditions, including requirements for appropriate and practicable mitigation, coupled with the ability of division engineers to impose regional conditions for certain activities will ensure minimal adverse effects on the aquatic environment, individually and cumulatively. We disagree that activities in areas accessible to anadromous salmonids will necessarily result in more than minimal impacts. Permittees must adhere to all applicable NWP general conditions including general condition 2, Aquatic Life Movements, and general condition 3, Spawning Areas. The terms and conditions of this NWP, as well as the ability for district engineers to exercise discretionary authority, will help ensure that the activities authorized by this NWP result in minimal adverse effects to anadromous salmon.

Several commenters remarked that the wording of NWP 18 is confusing and suggested clarifications be provided. One commenter stated the language pertaining to ''losses'' is vague and suggested we clarify the text by adding ''permanent'' losses.

We do not agree that additional modifications are necessary to clarify the terms and conditions of this NWP. The proposed revisions to the text of the NWPs were made to remove redundant language and simplify the wording to make it clearer and more concise. The term ''loss of waters of the United States'' is defined in the ''Definitions'' section which explains that the loss of waters of the United States includes the filled area and other waters that are permanently adversely affected by flooding, excavation or drainage because of the regulated activity. Therefore, we do not agree that elaboration on the term ''losses'' within the text of this NWP is warranted.

Some commenters objected to the 1/10 acre limit as an unnecessary administrative burden and unduly restrictive when coupled with the pre-construction notification requirement.

We do not agree that the 1/10 acre limit will result in an unnecessary administrative burden or be unduly restrictive for the regulated public. While we recognize that the 1/10 acre threshold may preclude use of this NWP for some activities, we have determined that activities that result in loss of more than 1/10 acre of waters of the United States are not necessarily ''minor'' within the meaning of this permit. We believe the reduced scope of the permit

is justified by the enhanced protection afforded to the aquatic environment and will better ensure that authorized activities result in no more that minimal effects.

Several commenters asserted that a 25 cubic yard threshold is sufficient to ensure minimal adverse impacts on the aquatic environment. One commenter suggested that the volume criteria reflect a net total volume of discharge or excavation to allow for the management of volumes greater than 25 cubic yards as long as the net total discharged or excavated does not exceed 25 cubic yards.

The 25 cubic yard limit for excavating material, or discharging dredged or fill material, below the plane of the ordinary high water mark or high tide line is necessary to ensure that this NWP authorizes only those activities with minimal individual and cumulative adverse effects on the aquatic environment. Applying this 25 cubic yard limit to net volumes may result in more than minimal adverse effects, because it could allow substantially larger volumes of material to be excavated or discharged. Excavation or discharges of greater than 25 cubic yards in waters of the United States may be authorized by other types of permits, including regional general permits and individual permits. The language in the September 26, 2006, proposal also helps simplify the implementation of this NWP, by providing clear, easily measured limits and making it easier to enforce.

Another commenter suggested this NWP be simplified to authorize only discharges of dredged or fill material and exclude excavation activities in section 10 waters since the Corps does not regulate excavation activities under section 404 that result only in incidental fallback.

Excavation activities may result in discharges of dredged or fill material into waters of the United States that require section 404 permits (see 33 CFR 323.2(d)). Therefore, it is not appropriate to remove references to excavation from this NWP. Unless exempted under Section 404(f) of the Clean Water Act, excavation activities in waters of the United States that result in more than incidental fallback require section 404 authorization. Minor discharges authorized under NWP 18 often involve excavation activities that result in more than incidental fallback and would therefore constitute a discharge that is regulated under section 404.

One commenter recommended NWP 18 be specifically prohibited from use for any new residential and commercial construction and that impacts resulting from new residential or commercial development be subject to NWPs 29 and 39, respectively.

This NWP authorizes minor discharges of dredged or fill material in waters of the United States provided that the activity complies with the specific terms and conditions of the NWP and all applicable NWP general conditions. The applicability and verification of the use of this NWP is at the discretion of district engineers based on case-specific circumstances. Therefore, we believe it would be inappropriate to prohibit its use for new residential and commercial development in the absence of case-specific information. We note that the limits on use of this permit are more restrictive than the limits on use of NWPs 29 and 39, so developers could only use this permit if their impacts were smaller than those that could be potentially authorized by these other NWPs.

One commenter recommended including language stating that the discharge will not result in significant stream geomorphologic or hydrologic alteration, and that the discharge will not be placed for the purpose of, or result in, impeding navigation.

General condition 9, Management of Water Flows, requires maintenance of the course, condition, capacity, and location of open waters, such as streams, to the maximum extent practicable. Concerns regarding potential impacts to navigation are addressed by general condition 1, which states that no activity may cause more than minimal adverse effects on navigation.

This NWP is reissued as proposed.

NWP 19. *Minor Dredging.* We proposed to remove the phrase ''as part of a single and complete project,'' since that requirement applies to all NWPs and it is not necessary to include that phrase in the text of this NWP. One commenter supported the proposed change.

Another commenter said that the phrase ''including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year'' is not appropriate and recommended that it be removed. The commenter asserted that the Corps should not prohibit the use of this NWP in areas where submerged aquatic vegetation was present in the past, but there is no longer evidence that it is still present.

We are retaining this provision of the NWP, since areas where submerged aquatic vegetation is documented to exist have a high potential for those species to return to the area. In a given year, poor water quality may prevent submerged aquatic vegetation from inhabiting that area, but once water quality improves those plants may grow back.

One commenter was concerned about authorizing minor dredging activities in waters containing habitat features for various life stages of anadromous fish, including complex wood structures and edge habitats used for juvenile rearing and adult holding. The commenter indicated that this NWP should not be used to authorize dredging in waters that are inhabited by anadromous salmonids.

The terms and conditions of this NWP, as well as the ability for division and district engineers to exercise discretionary authority or condition this NWP, are sufficiently protective of species of anadromous salmon. General condition 2, Aquatic Life Movements, specifies no activity may disrupt the necessary life cycle movements of the aquatic species indigenous to the waterbody. In addition, general condition 3, Spawning Areas, states that activities in any spawning areas must be avoided to the maximum extent practicable during spawning seasons and the specific terms of this NWP prohibit its use in anadromous fish spawning areas at all. Additional time of year restrictions may be imposed by division and district engineers to reduce or avoid impacts to juvenile salmonids utilizing these areas.

Other commenters expressed concerns that NWP 19 does not authorize activities that are similar in nature with minimal impacts. One commenter questioned whether this NWP can be used for removal of a sandbar across the mouth of a navigable waterway. A couple of commenters questioned why this NWP applies to section 404 waters when the text of the permit states that it only authorizes minor dredging activities in section 10 waters. One commenter said that this NWP should not authorize dredging activities in non-navigable waters, including small streams, because of the greater potential for more than minimal adverse environmental effects.

We believe that the minor scope and nature of the types of dredging activities authorized by this NWP are sufficient to establish that the activities are similar in nature. This NWP can only be used to authorize the removal of materials from waters subject to Section 10 of the Rivers and Harbors Act of 1899. Dredging activities in section 10 waters may require section 404 authorization, which may be provided by this NWP. In waters of the United States that are not

subject to section 10 jurisdiction (i.e., section 404-only waters), NWP 18, regional general permits, or individual permits may be used to authorize those activities. This permit could be used to remove a sandbar across the mouth of a Section 10 water provided the activity met all of the other conditions for its use.

This NWP is reissued without change.

NWP 20. *Oil Spill Cleanup.* We did not propose any substantive changes to this NWP. One commenter requested clarification of the applicability of NWP 38 for emergency response to an oil release in waters of the United States from electrical equipment that is not covered by a Spill Prevention, Control, and Countermeasure (SPCC) Plan. These releases are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761. Because the activities are not included in a SPCC Plan, they were not authorized by the previous or the proposed versions of NWP 20. Since the required work must be initiated within 24 or 48 hours of discovery of the release, the commenter requested that either NWP 20 be modified or the pre-construction notification requirement for NWP 38 be removed, to allow these activities to take place in a timely manner.

We agree with the commenter's concern but do not think it is appropriate to remove the pre-construction notification requirement from NWP 38. We are thus modifying NWP 20 to authorize the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761.

This NWP is reissued with the modification discussed above.

NWP 21. *Surface Coal Mining Operations.* We proposed to change the title of this NWP. We also proposed allowing authorization of projects by this NWP that were currently being processed as part of an integrated permit processing procedure in lieu of an authorization from the Department of Interior, Office of Surface Mining (OSM) or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. The Corps, the Environmental Protection Agency, OSM, and the U.S. Fish and Wildlife Service entered into a Memorandum of Understanding on February 8, 2005. This MOU envisioned a collaborative process in which the SMCRA authority chooses to be the lead agency in coordinating interagency review of applications for surface coal mining operations while preserving the authorities and responsibilities of each agency for permit decisions.

We believe there may be some confusion regarding the intent of the term ''surface'' coal mining operations. The Corps did not intend to restrict use of this NWP to only a particular type of coal mining technique. Any coal mining activities can be considered for authorization under NWP 21 to the extent the activities occur on the surface of the land. In particular, while discharges associated with underground coal mining activities now require authorization under NWP 50 rather than NWP 21, surface processing activities associated with underground coal mining may still be authorized by this permit provided they meet the conditions for its use.

Proposed Limits

There were numerous comments regarding limitations on NWP 21. A number of commenters recommended limits on the length of stream that could be filled under NWP 21, and other commenters recommended an overall limit on impacts to waters of the United States of ½ acre. One commenter suggested that the threshold limits should be 2 acres and 1,500 linear feet. Three commenters recommended a 300 linear foot limit on filling streams and a ½ acre limit on impacts to all waters, and that these impacts could not be waived by the district engineer. Two other commenters concurred with the 300 foot limit but also suggested not allowing the use of NWP 21 in watersheds where the cumulative amount of filled streams was already causing more than minimal harm. Several commenters stated that any linear foot limits should apply to all streams, ephemeral, intermittent, and perennial. One commenter said that this NWP should not authorize discharges into perennial streams. Another commenter stated that the use of NWP 21 should not be allowed if more than 10 percent of the headwater streams in the watershed had been filled or otherwise degraded. One commenter stated that a 250-acre watershed limit was appropriate but that drainage areas was not the only factor that should be considered in determining if a project should qualify for NWP 21.

There were also a substantial number of comments that objected to limitations on NWP 21. Many commenters stated that acreage limits that may be appropriate for eastern states would not be appropriate for western states and would be unnecessarily restrictive. Two commenters suggested issuing two versions of NWP 21, one for the western United States and another for the eastern United States. They discussed the differences in mining and reclamation techniques and believed the Corps should recognize these differences by establishing two NWPs for coal mining. One commenter noted that acreage limits need to be larger for the western United States. A number of commenters suggested that regional conditions could be used to address the issue of limits. Several commenters noted that there was no compelling scientific or environmental basis or rationale to establish limits on NWP 21. They noted that due to hydrologic, climatic, and ecological variations, there was no defensible way to establish a specific threshold below which impacts could be said to be ''minimal'' across the vastly differing geographical and hydrological regimes where mining occurs. Several commenters stated that arbitrary and unnecessary thresholds would slow the permit process and result in a loss of coal production, which could be construed as a ''takings'' that violated substantive due process rights. Other commenters noted that limiting the use of NWP 21 would result in a loss in royalty and tax revenues and increases to the cost of the nation's energy supply by restricting coal production. One commenter noted that it would take more of the Corps' limited resources to review surface mining projects as individual permits. One commenter stated that thresholds would also impact the Corps' ability to comply with Executive Order 13212, which requires federal agencies to expedite their review of permits for energy related projects. One commenter noted that if a 2-acre limit were established for NWP 21, more than 60 percent of the nation's coal production would not be eligible for the NWP. One commenter stated that a 3-acre limit in the western United States would have a significant impact on Western mining operations. One commenter noted that if a limit of less than 50 acres was adopted, the Corps' would not achieve its goal of focusing its limited resources on projects that have the potential for more environmentally damaging adverse effects. Two commenters believed safeguards were in place to ensure impacts do not cause more than minimal individual or cumulative effects. They noted that general condition 20, Mitigation, requires compensatory mitigation to offset the adverse effects to the aquatic environment, and that there was no need for arbitrarily chosen acreage limits because the mitigation requirement counterbalances all adverse effects.

This NWP is used to provide section 404 authorization for surface coal mining activities that have also been authorized by the Office of Surface Mining or states with approved programs under Title V of the Surface Mining Control and Reclamation Act (SMCRA). Previously, there have been no limits associated with impacts to waters of the United States for NWP 21. This was based partly on the belief that the analyses and environmental protection performance standards required by SMCRA in conjunction with the pre-construction notification requirement, are generally sufficient to ensure that NWP 21 activities result in minimal individual and cumulative adverse impacts on the aquatic environment.

Furthermore, we believe the change in NWP 21 in 2002, which requires not only notification to the Corps for all projects that may be authorized by this permit but also explicit authorization from the Corps before the activity can proceed, has strengthened the environmental protection for projects authorized by this permit. One commenter requested that this requirement be removed from this NWP. However, we continue to believe that this 2002 change helps ensure that no activity authorized by this permit will result in greater than minimal adverse impacts, either individually or cumulatively, on the aquatic environment, because it requires a case-by-case review of each project. If the district engineer determines through this case-by-case review that the activity has the potential to result in more than minimal adverse effects to the aquatic environment, he or she can exercise discretionary authority to require an individual permit. Also, because of the case-by-case review and the requirement for written verification, we do not agree that it is necessary to prohibit discharges of dredged or fill material into perennial streams.

Lastly, the Corps recognizes that there are vast differences in coal mining techniques not only between the western and eastern parts of the United States, but also within the Illinois Coal Basin and the Appalachian Coal Fields themselves. There are also considerable differences in geological, topographical, climatological, hydrological and ecological regimes in the areas where coal resources are located across the United States. Furthermore, no specific scientific or environmental basis for determining a uniform national limit on NWP 21 was submitted for consideration. As noted above, there were several comments suggesting specific limits but no ecological rationale was supplied to support these specific limits. Several commenters did submit information from the Programmatic Environmental Impact Statement (PEIS) for mountaintop mining/valley fill. However, the PEIS did not support or determine appropriate limits for NWP 21. Based on these considerations along with the fact that the impacts to waters vary greatly depending on the mining techniques and the environmental factors in the area, we have determined that establishing a specific threshold limit would not be practical on a national basis. We believe that regional conditions, as appropriate, and site-specific review of each pre-construction notification will ensure that NWP 21 authorizes activities with no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The Corps has determined that it is both efficient and environmentally protective to issue an NWP 21 that can be used to authorize most activities that have no more than minimal adverse effects on the aquatic environment and allow division engineers to establish regional conditions that determine appropriate limits for impacts to waters based on the functions and values of aquatic resources within their division.

Regional Conditions

There were three commenters who noted that the division engineer has the discretion to add regional terms and conditions to NWP 21 and that acreage limitations should be determined at the regional level. The Corps agrees, based on the discussion above regarding limitations, that regional conditions are the best way to address regional concerns regarding surface coal mining activities and NWP 21. Division engineers can add regional conditions to any NWP to further restrict the use of the NWP to ensure that the NWP authorizes only activities with no more than minimal adverse effects on the aquatic environment in a particular watershed or other geographic region. The division engineer cannot modify the NWP by adding regional conditions to make the NWP less restrictive (see 33 CFR 330.1(d)). The use of regional conditions recognizes that functions and values of aquatic resources differ greatly across the country.

Discretionary Authority

Three commenters noted that NWP 21 allows the Corps to exercise discretionary authority during the pre-construction notification review process for any project which has the potential to cause more than minimal individual and cumulative adverse impacts on the aquatic environment.

We agree with these commenters. The pre-construction notification requirements of all NWPs allows for a case-by-case review of activities that have the potential to result in more than minimal adverse effects to the aquatic environment. If the adverse effects on the aquatic environment are more than minimal, then the district engineer can either add special conditions to the NWP authorization to ensure that the activity results in no more than minimal adverse environmental effects or exercise discretionary authority to require an individual permit. While many NWPs allow the permittee to assume authorization if he or she has not heard back from the Corps within 45 days of submitting a complete pre-construction notification, NWP 21 requires written verification before the project can proceed. This ensures that adequate time is available to the Corps to review the extensive documentation that pre-construction notifications for NWP 21 often include, coordinate with other agencies as necessary, and determine whether exercise of discretionary authority is necessary to ensure no more than minimal effects.

Scope of Analysis

One commenter stated that the scope of analysis for NWP 21 review should extend beyond the effects of fills in waters. Another commenter noted that the Clean Water Act is clear that general permits may only be issued if the permitted activities have minimal impacts on the environment as a whole and not just the aquatic environment.

Several commenters stated that NWP 21 should not be reissued, in order to protect wildlife habitat, outdoor recreation, the quality of life in rural communities and environmental integrity. A myriad of comments were received itemizing impacts related to authorizations associated with NWP 21. These impacts included irreversible damages to the American people, the destruction of lives and the natural and cultural heritage of Appalachia, Montana and Wyoming, loss of hunting opportunities, the exploitation of impoverished areas by large corporations, global warming, landslides, blasting, truck traffic on roads not designed or built to handle heavy loads, harm to bird populations, destruction of valuable hardwood trees, loss of medicinal plants, affects on the tourism/vacation home industry, and local sickness. Several commenters stated that mined areas cannot be restored to pre-mining conditions, such as native forest. Several commenters

expressed concern about coal slurry damaging downstream areas.

All of these impacts are outside of the Corps' scope of analysis pursuant to the National Environmental Policy Act (NEPA). The Corps evaluation of coal mining activities is focused on impacts to aquatic resources. Mining in general is permitted under a separate Federal law, the Surface Mining Control and Reclamation Act. Impacts associated with surface coal mining and reclamation operations are appropriately addressed by the Office of Surface Mining or the applicable state agency. Under these circumstances, the Corps' NEPA implementing regulations clearly restrict the Corps' scope of analysis to impacts to aquatic resources.

Integrated Permit Process

Several commenters supported the Memorandum of Understanding (MOU) between the EPA, Corps, OSM and the USFWS regarding the integrated permit process for coal mining mentioned in the proposed NWP language. Some suggested the integrated permit process along with the Standard Operating Procedure (SOP) for NWP 21 be mandatory under NWP 21. Some commenters stated that the integrated permit process does not eliminate the dual review of section 404 and SMCRA as the MOU intended, while other commenters stated that the integrated permit process was unlawful because through it, the Corps has delegated its section 404 authority to the states processing the SMCRA permit applications. One of the commenters supporting the MOU stated that the current integrated permit process did not meet the goal of the MOU, as evidenced by its failure in Ohio, since dual reviews were still being undertaken by the regulatory agencies.

The MOU recommends that Federal and state agencies coordinate reviews of coal mining permit applications, with the SMCRA agency as the lead agency. Currently, in areas that have developed or are in the process of developing an integrated permit process, the agencies have elected to make the process voluntary. The integrated permit process does not eliminate the regulatory responsibilities of the participating agencies, but allows the various permit applications to be reviewed concurrently while utilizing information from one application to fulfill required sections of other applications, where appropriate. The process allows for timelier reviews while providing the framework for better environmental protection. The Ohio integrated permit process is still in use for those who choose to use it.

State Programmatic General Permits and Regional General Permits

Several commenters suggested that a state programmatic or regional general permit or other methods (*e.g.*, a national MOU) be developed to reduce the duplication of effort by the regulatory agencies, therefore reducing cost and delays in receiving authorizations.

State programmatic and regional general permits are developed at the district level. The Corps supports and participates in such efforts where possible.

Surface Mining Control and Reclamation Act

Several commenters stated that coal mining is the most environmentally regulated activity, and SMCRA, along with Sections 401 and 402 of the Clean Water Act, already require analyses of all of the factors addressed under Section 404 of the Clean Water Act. Therefore, as the above-referenced programs already regulate impacts to aquatic resources, including impacts related to water quality, endangered species, historic properties, and the hydrologic regime, further review by the Corps only creates an additional administrative burden without any real benefits.

The Corps understands coal mining is covered by many environmental regulations; however the Corps has determined that SMCRA, in its current form, does not remove the need, either legally or substantively, for independent authorization under Section 404 of the Clean Water Act. Consequently, this NWP does not duplicate the SMCRA permit process. The Corps continues to work with the other agencies to avoid potential duplication of efforts and uses appropriate work and studies done by or for other agencies (*e.g.*, surveys/findings under the Endangered Species Act or Section 106 of the National Historic Preservation Act as well as SMCRA permit documentation) in its analysis of the proposed project.

Mitigation

Several commenters stated that mitigation done for NWP 21 is scientifically indefensible and, absent such mitigation, the projects authorized under NWP 21 have more than minimal adverse effect and are therefore impermissible. They stated that current mitigation projects have so far been unsuccessful and referenced a court case in the Southern District of West Virginia (*Ohio Valley Environmental Coalition* v. *Bulen*), where they noted that a Corps official stated that he did not know of a single instance of successful headwater stream creation. Also, the commenters stated that the Corps did not include any specific guidelines for how to assess stream function in order to determine the adequacy of compensatory mitigation. They also stated that the Corps has not shown that mitigation will offset the impacts authorized under NWP 21 or that off-site enhancement of streams would fully compensate for functions of streams that are destroyed. Other commenters stated that the Corps mistakenly allows the mitigation requirements of SMCRA and state water quality laws to satisfy the independent requirements of Section 404 of the Clean Water Act. They stated that allowing a permittee to claim a compensatory mitigation or reclamation activity already required under SMCRA as compensatory mitigation under the Clean Water Act is ''double-counting'' and improperly blurs the requirements of sequencing (*i.e.*, avoidance, minimization, mitigation) imposed under the 404(b)(1) guidelines. Other commenters recommended that mitigation of 1:1 should be required in order to achieve no net loss, and that mitigation also be required for potential, as well as actual, impacts. Several commenters stated that final reclamation of wetland habitat will most likely exceed the required compensatory mitigation.

In order to ensure that an activity results in no more than minimal adverse effect on the aquatic environment, the Corps will add permit conditions that require compensatory mitigation that meets specified success criteria. The Corps will generally require the permittee to monitor the mitigation site for five years and, if the mitigation site does not meet the success criteria at that time, remediation or additional mitigation will be required. This ensures that the authorized activity will not result in a net loss in aquatic functions. The Corps has increased its compliance efforts to ensure that projects authorized by DA permits are constructed as authorized and that mitigation is successful.

We are currently developing new stream functional assessment protocols to identify and quantify the functions lost through authorized impacts and the functions gained or enhanced through mitigation. We removed the language from the proposed NWP 21 that required the applicant to furnish a SMCRA or state-approved mitigation plan. The Corps recognizes that SMCRA does not require ''mitigation'' per-se, but does require ''reclamation/restoration'', and that some states require ''mitigation'' above Corps requirements.

The Corps coordinates with the SMCRA and state resource agencies to achieve appropriate aquatic restoration on mine sites, which can reduce or eliminate off-site compensatory mitigation needs. The Corps does not consider this ''double-counting'', because the areas restored are only counted once in the replacement of aquatic resource functions. As long as the functions lost as a result of the permitted activity are mitigated through the onsite restoration or enhancement, it does not matter if the restoration also meets other goals unrelated to the Section 404 impacts. General condition 20 establishes the framework for achieving no net loss of waters/wetlands, as well as the sequential review of mitigation on-site. The Corps takes into account the fact that, in certain areas and circumstances, any Corps compensatory mitigation requirement may be fully encompassed or exceeded by requirements under other authorities. As long as the impacts to the aquatic environment are fully mitigated, the Corps will not require additional compensation.

Withdraw NWP 21

Several commenters requested that NWP 21 be withdrawn and that the Corps consider authorizations under state or regional permits where cumulative impacts and mitigation measures can be evaluated on a more focused level that assures minimal impacts on the environment.

Division and district engineers have the authority to revoke or modify any or all of the NWPs and require authorizations for proposed projects by other general permits or individual permits. This should be determined on a local level.

Independent Evaluation

Several commenters stated that the burial or other degradation of hundreds of miles of Appalachian streams from mining demands a thorough, independent review, public notice, and analysis of alternatives and minimization, which is provided only through the individual permit process. A few commenters stated that coal mining rearranges the natural landscape and deserves to be studied on a case-by-case basis. One commenter stated that each project should be independently evaluated with proper safeguards in place to include meaningful bonds that would be sufficient to cover remediation costs when companies declare bankruptcy.

A careful case-specific determination that a project will result in no more than minimal impacts is necessary for a project to be authorized by this NWP. The pre-construction notification process for NWP 21, which requires the applicant to wait until he or she receives verification from the Corps, provides this case-specific determination. If the District Engineer determines that a particular proposal will result in more than minimal adverse environmental effects, he will assert discretionary authority and require an individual permit. Bonding is covered under general condition 20. The Corps notes that the SMCRA permitting process provides for public notice and comment on all coal mining permits.

Minimal Adverse Effects

A few commenters stated that the Secretary of the Army can only issue NWPs by making an up-front determination that the activities authorized by each NWP category will cause only minimal adverse effects and the Corps cannot ignore harm already done when assessing cumulative impacts. The commenters stated that the Corps has no reasoned basis or substantial evidence to support its determinations that the individual or cumulative environmental impacts associated with NWP 21 will be minimal. Several commenters similarly stated that compensatory mitigation could not be used to reduce the net adverse impacts to the minimal level in order to qualify for general permits. Therefore, NWP 21 exceeds the definition of minimal adverse environmental effects and all coal mining should be reviewed under the individual permit process. A number of commenters stated that surface coal mining results in significant ecological damage to headwater stream systems, when considered both individually and cumulatively, and it cannot be reasonably assumed that those stream losses can be mitigated into insignificance.

We believe our process for NWP 21 ensures that activities authorized by the NWP result in no more than minimal adverse impacts to the aquatic environment because each project is reviewed on a case-by-case basis and the district engineer either makes a minimal impacts determination on the project or asserts discretionary authority and requires an individual permit. Additionally, as noted above, division engineers can add regional conditions to any NWP to further restrict the use of the NWP to ensure that the NWP authorizes only activities with no more than minimal adverse effects on the aquatic environment in a particular watershed or other geographic region. Each district tracks losses of waters of the United States authorized by Department of the Army permits, including NWPs, as well as compensatory mitigation achieved through aquatic resource restoration, creation, and enhancement.

In addition, we believe that the Corps can rely on mitigation in making a minimal adverse environmental effects determination.

One commenter requested that the Corps clarify what constitutes a ''single and complete surface coal mining operation'' since approved mines can expand through either the addition of substantial acreages or the addition of small acreages (incidental boundary revisions). This commenter asked whether all revisions, including incidental boundary revisions, are considered as single and complete coal mining operations.

District engineers use the criteria in the definition of ''single and complete project,'' which is found in the ''Definitions'' section of the NWPs, when identifying single and complete coal mining operations. District engineers will determine, on a case-by-case basis, whether the expansion of an existing mine constitutes a separate single and complete project.

Impacts From NWP 21 Activities

Many commenters opposed the reissuance of NWP 21 because of the potential impacts to the aquatic environment and water resources. Several commenters expressed concerns about impacts to water supplies and drinking water, downstream water uses, and recreational opportunities such as fishing. Concerns were also expressed about water pollution, the effects of burying streams that support aquifers, and loss of streams and wetlands. This NWP requires compliance with all of the general conditions for the NWPs, which address many of these concerns. Additionally, many of these factors will be evaluated during the project-specific evaluation.

One commenter noted that NWP 21 does not provide the public an opportunity to comment on the specific conditions of a permit that will affect their communities and watersheds.

Section 404(e) of the Clean Water Act provides the statutory authority for the issuance of general permits on a nationwide basis for any category of activities. The Corps establishes NWPs in accordance with section 404(e), by publishing and requesting comments on the proposed permits. The general public has the opportunity to comment on NWPs at this time. In order to address the requirements of the National Environmental Policy Act, the Corps prepares a decision document for each

NWP along with a 404(b)(1) Guidelines analysis. The decision document discusses the anticipated impacts on the Corps' public interest factors from a national perspective. NWPs are issued at the conclusion of this process. The individual projects that are proposed for authorization under an NWP are not given a permit but a verification or authorization that the project complies with an NWP. There are no requirements for public comments on specific projects authorized under NWPs. However, in the case of NWP 21, all projects must have undergone a separate SMCRA review process the provides for public notice and comment.

Several commenters recommended that NWP 21 be eliminated because it fails to require that the applicant demonstrate that there are no practicable alternatives to placing fill in waters of the United States, a requirement of Section 404(e) of the Clean Water Act. The commenters stated that the Corps wrongly assumes the SMCRA process to be comparable to Section 404 and the 404(b)(1) Guidelines. The commenters noted that, in fact, SMCRA does not require the applicant to choose the method of coal waste management that avoids and minimizes impacts and is least damaging to waters of the United States.

The Corps does not assume that other state or Federal agencies conduct a review that is comparable to the section 404(b)(1) Guidelines. Although analysis of offsite alternatives is not required in conjunction with general permits, each proposed project is evaluated for onsite avoidance and minimization, in accordance with general condition 20, and is not authorized under the NWP if the adverse impacts to waters of the United States are more than minimal.

Five commenters noted that coal slurry impoundments should not be allowed by an NWP and that NWPs can only be issued for activities that are similar in nature and that valley fills and coal slurry impoundments are not similar in nature.

The Corps has determined that slurry impoundments and valley fills are part of surface coal mining activities and are therefore similar in nature. The ''similar in nature'' requirement does not mean that activities authorized by an NWP must be identical to each other. We believe the ''categories of activities that are similar in nature'' requirement of Section 404(e) is to be interpreted broadly, for practical implementation of the NWP program.

The NWP is reissued as proposed.

NWP 22. *Removal of Vessels*. We proposed to rearrange the text of this NWP so that it is in a format similar to the other NWPs. In addition, we proposed to require pre-construction notification if the activity requires discharges of dredged or fill material into special aquatic sites.

One commenter asked if the pre-construction notification requirement included marine protected areas. One commenter said that pre-construction notification should be required for all vessel removals because certain removal methodologies may result in additional environmental impacts. One commenter stated that pre-construction notification should be required for all vessel removals from special aquatic sites, not just those involving discharges of dredged or fill material.

Pre-construction notification is required for NWP 22 activities in designated critical resources waters and their adjacent wetlands (see general condition 19), which may include marine protected areas. Designated critical resource waters include NOAA-designated marine sanctuaries, Natural Estuarine Research Reserves, and other waters identified by the district engineer after the issuance of a public notice and an opportunity for public comment. We do not agree that pre-construction notification should be required for all activities authorized by this NWP. However, we are modifying this NWP to require pre-construction notification for activities in special aquatic sites, to ensure that those activities result in minimal adverse effects on the aquatic environment. Vessel removal activities in special aquatic sites, especially coral reefs and vegetated shallows, have the potential to result in more than minimal adverse effects, even though there may be no discharge of dredged or fill material. Vessel removal activities in other areas conducted in compliance with the NWP and the general conditions will normally have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. Further, division and district engineers will condition these activities as necessary to ensure that they will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively.

Another commenter observed that vehicles are often found in waters of the United States due to accidents, abandonment, and other reasons, and that the removal of the vehicles is necessary to minimize the adverse environmental impacts associated with release of automotive fluids. The commenter requested that this NWP be modified to allow for the expedited removal of vehicles from waters of the United States.

We agree that the presence of vehicles, and the associated automotive fluids, in waters of the United States can be environmentally damaging, and this NWP can be used to authorize their removal when they constitute an obstruction to navigation. However, we believe that the pre-construction notification requirements for activities into special aquatic sites are necessary to ensure that the activities authorized by this NWP have no more than minimal adverse effects. Division and district engineers can evaluate projects on a case by basis in situations where pollutants may be leaking from vehicles and determine if expedited or emergency processing procedures are warranted.

A commenter requested that the Corps indicate when EPA and Corps permits are required or provide citations to EPA and Corps regulations. One commenter noted that the parenthetical identification of statutory authorities was not included at the end of the text for this NWP.

The ''Note'' to this NWP already includes a citation of applicable EPA regulations. We do not believe it is necessary to add citations to the Corps regulations for implementing Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. We are correcting this NWP to identify the statutory authorities under which this NWP is issued (i.e., sections 10 and 404).

Another commenter requested that the Corps clarify in the preamble to the final rule that this NWP also applies to the removal of objects and structures such as derelict mooring and breasting structures, piles, docks, bridges and trestles that are man made obstructions to navigation. They remarked that some districts apply this NWP only to the removal of vessels. One commenter requested clarification as to when a pre-construction notification is required with respect to general condition 18, Historic Properties. They asked if the permittee would have to wait to remove the vessel until after the district engineer has informed the permittee that compliance with general condition 18 is complete.

The text of the NWP clearly states that the NWP applies to the removal of man-made obstructions to navigation, which may include any of the obstructions identified by the commenter in addition to wrecked, abandoned, or disabled vessels. If the vessel is listed, or eligible for listing, in the National Register of Historic Places, then consultation under Section 106 of the National Historic

Preservation Act is required. The permittee would have to wait until the section 106 process has been completed before conducting the work.

The NWP is reissued with the modification discussed above.

NWP 23. *Approved Categorical Exclusions*. We proposed to modify this NWP by reorganizing the text, adding language to explain that Corps' Regulatory Guidance Letters (RGLs) list the approved Categorical Exclusion (CE) activities, and adding language that directs prospective permittees to the appropriate RGLs to determine if pre-construction notification is required.

One commenter supported the proposed rewording of NWP 23, and supported the clarification of pre-construction notification requirements. One commenter remarked that this NWP violates the intent of the National Environmental Policy Act (NEPA) by enabling developers to avoid addressing ecological impacts.

The process for approving categorical exclusions for use with this NWP, including any approved categorical exclusions that require pre-construction notification, helps ensure that this NWP authorizes only those activities that result in minimal individual and cumulative adverse effects on the aquatic environment and the public interest. In addition, only the actions of government agencies qualify for this NWP.

Another commenter suggested requiring pre-construction notification for activities adversely affecting more than 1/10 acre of wetland, and recommended adding a 1/3-acre limit to this NWP for wetland impacts. One commenter suggested that larger activities should be evaluated under individual permit procedures instead of using this NWP, and suggested that large highway projects impacting wetlands should not be authorized without the public involvement and the environmental safeguards of the 404(b)(1) Guidelines. One commenter suggested that all projects requiring stream channelization and any bridges spanning less than 1.5 times the bankfull width of a stream should be evaluated through the individual permit process.

The pre-construction notification thresholds established for the categorical exclusions approved for use with this NWP require case-by-case review for activities that have the potential to result in more than minimal adverse effects on the aquatic environment. For the same reasons, it is not necessary to impose an acreage limit on this NWP or require individual permits for large highway projects that impact small amounts of waters of the United States and qualify for approved categorical exclusions. In response to a pre-construction notification, the district engineer can add special conditions to the NWP authorization to ensure that adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work.

Two commenters said that this NWP authorizes activities that are not similar in nature. One commenter suggested that categorizing impacts by the effects instead of by the nature of activity is invalid, and that there appeared to be no limiting principle on the nature of the activities that could be permitted.

Regulatory Guidance Letter 05–07 lists all categorical exclusions currently approved for use with this NWP as of the date of this notice. This RGL is available on the Internet at: *http://www.usace.army.mil/cw/cecwo/reg/rgls/rgl_05_07_v2.pdf*. The lists of approved categorical exclusion activities referenced in RGL 05–07 represents impacts that are minor in nature, both individually and collectively. A limiting principle on the nature of activities exists because each government agency has inherent and mission-specific responsibilities and projects, and activities proposed by a specific agency within an approved categorical exclusion are similar in nature. The primary Federal action agency determines that the activities are categorically excluded from further environmental review. We believe that normally these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. However, division and district engineers can condition such activities where necessary to ensure there will be no more than minimal adverse effects on the aquatic environment, or exercise discretionary authority to require an individual permit for the work.

Two commenters asserted that the NWP fails to comply with a statutory requirement that the activities have minimal impacts individually and cumulatively. One of these commenters said that the Corps' estimate of 1,020 acres of impact to waters of the United States represents a significant impact.

We disagree with this assertion. Pre-construction notification is required for certain approved categorical exclusions that apply to activities that have the potential to result in more than minimal individual and cumulative adverse effects on the aquatic environment. In general, impacts authorized by this NWP are not significant because they are individually minor, are widely distributed across a vast area, and are scattered across many watersheds. In addition, compensatory mitigation offsets the authorized losses, and helps ensure that the authorized activities result in minimal adverse effects on the aquatic environment.

One commenter objected to the lack of specificity regarding the method of solicitation of public comments if new categorically excluded activities are proposed.

When proposing to add categorical exclusions for use with this NWP, Corps Headquarters publishes a proposal in the ''Notices'' section of the **Federal Register**. Public comment will be solicited through this notice, and all comments received will be thoroughly considered when the Corps makes its determination regarding those proposed categorical exclusions.

One commenter asked that the ''Note'' at the end of this NWP be expanded to list all of the agencies or departments that have categorical exclusions approved for use under this NWP. One commenter believed that referencing RGLs in the NWP is not sufficient, and suggested that the list of approved activities and pre-construction notification requirements be wholly included within the text of the permit rather than referenced to a separate document. Another commenter stated that the pre-construction notification requirements are vague, and recommended stating the pre-construction notification requirements within the text of the NWP or listing the specific RGL to refer to for those pre-construction notification requirements.

We have modified the ''Note'' by adding a sentence listing the agencies with approved categorical exclusions. Listing the approved activities and pre-construction notification requirements in the text of the permit is impractical, because of the lengths of those lists. In addition, simply referencing the list of RGLs is more useful because additional RGLs may be issued if more categorical exclusions are approved for use with this NWP.

One commenter asked that the text of this NWP be amended to acknowledge that state transportation agencies can legally assume the responsibility for categorical exclusion determinations for the Federal Highway Administration (FHWA).

The current text of the NWP states that activities ''undertaken, assisted, authorized, regulated, funded, or financed'' in whole or in part by a Federal agency are eligible to be considered by the Corps for possible approval as a categorical exclusion. We

believe that the current text is sufficient and there is no need to restate or affirm the relationships between the FHWA and the state transportation agencies, which generally fall into one or more of these categories.

This NWP is reissued as proposed.

NWP 24. *Indian Tribe or State Administered Section 404 Programs*. We proposed to add Indian tribes to this NWP, since they can be approved by EPA to administer the section 404 program. No comments were received.

This NWP is reissued as proposed.

NWP 25. *Structural Discharges*. No changes to this NWP were proposed. One commenter stated that it is difficult to perform these types of activities without some minor related temporary construction activity. They suggest adding a statement that allows minor construction activities.

The construction of these structural members is usually accomplished by installing sheeting or pilings to construct forms, which are then filled with concrete, sand, rock, or other materials. The installation of the sheeting or pilings usually does not result in a discharge of fill material that would require section 404 authorization. However, in cases where temporary construction, access, and dewatering activities are necessary to complete the activities authorized by this NWP, those temporary activities may be authorized by NWP 33, a regional general permit, or an individual permit.

The NWP is reissued as proposed.

NWP 27. *Aquatic Habitat Restoration, Establishment, and Enhancement Activities*. We proposed to modify this NWP by requiring reporting to the district engineer for those activities that do not require pre-construction notification. We also proposed to add shellfish seeding to the list of examples of activities authorized by this NWP, and remove the restriction limiting the use of this NWP only to those mitigation banks that have been approved in accordance with the 1995 mitigation banking guidelines. In addition, we proposed to prohibit the use of the NWP to authorize the conversion of natural wetlands.

We have modified the first paragraph of this NWP to more clearly present the general categories of authorized activities.

One commenter supported the broadening of the title of this NWP to include all aquatic habitats. One commenter said that this NWP has the potential to authorize projects with significant adverse impacts. One commenter said that this NWP should be revoked, because it could result in losses of wetland function and habitat and other adverse impacts to the aquatic environment. One commenter stated that there should be an acreage limit on this NWP. Two commenters said that wetland impacts should be limited to 2 acres, and another commenter stated that stream impacts should be limited to 2,000 linear feet. Another commenter stated that the lack of an acreage limit on this NWP does not encourage applicants to minimize adverse impacts. This commenter suggested a ½ acre limit for wetland fills and a 300 linear foot limit for stream impacts.

This NWP authorizes aquatic habitat restoration, establishment, and enhancement activities, provided those activities result in net increases in aquatic resource functions and services. Its use will not cause significant adverse effects on the overall aquatic environment. We do not believe there should be an acreage limit on this NWP, because of the requirement for these projects to result in net increases in aquatic resource functions and services. Moreover, all activities authorized under this NWP will be reviewed in advance by the Corps, either through the pre-construction notification requirement, or through the reporting requirement for projects conducted under authorities of other Federal agencies.

One commenter recommended prohibiting establishment of open water areas in existing wetlands and streams, and prohibiting the relocation of all aquatic resources. One commenter recommended removing the references to waterfowl impoundments because those impoundments may be considered enhancements by some people. This commenter said the establishment of impoundments in streams or natural wetlands should not be allowed for any reason. One commenter requested clarification whether this NWP authorizes green-tree reservoirs. One commenter suggested allowing dam removal activities to be authorized by this NWP. One commenter said that this NWP should authorize stream establishment, in cases where impaired or degraded streams can be relocated to provide net benefits to the aquatic environment and the overall watershed.

We have modified the text of this NWP, by removing the reference to establishing an impoundment for wildlife habitat. This NWP does not authorize green-tree reservoirs, because those activities generally degrade natural wetlands and would not result in a net increase in aquatic resource functions and services. Discharges of dredged or fill material into waters of the United States for the continued operation of existing green-tree reservoirs may be authorized by NWP 30. New green-tree reservoirs may be authorized by individual permits or regional general permits. This NWP prohibits the conversion of streams or natural wetlands to other aquatic habitat types or uplands, except for the relocation of non-tidal waters on the project site. We have also simplified the language regarding the relocation of non-tidal waters, including non-tidal wetlands, on the project site. The requirement that such relocations provide net gains in aquatic resource functions and services has been retained. Dam removal activities can be authorized by this NWP, provided they meet the requirements for its use, including that there is a net increase in aquatic resource functions and services. We have modified the third paragraph of this NWP to state that this NWP can be used to authorize the relocation of non-tidal streams, provided there are net increases to aquatic resource functions and services.

One commenter stated that using this NWP to authorize the relocation of non-tidal waters, including non-tidal wetlands, on the project site as long as there are net gains in aquatic resource functions and services, appears to contradict the provision prohibiting the conversion of streams or natural wetlands to another aquatic use. This commenter indicated that there will be different interpretations of the relative value of certain aquatic resource functions and services. This commenter also said that temporal lags associated with replacing certain wetland types, such as forested wetlands, should be considered.

The relocation of non-tidal waters on a project site does not necessarily contradict the provision prohibiting the conversion of streams or natural wetlands to another aquatic habitat type, if comparable streams or wetlands are restored or established elsewhere on the project site. District engineers will determine compliance with these provisions on a case-by-case basis, in response to a pre-construction notification or a report. We recognize that relocating non-tidal waters may result in temporal losses of certain aquatic resource functions and services, while the relocated waters undergo ecosystem development. To comply with these provisions of this NWP, the net increases in aquatic resource functions and services does not need to occur immediately after the NWP 27 activity has been constructed. However, those net increases need to occur over time through ecosystem development processes as a result of a successful

aquatic habitat restoration, establishment, or enhancement activity.

Two commenters noted that conversion of streams or wetlands to other aquatic uses is prohibited but conversions of waters to uplands are not prohibited. Three commenters supported the proposed language prohibiting conversion of streams or natural wetlands to other aquatic uses. Another commenter supported the language prohibiting conversion of wetlands to other aquatic uses, but said that it may limit the usefulness of this NWP, as it will not be able to authorize large ecosystem restoration projects that involve conversions of wetlands to other aquatic types, even where there are net benefits for the aquatic environment.

We have modified this NWP to prohibit the conversion of streams or natural wetlands to uplands. This prohibition does not apply to projects involving the relocation of non-tidal waters on the project site, as long as those activities result in net increases in aquatic resource functions and services. Large ecosystem restoration projects that involve conversions of aquatic habitat to other aquatic uses are more appropriately authorized through either regional general permits or individual permits.

To prevent re-arrangement of wetlands within a single development tract, one commenter asked that this NWP prohibit the relocation of aquatic habitat types on parcels where a local planning document exists for the development. One commenter objected to prohibiting the conversion of natural wetlands to other aquatic uses on the grounds that NWPs are intended to allow any activities with minimal adverse effects. This commenter stated that some conversions enhance ecosystem functions.

This NWP can be used to authorize relocation of aquatic habitats on a project site, even those with development activities, provided there are net gains in aquatic resource functions and services. These activities can be beneficial in cases where the development activity could have indirect adverse effects on the functions of existing aquatic resources on the project site, and where relocating those aquatic resources would result in enhanced ecosystem functions. We have revised the text of this NWP to prohibit the conversion of natural wetlands to other uses, unless that conversion is part of relocating non-tidal waters on the project site. This NWP does not authorize stream channelization, which often involves extensive armoring and straightening of stream channels.

One commenter suggested allowing the use of NWP 27 for the restoration and enhancement of tidal streams and tidal open waters. Another commenter said that this NWP should authorize the relocation and/or conversion of any tidal waters, provided the proposed work would result in net increases in aquatic resource functions and services. One commenter stated that this NWP should not authorize the construction of impoundments or partial impoundments in tidal wetlands or estuarine waters.

This NWP does not authorize the restoration of tidal streams and tidal open waters, but may authorize the restoration of riparian areas next to such waters. The restoration of tidal streams and other tidal open waters that involve more than restoring riparian areas is more appropriately authorized by other Department of the Army permits, since those activities may result in more than minimal adverse effects on the aquatic environment. We do not believe it would be appropriate to modify this NWP to authorize those activities. We maintain our position that this NWP should not authorize the relocation or conversion of tidal waters. Those activities may be authorized by individual permits or regional general permits. This NWP does not authorize the conversion of tidal waters to other uses, such as impoundments or partial impoundments.

One commenter said that many activities proposed as restoration actually degrade habitat or result in a net loss of habitat, and stated that pre-construction notification should be required for all activities authorized by this NWP, to determine the beneficial effects and whether the activity is protective of tribal resources.

Pre-construction notification is required for activities authorized by this NWP, except for those activities conducted in accordance with binding agreements between certain Federal agencies or their designated state cooperating agencies, voluntary wetland activities documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards, or the reclamation of surface coal mining lands, in accordance with permits issued by the Office of Surface Mining or the applicable state agency. For those activities that do not require pre-construction notification, reporting to the district engineer is required. In the latter cases, the district engineer can review the documentation provided through reporting to ensure that the activity qualifies for NWP authorization. The reporting requirements provide district engineers with the opportunity to review aquatic habitat restoration, establishment, and enhancement activities conducted under the purview of other government entities, to ensure that those activities result in net increases in aquatic resource functions and services. The pre-construction notification requirements, as well as the reporting requirements, will help ensure that this NWP authorizes only activities that comply with the terms and conditions of this NWP, including general condition 16, Tribal Rights.

One commenter stated that the reporting requirement for voluntary NRCS-related wetland projects would be burdensome, and suggested that requiring NRCS documentation could discourage voluntary wetland restoration activities. Another commenter said that there appears to be little difference between the reporting and pre-construction notification provisions, and suggested requiring pre-construction notifications for all NWP 27 activities. Two commenters supported the requirement that copies of restoration agreements be submitted. One commenter recommended requiring pre-construction notifications and interagency coordination for all projects using NWP 27, to ensure that development activities are not conducted as NWP 27 activities. A commenter objected to requiring the submittal of restoration agreements to fulfill the reporting requirement, citing privacy concerns. This commenter said that alternative types of information could be submitted instead to report proposed NWP 27 activities conducted under these agreements. One commenter stated that the Corps and other agencies should be required to approve wetland enhancement, restoration, or establishment agreements referenced in the reversion provisions of NWP 27.

The pre-construction notification requirements are sufficient to ensure proper implementation of NWP 27. We have clarified the language in the NWP to reduce confusion. To avoid duplicative efforts by the government, pre-construction notification is not required for activities conducted under agreements or arrangements with other state or Federal government agencies. Pre-construction notification is required for all other activities. The reporting requirement will provide a mechanism whereby the Corps can review proposed activities conducted under other agency programs, to ensure that they comply with the terms and conditions of this NWP. We are modifying the reporting requirement to allow the submittal of project descriptions and plans, in lieu of

binding agreements executed between agencies and landowners.

It would be inappropriate to require Corps approval of wetland enhancement, restoration, or establishment agreements executed and administered by other agencies. For those activities that require pre-construction notification and will result in the loss of greater than ½ acre of waters of the United States, agency coordination is required (see paragraph (d) of general condition 27).

One commenter suggested modifying the reversion, reporting, and notification provisions by referencing actions documented by ''NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide Standards'' instead of ''NRCS regulations,'' since many of these wetland restoration, enhancement, and establishment activities are performed by technical service providers, who must be certified by NRCS and comply with the Field Office Technical Guide standards. We concur with this recommendation, and have made appropriate changes to the text of this NWP.

One commenter said that replacing the word ''values'' with ''services'' demeans the functions provided by a healthy ecosystem, unless the term ''functions'' is specifically retained. Another commenter remarked that replacing the word ''values'' with ''services'' is inconsistent with the common industry vernacular. They suggest using the word ''functions'' instead of ''services.''

We are retaining the term ''functions'' in the text of this NWP, and are replacing the word ''values'' with ''services'' because ecosystem services provide a more objective measure of the importance of aquatic resource functions to human populations. The terms ''functions'' and ''services'' are not equivalent, and therefore it would not be appropriate to replace the term ''services'' with ''functions.'' Services are the benefits that humans derive from the functions performed by wetlands and other aquatic resources. The term ''services'' is now being used in place of ''values'' in the ecological economics literature, because of the difficulty in assigning value to ecosystem services. As discussed in the September 26, 2006, **Federal Register** notice, values may relate to either monetary or non-monetary measures, but services can be described in physical terms that are easier to evaluate and address, where necessary, in NWP authorization letters and special permit conditions.

Two commenters supported allowing the use of NWP 27 to authorize the construction of mitigation banks. One commenter requested clarification that this NWP could be used for wetland mitigation banks, and one commenter asked that the NWP apply to all mitigation banking projects, not just those with a signed mitigation banking agreement. Two commenters said that the construction of mitigation banks should not be authorized by NWP 27, but should be authorized by individual permits instead. One commenter stated that it would be acceptable to allow the use of NWP 27 for mitigation bank construction with a caveat that impacts associated with mitigation bank construction be deducted from any available credit the mitigation bank develops. One commenter requested that this NWP contain language stating that compensatory mitigation is required for activities authorized by NWP 27, but another commenter suggested that no compensatory mitigation should be required for impacts associated with construction of compensatory mitigation projects.

This NWP can be used to authorize aquatic resource restoration, establishment, and enhancement activities necessary for the construction of mitigation banks. It is not necessary for the mitigation bank proponent to obtain a signed mitigation banking instrument prior to conducting the NWP 27 activity, but the mitigation bank proponent needs to understand that activities conducted prior to approval of a banking instrument may or may not be approved in any final instrument. The Corps thus recommends that construction of mitigation banks not begin until a final instrument has been signed. Requiring compensatory mitigation for losses of waters of the United States as a result of NWP 27 is at the discretion of the district engineer. The crediting of a mitigation bank will be determined by the district engineer during the approval process for the mitigation banking instrument. Any adverse impacts to aquatic resources resulting from construction of the bank would certainly be considered in that determination.

Two commenters said that this NWP should require permittees to plant native species at the site. They said that the proposed language contains too much flexibility. One commenter said that NWP 27 should not authorize activities in waters inhabited by anadromous fish. One commenter stated that the U.S. Fish and Wildlife Service must concur with projects in which machinery must work in waters where endangered or threatened species are present. One commenter indicated that this NWP should authorize work in flowing waters where the activity will result in long-term stability and habitat benefits.

It would be inappropriate to require permittees to plant only native species at the project site. Native plant materials may not be available for all of these projects, and it is difficult to define precisely what constitutes a ''native'' species. The activities authorized by this NWP are required to result in net increases in aquatic resource functions and services, which should benefit anadromous fish species. However, district engineers will review pre-construction notifications and other reported activities to determine if the proposed aquatic habitat restoration, establishment, or enhancement activity would have more than minimal adverse effects on anadromous fish species, or require consultation under Section 7 of the Endangered Species Act. In addition, division and district engineers can develop regional conditions or case-specific conditions to ensure that potential impacts to anadromous fish are minimal, or exercise discretionary authority to require an individual permit for the work if impacts are expected to be more than minimal. Compliance with the other general conditions for the NWPs, including general condition 9, Management of Water Flows, is required, though general condition 9 specifically allows activities that alter the pre-construction course, condition, capacity, and location of open waters if they benefit the aquatic environment.

One commenter requested clarification of what constitutes a ''small'' nesting island, and requested that the NWP state that approved water quality standards cannot be violated during construction of small nesting islands. Another commenter said that pre-construction notification should be required for the construction of small nesting islands in special aquatic sites. One commenter asked for a definition of the term ''enhancement activities.'' One commenter suggested requiring monitoring of stream restoration projects, with mandatory corrective actions for projects that are not successful.

The district engineer has the discretion to determine what a ''small nesting island'' is for the purposes of this NWP. Either pre-construction notification or reporting is required for all activities authorized by this NWP, which will provide district engineers with opportunities to review all proposed activities, including the construction of small nesting islands, to determine those activities comply with the terms and conditions of the NWP.

The term ''enhancement'' is defined in the ''Definitions'' section of the NWPs. District engineers have the authority to require additional monitoring or corrective measures on a case-specific basis. We believe it is unnecessary to restate those authorities in the text of this NWP.

One commenter said that this NWP should prohibit the widening or straightening of stream channels, the removal of gravel bars, the destruction of woody vegetation, and the in-stream use of bulldozing or heavy equipment. Another commenter stated that NWP 27 should require the use of natural stream channel design for in-stream work. Two commenters suggested that this NWP should not authorize the use of riprap or other armoring. One commenter suggested limiting the use of this NWP to restoration of a stream to its historic non-degraded condition to prevent the use of this NWP for construction of flood control projects.

This NWP does not authorize stream channelization activities. It may be necessary to temporarily impact gravel bars or vegetation during the construction of stream restoration and enhancement activities. After the construction of the stream restoration or enhancement project, the stream channel should move water and sediment in a manner that will result in a channel morphology that provides habitat for a diverse community of species. That restored or enhanced habitat will include gravel bars, if the bed load carried by the stream includes a sufficient proportion of gravel. In addition riparian vegetation will normally be planted or allowed to grow back to replace the impacted riparian vegetation after construction activities have been completed. In-stream use of heavy equipment is not prohibited, because such equipment is usually necessary to conduct stream restoration and enhancement activities. In response to a pre-construction notification, or the review of the other Federal agency agreement, the district engineer will determine whether the proposed activity complies with the terms and conditions of the NWP, including the requirement for the activity to result in net increases in aquatic resource functions and services. It would be inappropriate to require, in the text of this NWP, specific design or construction methods, or prohibit the use of riprap or other armoring. Armoring using riprap or other materials can be a necessary component of beneficial aquatic habitat restoration, establishment, and enhancement projects.

We believe that limiting the use of this NWP for the sole purpose of restoring streams to historic conditions would be overly restrictive, and would effectively prohibit its use for other beneficial restoration activities. Further, the pre-construction notification and reporting requirements for this NWP will help ensure that activities conducted under this NWP comply with the purposes and intent of the NWP, as well as its terms and condition.

Two commenters said that the prohibition against stream channelization conflicts with general condition 9, Management of Water Flows, which allows stream restoration and relocation for some NWP activities. One commenter suggested that the Corps remove the channelization restriction from NWP 27 and expand the definition of ''stream channelization'' to authorize activities beneficial to the aquatic environment.

As noted above, general condition 9 allows the use of any NWP for projects that alter the pre-construction course, condition, capacity, and location of open waters if they benefit the aquatic environment. The removal of the stream channelization prohibition from NWP 27 could inadvertently allow projects to proceed under this NWP that have more than minimal adverse impacts on the aquatic environment. We also believe that it is unnecessary to modify the definition of stream channelization as suggested because the definition provides an accurate and concise description of what constitutes stream channelization.

One commenter recommended limiting the use of NWP 27 to projects conducted by or sponsored by state or federal agencies. One commenter recommended removing the reference to prior converted croplands.

We disagree that use of this NWP should be limited to activities conducted or sponsored by state or federal agencies, however, projects not conducted pursuant to authorities of other agencies do require a pre-construction notification. The reference to prior converted croplands in the reversion provision is necessary, since prior converted croplands are not considered to be waters of the United States (see 33 CFR 328.3(a)(8)).

One commenter suggested including a definition for shellfish seeding in the NWP. One commenter questioned whether the Corps has regulatory jurisdiction over shellfish aquaculture and restoration activities. Another commenter requested clarification whether pre-construction notification is required for shellfish seeding authorized by this NWP. One commenter recommended removing the pre-construction notification requirement for shellfish activities that have the approval of other government agencies with resource management responsibilities. Two commenters said that state natural resource agencies should be exempted from the pre-construction notification requirements if the shellfish seeding activity is done over an unvegetated bottom, since those activities are already addressed by other state and Federal permit processes. Two other commenters expressed concern that the proposed changes to the NWP would adversely affect community-based shellfish restoration efforts, including locally-based oyster restoration programs. They said that the pre-construction notification requirements, or requiring any permit for shellfish restoration, would be overly burdensome and would adversely affect community-based programs that are already operating with volunteer staffs, minimal budgets, and limited resources.

We are providing a definition of ''shellfish seeding'' in the ''Definitions'' section of the NWPs. This definition was derived from the definition provided in the preamble discussion for proposed NWP D, Commercial Shellfish Aquaculture Activities (see 71 FR 56275). Shellfish aquaculture and restoration activities require Department of the Army authorization, if they involve discharges of dredged or fill material into waters of the United States and/or structures or work in navigable waters of the United States. On-going commercial shellfish aquaculture activities may be authorized by NWP 48 and shellfish restoration activities may be authorized by NWP 27. New commercial shellfish aquiculture activities may be authorized by regional general permits or individual permits. The pre-construction notification requirement is necessary for shellfish habitat restoration activities, except those conducted under one of the other listed authorities, to ensure that those projects comply with the terms and conditions of this NWP and do not cause more than minimal adverse effects. However, the Corps does not believe that the PCN requirement is overly burdensome and it should not limit the ability of community-based programs to conduct such activities.

One commenter opposed modifying this NWP to authorize shellfish restoration activities because they believe that these projects can have more than minimal impact on benthic habitat. One commenter said that shellfish seeding should not be authorized by this NWP. Another

commenter suggested that fill placement for shellfish seeding or shellfish bed preparation activities should not qualify for any NWP and should only be evaluated under individual permit processes. Several commenters recommended that shellfish seeding should be authorized by this NWP. A number of commenters stated that shellfish seeding can be used to protect or restore valuable aquatic habitats since construction of oyster reefs has been used to attenuate wave energy as part of coastal restoration strategies.

The restoration of oyster habitat, as well as the habitat of other shellfish species, usually provides substantial benefits to the overall aquatic environment. Shellfish help improve water quality and other habitat characteristics of estuarine and marine waters. Shellfish seeding is often a necessary component of restoration activities, when the objective is to increase populations of shellfish. District engineers will review pre-construction notifications or agreements with other agencies to ensure that these activities result in minimal individual and cumulative effects on the aquatic environment and other public interest factors. In response to a pre-construction notification, the district engineer can add special conditions to the NWP authorization or exercise discretionary authority and require an individual permit.

One commenter remarked that shellfish seeding practices could be considered an aquaculture activity, and said that the requirements of NWP 27 could be a significant barrier to aquaculture development. Another commenter indicated that projects solely associated with shellfish restoration could be authorized by NWP 27, but suggested that it would be more appropriate to authorize such activities under the proposed NWP for commercial shellfish aquaculture activities. One commenter expressed concern that NWP 27 may overlap with NWP 48. One commenter stated that some oyster restoration and enhancement is done by commercial shellfishing operations that harvest only wild oysters. In some cases, shellfish husbandry or restoration is required by other regulatory agencies, and the commenter stated that neither NWP 27 nor NWP 48 allow this activity. One commenter asked if each oyster bed restoration would require a separate permit, or could an entity apply for a single permit to cover all of their shellfish restoration projects. They recommended establishing a single permit that any state natural resource agency could use at any time to eliminate the need for those agencies to obtain separate permits for numerous individual projects.

This NWP does not authorize commercial aquaculture activities. It authorizes shellfish habitat restoration activities, including shellfish seeding, that are conducted to restore populations of shellfish in navigable waters of the United States. Although these restored shellfish populations may be harvested at a later time by licensed fisherman, the objective of the activities authorized by this NWP must be to restore populations of shellfish in navigable waters of the United States. This NWP does not authorize structures or work, such as nets and anchors, that are used to reduce or eliminate predation of shellfish growing in these restored habitats. On-going commercial aquaculture activities may be authorized by NWP 48, regional general permits, or individual permits. New commercial aquaculture activities may be authorized by regional general permits or individual permits. This NWP authorizes single and complete shellfish habitat restoration activities. Regional general permits or individual permits may be issued by district engineers to authorize shellfish restoration programs.

This NWP is reissued, with the modifications discussed above.

NWP 28. *Modifications of Existing Marinas.* No changes were proposed for this NWP. One commenter said that modifications in special aquatic sites, such as vegetated shallows or coral reefs, should require pre-construction notification. This commenter also requested clarification whether this NWP authorizes pile driving, and recommended requiring pre-construction notification for such activities.

This NWP authorizes the installation of piles for the reconfiguration of marinas. The reconfiguration of existing marinas generally results in minimal individual and cumulative adverse effects, since these activities are limited to areas currently used for marinas. Therefore, it is unnecessary to require pre-construction notification for these activities. However, division engineers can regionally condition this NWP to require pre-construction notification for activities in certain areas.

This NWP is reissued as proposed.

NWP 29. *Residential Developments.* We proposed to modify this NWP by incorporating the residential development provisions of NWP 39, so that there would be one NWP to authorize single unit and multiple unit residential developments, including residential subdivisions. We also proposed to reduce the scope of applicable waters for this NWP, by prohibiting its use to authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters. In addition, we proposed to require pre-construction notification for all activities.

One commenter requested that a definition of ''residential property'' be provided. This commenter also said that this NWP should include a provision prohibiting its use with NWP 39 to authorize mixed use developments. Two commenters objected to including multiple-unit residential developments in NWP 29 because they felt it is inconsistent with the original intent of NWP 29. Several commenters stated that including multiple-unit residential development would lead to problems with water quality certifications or local government decisions. Two commenters said that single-family and multi-unit developments are not similar in nature while another questioned the need and the rational for the proposed change.

This NWP utilizes the commonly accepted definition of what constitutes a residential property. We do not agree that there should be a prohibition against combining NWPs 29 and 39 to authorize mixed use developments, because the terms and conditions of those NWPs, including the pre-construction notification requirements and general condition 24, Use of Multiple Nationwide Permits, will help ensure that those activities will result in minimal individual and cumulative adverse effects on the aquatic environment and other public interest review factors. As discussed in the preamble of the September 26, 2006, **Federal Register** notice, the proposed changes effectively eliminate the previous NWP 29. Previously, single family residential projects could choose between NWPs 29 and 39. NWP 39 had a higher acreage limit, but NWP 29 could allowed activities in wetlands adjacent to tidal waters. We have determined that that all residential projects using an NWP, whether single-family or multi-family, should face the same set of requirements. In particular, we have determined that residential projects in wetlands adjacent to tidal waters should not be authorized through an NWP, so we are combining all residential development activities in NWP 29 and eliminating its use in wetlands adjacent to tidal waters. We believe the ½ acre limit previously included in NWP 39 will ensure that projects undertaken only in non-tidal waters and their adjacent wetlands will not have more than minimal adverse effects. Limits for multi-family residential projects have not changed,

these activities have merely been shifted into NWP 29. States concerned with multiple unit residential developments may add stipulations to their water quality certifications that differentiate between single-family and multi-unit developments. Local governments can address their concerns over residential development through their planning and zoning processes. Also, the Corps is expanding the pre-construction notification requirement to include all projects authorized under this NWP, to enhance our ability to identify projects that may have more than minimal adverse effects.

One commenter suggested we add ''single-unit residential subdivision'' to the list of authorized activates in the first sentence.

We have added the phrase ''residential subdivision'' to the list of activities authorized by this NWP. This NWP authorizes residential subdivisions with multiple single-family units or multiple-family units.

Several commenters objected to raising the acreage limit from ¼ acre to ½ acre. One commenter said that the ½ acre limit will result in substantial cumulative losses of waters of the United States. Two comments recommended acreage limits of one or two acres. One commenter asked why the ½ acre limit is not for associated multi-unit developments when it is expressed as the limit for single-family residences.

As noted above, the effective acreage limit for residential projects has not been raised. We have simply removed the option of using an NWP with a ¼ acre threshold to authorize single-family projects in wetlands adjacent to tidal waters. Through the review of pre-construction notifications, district engineers will monitor the use of this NWP so that more than minimal cumulative adverse effects do not occur. We disagree that increasing the acreage limit to one to two acres would result in activities that have minimal impacts on the aquatic environment. The ½ acre limit applies to any type of residential subdivision (single-family, multi-family, or a combination of both), as it did previously when these projects were authorized by NWP 39.

Some commenters objected to requiring pre-construction notification for all activities, and suggested changing the pre-construction notification threshold to 1/10 acre. Three commenters proposed a 1/10 acre pre-construction notification threshold for single-family developments. Three commenters supported the proposed pre-construction notification threshold. One commenter suggested establishing a graduated pre-construction notification threshold based on the size of the overall development.

We are retaining the requirement for pre-construction notification for all activities authorized by this NWP. Although this will result in an increase in the number of pre-construction notifications submitted to district engineers, we do not believe that it will be a substantial increase, since many permittees proposing to construct residential developments in the past have submitted verification requests for NWP 39 authorization even when not required to do so. The NWP 29 issued in 2002 require pre-construction notification for all proposed single family homes. The pre-construction notification threshold will also help ensure compliance with general condition 17, Endangered Species, and general condition 18, Historic Properties. A graduated pre-construction notification requirement would be unnecessarily complex and would not provide as much assurance that only activities with no more than minimal adverse effects are authorized.

Many commenters discussed the 300 linear foot limit for stream bed impacts. Those comments are discussed in a separate section of the preamble. We are retaining the 300 linear foot limit for stream bed impacts, as well as the ability for district engineers to provide written waivers of the 300 linear foot limit for losses of intermittent and ephemeral stream beds.

Several commenters said that this NWP should retain the requirement to maintain sufficient buffers adjacent to all open water bodies, such as streams. Some commenters stated that a minimum buffer width should be required. One commenter supported the removal of the buffer requirement and addressing the need for riparian areas through general condition 20, Mitigation.

The establishment and maintenance of riparian areas next to streams and other open waters will be required by district engineers as compensatory mitigation where necessary to ensure that the authorized work results in minimal individual and cumulative adverse effects on the aquatic environment. Although the NWP 29 issued in 2002 contained a requirement to establish sufficient vegetated buffers, the counterpart language in the 2002 NWP 39 reflected the use of vegetated buffers as components of the compensatory mitigation plan for the NWP 39 activity, if there were streams or other open waters on the project site. District engineers will make determinations regarding the appropriateness and practicability of requiring riparian areas, as well as their width, in the implementation of general condition 20, Mitigation.

Three commenters said that residential developments are not water dependent activities, and therefore, under the Section 404(b)(1) Guidelines, an NWP should not be issued unless all practicable alternatives have been considered. Some commenters objected to authorizing attendant features by NWP 29, because they may not be water dependent or there may be secondary impacts associated with the development.

An activity that is not water dependent may still be authorized by NWP as long as an appropriate Section 404(b)(1) Guidelines analysis is conducted when the NWP is issued. The decision documents for all NWPs, including this NWP, that authorize discharges under Section 404 of the Clean Water Act include a Section 404(b)(1) Guidelines analysis.

Two commenters objected to including septic fields as attendant features and three commenters objected to including sports fields and golf courses as attendant features. One commenter requested a definition of the term ''integral part'' to reduce the potential for authorizing golf courses that are not directly associated with the residential development. One commenter objected to the use of the NWP for large subdivisions, because of potential impacts due to sprawl, traffic, and degradation of water quality.

Septic fields are often necessary attendant features for residences, and should be authorized where part of a single and complete project. Sports fields and golf courses may also be integral attendant features of residential developments. District engineers will determine, in response to pre-construction notifications, whether golf courses are integral parts of the residential development. Impacts of large subdivisions will be considered during the pre-construction notification review process. If such projects would have more than minimal adverse effects, these will be addressed through project-specific special conditions or by requiring an individual permit.

One commenter requested that we define ''subdivision'' as an ''area that involves all residences that share the attendant features.'' One commenter urged that phased developments be prohibited since they can result in impacts to waters that otherwise can be avoided with comprehensive planning and permitting.

Defining the term ''subdivision'' is unnecessary as there is little confusion

surrounding the term. Phased developments can be authorized by the NWP, provided that each phase is a single and complete project and has independent utility. When reviewing pre-construction notifications, district engineers will take into account individual and cumulative impacts of phased developments. We strongly support comprehensive planning efforts undertaken by local governments as a means of reducing impacts to the aquatic environment. Where the cumulative effects of phased projects would be more than minimal, these will be addressed through project-specific special conditions or by requiring an individual permit.

Four commenters requested that the NWP authorize projects in non-tidal wetlands adjacent to tidal waters, while two comments supported the proposal to prohibit the use of the NWP in those areas. One commenter requested a definition of the term ''adjacent.'' Two commenters objected to removal of language concerning minimization of on-site and off-site impacts, such as avoiding flooding of adjacent lands.

Limiting the use of this NWP to non-tidal waters of the United States, and prohibiting its use in non-tidal wetlands adjacent to tidal waters is necessary to ensure that this NWP authorizes only those activities with minimal individual and cumulative adverse effects on the aquatic environment. Development along coastal waters is a growing concern with significant potential to cause more than minimal adverse effects, particularly cumulatively. Such projects can be authorized by an individual permit following appropriate environmental review. The term ''adjacency'' is defined at 33 CFR 328.3(c). For the NWPs, including NWP 29, requirements to avoid and minimize impacts to waters of the United States are addressed through general condition 20, Mitigation.

District engineers will review pre-construction notifications to ensure that all practicable on-site avoidance and minimization has been accomplished. In response to a pre-construction notification, the district engineer may require compensatory mitigation to ensure that the authorized activity results in minimal adverse environmental effects (see 33 CFR 330.1(e)(3)).

One commenter said that NWP 29 should not be issued because it results in more than minimal adverse impacts particularly when salmonids are present. One commenter stated that this NWP should not authorize impoundments. One commenter said that there should be an exemption for residential developments in coastal areas in the eastern United States.

Potential impacts to salmon species are more appropriately addressed through regional conditions. Division engineers may regionally condition this NWP to restrict or prohibit its use in waters inhabited by salmonids. Impoundments may be authorized as attendant features, after reviewing the pre-construction notification. Section 404 permits are required for discharges of dredged or fill material into waters of the United States to construct residential developments. Such activities do not qualify for exemptions under Section 404(f)(1) of the Clean Water Act.

This NWP is reissued with the modifications discussed above.

NWP 30. *Moist Soil Management for Wildlife.* We proposed to modify this NWP to allow any landowner to use this NWP to authorize discharges of dredged or fill material into non-tidal waters of the United States for the purpose of managing wildlife habitat and feeding areas.

Some commenters supported the proposed changes to this NWP, since it will facilitate the production of large amounts of wetland/wildlife habitat and conserve the Nation's native wildlife populations. However, other commenters expressed concern about the use of this NWP by private landowners, because they may be creating impoundments to increase wildlife habitat. One commenter recommended requiring interagency coordination to provide guidance to landowners and to help ensure land cover types are not detrimentally converted to other land cover types. One commenter said that expanding the NWP to apply to all landowners would result in more than minimal cumulative adverse effects.

We believe that it is appropriate to expand the use of this NWP to private landowners that have an interest in attracting and supporting various species of wildlife on their land. This NWP does not authorize the construction of impoundments, because it does not authorize new roads, dikes, and water control structures. We believe that it is not necessary to require interagency coordination for these activities because only activities that do not result in a net loss of aquatic resource functions and services are authorized. The terms and conditions and the ability of division engineers to impose regional and case-specific conditions on this NWP, will ensure that the activities authorized by this NWP will result in no more than minimal individual and cumulative adverse effects on the aquatic environment.

One commenter recommended imposing a ½ acre limit on activities conducted by private landowners. One commenter recommended adding pre-construction notification requirements to this NWP, so that district engineers can review proposed activities to ensure that they comply with the terms and conditions of the NWP. One commenter indicated that this NWP should authorize moist soil management activities for native vegetation that are not necessarily for wildlife use.

Since this NWP authorizes only on-going wildlife management activities involving moist soil management, we do not believe it is necessary to impose an acreage limit or require pre-construction notification for these activities. Division engineers can regionally condition this NWP to require pre-construction notification, if there are concerns for the aquatic environment or other public interest review factors that may need to be addressed through case-specific review of these activities. Moist soil management activities conducted primarily for growing native plants may be authorized by other NWPs, regional general permits, or individual permits. Restoration of wetland meadows, forested wetlands, and other native plant communities may also be authorized by NWP 27.

One commenter suggested changing the title of this NWP to ''Maintenance of Existing Moist Soil Management Areas for Wildlife.'' One commenter recommended modifying the ''Note'' at the end of this NWP to acknowledge that maintenance may be exempt under Section 404(f) of the Clean Water Act.

We do not agree that it is necessary to change the title of this NWP, because the text of the NWP clearly states that is authorizes only soil management for on-going, site-specific, wildlife management activities. We have modified the ''Note'' to include a statement concerning the section 404(f) exemption.

This NWP is reissued with the modification discussed above.

NWP 31. *Maintenance of Existing Flood Control Facilities.* We proposed to remove the last sentence of the first paragraph of this NWP. In addition, we proposed to add levees to the list of features that can be maintained through the authorization provided by this NWP.

A few commenters stated support for the addition of levees to the list of features that can be maintained with authorization under this NWP. In addition, one commenter recommended that the Corps exempt or develop a streamlined NWP for federally

constructed or funded levees where maintenance responsibilities for those levees have reverted to a local agency.

We believe that the NWP program is already a streamlined permit process and discharges associated with federally constructed and funded flood control projects which have reverted to a local agency should still be subject to the requirements of this NWP, including the establishment of a maintenance baseline. At this time, we believe it is necessary to conduct a site specific verification through the pre-construction notification process to ensure that the adverse effects of the project are no more than minimal. The Corps has no authority to exempt discharges of dredged or fill material that occur in conjunction with the maintenance of the facility, or to waive any requirement for necessary mitigation. The inclusion of levees in this NWP does not preclude maintenance of levees that is allowed under other NWP authorizations, such as NWP 3.

One commenter stated that, as flood control projects constructed by the Corps and transferred to a non-federal sponsor have a Corps-developed Operations and Maintenance (O&M) manual, and the sponsor is obligated to perform maintenance according to the O&M manual, the project's as-built drawings and O&M manual should constitute the maintenance baseline. Therefore, no maintenance baseline submittal should be required.

The intent of this NWP is to require the submittal of a maintenance baseline for all projects requesting authorization by this NWP. A non-federal sponsor can submit the as-built drawings and O&M manual from a federally-constructed or funded flood control project. In any case the maintenance baseline must be approved by the district engineer.

Another commenter suggested that the requirement to submit best management practices (BMPs) with the maintenance baseline documentation be eliminated, as BMPs are addressed by several general conditions. This commenter also requested that we clarify the important exception that applies to this NWP in regard to the general condition 27 requirement that the district engineer must approve any compensatory mitigation proposal before the permittee commences work. The Corps disagrees that the requirement to submit BMPs is adequately addressed by general conditions. We believe that inclusion of the BMPs in the documentation is necessary so that the Corps can ensure that the impacts associated with the activity will be no more than minimal. In addition, the inclusion of certain BMPs may reduce the impacts to the aquatic environment and, as a result, the required one-time mitigation associated with establishing the baseline. The BMPs submitted with the maintenance baseline documentation do not preclude the Corps from requiring additional BMPs that might be necessary to ensure that the maintenance activity results in minimal adverse effects on the aquatic environment. Regarding mitigation approval, we believe the proposed text of this NWP clearly states that for this NWP, the district engineer will not delay necessary maintenance so long as the district engineer and permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. It also states that work can begin before approval of the maintenance baseline in emergency situations.

Two commenters opposed adding levees to the list of features that can be maintained through authorization by this NWP. One of these commenters believed that the change constitutes more than a wording change, because levees are large scale structures with impacts that require a thorough assessment. The other commenter stated that levees disrupt natural processes important to floodplains and habitat. They also noted that the presence of levees on a stream does not transform the stream into a flood control facility.

While we agree that the construction of levees may require a thorough assessment of impacts on the watershed, the maintenance of existing levees is an activity that is appropriate for inclusion in this NWP since levees are often integral parts of flood control facilities. This NWP does not authorize the construction of levees. We believe that the limitations and general conditions associated with the NWP will ensure that authorized projects will have no more than minimal adverse effects. The requirement for an approved baseline and the ability to require mitigation provides a safeguard for valuable habitat. The Corps agrees that levees do not make a stream a flood control facility. However, levees are a flood control facility and this NWP should allow maintenance of the levees. In order for flood control activities to occur in the stream, they would have to be included in the maintenance baseline, as described in the text of the NWP.

One commenter observed that the text of this NWP uses the phrase ''significantly reduced capacity'' when discussing abandonment. They stated that Regulatory Guidance Letter 87–2 discusses the ramification of using the word ''significant'' in Corps documentation and suggested that it be changed. Another commenter said that this NWP should not authorize actions that need to be taken because of neglect.

We believe that the use of the word ''significantly'' in this NWP is not contrary to the Regulatory Guidance Letter because it describes a level of reduction in flood capacity and does not relate to any determination of environmental impacts. If a flood control facility can be considered abandoned because of neglect, then the NWP would not authorize the work needed to reconstruct that facility.

Another commenter requested that the fill associated with beaver dam control and maintenance be added to the list of features authorized by this NWP. While the Corps agrees that the maintenance of beaver dam control and maintenance structures may be authorized by this NWP, this NWP does not authorize fills associated with the construction of new structures.

Two commenters opposed removing the last sentence in the first paragraph of this NWP (regarding types of maintenance activities that do not require section 404 permits) because they believe that the language clarified that vegetation maintenance does not require a section 404 permit. The Corps believes that this sentence is unnecessary, since Section 404 permits are only required for discharges of dredged or fill material, and, per the regulations at 33 CFR 323.2(d)(3)(ii), vegetation removal above the ground, that does not disturb the root system or include redeposition of excavated soil material, is not a discharge of dredged or fill material.

One commenter stated that many existing flood control facilities may not have met the criterion (i.e., it was previously permitted by the Corps, it did not require a permit at the time it was constructed, or it was constructed by the Corps and transferred to a non-federal sponsor), or the permittee cannot provide documentation that the criterion was met. Another commenter requested that this NWP authorize the maintenance of projects that were built by others but accepted as part of a federal flood control project or those that are authorized under state or local flood control laws. Both commenters requested that the Corps modify or eliminate the criterion listed in the first sentence of this paragraph and authorize maintenance of any flood control facility after approving the maintenance baseline and reviewing the activity through the pre-construction notification process. In addition, one commenter stated that the Corps should

not consider a flood control facility to be abandoned because vegetation has become established in the facility. That commenter also said that the NWP should compel agencies to perform maintenance more frequently by requiring mitigation for temporal losses in vegetation or habitat. Another commenter stated that agencies should be encouraged to reduce the frequency of maintenance where feasible by approving maintenance baselines that allow for less frequent maintenance. One commenter said that this NWP should also authorize temporary stockpiling as authorized by NWP 12.

The criteria in the first sentence of this NWP cover all properly authorized flood control facilities. Unless a flood control facility was constructed as a result of a Corps Civil Works project, it would have required a Corps permit unless it was constructed in a manner that did not require Corps authorization or it was exempt from permit requirements. If it should have had Corps authorization but did not, we do not think it is appropriate to authorize maintenance under this NWP. The Corps will not generally require documentation of compliance with these criteria, unless there is reason to believe that these criteria are not met.

We believe that the current text accurately describes how a site should be determined to be abandoned. The presence of vegetation does not necessarily indicate that a flood control facility has been abandoned. However, a site may be determined to be abandoned when vegetation has substantially diminished the capacity of the channel. We do not believe it is necessary to require permittees to conduct maintenance more frequently, to prevent the establishment of vegetation within the flood control facility. The one-time mitigation requirement is sufficient to offset the losses of aquatic resource functions and services that will occur as a result of keeping the facility within the maintenance baseline. Maintenance-related discharges that do not exceed the established maintenance baseline will not result in losses of aquatic resources beyond those addressed at the time the maintenance baseline is established. The frequency of maintenance will depend on the characteristics of the flood control facility and the surrounding area. Those flood control facilities that were constructed in more dynamic environments generally require more frequent maintenance. Because of the various environmental factors affecting the need for maintenance and the physical parameters that apply to an existing facility, it would be difficult to establish a maintenance baseline that lessens the frequency of maintenance. We do not believe it would be appropriate to modify this NWP to authorize temporary stockpiling of sediments and other materials in waters of the United States. Sediments and other materials removed during the maintenance of flood control facilities must be deposited at non-jurisdictional areas, unless the district engineer authorizes temporary stockpiling through a separate Department of the Army authorization.

The previous commenter also remarked that the provisions for emergency situations still require that the permittee submit a pre-construction notification and wait for Corps approval before conducting any emergency work within the flood control facility. They stated that this requirement could compromise public health and safety, as it typically takes one or two days, minimum, to obtain the necessary approval to proceed. They requested deferral of the pre-construction notification requirement until after the emergency maintenance activities have been conducted. We believe that NWP 31, as proposed, is a reasonable and prudent way to minimize the burdens imposed on permittees, within the constraints of applicable law and regulation. It is not appropriate to defer the submittal of a pre-construction notification, due to the fact that the Corps must determine if authorization by this NWP is applicable. The Corps has developed specific procedures for dealing with emergency situations. Entities responsible for maintaining flood control facilities should contact their local Corps office well in advance of the rainy season, to familiarize themselves with the available emergency processing procedures for that district.

One commenter suggested that activities authorized by this NWP instead be authorized by NWP 3. We believe that the specific requirements of this NWP are necessary to ensure that impacts to the aquatic environment are minimal. Incorporating these requirements into NWP 3 would be confusing and make implementation of that NWP more difficult.

Another commenter asserted that this NWP has the potential for more than minimal impacts, based on the fact that there are no limits on acreage or volume of discharges. The commenter also commented that one-time mitigation does not adequately ensure that aquatic functions will be restored, and that limiting mitigation to one-time will result in more than minimal adverse impacts if mature wildlife habitat is destroyed repeatedly. The Corps believes that activities authorized by NWP 31 that comply with the maintenance baseline provision do not result in more than minimal impacts, even without acreage limitations. The establishment of the maintenance baseline, in effect, identifies the location and physical dimensions of waters of the United States that have been incorporated in the flood control facility. Discharges that result in losses of these waters (i.e., that exceed the maintenance baseline) are not eligible for authorization under NWP 31. In light of this, we believe that the ''one-time mitigation requirement'' imposed in conjunction with the establishment of the maintenance baseline is sufficient for the purpose of this NWP. The intent of the one-time mitigation is to replace the aquatic functions that may be lost each time maintenance is performed. Once the mitigation is in place, any aquatic functions that develop between maintenance activities, are over and above the level of function that existed before the initial maintenance occurred. For areas or projects with specific issues, the division and district engineer may choose to add regional conditions or special conditions to the NWP authorization.

One commenter made reference to a particular project containing salmonids and stated that an NWP should not have been issued for that particular project. The commenter objected to this NWP authorizing the continued maintenance of the project because the salmonid habitat may have partially recovered and would be repeatedly impacted. While we agree that this can occur, we do not agree that requiring mitigation over and over for what is, in effect, the same impact is appropriate. We believe that the limitations and general conditions included within this NWP will ensure that it will result in no more than minimal effects. The requirement for an approved baseline and the ability to require mitigation provides a way to safeguard valuable habitat.

This NWP is reissued as proposed.

NWP 32. *Completed Enforcement Actions.* We proposed to eliminate the phrase ''For either (i), (ii), or (iii) above,'' from the last paragraph of this NWP. In addition, we proposed to remove the phrase ''or fails to complete the work by the specified completion date.''

Two commenters suggested that the five-acre non-tidal water or one-acre tidal water limits be eliminated. They believe that if the NWP applied to enforcement actions with greater impacts, then the mitigation could be completed earlier which would reduce

temporal losses. One commenter said that the NWP should have a limit of two acres for wetland impacts, since the permit process, including the opportunity for public comment, has been avoided. One commenter stated that individual permits should be required for activities undertaken as a result of an enforcement action. They believe that greater oversight is appropriate for a party that broke the law.

We believe that if the unauthorized activity impacts more than five acres of non-tidal waters or one acre of tidal waters that it may be more appropriate to either require an individual permit review or to pursue a judicial settlement or judgment. In cases where judicial settlements are pursued, there is usually a comprehensive evaluation of the environmental damage associated with the unauthorized work and substantial mitigation and penalties. In addition, we recognize that the limits for this NWP exceed the limits for the majority of the NWPs. We believe however, that the requirement that non-judicial settlements provide for environmental benefits equal to or greater than the environmental harm caused by the unauthorized activity ensures that the net impacts caused by the unauthorized work are no more than minimal. The thresholds limit the maximum size of the impact area and, wherever appropriate and practicable, restoration of this area will be required to undo the impacts. In any case, full compensation for the impacts in some form is required.

One commenter requested we delete the sentence stating that the NWP does not apply to any activities occurring after the date of the court decision, decree or agreement that are not for the purpose of mitigation, restoration or environmental benefit. The commenter believes that this provision limits the ability of the Corps to enter into a settlement agreement. Another commenter requested that language be added to the NWP to expressly prohibit its use for any future impacts related to the existing project that is under the enforcement action.

The Corps believes that the NWP as proposed is appropriate. Proposed additional project impacts (e.g., impacts necessary to complete the project that was initiated without a permit) must be evaluated under other NWPs, regional general permits, or individual permit review processes. This permit is intended only to authorize past discharges along with the required compensatory activities, not to substitute for applicable permit requirements for future activities.

One commenter remarked that the activities authorized by this NWP do not correlate with the programmatic general permits in the commenter's state.

The Corps acknowledges this comment, however, we believe it is simply a statement and does not warrant any changes to the proposed NWP.

This NWP is reissued as proposed.

NWP 33. *Temporary Construction, Access, and Dewatering*. We proposed to divide the first sentence of this NWP into two sentences, to clarify that the NWP can be used to authorize temporary activities associated with both construction projects that do not otherwise require permits from the Corps or the U.S. Coast Guard, and those that do require and have obtained such permits. We also proposed to move the requirement for a restoration plan from the ''pre-construction notification'' general condition (general condition 13 of the 2002 NWPs) to the ''Notification'' paragraph of this NWP, because it only applies to this NWP. We inadvertently used the term ''mitigation plan'' in the ''Notification'' paragraph in the proposed NWP, and have changed it to ''restoration plan'' in the final permit. The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area will be restored to pre-project conditions. The restoration plan should also describe reasonable measures for avoidance and minimization of adverse effects to aquatic resources. Please note that this restoration plan is different from the mitigation requirements in general condition 20 for permanent losses of waters of the United States. We proposed to remove the sentence that states that the district engineer will add special conditions to ensure minimal adverse effects, since the addition of special conditions where necessary to ensure minimal adverse effects is a condition of all NWPs.

One commenter suggested that NWP 33 should also be used to authorize temporary stockpiles and temporary fills that are related to construction activities.

The Corps agrees that this work could potentially be authorized under NWP 33 as long as all other conditions are met and the work is the minimum necessary to complete the project. However, the districts have discretion in determining if the work is the minimum necessary.

One commenter expressed concern about the last statement in this NWP, which requires a Section 10 permit for structures left in place. The commenter indicated this statement is contradictory since any structures left in place would be permanent and would not qualify for the NWP 33 anyway. The commenter recommends removing or clarifying this statement.

This statement is intended to reiterate that if any structures are left in place, separate authorization is required, however we have broadened it to cover all situations where structures left in place require separate Section 10 authorization.

Another commenter generally supported NWP 33 as proposed, but recommended changing the word ''conditions'' to ''contours'' in the sentence stating ''Following completion of construction, temporary fill must be entirely removed to upland areas, dredged material must be returned to its original location, and the affected areas must be restored to the pre-project conditions.'' Several commenters indicated that requiring the area to be restored to pre-project conditions may not be beneficial when the pre-project conditions were degraded. One commenter suggested we require the affected areas be restored to the pre-project conditions or to a condition with greater than pre-project habitat functions and services. Another commenter suggested saying that the area should be returned to appropriate pre-existing stable elevations and slope and restored with vegetation species matching the adjacent undisturbed areas, but consistent with the purposes of the associated project for which the temporary construction is necessary.

We agree that returning a degraded area to better than pre-existing conditions is beneficial and we support this concept. We will not require the area to be restored to create better habitat functions and services, but we are not precluding this work from occurring. Removal of temporary fills is also addressed in general condition 13 and the language in NWP 33 has been slightly modified to match this general condition. Any fill left in place will require separate authorization.

One commenter questioned whether the restoration plan for temporary and permanent impacts could be included in a single plan, with any proposed mitigation, and whether the mitigation plan must be submitted concurrently with the pre-construction notification. Another commenter opposed the provision requiring that a restoration plan be included in the pre-construction notification that shows how the area will be restored to pre-project conditions. The commenter was concerned that a restoration plan is not always developed up front because a contractor is often not selected until after a permit has been issued.

The pre-construction notification must contain a restoration plan showing how all temporary fills and structures will be removed and the areas restored to pre-project conditions. The restoration plan must, at a minimum, include a general description of how restoration will be accomplished, with as much detail as is practicable when the pre-construction notification is submitted. We do not believe that selection of a contractor is necessary for the development of an appropriate restoration plan.

Several commenters requested that we clarify or define some of the terms in NWP 33, such as cofferdam, access fill, and temporary structure. One of the commenters also asked if the Corps considers temporary construction pads to be a form of access that requires authorization. They also asked if cofferdam includes structures that only partially isolate a portion of the streambed but still allow water to pass.

The Corps believes that cofferdam, access fill, and temporary structure are widely used and accepted terms. The Corps is hesitant to place strict definitions on these terms. The Corps does consider temporary construction pads to be a form of access that can be authorized under NWP 33 and we do consider a structure that partially blocks a portion of the streambed to be a cofferdam that could be authorized by NWP 33.

One commenter suggested that notification should not be required for temporary impacts that last less than 24 hours, when used with Best Management Practices. Another commenter requested we include a limit on the duration of impacts, such as 48 hours. Another commenter requested that the Corps consider an exemption to the pre-construction notification requirement if the temporary fill is a mat instead of dirt, or a stabilized material, and it is in place for only a short time, such as 48 hours. This commenter also suggested that the Corps allow an exemption to the pre-construction notification requirement for minor amounts of temporary impacts. A commenter questioned whether a water-inflated cofferdam would be considered *de minimus* and be exempt from submitting a pre-construction notification. Several commenters recommended that a PCN should not be required for temporary construction access roads and other construction activities covered under NWP 33, unless the discharge causes the temporary loss of greater than 1/10 acre of waters of the United States.

We have modified NWPs 3, 12, and 14 to address concerns regarding pre-construction notification and temporary impacts to waters of the United States. In particular, we are not requiring separate authorization under NWP 33 for temporary impacts associated with activities authorized under these three NWPs. Therefore, we are retaining the pre-construction notification requirements from the September 26, 2006, proposal for NWP 33. We have modified the text of this NWP to require restoration of affected areas to pre-construction elevations, with revegetation, as appropriate, to be consistent with the changes to general condition 13, Removal of Temporary Fills.

This NWP is reissued with the modification discussed above.

NWP 34. *Cranberry Production Activities*. We proposed to rearrange the text of the NWP and to eliminate the phrase ''provided the activity meets all of the following criteria''. In addition, we proposed to eliminate the requirement for delineations of special aquatic sites from the text of the NWP, since this is a requirement of general condition 27.

One commenter requested clarification of the last part of the last sentence which reads ''. . .and the NWP would authorize that existing operation, provided the 10-acre limit is not exceeded.'' Another commenter recommended reducing the acreage limit to ½ acre. This commenter also said that pre-construction notifications must clearly indicate areas to be impacted by the proposed activity.

We believe that the text of this NWP is clear. This NWP only authorizes activities associated with existing cranberry production operations, such as expansion, reconfiguration or leveling. The NWP provides authorization for these types of activities, provided the total impacts to waters of the United States during the 5-year term of the NWP do not exceed 10 acres. It does not authorize the construction of new cranberry production operations. Since this NWP authorizes only existing cranberry production activities, the 10-acre limit is appropriate because these areas remain as wetlands, even though they are managed to improve cranberry production. General condition 27 requires prospective permittees to submit delineations of waters of the United States with their pre-construction notifications, so that the impacts of the proposed activity can be assessed.

Some commenters asserted that the activities authorized by this NWP will result in more than minimal adverse impacts, individually and cumulatively. These commenters also requested that the Corps not reissue this permit as it violates section 404(e) of the CWA and the section 404(b)(1) Guidelines. In addition, they remarked that it is unclear how the permittee would determine whether a net loss occurs. They were concerned that permittees would claim that converting a natural wetland to a cranberry bog does not result in a net loss of wetlands and as a result these losses would not be counted. In addition, one commenter remarked that the Corps should not rely on compensatory mitigation to offset the potential adverse impacts associated with conversion of wetlands to cranberry bogs.

We believe that the activities authorized by this NWP will not have more than minimal impacts both individually and cumulatively. This NWP authorizes activities associated with the expansion, enhancement, or modification of existing cranberry operations. This NWP does not authorize new operations. Regarding the determination of net loss, this NWP requires pre-construction notification. The district engineer will determine if the proposed project would result in a net loss of wetland acreage, not the permittee. In making this determination, the Corps would consider conversion of natural wetlands to cranberry bogs a loss of waters. We believe the pre-construction notification requirement gives district engineers the ability to assess the impacts to aquatic resources and, if the acreage limit is exceeded or if otherwise warranted, exercise discretionary authority and require an individual permit. The individual permit process includes case-specific reviews to ensure compliance with the Section 404(b)(1) Guidelines. In addition, division and district engineers will condition such activities where necessary to ensure that these activities will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. The Corps believes that this NWP is fully in compliance with section 404(e) of the Clean Water Act.

One commenter stated that the Corps' limited cumulative effects data suggests a reduction in average impacts associated with this NWP. They added that this reduction appears to be due to cranberry production activities being authorized under state or regional general permits.

We believe that the use of state programmatic and regional general permits to authorize cranberry operations are appropriate. All general permits must have no more than minimal adverse effect. Regional general

permits developed in consideration of local and regional issues have been determined to have minimal impacts both individually and cumulatively. As with the NWPs, regional general permits also enable the district engineer to exercise discretionary authority to require individual permit review, where appropriate.

The NWP is reissued as proposed.

NWP 35. *Maintenance Dredging of Existing Basins.* We proposed to change the phrase ''disposed of'' to ''deposited at'' in the text of this NWP.

One commenter suggested the NWP be modified to allow disposal of dredged material (e.g., sand and gravel) in the littoral system.

We believe the placement of dredged material at upland sites with the implementation of proper siltation controls helps to ensure minimal impacts on the aquatic environment, individually and cumulatively. We agree that beneficial use of dredged material, including placement of suitable material on beaches or in the littoral zone, can provide environmental benefits. However, such activities can result in unintended adverse environmental effects, and therefore require detailed and comprehensive analysis of sediment and littoral processes. We believe that an individual permit is the appropriate mechanism for authorizing this use of dredged material and that it should not be permitted under this NWP.

Another commenter requested that we require pre-construction notification to help determine whether dredging activities authorized under this NWP may indirectly adversely impact adjacent beaches and near shore habitat.

Generally, dredging of existing basins does not result in substantial adverse impacts to adjacent beaches and/or near shore habitat when proper siltation controls are used, as required by this NWP. We disagree that pre-construction notification is necessary for these dredging activities since division engineers have the ability to impose regional conditions, including the requirement for pre-construction notifications for certain activities, to ensure minimal adverse effects on the aquatic environment, individually and cumulatively.

One commenter remarked that we should provide clarification on the applicability of this NWP to existing access channels and mooring facilities.

This NWP authorizes excavation and removal of accumulated sediment for maintenance of existing basins provided that the activity complies with its terms and conditions.

This NWP is reissued as proposed.

NWP 36. *Boat Ramps.* We proposed to modify this NWP to allow district engineers to waiver the 50 cubic yard limit for discharges of dredged or fill material into waters of the United States to construct a boat ramp. We also proposed to allow district engineers to waiver the 20 foot width limit for boat ramps. These waivers can be issued only if, after reviewing a pre-construction notification, the district engineer determines that adverse effects on the aquatic environment and other factors of the public interest will be minimal.

Many commenters supported the discretion vested in district engineers to waive the limitations imposed by this NWP, however one commenter objected to the flexibility provided to the district engineers and suggested activities that exceed 50 cubic yards or 20 feet in width be evaluated under an individual permit process. Another commenter requested we include guidelines for when and to what degree the district engineer would apply waivers to the 50 cubic yard fill limit and/or 20-foot width limit to avoid inconsistencies.

We believe deference must be given to district engineers' expertise and knowledge of the local aquatic environment, as well as his/her assessment of information submitted in pre-construction notifications, to make case-specific determinations on the effects to the aquatic environment. The proposed pre-construction notification requirement for discharges that exceed 50 cubic yards or 20 feet in width will enable the district engineer to evaluate the direct, indirect and cumulative effects of a proposed activity to determine whether a waiver is appropriate or an individual permit is required. Because of the inherent variability across the nation, we disagree that it is necessary or appropriate to establish guidelines for the application of the waiver. We expect district engineers to formulate their case-specific determinations on the appropriateness of the waiver based on the unique characteristics of the local aquatic environment and in consideration of the specific circumstances of the proposed activity.

One commenter noted that boat ramps are hardened surfaces that diminish near shore or bank habitat and asserted that pre-construction notification should be required along with mitigation.

We believe that the discretion vested in district engineers to issue special conditions on a case-specific basis, including requirements for appropriate and practicable mitigation (see general condition 20), will ensure that losses to the aquatic environment are adequately offset. We also believe that the ability of division engineers to impose regional conditions for certain activities will ensure minimal adverse effects on the aquatic environment, individually and cumulatively.

Two commenters indicated that the case-by-case waiver of the 50 cubic yard and 20-foot width discharge limits should also require the Corps to coordinate with appropriate federal and state natural resource agencies.

We disagree it is necessary to coordinate with federal and state natural resource agencies prior to the district engineer determining whether to grant a waiver for those activities that exceed the 50 cubic yard fill limit and/or 20-foot width limit. District engineers have the aquatic resources expertise to determine whether activities will result in more than minimal adverse effect on the aquatic environment.

One commenter noted that activities authorized under this NWP do not require Department of the Army authorization in Section 404-only waters unless there is more than incidental fallback.

Discharges in waters of the United States that are not otherwise exempt from regulation require Corps authorization. We acknowledge that the Corps does not regulate excavation under section 404 in instances when there is only incidental fallback.

This NWP is reissued as proposed.

NWP 37. *Emergency Watershed Protection and Rehabilitation.* We proposed to rearrange the text of this NWP to match the other permits. In the final permit, we have added two additional types of activity (reclamation of abandoned mine lands pursuant to Title IV of SMCRA and the Emergency Conservation Program administered by the Farm Service Agency) that may be authorized.

One commenter supported the reissuance of this NWP without change, since they regularly partner with the Natural Resources Conservation Service on emergency projects. Another commenter expressed concerns that NWP 37 does not contain specific requirements for conducting repair work and it only includes generic references to environmentally defensible approaches. The commenter agreed that allowing the work to commence immediately (with follow-up permitting as necessary) may be desirable due to the urgency of some disaster responses; however, they indicated that the process may be prone to uncertainty about requirements and may cause more than minimal harm to the aquatic resources. The commenter indicated that activities

are funded by the Natural Resources Conservation Service but not always implemented by the agency, so people with limited experience may be completing the work. The commenter suggested that work should only be allowed to proceed prior to verification where a damage response team comprised of federal and state agencies have developed the site specific plans for damage repair.

We believe that in some cases the urgency of the activities authorized by this NWP requires an expedited process. All activities require pre-construction notification, and as a general matter, the prospective permittee should wait until the district engineer issues an NWP verification before proceeding with the watershed protection and rehabilitation activity. A watershed protection and rehabilitation activity may proceed immediately only in those cases of true emergencies (i.e., where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur). Where practicable, permittees are encouraged to consult informally with the Corps before proceeding with emergency activities. In cases where emergency watershed protection and rehabilitation activities were conducted prior to receiving an NWP verification, the district engineer, after reviewing the pre-construction notification, may modify, suspend, or revoke the NWP authorization through the procedures at 33 CFR 330.5. All of the projects authorized by this permit are conducted under the sponsorship of another Federal resource management agency. Those agencies, not the Corps, have the responsibility to determine whether the project complies with their program authority. The Corps must determine the applicability of the NWP to the specific project, but for the most part, the Corps only reviews the proposed work to determine compliance with the requirements of the NWP and the general conditions. We believe that any specific concerns should be addressed through regional conditions or through consultation with the sponsoring agency.

A couple of commenters recommended adding Title IV of the Surface Mining Control and Reclamation Act, which governs the abandoned mine land reclamation program, to proposed NWP E, Coal Remining Activities. One commenter suggested adding to NWP 37 work funded by the Farm Service Agency under its Emergency Conservation Program, which rehabilitates farmland damaged by natural disasters.

As discussed below, we have revised proposed NWP E (now designated as NWP 49), to authorize abandoned mined land reclamation activities that also involve coal extraction activities. However, for those abandoned mine land reclamation activities that do not involve coal extraction, we believe it is more appropriate to authorize these activities under NWP 37, since they help protect and rehabilitate watersheds, and have revised the text of the NWP accordingly. In cases where it is necessary to conduct an emergency abandoned mine reclamation activity immediately, the project proponent may proceed with the work (see paragraph (d)(3) of general condition 27) while the district engineer reviews the pre-construction notification. For clarity, we have also added a new paragraph to this NWP that is consistent with paragraph (d)(3) of general condition 27. We have also added Emergency Conservation Program activities funded by the Farm Service Agency, which provides cost-share assistance to eligible participants to rehabilitate farmland damaged by floods, hurricanes, or other natural disasters. The implementing regulations for the Emergency Conservation Program are found at 7 CFR part 701.

The NWP is reissued, with the modifications discussed above.

NWP 38. *Cleanup of Hazardous and Toxic Waste.* We proposed to modify this NWP by moving the requirement to submit a delineation of waters of the United States to paragraph (b)(4) of the ''pre-construction notification'' general condition (GC 27). We also proposed to move the last sentence of this NWP to a ''Note'' at the end of the NWP.

One commenter requested this NWP be revoked, because the cleanup of hazardous waste has the potential to cause adverse effects during and after the activities. The commenter indicated that remedial activities in navigable waters and wetlands need site-specific review, evaluation and permitting to ensure proper design, appropriate restoration, and long term stability.

This NWP requires pre-construction notification to the Corps. We believe our review under this NWP is sufficient, since the activities authorized must be performed, ordered, or sponsored by a government agency with established legal or regulatory authority.

Another commenter suggested the expansion of this NWP to allow removal of waste material, such as trash, debris, detritus, or rubble, in waters of the United States. The commenter suggested that the NWP should be modified to authorize the immediate removal of the waste and the notification to the Corps after the material has been removed.

In general, the removal of waste material should not require Corps authorization, unless the activity involves discharges of dredged or fill material into waters of the United States and/or structures or work in navigable waters of the United States. Temporary access to remove the material may be authorized by NWP 33. Restoration of the affected area may be authorized under NWP 27.

One commenter requested clarification regarding the applicability of NWP 38 for emergency response to an oil release in waters of the United States from electrical equipment that is not covered by a Spill Prevention, Control, and Countermeasure (SPCC). The releases are governed by EPA's polychlorinated biphenyl spill response regulations (40 CFR part 761). Because the activities are not included in a SPCC Plan, they are not authorized by NWP 20. The work that is required must be initiated within 24 or 48 hours of discovery of the release, so the commenter requested that either NWP 20 be modified or the pre-construction notification requirement under NWP 38 be removed in situations where the response time is critical.

Instead of modifying this NWP, we have modified NWP 20 to include coverage of response to spills not covered by a SPCC Plan, but otherwise required to be initiated in a short time frame by another government agency, such as EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761.

This NWP is reissued as proposed.

NWP 39. *Commercial and Institutional Developments.* We proposed to modify this NWP by moving the provisions authorizing residential developments to NWP 29, requiring pre-construction notification for all activities authorized by this NWP, and applying the 300 linear foot limit to ephemeral streams.

Three commenters objected to moving residential developments from NWP 39 to NWP 29 because these developments are inconsistent with the original intent of NWP 29. Six commenters supported removing residential developments stating that the impacts associated with residential developments are not the same as commercial and institutional developments. Three commenters desired the ability to use multiple NWPs with NWP 39 for mixed-use developments, such as housing and commercial. One commenter did not support removing residential development from this NWP because mixed-use developments would lead to more than minimal impacts if multiple NWPs were used.

As discussed in the preamble to the September 26, 2006, **Federal Register**

notice, the proposed changes effectively eliminates the previous NWP 29. We do not believe that NWP 39 will result in more than minimal individual and cumulative adverse effects, on the aquatic environment if it is used with other NWPs in accordance with general condition 24, Use of Multiple Nationwide Permits.

Two commenters recommended allowing the NWP to be used in non-tidal wetlands adjacent to tidal waters, while another agreed with the proposed language to exclude its use from these wetlands. One commenter declared that the NWP should not be used in wetlands accessible to anadromous fish or in difficult-to-replace aquatic environments. One commenter wanted the acreage limit increased to 5 acres and another recommended it be decreased to ¼ acre so that it reflects the limits in the previous version of NWP 29.

We believe that restricting the types of wetlands the NWP applies to is an appropriate method of assuring that minimal adverse impacts are not exceeded. Division engineers may regionally condition or revoke this NWP in certain areas or for certain activities if they believe the NWP would result in more than minimal impacts. Increasing the acreage limit to 5 acres would likely result in activities that will have more than minimal individual and cumulative adverse effects on the aquatic environment. Reducing the acreage limit to ¼ acre would cause many projects that do have minimal adverse impacts to be evaluated under the individual permit process.

Many commenters supported retaining the language requiring sufficient vegetated buffers to be maintained adjacent to all open water bodies, such as streams. One commenter requested an unspecified minimum vegetated buffer width while two commenters suggested a 200 foot setback from streams containing anadromous fish. One commenter supported removing of the buffer language and relying on paragraph (d) (now designated as paragraph (f)) of general condition 20.

In general, the Corps agrees that buffers (i.e., riparian areas) are necessary to protect streams and other open waters. District engineers will make determinations regarding the need for and amount of required riparian areas in the context of general condition 20, Mitigation.

One commenter stated that including the expansion of commercial or institutional buildings will lead to piecemealing projects and result in more than minimal impacts on the aquatic environment. Five objected to removing language concerning avoidance and minimization to the maximum extent practicable. Two commenters suggested maintaining language requiring a conceptual mitigation plan. Several commenters recommended retaining the language concerning single and complete projects. Two commenters asserted that maintaining language addressing minimal change to flow and water quality was necessary. Two commenters objected to removal of language concerning minimizing on-site and off-site impacts, such as avoiding flooding of adjacent lands. Another commenter objected to removing ''many'' of the restrictions in the NWPs, including this one. One commenter suggested that problems will occur without the language about ''single and complete projects.''

We disagree with these comments. Requirements for avoidance and minimization, management of water flows, and water quality are provided in the NWP general conditions. Removal of language from the permit text itself does not affect the applicability of requirements contained in Corps regulations and in the NWP general conditions. We have repeatedly emphasized in this preamble that permittees must review the general conditions before using any NWP to ensure that they are meeting all requirements for its use. District engineers will review pre-construction notifications to ensure that all practicable on-site avoidance and minimization has been accomplished. In response to a pre-construction notification, the district engineer may require compensatory mitigation to ensure that the authorized activity results in minimal adverse environmental effects (see 33 CFR 330.1(e)(3)).

Several commenters objected to the mandatory pre-construction notification requirement and suggested a pre-construction notification threshold of 1/10 acre or greater than 300 feet of stream loss. Some of these commenters reasoned that eliminating the 1/10 acre pre-construction notification threshold would be a disincentive to avoid the loss of waters of the United States. Two commenters supported the proposed pre-construction notification requirement.

We disagree that the pre-construction notification threshold should be 1/10 acre. We acknowledge that this will result in an increase in the number of pre-construction notifications district engineers receive, however, we are proposing to simplify the information required in a pre-construction notification (see general condition 27) to reduce the paperwork burden on prospective permittees. Requiring notification for all activities authorized under NWP 39 will help ensure adverse minimal effects.

Thirteen commenters wrote concerning impacts to streams and the use of waivers. See the discussion regarding this topic, above.

One commenter stated that projects authorized by this NWP are not water-dependent and should not be permitted.

We agree that most commercial and institutional developments are not water dependent activities. This does not mean that they cannot be permitted, only that they undergo an alternatives analysis (see the EPA's 404(b)(1) Guidelines at 40 CFR part 230). Although analysis of off-site alternatives is not required for general permits, each proposed project is evaluated to determine whether avoidance and minimization has been accomplished on the project site to the maximum extent practicable (see general condition 20, Mitigation). In addition, the activity is not authorized under an NWP if the adverse impacts to waters of the United States are more than minimal.

This NWP is reissued as proposed.

NWP 40. *Agricultural Activities.* We proposed to modify this NWP to require pre-construction notification for all activities, authorize the construction of farm ponds in waters other than perennial streams, and remove certain restrictions on who could use the NWP.

One commenter wanted to retain the paragraph numbering of the 2002 NWP. Another commenter said that this NWP should be limited to USDA program participants.

The Corps believes the revised numbering system is appropriate and easy to understand. This NWP should not be limited to USDA program participants, since there are agricultural activities being conducted by non-participants that result in minimal adverse effects on the aquatic environment which are appropriately authorized by NWP.

One commenter opposed reissuance of NWP 40 because of unacceptable impacts to wetlands. Two commenters did not support eliminating the ½ acre limit per farm tract on impacts to waters of the United States, and one commenter recommended reducing the acreage limit to 1/10 acre. One commenter expressed concern that removing farm tracts as the basis for the acreage limit would result in use of this NWP to authorize discharges of dredged or fill material for non-agricultural activities. One commenter stated that

roadside stands should not be considered farm buildings for authorization under this NWP. One commenter recommended retaining the 1/10 acre threshold for pre-construction notification. One commenter stated that pre-construction notification should not be required for projects conducted under USDA programs.

We believe the requirement for pre-construction notifications for all activities and the case-by-case review by district engineers will ensure that activities authorized by this NWP result in no more than minimal individual and cumulative adverse effects to the aquatic environment and other public interest review factors. The district engineer will add case specific conditions and require mitigation when needed to ensure impacts do not exceed the minimal level, and will assert discretionary authority to require an individual permit when impacts are more than minimal. Due to differences in program requirements between USDA programs and Section 404 of the Clean Water Act, it is not possible to ensure that activities conducted under USDA programs will necessarily comply with Section 404 requirements and have minimal adverse impact to waters of the United States. Therefore, we are retaining the pre-construction notification requirement for USDA program participants and projects. We have removed the reference to ''farm tracts'' because we have found that it caused confusion in the past. The limit applies to each single and complete project (see definitions section). District engineers will determine during the pre-construction notification process whether the acreage limit is satisfied. Eliminating the use of farm tracts would not expand the use of this NWP to non-agricultural activities. The text of this NWP clearly states that it authorizes only agricultural activities.

One commenter objected to authorizing farm ponds in wetlands and two objected to authorizing farm ponds in non-tidal waters excluding perennial streams. One commenter supported the use of NWP 40 for construction of farm ponds only in streams without aquatic life use designations. Another commenter said that the proposed modification was unnecessary, since many farm ponds are constructed outside of waters of the United States or they are exempt from section 404 permit requirements because of the exemption at Section 404(f)(1)(C) of the Clean Water Act. This commenter expressed concern that the proposed changes to NWP 40 would require landowners to submit pre-construction notifications for all farm ponds, even if they are not constructed in waters of the United States or they qualify for the section 404(f) exemption.

We are limiting the construction of farm ponds to certain types of waters where the adverse effects to the aquatic environment are likely to be minimal, individually and cumulatively. This NWP does not authorize the construction of farm ponds in perennial streams. Under this NWP, farm ponds may be constructed in non-tidal wetlands, intermittent streams, and ephemeral streams. Pre-construction notification is required for all activities authorized by this NWP, so that district engineers will have the opportunity to review each proposed activity to determine whether the adverse effects on the aquatic environment will be minimal. If the construction of a farm pond does not involve discharges of dredged or fill material into waters of the United States, or if it qualifies for a Section 404(f) exemption, the project proponent is not required to submit a pre-construction notification. This NWP authorizes the construction of farm ponds that involve discharges of dredged or fill material into waters of the United States and do not qualify for the Section 404(f)(1)(C) exemption, because of the recapture provision at Section 404(f)(2). We have added a sentence to the ''Note'' at the end of this NWP to clarify that this NWP is used to authorize the construction of farm ponds that are not exempt under Section 404(f).

One commenter was concerned about negative impacts to salmonids from agriculture activities. Of main concern was placement of farm buildings in wetlands and streams, discharges from drainage tiles into farm ditches that were built in salmonid streams, and levee maintenance that degrades salmonid habitat and riparian areas.

Potential adverse impacts from these activities will be addressed during the pre-construction notification review. Water quality issues are also addressed during Section 401 water quality certification or by a Clean Water Act Section 402 permit.

Two commenters stated that the proposed permit will destroy wetland acres. One commenter stated that the loss of prairie potholes and western glaciated potholes will be staggering. Another commenter stated that discharges into playas, prairie potholes, and vernal pools should not be allowed under NWP 40.

The 1/2-acre limit for this NWP applies to the loss of waters associated with activities authorized by this NWP. During the pre-construction notification review process, if the district engineer determines that adverse effects to aquatic resources are more than minimal, individually or cumulatively, he or she will impose special conditions to reduce the impacts to the minimal level or assert discretionary authority and require an individual permit. In addition, division engineers may add regional conditions to this NWP to restrict or prohibit its use in certain types of waters, if discharges into those waters for agricultural activities would result in more than minimal adverse effects on the aquatic environment. General condition 20, Mitigation, requires district engineers to determine appropriate and practicable mitigation necessary to ensure that impacts are no more than minimal. The Corps believes the pre-construction notification requirement for all activities and the case-by-case review by district engineers will ensure that activities authorized under this NWP will result in no more than minimal individual and cumulative adverse effects to the aquatic environment. The Corps notes that the acreage and linear foot limits in the NWPs apply only to waters that are jurisdictional under the Clean Water Act.

One commenter stated that the Corps now proposes to ignore impacts to waters of the United States associated with agricultural dredge and fill activities that are deemed exempt under Section 404(f) of the Clean Water Act.

This NWP authorizes certain agriculture activities that are not eligible for the exemptions under Section 404(f) of the Clean Water Act. Those agricultural activities that qualify for the Section 404(f) exemptions do not require a Section 404 permit. This has always been the case; it is not a change from current practice.

One commenter stated that the possible waiver for the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in intermittent and ephemeral streams would result in more than minimal adverse impacts. Another commenter said that the provision authorizing the relocation of existing serviceable drainage ditches constructed in non-tidal streams should be conditioned to ensure that the activity does not result in a reduction in base flow to the stream.

In response to a pre-construction notification for the proposed relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in intermittent or ephemeral streams, the activity is not authorized unless the district engineer issues a written waiver after determining that the activity will result in minimal adverse effects on the aquatic environment. The relocation of

drainage ditches must also comply with general condition 9, Management of Water Flows, to maintain the capacity of those waters to the maximum extent practicable.

Several commenters stated that some language in the NWP was confusing or needed clarifying. This included the phrase ''ditches constructed in waters of the United States'', whether the permit applies to farm tracts or the entire farm, and the concept of ''necessary for agriculture production''.

We have removed the definition of ''farm tract'' and the conditions limiting the use of NWP 40 on a particular site, since district engineers will receive pre-construction notifications for all activities authorized by this NWP. District engineers will review pre-construction notifications for those NWPs to ensure that the proposed work results in minimal individual and cumulative adverse environmental effects. We believe that the other terms are self-explanatory. Determining whether an activity is necessary for agriculture production involves some discretion, which the district engineer will apply when evaluating pre-construction notifications for proposed projects.

One commenter said that this NWP should not authorize the construction of livestock watering ponds unless the applicant submits documentation showing that he or she has obtained government assistance for the construction of the pond, and that no feasible alternatives are available that would avoid discharges into waters of the United States. This commenter supported the proposed prohibition against constructing farm ponds in perennial streams, but also recommended that the NWP prohibit the construction of farm ponds in oxbows or lakes. Another commenter stated that NWP 40 should authorize the construction of aquaculture ponds.

We do not agree that it is necessary to require prospective permittees to obtain government assistance as a condition of authorization under this NWP. General condition 20, Mitigation, requires permittees to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable on the project site. District engineers will also review pre-construction notifications to ensure compliance with the terms and conditions of this NWP, including general condition 20. If a farm pond is proposed to be constructed in an oxbow or a lake, the district engineer will review the pre-construction notification to determine if the activity will result in minimal adverse effects. In addition, division engineers may also regionally condition this NWP to restrict or prohibit its use to construct farm ponds in certain categories of non-tidal waters of the United States. We believe that construction of aquaculture ponds is a distinct activity that should not be authorized under this NWP because there may be unique issues associated with it (e.g., invasive species concerns, changes in water quality). Ponds constructed for purposes other than conventional agriculture may be authorized under other general permits or individual permits.

This NWP is reissued as proposed.

NWP 41. *Reshaping Existing Drainage Ditches.* We proposed to modify this NWP to clarify that it authorizes only the reshaping of drainage ditches constructed in waters of the United States where the purpose of reshaping the ditch is to improve water quality. As a result of this modification, we also proposed to remove the sentence that states why compensatory mitigation is not required for the activities authorized by this NWP.

The purpose of this NWP is to encourage landowners who need to maintain drainage ditches constructed in waters of the United States to do so in a manner that benefits the aquatic environment. The maintenance of a drainage ditch is exempt under Section 404(f)(1)(C) of the Clean Water Act, and does not require a section 404 permit. This exemption does not apply to the reshaping of existing drainage ditches, so landowners have a disincentive to reshape their ditches, even though such reshaping can be beneficial to the aquatic environment. This NWP authorizes those reshaping activities that benefit the aquatic environment.

This NWP was first issued on March 9, 2000, (65 FR 12818) to authorize, to the extent that a section 404 permit is required, the grading of the banks of a currently serviceable ditch to gentler (shallower) slopes than its current or original configuration. Reshaping a drainage ditch so that it has shallower side slopes can help improve water quality by decreasing the velocity of water flowing through the ditch and by spreading out water flow over a greater area of soil surface. It should also provide more area for plants to become established and grow within the ditch. These changes are likely to help improve water quality by increasing water contact with vegetation and soil microbes, which facilitates the removal of nutrients and other chemical compounds through biogeochemical processes. Slower water flow rates through the ditch should also decrease erosion, further improving water quality.

We proposed to remove the prohibition against permanent sidecasting of excavated material into waters of the United States, where the excavated material results from the ditch reshaping activity. In cases where there are jurisdictional wetlands or other waters next to the ditch to be reshaped, this prohibition is likely to cause many landowners to maintain the ditch at its originally designed configuration to qualify for the exemption, since the 404(f)(1)(C) exemption allows discharges of dredged or fill material into waters of the United States resulting from ditch maintenance activities.

Some commenters supported the modifications to this NWP because they encourage landowners to maintain drainage ditches in a manner that benefits the aquatic environment. Several commenters also agreed with the proposal to remove the prohibition against permanent sidecasting of excavated materials into waters of the United States. Several other commenters did not support allowing permanent sidecasting of material excavated from reshaped ditches. These commenters suggested that the sidecasting would have adverse impacts that exceed the water quality improvements. One commenter suggested we provide conditions on the sidecast material, such as requiring the fill to be no higher than 18 inches, so that the hydric soils will retain their hydric characteristics. They also suggested requiring random distribution of the material and that the sidecast should not interfere with surface water flows. Another commenter indicated that permanent sidecasting that isolates wetlands on-site, rendering them non-jurisdictional, should not be allowed.

The exemption at 404(f)(1)(C) allows sidecasting, but prohibits reshaping drainage ditches. This NWP provides an incentive to improve water quality through reshaping the drainage ditches while still allowing sidecasting of the material. The Corps believes that allowing the sidecasting under this NWP will encourage landowners to reshape existing drainage ditches in favor of water quality improvements instead of conducting traditional maintenance activities. The Corps recognizes the need to ensure that the sidecasting has minor impacts on the aquatic environment and does not isolate wetlands. Regional conditions may be added to ensure that the individual and cumulative impacts are minimal. We note that the presence of a man-made berm between wetlands

and adjacent waters does not necessarily make the wetlands non-jurisdictional.

Some commenters suggested that many drainage ditches are within what was a historical stream that has been straightened and many of these drainage ditches are used by anadromous salmonids as transport to upstream spawning grounds and for juvenile rearing. One commenter suggested this NWP should not be used in waterbodies bearing salmon where a state or federal watershed analysis or limiting factors analysis has determined that off-channel rearing habitat is limiting or potentially limiting to salmonid production. The commenters indicated that an individual permit should be required for work in ditches that are accessible to anadromous salmonids. The commenter suggested if this NWP is utilized in such waterbodies, a regional condition should require a delineation of pools and riffles and that reshaping be conducted in a manner that does not reduce volume and surface area of pools or other suitable low velocity habitat.

The Corps agrees that these are important concerns but they only relate to certain areas. Division and district engineers will impose regional conditions or case-specific conditions, so that adverse effects to salmon species that utilize these drainage ditches are minimal, individually and cumulatively.

One commenter suggested this NWP should allow for the restoration of ditches that lose their original shape, become vegetated, and obtain characteristics of wetlands due to long ditch maintenance cycles, which are often greater than 20 years.

The Corps believes that this NWP may potentially be used in such areas in cases where the purpose of the work is to improve water quality. However, to be eligible to use this NWP, the drainage ditches must be currently serviceable and not so degraded that the area appears to have more the characteristics of a wetland than those of a drainage ditch.

One commenter suggested this NWP should authorize reshaping of natural drainage features. The commenter indicated that reshaping unvegetated streambeds, channels, and watercourses with vertical banks subject to continuous erosion would provide flatter and vegetated side slopes, which would improve water quality.

We do not agree that this NWP should be modified to authorize alterations to the geomorphology of natural streams and other waters of the United States. Such changes to natural waterbodies may result in more than minimal adverse effects to the aquatic environment. Other forms of Department of the Army authorization may be more appropriate to authorize this type of work.

Another commenter indicated that the amount of change in reshaping is not specified.

We do not believe it is necessary to place a limit on the cubic yards of change that can occur with this permit. We believe if the purpose is to reshape the ditch and improve water quality, an upper limit does not need to be specified.

One commenter indicated that the term ''* * * ditches constructed in waters of the United States'' is confusing and suggested changing it to ''serviceable drainage ditches which were constructed in regulated wetlands or by channelizing waters of the United States.'' Another commenter stated that the Corps has too narrowly defined what constitutes a drainage ditch. The commenter indicated that a large number of streams in the United States have had some channelization and some people refer to these water bodies as drainage ditches. The commenter is concerned that some natural waterbodies will be reshaped, which would actually reduce water quality.

We believe the current phrasing is simple and concise, since jurisdictional wetlands are waters of the United States. This NWP is intended for currently serviceable drainage ditches and the applicability of the NWP can be determined on a case-by-case basis by the district engineers. This NWP does not authorize the channelization of existing streams and it does not authorize the relocation of those streams. In addition, this NWP does not authorize the reshaping of natural waterbodies. If a ditch has become incised, this NWP may potentially be used to reshape the ditch, thereby making it more stable.

Another commenter is concerned about the lack of required documentation or demonstration of how the proposed reshaping will meet this basic condition of NWP eligibility. The commenter also questioned why the Corps does not define the term ''improving water quality'' and does not explain how to evaluate a project that improves some aspects of water quality, but harms others. One commenter suggested a wording change to say, ''for the purpose of stabilizing eroded banks'' instead of ''for the purpose of water quality.'' The commenter indicated that saying the work is for the purpose of improving water quality is vague and subject to misinterpretation.

The work authorized by this permit is designed to improve water quality by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. We have added this language to the NWP. More stable banks may result from these activities, but the primary objective of these projects is to improve water quality. We recognize that the environmental benefits of these activities usually need to be determined subjectively.

A commenter was also concerned that the NWP does not require an applicant to prove the proposed ditch reshaping activity will not increase the area drained by the ditch. The commenter is concerned this NWP has a high potential for abuse and will attract landowners looking for authorization to make their ditches larger to drain wetlands more thoroughly and they suggest that the Corps will need to dedicate more resources to track and monitor the use of this permit. The commenter also indicated there must be a limit on the extent of impacts authorized under this permit and that extensive reshaping of drainage ditches should be subject to individual permit review.

The Corps believes that the pre-construction notification requirement for this NWP will allow us to review larger-scale proposals and ensure that additional wetlands are not drained by the work. We have modified the text of this NWP, to prevent drainage of additional wetlands. We have replaced the phrase ''original design capacity'' with ''original as-built capacity'' to reflect the extent of drainage that occurred when the drainage ditches were originally constructed. We have also changed the word ''designed'' to ''constructed'' in that sentence to ensure that the reshaping activity does not drain additional waters. We believe these changes will help prevent increases in the area drained by these ditches, especially in those cases where the ditch did not achieve its design capacity when it was originally constructed.

A commenter recommended modifying the requirement that the capacity of the ditch must be the same as originally designed. The commenter is concerned that the only way for the capacity to remain the same is if the side slopes are increased is to narrow the bottom of the existing ditch. The commenter expressed concern about narrowing the bottom of the ditch and still having a stable system. The commenter suggested requiring the bottom width and depth of the ditch to be the same as originally designed.

We do not agree that this language should be changed, except to refer to the as-built capacity or the original construction of the ditch, for the reasons discussed above. The Corps believes that changing the language as recommended in the previous paragraph may unduly restrict the design criteria, because there may be some cases where the bottom width and depth would change, but the capacity would remain the same; therefore, we are keeping the current language. The important point is that this NWP may not be used to increase the capacity of the ditch.

A commenter requested that some provisions be made to allow for an increase in capacity to accommodate increased drainage in the watershed. Due to increased runoff, ditches may have become incised and restoring stable slopes may require increased capacity. The commenter suggested not restricting the permit to original design capacity, since this does not allow for laying back the side slopes without decreasing maximum depth to avoid increasing cross sectional area. Another commenter indicated that there may be constricted conditions that do not allow for shallow side slopes and wanted to know if there would be flexibility in the use of NWP 41.

Modifying this NWP to allow increased drainage capacity would be contrary to the intent of the NWP, which is to authorize changes in the ditch that help improve water quality. If the site characteristics do not support reshaping the ditch in a manner that improves water quality, without increasing drainage capacity, then this NWP cannot be used. Modifications of drainage ditches to accommodate changes in watershed hydrology or site limitations may be authorized by other types of Department of the Army permits.

One commenter asked if the NWP 41 would authorize the reshaping of existing drainage ditches that were not constructed in waters of the United States but now contain an ordinary high water mark or wetlands.

This NWP may be used in currently serviceable drainage ditches to the extent that they are jurisdictional. Division or district engineers can make a determination on the applicability of this NWP on a case-by-case basis.

A commenter was concerned about the prohibition against stream channelization activities. The commenter suggested that activities that modify the cross sectional configuration of drainage ditches could easily be interpreted as manipulation of a stream's condition that causes more than minimal interruption of normal stream processes. The commenter encouraged the Corps to remove the channelization restriction from NWP 41.

The intent of this NWP is to authorize the reshaping of ditches to provide more stable conditions, which will improve water quality. The Corps does not believe this permit should allow channelization of streams.

Several commenters questioned why this NWP excludes non-tidal wetlands adjacent to tidal waters. The commenters asked why it matters whether currently serviceable drainage ditches were originally constructed in non-tidal wetland adjacent to tidal waters or in upland settings.

We believe that excluding ditch reshaping activities in non-tidal wetlands adjacent to tidal waters is necessary to ensure that the adverse effects on the aquatic environment will be minimal, individually and cumulatively. Wetlands adjacent to tidal waters tend to have a high level of ecological and hydrologic connectivity with tidal waters. Ditch reshaping activities in these areas may have more than minimal adverse effects and can be better addressed by other general permits or individual permits.

One commenter stated that this NWP should have a 500 linear foot limit and a 250-foot pre-construction notification threshold and that mitigation must be required for all adverse impacts to the aquatic environment authorized under this permit. Another commenter said that the activities authorized by this NWP would result in more than minimal adverse effects.

The Corps believes that the pre-construction notification threshold is sufficient. Since we will see all proposals that are over 500 linear feet, we will have the opportunity to determine if the impacts are more than minimal. The Corps does not believe this NWP will cause a permanent loss of waters, since the work involves reshaping existing drainage ditches to improve water quality, therefore, mitigation is not required.

Several commenters suggested that removing some of the language from the NWP 41 issued in 2002 made the permit less clear. One commenter suggested that the Corps add language stating indicating that this NWP is limited to reshaping activities that would restore more natural stream characteristics such as increasing the area of riparian vegetation through regrading or recreating stream meanders.

The Corps believes that including this type of language would go beyond the intent of this NWP, which is to authorize the reshaping of existing drainage ditches that may not have ever contained meanders or other natural stream characteristics.

Other commenters suggested putting the language from the 2002 NWP 41 about compensatory mitigation back in the NWP.

The Corps agrees and the following language has been placed in the final version of NWP 41: ''Compensatory mitigation is not required because the work is designed to improve water quality.''

This NWP is reissued with the modifications discussed above.

NWP 42. *Recreational Facilities.* We proposed to modify this NWP by removing the language that limits its use to those recreational facilities that are integrated into the existing landscape and do not substantially change pre-construction grades or deviate from natural landscape contours. We also proposed to modify this NWP to require pre-construction notifications for all activities, and apply the 300 linear foot limit for losses of stream bed to ephemeral streams. In addition, we proposed to modify this NWP, to authorize the construction of ski areas, playing fields, and basketball and tennis courts.

One commenter suggested that the Corps change the word ''loss'' to ''fill'' or ''impact'' (including temporary and permanent impacts). Another commenter suggested rewording a sentence to address the Rapanos and Carabell decisions.

The Corps believes that the term ''loss'' is the appropriate term. The term ''loss of waters of the United States'' is defined in the ''Definitions'' section of the NWPs. Issues related to the jurisdictional reach of the CWA are not addressed in the NWPs or this preamble. Department of the Army Section 404 permits are required only for activities involving discharges of dredged or fill material into jurisdictional waters.

Three commenters stated that the activities authorized by this NWP are not similar in nature, and will not result in minimal adverse effects to water quality and the aquatic environment.

This NWP authorizes recreational facilities. The activities authorized by this NWP are all recreational facilities, which is a category of activity that is similar in nature. The pre-construction notification requirement gives district engineers the ability to assess the impacts to aquatic resources and, if warranted, exercise discretionary authority to add special conditions or require individual permits. Division and district engineers will condition such activities where necessary to ensure that these activities will have no more than

minimal adverse effects on the aquatic environment, individually and cumulatively.

Two commenters supported the removal of the limits on the types of recreational activities that can be authorized by this NWP. A number of commenters objected to allowing changes in preconstruction grades and deviations in natural landscape contours. Two commenters requested we prohibit the use of this NWP for golf courses, ski areas, playing fields, and basketball and tennis courts because these types of facilities are likely to alter natural landscape contours. One commenter stated that projects such as golf courses that require filling large valleys to create flatter areas, will change the hydrology of the area. One commenter requested that the Corps revoke this NWP or exclude golf courses, ski slopes, campgrounds and associated structures from this NWP. A couple of commenters suggested prohibiting the use of this NWP for habitat conversion, and the construction of buildings, stables and parking lots. Another commenter supported excluding hotels, racetracks, stadiums, and arenas from authorization by this NWP. A few commenters stated the proposed NWP encourages development of recreational facilities in wetlands, which creates maintenance problems, and they requested the NWP not be modified.

The Corps believes that recreational facilities that result in minimal individual and cumulative adverse effects on the aquatic environment should be authorized by this NWP, regardless of the changes that might occur to pre-construction grades or natural landscape contours in areas not subject to section 404 jurisdiction. This is consistent with activities authorized by other NWPs, which do not restrict grading and landscape contouring in uplands. Because of the pre-construction notification requirement for this permit, the district engineer will have the opportunity to review proposed recreational facilities to determine if they will result in more than minimal individual and cumulative adverse effects.

Six commenters objected to the proposal to allow district engineers to waive the 300 linear foot limit in ephemeral and intermittent streams. The district engineer will only waive the 300-linear foot limit in ephemeral and intermittent streams if he or she determines that the individual and cumulative adverse effects on the aquatic environment are minimal. Any waivers must be issued in writing from the district engineer.

Two commenters requested that the NWP be clarified so that acreage limits are applied cumulatively for both the original construction and expansion. One commenter said that this NWP should not be used with NWPs 29 or 39, to authorize recreational facilities within residential, commercial, or institutional developments, and that the ½ acre should apply to such projects.

The NWPs authorize single and complete projects, as defined in the ''Definitions'' section of the NWPs. The ½-acre limit associated with this NWP applies to a single and complete project. In any case, if the district engineer determines that the impacts of a proposed project are more than minimal, individually or cumulatively, he or she will assert discretionary authority and require an individual permit. It is not necessary to prohibit the use of NWP 42 with NWPs 29 or 39. Even though NWPs 29 and 39 may be used to authorize recreational facilities as attendant features of residential, commercial, or institutional developments, any use of NWP 42 with NWPs 29 or 39 would be limited by general condition 24, Use of Multiple Nationwide Permits. Under that general condition, the ½ acre limit would apply to such projects.

Two commenters supported requiring pre-construction notification for all activities authorized by this NWP. In addition, they stated that the Corps should require documentation in the pre-construction notification that the facilities will result in unaltered surface and groundwater regimes and will not alter flow into open waters or streams. Another commenter supported retaining the 1/10 acre threshold for pre-construction notifications and eliminating it completely for projects conducted under USDA programs. The commenter believed requiring pre-construction notifications for all activities makes more work for both the public and the Corps.

The Corps believes that pre-construction notifications are necessary to ensure that proposed activities will result in no more than minimal individual and cumulative adverse impacts. If the district engineer determines that the construction or expansion of recreational facilities will result in adverse effects on aquatic resources, including water regimes and flow, he or she can impose special conditions or require an individual permit.

One commenter opposed the prohibition on use of this NWP in non-tidal wetlands adjacent to tidal wetlands, stating that it is arbitrary.

We believe that prohibiting the use of this NWP to authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters to construct or expand recreational facilities is necessary to ensure that the NWP authorizes only those activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Non-tidal wetlands adjacent to tidal waters warrant greater protection because of their interactions with those tidal waters and the functions and services they provide to coastal ecosystems. Construction activities resulting in discharges of dredged or fill material into those waters are more appropriately addressed through the individual permit process or regional general permits.

One commenter stated that recreation facilities proposing impacts in streams accessible to anadromous salmonids should not be authorized by this NWP. Another commenter request that the Corps place regional conditions on this NWP such that it will not authorize the construction of trails or paths along the top bank of a stream unless there is no loss of riparian vegetation or the riparian vegetation can grow back. That commenter also suggested that this NWP should not be used with NWP 13, since activities authorized by these two NWPs may adversely affect the addition of woody material in stream channels.

Division engineers can impose regional conditions on this NWP to address cumulative impacts, including impacts to salmon habitat. We do not agree that NWP 13 should be prohibited from being used with this NWP for a single and complete project. Bank stabilization may be required to maintain the integrity and safety of a recreational facility and to protect aquatic resources.

One commenter stated that the pre-construction notification requirement is not enough to ensure minimal impacts and that the Corps position that adverse impacts will be offset by compensatory mitigation is unfounded. This commenter also opposed eliminating the requirement to submit avoidance and minimization statements and water quality management measures.

The pre-construction notification requirement allows the Corps to evaluate recreational facilities on a case-by-case basis and determine if the project, as proposed, will result in more than minimal impact. The Corps believes that compensatory mitigation is an appropriate means of ensuring that adverse effects on the aquatic environment are minimal. The requirement to demonstrate avoidance

and minimization is part of general condition 20, Mitigation.

One commenter said that this NWP should be conditioned to require the establishment and maintenance of buffers adjacent to all open waters, streams, and wetlands on the site, to prevent water quality degradation due to erosion and sedimentation, protect stream banks, provide wildlife habitat, and to enhance watershed functions and values.

The establishment and maintenance of riparian areas next to streams and other open waters is addressed through the requirements of general condition 20, Mitigation. Please see the preamble discussion for general condition 20, where we address comments concerning requirements and recommended widths for riparian areas.

This NWP is reissued as proposed.

NWP 43. *Stormwater Management Facilities.* We proposed to modify this NWP to require pre-construction notification for the construction or expansion of stormwater management facilities, but not for maintenance activities. We also proposed to modify the 300 linear foot limit for the loss of stream bed by applying that limit to ephemeral streams. We proposed to allow district engineers to waive the 300 linear foot limit if the stream bed is intermittent or ephemeral and the filling and/or excavation of that stream bed will result in minimal individual and cumulative adverse effects on the aquatic environment. In addition, we proposed to remove the requirement for prospective permittees to submit maintenance plans and the permit text requiring the submission of compensatory mitigation proposals with pre-construction notifications.

One commenter suggested we refer to the definition of ''stormwater management facilities'' rather than furnish examples of the types of stormwater management facilities in the description of the NWP.

The text of the proposed NWP describes the type and nature of activities that are authorized in various stormwater management facilities (e.g., construction, maintenance, excavation, installation), rather than defining what constitutes a stormwater management facility. Therefore, we do not agree that the language within the text of the NWP is redundant or superfluous.

Several commenters requested we add restrictions to this NWP to exclude its use in special aquatic sites and/or prohibit construction of in-stream retention or detention basins and construction of hardened channels (e.g., concrete or riprap).

We do not agree it is necessary to prohibit the construction of in-stream retention or detention basins and/or hardened channels since division engineers can impose regional conditions to this NWP to exclude certain types of activities in specific streams, watersheds, or other designated aquatic resources to ensure impacts to the aquatic environment are minimal, individually and cumulatively. In addition, since construction and expansion activities require pre-construction notification, the district engineer can either require case-specific special conditions or exercise discretionary authority to require an individual permit if the proposed activity, such as construction of in-stream basins and/or hardened channels, would result in more than minimal adverse impact on the aquatic environment. All new construction and expansion of existing facilities requires a pre-construction notification.

Several commenters objected to the application of a 300 linear foot threshold for intermittent and ephemeral streams, while other commenters indicated the activities authorized under this NWP should apply exclusively to ephemeral streams and prohibit work in intermittent and perennial streams. One commenter stated that no stormwater management facilities should be constructed in waters of the United States.

We agree that intermittent and ephemeral streams often provide important functions, services, and values, although there are situations where activities in these streams will result only in minimal adverse effects on the aquatic environment. In many cases, the only practicable alternatives involve constructing stormwater management facilities in waters of the United States. The pre-construction notification process allows district engineers to review proposed construction and expansion activities on a case-by-case basis to ensure that those activities result in minimal individual and cumulative adverse effects on the aquatic environment.

In order for the 300 linear foot threshold for intermittent and ephemeral streams to be waived, the district engineer must make a written determination that the proposed work will result in no more than minimal adverse effects on the aquatic environment. If the district engineer does not provide written confirmation of the waiver, then the 300 linear foot limit remains in place and the prospective permittee must obtain another type of authorization for the proposed activity. As an added level of protection, division engineers can impose regional conditions to further restrict or prohibit the use of NWP 43 in high value perennial, intermittent and ephemeral streams. Please note that this NWP prohibits discharges of dredged or fill material to construct new stormwater management facilities in perennial streams.

Some commenters asserted that activities authorized under this NWP would result in adverse environmental impacts on spawning habitat or cause more than minimal adverse impacts to the aquatic environment if the 300 linear foot limit is waived, and, as a result should be evaluated under the Corps individual permit process.

In general, we believe the activities authorized under NWP 43 would result in minimal adverse impacts to the aquatic environment, including spawning habitat. Requiring individual permits for all activities that would otherwise qualify for authorization under NWP 43 based solely on the fact that they involve the loss of greater than 300 linear feet of ephemeral or intermittent stream bed would place an unnecessary burden on the Corps and the permittee, with negligible added environmental benefits. District engineers will use their knowledge of the local aquatic environments and case-specific circumstances to determine when proposed activities would result in more than minimal adverse effects on the aquatic environment and consequently require an individual permit. In addition, general conditions 2 and 3 provide for the protection of aquatic life movement and spawning habitat, respectively, which collectively we believe will help to ensure overall minimal impacts.

One of the commenters requested we establish criteria for the district engineer's determination to waive the 300 linear foot limit. One other commenter expressed concerns that in the absence of such guidelines there would be inconsistencies within the Corps as to how or to what degree the waiver is applied.

We believe deference must be given to the district engineers' expertise and knowledge of the local aquatic environment, as well as their assessment of information submitted in pre-construction notifications, to make case-specific determinations on the effects to the aquatic environment. Based on the inherent variability across the nation, we disagree that it is necessary or appropriate to establish nationally applicable criteria for the application of the waiver. Aquatic resource functions, services, and values differ across the United States and,

accordingly, there will be corresponding differences in the criteria considered for implementation of the waiver consistent with regional and/or local variations. District engineers will make their case-specific determinations on the appropriateness of the waiver based on the characteristics of the local aquatic environment and in consideration of the specific circumstances of the proposed activity.

Some commenters suggested we combine this NWP with NWP 3, Maintenance, since both include maintenance activities.

We believe the specific requirements of NWP 43 are necessary to allow for specific types of maintenance activities that may not be authorized by NWP 3. For example, NWP 43 authorizes activities necessary to return the storm water management facility to its original design capacities, which may include basins that are not considered structures or fills. In contrast, NWP 3 is limited to the repair, rehabilitation, or replacement of structures or fills, or the removal of accumulated sediments in the vicinity of existing structures.

A few commenters requested we provide clarifications to NWP 43, including whether maintenance and mitigation plans for these facilities would be required. Several commenters requested we retain the requirement for submittal of maintenance plans for stormwater management facilities. Other commenters indicated the pre-construction notifications should include maintenance plans, avoidance and minimization measures, and water quality management measures.

The removal of the requirement for prospective permittees to submit maintenance plans and compensatory mitigation plans with pre-construction notifications simplifies this NWP and eliminates redundancy with general condition 20, Mitigation. Maintenance plans are not necessary if maintenance does not increase the design capacity of the facility. For new construction or expansion of existing facilities, compensatory mitigation requirements are addressed in general condition 20, Mitigation. Division engineers also have the ability to impose regional conditions to ensure specific activities authorized under this NWP result in minimal adverse impacts on the aquatic environment.

One commenter indicated maintenance of an existing stormwater management facility should not require Department of the Army authorization.

We disagree with this comment. Unless an exempted activity, all work and/or actions that result in the discharge of dredged or fill material into waters of the United States require Department of the Army authorization.

One commenter opposed the elimination of the 1/10 acre pre-construction notification threshold.

We believe that pre-construction notification should be required for all new construction and expansion of existing facilities in order for the Corps to ensure that the individual and cumulative adverse environmental impacts associated with the project are minimal.

One commenter indicated this NWP should not apply to specific watersheds, while another commenter insisted we not re-issue this NWP.

We believe the stormwater management facilities authorized under NWP 43 often constitute vital development or improvement projects that serve important public functions, including protection of aquatic resources. While such activities may need to be located in waters of the United States, we believe the underlying provisions of the NWP program that require all authorized activities to have minimal impacts on the aquatic environment, coupled with the ability of division engineers to impose regional conditions on specific activities, will provide effective regulatory mechanisms for protecting the aquatic environment without adding further restrictions on the use of NWP 43.

One commenter indicated the prohibition on use in non-tidal wetlands adjacent to tidal waters is an unfair limitation to prospective permittees in coastal plains.

In consideration of the relatively high functions, services, and values these wetlands contribute to the overall health of the aquatic environment on a national basis, we do not agree that the prohibition on the use of NWP 43 in non-tidal wetlands adjacent to tidal waters is unfair to those perspective permittees located in coastal plains. More importantly, this prohibition is necessary to ensure that this NWP authorize only activities with minimal adverse effects, individually and cumulatively.

We have slightly revised the wording of this NWP to clarify that activities which increase existing capacity may be authorized as ''expansion'' of existing facilities if pre-construction notification is submitted.

This NWP is reissued as modified above.

NWP 44. *Mining Activities.* We proposed to simplify this NWP and modify it to authorize all types of mining activities except for coal mining. Surface coal mining activities may be authorized by NWP 21. Other types of coal mining activities may be authorized by NWP 49 (Coal Remining Activities) or NWP 50 (Underground Coal Mining Activities). This NWP continues to authorize aggregate mining and hard rock/mineral mining activities. We proposed to retain the ½ acre limit for this NWP.

A number of commenters supported reissuance of NWP 44, but opposed the ½ acre limit, stating that it is arbitrary and duplicative of other existing regulatory requirements, or is too stringent for the permit to be useable. Several commenters expressed support for the ½-acre limit and recommended adding a linear foot limit for stream impacts. One commenter recommended a ¼ acre limit for this NWP, to protect anadromous fish. One commenter recommended a 2,000 linear foot limit for impacts to streams.

We believe that the terms and conditions of this NWP, including the ½-acre limit, will ensure that activities authorized by this NWP result in no more than minimal adverse effects to the aquatic environment, individually and cumulatively. Aggregate and hard rock/mineral mining activities that do not qualify for authorization under this NWP can be authorized by individual permits. We believe the ½ acre limit is appropriate. We have modified the text of this NWP to clarify that the ½ acre limit applies to all non-tidal waters of the United States. This NWP only authorizes discharges of dredged or fill material into certain non-tidal waters of the United States. It does not authorize discharges into tidal waters, or non-tidal wetlands adjacent to tidal waters. As a pre-construction notification must be submitted for all activities, a specific linear foot threshold for streams is not necessary, as the district engineer can exercise discretionary authority or include special conditions to ensure that impacts to streams are no more than minimal. District or division engineers can condition this NWP on a case-by-case or regional basis to protect anadromous fish.

One commenter stated that ephemeral streams, isolated waters, and artificially created wetlands should not be considered in the acreage limitations.

The acreage limit for this NWP applies to waters of the United States. Impacts to non-jurisdictional waters are not considered as losses of waters of the United States, and are not counted towards the acreage limit for this NWP.

A couple of commenters stated that the reclamation plan should not be required as part of the pre-construction notification. Pre-construction notifications are frequently submitted to the Corps before reclamation plans are

required and the Corps has no authority over mining reclamation.

The Corps needs to review the reclamation plan to ensure that the authorized activities, including any required reclamation, do not result in more than minimal adverse environmental impact. In addition, reclamation activities may affect the need to require compensatory mitigation.

Several commenters opposed the removal of the prohibition on using NWP 44 in 100-year floodplains, while one commenter stated that certain mining activities will increase the flood storage capacity of floodplains and streams and thereby reduce flooding, which would benefit local communities.

In accordance with general condition 10, permittees must comply with applicable state or local floodplain management requirements that have been approved by the Federal Emergency Management Agency. In addition, the Corps will address impacts to 100-year floodplains through the case-by-case review that occurs through the pre-construction notification process.

Several commenters supported the simplification of NWP 44 by eliminating redundant terms and conditions. One commenter questioned whether the permittee could mine the same area over and over for aggregates as new deposits accumulate each year. This commenter also asked whether there is a limit on the number of times or locations that the permit can be used by one mining company, what kind of separation is necessary between mining sites, and whether this NWP can be used by one mining company on multiple streams.

This NWP can be used for any single and complete mining activity that has independent utility. The definitions of ''single and complete project'' and ''independent utility'' are provided in the ''Definitions'' section. Therefore, it is possible for an applicant to use this NWP each year or on multiple sites, provided each activity is a single and complete project that complies with the terms and conditions of the NWP, including the requirement that the individual and cumulative adverse environmental impacts are minimal. In response to pre-construction notifications, district engineers will determine whether proposed mining activities constitute separate single and complete projects that qualify for NWP authorization.

A number of commenters were opposed to the reissuance of NWP 44 because they believe the environmental impacts associated with the permit are more than minimal, and could result in significant adverse effects to rivers and streams, including those with important fish and mussel species. One commenter stated that this NWP does not satisfy the ''similar in nature'' requirement for general permits. One commenter recommended that the Corps establish an activity-specific NWP for the aggregates industry. One commenter recommended excluding peat mining and in-stream gravel mining, due to the environmental damage produced by these types of mining.

This NWP authorizes mining activities that have no more than minimal individual and cumulative adverse effects on the aquatic environment. The terms and conditions of this NWP, including the NWP general conditions, will ensure that these mining activities will have no more than minimal adverse environmental effects. All activities authorized by this NWP require pre-construction notification to the district engineer prior to commencement of mining activities. The pre-construction notification process allows district engineers to review mining activities on a case-by-case basis, to ensure that the proposed work has no more than minimal adverse effects on the aquatic environment. The district engineer can add special conditions to the NWP authorization to ensure that any adverse effects on the aquatic environment are no more than minimal, or exercise discretionary authority to require an individual permit for the work. This NWP complies with the ''similar in nature'' requirement of general permits because it authorizes a specific category of activities (i.e., mining activities, except for coal mining activities).

One commenter recommended that the NWP be revoked in Montana because these activities would have more than minimal adverse environmental effects. One commenter also stated that the permit is not adequately coordinated with state and federal resource agencies and eliminates the public interest review.

Division engineers may add regional conditions to this NWP to enhance protection of the aquatic environment and address local concerns. Division engineers can also revoke this NWP in a specific geographic area if the use of that NWP would result in more than minimal adverse effects on the aquatic environment, especially in high value or unique wetlands and other waters.

This NWP is reissued with the modification discussed above.

NWP 45. *Repair of Uplands Damaged by Discrete Events.* This was proposed as NWP A. We proposed to remove paragraph (iii) and portions of paragraph (i) from NWP 3 to this new NWP, to authorize emergency repair activities. This was intended to simplify NWP 3 and limit that NWP to routine maintenance activities.

Numerous commenters supported the issuance of this new NWP.

The majority of the comments received in response to the proposed NWP involved general concerns regarding the way in which this permit could affect time critical responses for emergency situations. Many commenters stated that authorization of the repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms or other discrete events should remain in NWP 3, since NWP 3 did not require pre-construction notification for those activities. Therefore, NWP 3 would allow expeditious maintenance activities, especially for infrastructure and other important features.

We agree, and have returned the language to NWP 3 that authorizes the repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms or other discrete events. We wish to clarify that this NWP is not intended to serve as an emergency permit. An ''emergency'' is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action is not undertaken within a time period that does not allow the Corps to process the application under standard procedures. As many commenters pointed out, pursuant to 33 CFR 325.2(e)(4), the Corps has already developed special permitting and permit application processing procedures for emergency situations, which are applicable to all types of DA permits. Further, as several commenters indicated, in accordance with 33 CFR 323.4(a)(2), certain emergency response activities are exempted from the permitting requirements of Section 404 of the Clean Water Act. As a result of the changes discussed above, this NWP authorizes only the restoration of upland areas damaged by storms, floods, or other discrete events. Those repairs may or may not require emergency processing, though in most cases we believe they will not. We believe that the confusion regarding the purpose of this NWP was caused by the inclusion of the word ''Emergency'' in its name. In order to remove that confusion, we are renaming this NWP ''Repair of Uplands Damaged by Discrete Events.''

Several commenters expressed concerns over the lack of clear limits for this NWP, and recommended

establishing acreage or linear-foot limits in order to prevent more than minimal impacts to the aquatic environment. On the other hand, several commenters suggested establishing thresholds that would require pre-construction notification only for large-scale activities. One commenter asked how ''pre-event'' bottom contours of waterbodies would be determined, particularly on those sites with limited or no data, aerial photos, or other information.

This NWP only authorizes the restoration of damaged uplands to the extent that existed before the damage occurred, along with any bank stabilization necessary to protect the restored uplands. This NWP may also authorize minor dredging where necessary to restore material that has washed from the uplands into a neighboring waterbody. Since this NWP only authorizes activities to restore damaged areas to previously existing conditions, we do not believe that it will result in adverse effects that did not previously exist. We believe that the pre-construction notification requirements established for this NWP are necessary to ensure that the proposed activities will result in no more than minimal adverse effects. We recognize that the pre-construction notification requirement imposes an additional burden on project proponents, but we do not believe that it is inequitable or, in most circumstances, substantial. The district engineer has discretionary authority to require an individual permit for any proposed activity that will have more than minimal individual or cumulative adverse effects on the environment, and the pre-construction notification requirement is necessary for the effective use of this authority. When reviewing pre-construction notifications, district engineers will use available information, including documentation provided by permit applicants in accordance with the ''Notification'' provision of this NWP, to determine the pre-existing conditions. If maps or photographs are not available, the district engineer's judgment will be used.

One commenter stated that this NWP could interfere with tribal rights, including treaty fishing access, and that it could severely impact anadromous salmonid habitat.

District engineers can impose special conditions or assert discretionary authority and require an individual permit for projects that have more than minimal adverse effect on the aquatic environment or other public interest factors. Furthermore, activities authorized under this NWP must comply with the NWP general conditions, including general condition 16, Tribal Rights, and general condition 2, Aquatic Life Movements.

One commenter requested clarification regarding the effects of changes in the ordinary high water mark after discrete storm or flood events on the scope of activities authorized under this NWP.

Discrete storm or flood events may result in erosion, which can change the ordinary high water mark (OHWM) in non-tidal waters or high tide line (HTL) in tidal waters. For the purposes of this NWP, determinations regarding the location of the OHWM or HTL will be made by the district engineer upon receipt of the pre-construction notification.

One commenter stated that this NWP is unnecessary since repair activities that do not exceed the original scope of the project should be covered by the original authorization. One commenter stated that the Corps should not allow rebuilding of structures located in floodplains which are likely to be damaged again by subsequent storm events.

This NWP authorizes the restoration of uplands damaged by a discrete event, in cases where there is no available authorization to restore those areas. There would be no original authorization for natural uplands that were damaged by a discrete event. Man-made uplands may have been constructed without the need to obtain a Department of the Army permit.

Activities authorized by NWP must comply with general condition 10, Fills within 100-year Floodplains, which requires all NWP activities to comply with any applicable FEMA-approved state or local floodplain management requirements. We do not agree that there should be a prohibition against rebuilding structures in floodplains. Such decisions should be made by the appropriate state or local authorities, in accordance with FEMA-approved floodplain management requirements.

A number of commenters stated that the terms of the NWP were contradictory with regards to the start date of the authorized activity. These commenters requested clarification as to whether the work must commence within two years from the date of the damages or from the date the pre-construction notification is filed.

We have modified the text of this NWP to clarify that activities authorized by this permit must commence, or be under contract to commence, within two years of the date of damage. This change will make the second paragraph of this NWP consistent with the pre-construction notification requirements for this NWP. This requirement may be waived by the district engineer if the permittee can show that delays were unavoidable.

One commenter indicated that this NWP should also authorize temporary impacts that are necessary to repair or provide maintenance to damaged structures.

This NWP does not authorize temporary fills, structures, or work required to conduct the upland restoration activities. Those temporary activities may be authorized by NWP 33.

Proposed NWP A is issued as NWP 45, with the modifications discussed above.

NWP 46. *Discharges in Ditches.* This NWP was proposed as NWP B to authorize discharges of dredged or fill material into certain types of ditches and canals. This NWP allows a landowner to return his or her land to its prior condition, but only in those cases where the ditches or canals meet all four criteria specified in the NWP. To qualify for this NWP, those ditches and canals must: (1) Be constructed in uplands, (2) receive water from another water of the United States, (3) divert water to another water of the United States, and (4) be determined to be waters of the United States. These four criteria will limit the use of this NWP to those ditches and canals that generally provide few aquatic resource functions. This proposed NWP does not authorize discharges of dredged or fill material into ditches or canals that were constructed in waters of the United States, such as streams.

Several commenters supported the new NWP. Several commenters stated that the limits for this NWP are too high to prevent more than minimal impacts on the aquatic ecosystem, particularly to flood storage and water quality. Several commenters recommended establishing a 300 linear foot threshold for pre-construction notification and a ½ acre limit on permitted impacts, in order to be consistent with other NWPs. Another commenter stated that filling ditches should not be allowed without an assessment of how the hydrology was altered when the ditch was created and how the hydrology and water quality would be affected if it is filled. Another commenter recommended requiring pre-construction notification for all activities under this NWP, because authorized activities could result in isolating wetlands that are adjacent to the ditches and severing the migratory pathways of aquatic organisms. On the other hand, one commenter stated that since the ditches regulated by this

permit have been determined to provide few aquatic resource functions, the thresholds for pre-construction notification and limits for permitted impacts should be increased. Similarly, one commenter suggested that this NWP should not have any limits, because the regulated ditches are not natural.

This NWP authorizes discharges of dredged or fill material into certain types of ditches. Those ditches must meet all of the criteria listed in the first paragraph of the NWP. To ensure that this NWP is used only to authorize discharges into those types of ditches, and to ensure that those activities result in minimal adverse effects on the aquatic environment, we are requiring pre-construction notification for all activities. To address concerns regarding the jurisdictional status of the waters of the United States other than the ditch to be filled, we have changed the text of this NWP to state that those other waters had to have been waters of the United States prior to the construction of the ditch. Therefore, the jurisdictional status of those waters should remain unchanged after the ditch is filled.

We are retaining the proposed one acre limit for this NWP. We believe that the applicable provisions and terms and conditions, including the general conditions, the pre-construction notification requirements, and the ability of division and district engineers to assert discretionary authority and impose regional and case-specific conditions on this NWP, will ensure that the activities authorized will result in no more than minimal individual and cumulative adverse effects on the aquatic environment.

One commenter stated that a determination of absence or presence of salmonids should be required in channels potentially accessible by anadromous salmonids. Another commenter said that this NWP should not authorize discharges of dredged or fill material into streams.

Potential impacts to salmon species will be considered by district engineers during the review of pre-construction notifications. General condition 2, Aquatic Life Movements, prohibits activities which could disrupt the necessary life cycle movements of aquatic species. If deemed appropriated, this NWP can be regionally conditioned by division engineers to limit or restrict the use of this NWP in waters accessible to anadromous salmonid species. The text of this NWP clearly states that it does not authorize discharges into streams, or streams that have been relocated into uplands.

Several commenters stated that the proposed NWP is contrary to Section 404(e) of the Clean Water Act because it is not a general permit for a category of activities that are similar in nature but rather a permit for a category of waters, and that the Corps has no authority to issue a permit for a category of waters. One commenter suggested that the Corps clarify that the NWP is not limited to situations where the landowner seeks to return his or her land to its prior condition. One commenter requested clarification on whether impacts to roadside ditches for road improvements can be permitted under this NWP, or if NWP 14 would be applicable. Similarly, another commenter suggested that fill for access roads should be included in this NWP.

We expect that this NWP will be mostly used by landowners to return ditches or portions of ditches to their prior upland condition. However, this NWP may also authorize ditch relocation and reshaping activities. To help ensure that this NWP only authorizes activities with minimal individual and cumulative adverse effects on the aquatic environment, we have added language stating that this NWP does not authorize discharges of dredged or fill material that will increase the drainage capacity of the ditch and will drain other waters of the United States. In the event that the ditch is returned to its prior upland condition, the Corps would no longer have regulatory jurisdiction over that ditch. This NWP may authorize discharges of dredged or fill material into roadside ditches, provided those ditches meet all four criteria specified in the first paragraph of this NWP. Access roads may be authorized by other NWPs, regional general permits, or individual permits.

One commenter requested clarification as to whether all four or only one of the four eligibility criteria are needed for a project to be authorized under this NWP. The same commenter requested clarification on the eligibility criterion ''receive water from another waters of the United States.'' One commenter asked whether this NWP could be used to authorize discharges of dredged or fill material into both tidal and non-tidal waters of the United States. One commenter said that this NWP should not authorize discharges into canals, because canals can be large aquatic systems and the adverse environmental effects could be more than minimal.

This NWP applies only to those ditches that meet all four criteria specified in the first paragraph of the NWP. The second criterion for eligible ditches refers to situations where the ditch constructed in uplands receives surface water flow from another water of the United States that existed prior to the construction of that upland ditch.

To ensure that this NWP authorizes only those activities with minimal individual and cumulative adverse effects on the aquatic environment, we have limited this NWP to discharges of dredged or fill material into non-tidal ditches. In addition, it does not authorize discharges of dredged or fill material into navigable waters of the United States (i.e., section 10 waters). We have removed the word ''canal'' from this NWP, to provide further clarity since canals may be navigable waters of the United States. Discharges into a non-tidal ditch that flows into a tidal water could be covered under NWP 46, but not discharges into a ''tidal'' ditch, *i.e.*, one into which tidal waters flow.

A number of commenters questioned or requested clarification of Corps jurisdiction over ditches following the Supreme Court decisions in Rapanos and Carabell. One commenter requested clarification on whether the term ''water of the United States'' includes wetlands or only waterbodies, and whether a ditch connecting two wetlands would qualify for authorization under this NWP. One commenter suggested providing guidelines for or examples of the information required to determine that a ditch was constructed in uplands.

This NWP can be used to authorize discharges of dredged or fill material into ditches that meet the four criteria in the first paragraph, as well as the other terms and conditions of this NWP. The waters of the United States other than the ditch constructed in uplands may consist of wetlands, open waters, or both. This preamble does not address the limits of jurisdiction after Rapanos and Carabell.

Data used to determine whether a ditch was constructed in uplands may be obtained from a variety of sources, such as aerial photographs, soil surveys, property maps, plans, plots or plats, previous jurisdictional determinations and data sheets, topographical maps, wetland inventory maps, and photographs.

One commenter stated that mitigation should be required for impacts to wetlands and aquatic life that may be established in those ditches. In contrast, another commenter stated that requiring mitigation for reversion to a prior upland condition is excessive and unreasonable.

We do not believe that it would be appropriate or practical to establish a national standard requiring mitigation

for all activities authorized by this NWP. The need for compensatory mitigation to ensure minimal individual and cumulative adverse effects will be made by district engineers on a case-by-case basis, in response to pre-construction notifications. We believe that the provisions of general conditions 27 and 20 will allow the district engineer to determine if any compensatory mitigation is needed to reduce the effects of the activities authorized under this permit to the minimal level.

One commenter suggested that the one-acre limit should not apply if the impacted ditch is replaced with another ditch that would perform the same functions.

Although this NWP may be used to authorize discharges of dredged or fill material into ditches for the purpose of relocating those ditches, the one acre limit applies to the loss of waters of the United States that results from the discharge of dredged or fill material into the existing ditch.

One commenter requested clarification on how the ''constructed in uplands'' criterion reconciles with Corps policy at 51 FR 41217, under which ditches excavated on dry land are generally not waters of the United States.

The proposed NWP is consistent with the policy established in the November 13, 1986 **Federal Register** Notice (51 FR 41217), because that policy also states that the Corps reserves the right on a case-by-case basis to determine whether non-tidal ditches excavated on dry land or other features constitute waters of the United States.

One commenter requested clarification on how this NWP reconciles with the Section 404 exemption for construction and maintenance of irrigation ditches at 33 CFR 323.4(a)(3).

The Section 404 exemption at 33 CFR 323.4(a)(3) applies to construction and maintenance of irrigation ditches or the maintenance of drainage ditches. This NWP authorizes activities not covered in the exemption, such as discharges of dredged or fill material to restore the area to its previous upland condition.

One commenter stated that this NWP should not be issued because it is contrary to the Congressional intention that ditches should be regulated as point sources and not as navigable waters.

This preamble does not address the limits of Clean Water Act jurisdiction. To the extent that ditches are determined to be waters of the United States, this permit provides authorization for discharges of dredged or fill material into them provided all conditions for its use are met.

One commenter recommended providing definitions for ''ditch'' and ''canal''.

We believe that district engineers should maintain the discretion to determine on a case-by-case basis whether particular features are ditches or canals and also are waters of the United States.

Proposed NWP B is issued as NWP 46 with the modifications discussed above.

NWP 47. *Pipeline Safety Program Designated Time Sensitive Inspections and Repairs.* In the September 26, 2006, **Federal Register** notice, we proposed this NWP (as proposed NWP C) to authorize the inspection, repair, rehabilitation, or replacement of any currently serviceable structure or fill for pipelines that are determined to be time-sensitive in accordance with the Pipeline and Hazardous Materials Safety Administration's Pipeline Safety Program (PHP), including its criteria at 49 CFR parts 192 and 195.

Thirteen comment letters were received concerning this proposed NWP with six expressing strong support for its issuance but also inquiring about the applicability of general conditions 17 (Endangered Species) and 18 (Historic Properties) to the use of the permit. Six commenters recommended that the Corps enter into programmatic ESA consultation with PHP and the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

This NWP only authorizes activities that are included in the U.S. Department of Transportation's Pipeline Repair and Environmental Guidance System (PREGS). The PHP is the lead Federal agency for these activities and, as such, conducts any Section 7 consultation required under the Endangered Species Act and consultation required under Section 106 of the National Historic Preservation Act. In cases where PHP has not conducted consultation required by either Section 7 of the Endangered Species Act, or Section 106 of the National Historic Preservation Act, permittees are required by 33 CFR 330.4(f) and (g) to notify the Corps if there are threatened or endangered species or critical habitat, or historic properties that might be affected or are in the vicinity of the project.

One commenter declared that ''inspections'' should be removed from the list of authorized activities since technology exists which allows pipeline operators to evaluate a pipeline without the need to visually inspect it. One commenter said that this NWP should not authorize the repair of pipelines that have deteriorated as a result of neglect. Two commenters stated that acreage limits should be placed on the NWP. One commenter remarked that access roads should be authorized by the NWP because problems will occur when an activity requires use of multiple NWPs and one of the other NWPs has an acreage limit.

We disagree with the first two comments of the preceding paragraph. Pipeline inspections are critical activities related to the repair of these pipelines. In certain instances it is necessary that the pipeline be visually inspected, and this permit allows excavation to expose the pipeline. Impacts authorized under this NWP will be temporary in nature so the aquatic resources will recover over time. This NWP provides Department of the Army authorization for the repair, rehabilitation, or replacement of currently serviceable pipelines. These pipelines are unlikely to become unserviceable as a result of neglect, since operators are required to periodically inspect these pipelines and make necessary repairs or replacements. We do not believe acreage limits are necessary, given the nature of the category of activities authorized by this NWP. Access roads will not generally need to be constructed to conduct the pipeline inspection and repair, since access roads would likely have been built at the time the pipeline was constructed, or the terrain will not impede access to the pipeline. If temporary access roads are necessary to conduct the pipeline inspection and repair activity, they are authorized by this NWP as long as they are removed upon completion of the work. This NWP requires that all temporary structures and fill be removed and the area restored to preconstruction elevations. We have modified paragraph (c) of this NWP so that it is consistent with general condition 13, Removal of Temporary Fills.

One commenter inquired as to why temporary activities are included in the proposed NWP when this work is being removed from other NWPs that authorize maintenance. Two commenters requested we add a pre-construction notification requirement for environmentally sensitive areas. One commenter said the pre-construction notification should be required for all activities. Two commenters were against and one commenter supported prohibiting division engineers from placing regional conditions on the NWP.

Since the objective of this NWP is to authorize inspections and repairs for eligible pipelines in a timely manner, the NWP authorizes temporary activities necessary to conduct the inspection,

repair, rehabilitation, or replacement activity. We do not agree that it is necessary to require pre-construction notification for these activities, since PHP is the lead Federal agency for these activities. Submitting a pre-construction notification when a pipeline is in critical need for repair will delay the repair and increase the risk that the pipeline will leak and cause more damage to the aquatic environment, particularly environmentally sensitive areas. Given the nature of the activities authorized by this NWP, as well as its objective of authorizing these activities in a timely manner, we believe it is unnecessary for division engineers to regionally condition this NWP. However, division engineers can impose regional conditions on this NWP that are limited to measures necessary to minimize adverse effects to the aquatic environment, as long as those regional conditions do not require pre-construction notification or cause delays to inspection and repair activities. We have added a ''Note'' to this NWP to explain what types of regional conditions may be added by division engineers.

Two commenters suggested that in order for water quality certifications to be issued, a list of ''time-sensitive'' activities as well as appropriate best management practices must be provided by PHP and an opportunity for public comment should be given for the best management practices. One commenter stated PHP has not made all the best management practices available to the pipeline operators yet.

We do not agree that it is either necessary or feasible to provide a list of time-sensitive activities or best management practices for states, Indian tribes, and EPA to make their water quality certification decisions for this NWP. In response to concerns raised by states or tribes through the water quality certification process, districts may add regional conditions as long as they do not preclude its use for time sensitive repairs. Identification of time-sensitive activities will be made in the future, as the program is implemented. Best management practices may vary by region, and we do not believe it is necessary for PHP to solicit public comment on those best management practices prior to implementing this NWP.

Proposed NWP C is issued as NWP 47 with the modifications discussed above.

NWP 48. *Existing Commercial Shellfish Aquaculture Activities.* We proposed to issue this new NWP to authorize ongoing shellfish aquaculture activities throughout the United States.

The majority of commenters expressed their support for this new NWP, stating that existing commercial shellfish operations do not have more than minimal adverse impacts on the aquatic environment and contribute benefits to the ecosystem that balance any adverse impact. Referencing numerous scientific studies as evidence of the beneficial aspects of shellfish culture, many of these commenters expressed their desire for the 25-acre threshold for pre-construction notification to be raised considerably, or eliminated entirely, stating it was arbitrary and created an unnecessary bureaucratic paperwork burden for the operators and the Corps. In addition, many commenters recommended that the NWP not be limited only to existing operations but also be available for the expansion of existing operations and for new operations. One commenter supported limiting this NWP to existing operations. A few commenters objected to the issuance of this NWP, stating that commercial shellfish aquaculture operations of unlimited size threaten submerged aquatic vegetation, shorebirds, and other estuarine resources, and potentially exceed the minimal impact threshold, both individually and cumulatively. Several commenters believed that potential for adverse impacts was related more to specific activities than to the geographic extent of an operation, and that whether an operation engaged in these activities was thus a better basis for limits or pre-construction notification thresholds. One commenter recommended requiring pre-construction notification for the use of canopy predator nets that cover broad areas of an aquaculture operation because of potential impacts to a variety of aquatic species. One commenter recommended requiring pre-construction notification for all activities authorized by this NWP, while another commenter suggested a simple reporting requirement in lieu of a pre-construction notification.

Since shellfish improve water quality and increase food production, we believe that there is generally a net increase in aquatic resource functions in estuaries or bays where shellfish are produced. We do not believe it is necessary to require pre-construction notification for all activities authorized by this NWP, including those that involve canopy predator nets. Concerns regarding the use of canopy predator nets are more appropriately address through regional conditions imposed by division engineers, or by special conditions added to NWP authorizations by district engineers. After review of the comments and of scientific literature, we have modified the pre-construction notification requirements. Pre-construction notification will be required if the project area is greater than 100 acres or if the operation conducts any of the following activities: any reconfiguration of the aquaculture activity, such as relocating existing operations into portions of the project area not previously used for aquaculture activities; a change in species being cultivated; a change in culture methods (e.g., from bottom culture to off-bottom culture); or dredge harvesting, tilling, or harrowing in areas inhabited by submerged aquatic vegetation. We do not believe it is necessary to require pre-construction notification for on-going operations, unless the project area is greater than 100 acres or the operation involves dredge harvesting, tilling, or harrowing in areas inhabited by submerged aquatic vegetation, since on-going operations not meeting these criteria are unlikely to result in significant adverse environmental effects. However, in order to generate better information for future permitting decisions, for those activities that do not require pre-construction notification, we are requiring operators to submit a brief report that will provide the district engineer with basic information on the activity. The report must include the size of the project area, the location of the aquaculture operations, a brief description of the culture methods used, a brief description of the harvesting method(s) used, the name(s) of the cultivated species, and a statement addressing whether canopy predator nets will be used. For each existing operation not submitting a pre-construction notification, the report needs to be submitted within 90 days of the effective date of this NWP. Following submission of this one-time report, no further reporting is necessary. However, if there are any changes to the operation that require Department of the Army (DA) authorization, then pre-construction notification is required if the proposed changes meet any of the pre-construction notification triggers. Depending on the region and culture method used, there may be additional restrictions (e.g., limits on timing of certain activities) that are necessary to further minimize impacts to aquatic resources. These regional concerns are best addressed by district engineers in coordination with State and local agencies and handled through regional conditioning.

Many commenters were confused about the definitions of ''existing

operation'' and ''project area'' and requested clarification of these terms.

For the purposes of this NWP, an existing operation is one that has been granted a permit, license, or lease from a state or local agency specifically authorizing commercial aquaculture activities and which has undertaken such activities prior to the date of issuance of this NWP. For the purposes of this NWP, the project area is defined as the area of waters of the United States occupied by the existing operation. In most cases, the project area will consist of the area covered by the state or local aquaculture permit, license, or lease. The project area may consist of several sites that are not contiguous. The project area may include areas in which there has been no previous aquaculture activity and/or areas that periodically are allowed to lie fallow as part of normal operations. Relocation of existing operations into portions of the project area not previously used for aquaculture activities may be authorized by this NWP but will require a pre-construction notification. Cultivation in areas that were previously used but allowed to lie fallow does not require a pre-construction notification. Operators should maintain appropriate documentation showing which areas were previously cultivated.

This NWP is limited to work associated with the continued operation of existing commercial shellfish operations, many of which have been in place for hundreds of years. The potential for adverse environmental impacts from such existing operations is minimal, and we support the objectives of the U.S. Department of Commerce's Aquaculture Policy to increase shellfish productivity in this country. Although we believe new projects and the expansion of existing operations are also unlikely to have a high potential for adverse affects on the aquatic environment, without an established data set from which to work, we are not prepared to include them in this NWP at this time. Although new projects and the expansion of existing operations are not authorized initially by this NWP, once authorized by another form of DA permit, such as a regional general permit or an individual permit, the commercial shellfish activities may continue in accordance with the terms and conditions of the issued permit and/or this NWP. Division engineers will conduct regional reviews of commercial shellfish aquaculture activities in coordination with interested agencies and shellfish producers over the next 5 years. After these reviews are completed, we may be prepared to propose an NWP to authorize new commercial shellfish aquaculture operations and the expansion of existing operations in the next NWP re-issuance cycle. The information gathered through the pre-construction notification process and reporting requirement for existing operations in the current NWP will support this effort.

Several commenters expressed confusion regarding whether ongoing commercial shellfish operations require reauthorization under this NWP, if those existing operations have previously been permitted by the Corps.

Existing operations previously authorized by another NWP or another form of DA permit, such as a regional general permit or an individual permit, are covered until the expiration of the original permit. If the operator wishes to continue, and the operation's size, conditions, and/or practices trigger the pre-construction notification requirements of this NWP, then a pre-construction notification must be submitted to the appropriate district office for review prior to the expiration date of the original permit in order to remain in compliance with Federal laws. If the pre-construction notification requirements are not triggered, the operator must submit the required brief report within 90 days of the beginning of coverage under this NWP.

This NWP authorizes the continued operation of existing commercial shellfish aquaculture operations. The continued operation of an aquaculture activity may involve removing and replacing structures in navigable waters of the United States on a recurring basis and requires a current DA permit. However, if an operator is installing a fixed structure, the construction period for a DA permit is the period of time where the permittee is authorized to conduct work in navigable waters of the United States and/or discharge dredged or fill material into waters of the United States. Once the DA permit expires, further authorization is not required to maintain the structures or fills, but if additional work in navigable waters or discharges of dredged or fill material in jurisdictional waters are necessary for the continued operation of those activities, then another DA permit is required.

Many commenters were confused about the requirement to submit a pre-construction notification, assuming that having to submit a pre-construction notification meant that an individual permit would be required. The requirement to submit a pre-construction notification does not mean that an individual permit will be required. Instead, it means that a district office will review the project, in coordination with appropriate resource agencies, within a 45-day timeframe and respond to the applicant with either a verification of the applicability of the NWP or a determination that an individual permit, or other type of DA permit, is required. If the applicant does not hear back from the Corps within 45 days, he or she may assume that the operation is authorized by the NWP.

A pre-construction notification is a brief document that is intended to provide the district engineer with enough information to determine whether an activity is authorized by NWP. The information requirements for a pre-construction notification are listed in paragraph (b) of general condition 27, Pre-Construction Notification. Detailed studies or analyses are not required for pre-construction notifications. The required description of the direct and indirect adverse environmental effects that are expected to result from the NWP activity should be brief, but with sufficient detail to allow the district engineer to determine whether the adverse environmental effects will be minimal and assess the need for compensatory mitigation. The description for the pre-construction notification should include the size of the project area, the name(s) of the species being cultivated, the types of cultivation methods (e.g., long lines, bottom culture, rack and bags), and the harvesting method (e.g., hand pick, dredge, long line harvest). The description should also state when dredge harvesting, harrowing, or tilling will occur in waters with SAV.

For all projects that do not trigger the pre-construction notification requirements of the NWP, submission of a brief report is required. This reporting requirement will help us monitor the use of this NWP, to help ensure that it authorizes only those activities that have minimal individual and cumulative adverse effects on the aquatic environment and other public interest review factors. We have attempted to keep the reporting requirement as simple as possible, to minimize administrative burdens on operators.

A few commenters suggested that NWP 48 is unnecessary because NWPs 4 and 27 adequately cover all the needs of commercial shellfish operations.

Although shellfish seeding activities were authorized by previous versions of NWP 4, that NWP did not authorize additional structures or work in navigable waters commonly associated with commercial shellfish aquaculture activities, such as the installation of stakes and netting in navigable waters to

prevent predators from feeding upon the shellfish. Because of the issuance of this NWP and the modification of NWP 27, it is no longer necessary to include shellfish seeding in the list of activities authorized by NWP 4 and we have removed it. NWP 27 does not cover commercial shellfish operations. It covers shellfish habitat restoration activities, including shellfish seeding, that are conducted to restore shellfish populations. Restored populations may, at some future date, be subject to recreational harvesting; but the purpose of activities conducted under NWP 27 is restoration, not commercial aquaculture. Although NWP 48 represents a change in how commercial shellfishing operations are being regulated by the Corps, structures and other work in navigable waters of the United States have been regulated activities for decades. Discharges of dredged or fill material into waters of the United States have been regulated under Section 404 of the Clean Water Act since 1972, but the definitions of these terms have changed over the years. Individual permits remain a permitting tool that will be necessary in some circumstances. There are several districts that currently have regional general permits in place to authorize aquaculture activities and more general permits are expected to be developed.

In the preamble to the September 26, 2006, proposal, we solicited comments on whether to impose limits on the quantity of dredged or fill material that could be discharged into navigable waters under this NWP. One commenter said that this NWP should be conditioned to prohibit discharges of dredged or fill material or to require pre-construction notification for each activity involving such discharges. Many commenters stated that there should be no limitation on the quantity of dredged or fill material that could be discharged into navigable waters because the cost of such material is limiting and also because most of the material is removed during harvest. Many mentioned large Federal restoration projects that have utilized shellfish seeding methods to enhance estuaries. Several commenters objected to having no limits and several suggested limiting the discharge to 3 to 6 inches or a certain percentage of the water column. Several others indicated that materials such as marl, concrete, and gravel, in addition to shell and shell fragments, should be included in the material authorized for discharge.

It would be illogical to prohibit discharges of dredged or fill material under this permit, since without such discharges, no permit is required anyway. This NWP authorizes discharges of dredged or fill material into waters of the United States only for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities for on-going commercial shellfish aquaculture activities. With the exception of harvesting activities, such discharges usually enhance habitat characteristics to support the growth of shellfish. As for harvesting activities, pre-construction notification is required for dredge harvesting in areas inhabited by submerged aquatic vegetation, so case-by-case review will be conducted to determine if the activity results in more than minimal adverse effects on the aquatic environment. Pre-construction notification is also required for tilling and harrowing in submerged aquatic vegetation. Other harvesting activities that are part of on-going activities are unlikely to result in more than minimal adverse effects. Division engineers may impose regional conditions on this NWP to further restrict cultivation or harvesting practices or to require pre-construction notification for additional practices that may be of concern within a particular area.

Many commenters expressed concern over whether the gear associated with commercial shellfish culture would be authorized by this NWP, noting that much of the in-water gear serves as habitat for other aquatic species and is necessary for the success of a commercial shellfish venture. Other commenters expressed concern over the waste and trash left by geoduck operations and the adverse impacts that litter has on the surrounding intertidal environment.

This NWP authorizes structures or work in navigable waters of the United States, as well as discharges of dredged or fill material into all waters of the United States for the purposes of the commercial seeding, rearing, cultivating, transplanting, and harvesting of shellfish, which may involve the installation of buoys, floats, racks, trays, nets, lines, tubes, and containers, as well as other associated structures and work. The language of the NWP has been modified to clarify that it does not authorize the discharge of dredged or fill material into waters of the United States for attendant features of commercial aquaculture operations such as boat ramps, stockpiles, staging areas, and moorings or for the deposition of shell material back into tidal waters as a waste material. As stated above, discharges of dredged or fill material below the high tide line/ordinary high water mark must be of the minimum necessary to provide suitable planting substrate. Examples of commercial shellfish species for which this NWP may be used to authorize existing commercial aquaculture activities include oysters, clams, geoducks, mussels, and scallops. The proposed NWP does not authorize commercial aquaculture activities for crustaceans or finfish. Types of gear specific to a particular region or species are best evaluated on a regional basis by the district engineer and can be addressed through regional conditions.

There are different types of shellfish seed that can be used to increase shellfish production. Shellfish seed may consist of immature individual shellfish, an individual shellfish attached to a shell or shell fragment (i.e., spat on shell) and shellfish shells, shell fragments, and/or shell fragments mixed with gravel/concrete/limestone placed into waters to provide a substrate for attachment by free swimming shellfish larvae (i.e., natural catch). Several commenters asked that we clarify the definition of shellfish seeding. We have provided a definition of shellfish seeding in the ''Definitions'' section of the NWPs. This definition was based on the definition provided in the preamble to the September 26, 2006, **Federal Register** notice (71 FR 56275).

Most commenters asked that we clarify our definition of submerged aquatic vegetation (SAV) and asked that we limit our concern to those species of aquatic vegetation that have been shown to have beneficial environmental effects. Some commenters expressed concern that any commercial aquaculture activity would have a negative impact on SAV and therefore this NWP should not be issued. Many commenters asked that we remove the pre-construction notification requirement for operations having more than 10 acres of the project area occupied by SAV, stating that shellfish beds clarify the water thereby increasing the likelihood that SAV would colonize their project area. A few commenters suggested that we define the density of bed and length of time present (i.e., recognize seasonal population fluctuation) necessary to trigger the reporting requirement.

Commercial shellfish aquaculture activities often take place in, and are found to co-exist with, intertidal areas that are occupied by submerged aquatic vegetation (i.e., vegetated shallows). The definition of vegetated shallows (see Part D, Definitions) clarifies that vegetated shallows are those areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in

freshwater systems. Macroalgae are not included in our definition of SAV nor is it our intent to provide protection for noxious or invasive species such as *Zostera japonica.* However, to minimize adverse effects to valuable aquatic habitat, such as shallows vegetated by species such as *Zostera marina,* we are requiring pre-construction notification for dredge harvesting, tilling, or harrowing in areas inhabited by SAV. To capture the regional variances, such as colonization rate, population shifts, density, and species composition, districts may choose to further refine the definition of SAV in their regional conditions to better reflect environmental circumstances in their region. We are removing the proposed requirement to submit a pre-construction notification if the project area includes 10 acres or more of SAV because we have determined that only certain types of activities (dredge harvesting, tilling, harrowing) in SAV areas have the potential to cause more than minimal adverse impacts.

The majority of commenters objected to the proposed prohibition against the cultivation of new species by an operation while recognizing the need to protect the environment from invasive species colonization. A few commenters were in favor of the prohibition citing concerns about invasive species and changing culture methods. One commenter said that this NWP should not authorize experimental cultivation of new species in a waterbody.

Upon review of the comments, the proposed NWP has been modified slightly. The NWP does not authorize aquaculture activities for any species that were not previously cultivated in the waterbody. However, under this NWP, an individual operator can change the species grown under this NWP within the project area, provided the change is limited to species that have been previously cultivated in the water body. Such a change would require pre-construction notification. The commercial production of a shellfish species that has not been previously commercially produced in the waterbody, including new exotic (non-native) species, may only be authorized by an individual permit or a regional general permit if applicable. Also, this NWP does not authorize experimental cultivation of new species. It only authorizes on-going commercial shellfish aquaculture activities, provided those activities satisfy the terms and conditions of this NWP. Experimental cultivation is considered to be a new activity, and may be authorized by other DA permits if it involves activities subject to the Corps regulatory jurisdiction.

Producers must be licensed, as required, through their State's regulatory agency. Commercial harvest will only commence under each State's Shellfish Authority, as delegated by the U.S. Food and Drug Administration under the National Shellfish Sanitation Program. To be eligible for coverage under this NWP, producers must obtain all required permits or licenses required for their culture activities, such as transfer permits, development permits, and land-use permits.

In response to commenters concerned about the individual and cumulative adverse effects to the environment and the many commenters who stated that acreage limits were not an adequate way of establishing or evaluating the interaction of the shellfish operation with the aquatic environment, an additional pre-construction notification threshold has been added. When an existing operation decides to change culture methods, for example to go from bottom-culture to long-line or from long-line to bottom culture, pre-construction notification is required. These existing operations may be authorized by this NWP, after the district engineer has reviewed the pre-construction notification and determined that the new activity complies with the terms and conditions of the NWP and will have minimal adverse effects.

We are also committed to conducting programmatic reviews of commercial shellfish activities generally to ensure that the Corps is authorizing only those activities that result in minimal individual or cumulative adverse effects on the aquatic environment with this NWP or other general permits for aquaculture activities. These reviews will begin as soon as possible in all divisions, and will involve Federal, State and local agencies, stakeholders, and the general public to help the Corps develop future regional and special conditions to mitigate impacts to the aquatic environment or other aspects of the public interest which may result from commercial shellfish aquaculture activities. Completion of these programmatic reviews is not necessary for authorization under this NWP. The data collected through the pre-construction notification and reporting requirements will support these reviews.

One commenter said that this NWP should include conditions prohibiting the use of pesticides. A commenter stated that this NWP should require pre-construction notification for any activity located in National Park Service units, and that review by the National Park Service should be conducted before the activity is authorized by this NWP.

The Corps does not regulate application of pesticides under Section 10 of the Rivers and Harbors Act of 1899 or Section 404 of the Clean Water Act. The application of pesticides into aquatic environments is regulated by other agencies through other authorities. We do not agree that pre-construction notification should be required for on-going commercial shellfish aquaculture activities being conducted in areas under the purview of the National Park Service. The National Park Service has the authority to control the activities conducted in its units, to ensure that those activities are consistent with any management requirements or objectives established for those units.

Proposed NWP D is issued as NWP 48, with the modifications discussed above.

NWP 49. *Coal Remining Activities.* This is a new NWP. It provides for authorization of projects associated with the remining and reclamation of lands that were previously mined for coal. New mining may be conducted on adjacent areas provided that the area mined is smaller than 40 percent of the previously mined lands plus the unmined lands required to reclaim the previously mined lands as determined by SMCRA. Pre-construction notification is required for all activities proposed to be authorized by this permit, and the permittee must receive written notification from the District Engineer prior to commencing the activity. Additionally, the projects must be authorized by OSM or by states with approved programs under Title IV or V of SMCRA.

One commenter requested that the proposed NWP be changed to include Abandoned Mine Land (AML) projects that are government funded or contracted. They believed that the aquatic benefits resulting from the AML projects are similar in nature to those that would be covered by this NWP, and that since this NWP requires notification, any adverse impacts to high-quality waters could be avoided. Another commenter suggested that the Corps clarify the extent to which NWPs are required for AML projects, and another commenter stated that the Corps should clearly state that no NWP of any kind is required for projects that fall under Title IV of SMCRA. One commenter stated that it is imperative that the new NWP 49 proposed by the Corps not inhibit efforts but rather support recent actions by states, EPA, and OSM to encourage opportunities for remining AML impacted lands and waters.

We agree that this NWP should support and encourage opportunities for remining AML impacted lands and waters. We are thus modifying the text of this NWP to authorize AML projects that include coal extraction authorized by Title IV of SMCRA, in addition to remining authorized under Title V. To authorize Title IV AML projects that do not involve coal extraction, we have modified NWP 37, which authorizes emergency watershed protection and rehabilitation activities. In response to the comment that projects conducted under Title IV of SMCRA should not require Section 404 authorization, any discharge of dredged or fill material into waters of the United States, requires an authorization under Section 404 of the Clean Water Act unless the activity is specifically exempt.

Several commenters agreed that the Corps should issue an NWP to authorize remining activities. They stated that until recently the Corps has not recognized the environmental benefits of remining and basically ignored remining incentives developed by Congress and other Federal agencies such as OSM and USEPA. However, these commenters believe that the requirement that any newly mined land not exceed 40 percent of previously mined land plus any unmined land necessary for reclamation is inappropriate. They state that the ratio should be left up to the SMCRA agency on a case-by-case basis and that a rigid 40 percent ratio may not allow enough material to be generated to reclaim the previously mined land. One commenter stated that the Corps should reconsider the proposed limitations since an overall improvement in aquatic resources is guaranteed and, as proposed, the ratio threshold only serves to limit the reclamation of abandoned mine lands. One commenter recommended that the ratio limitation be removed and that the Corps rely solely on the demonstration that the overall project, including the reclamation activity and any new mining, will result in a net increase in aquatic functions. One commenter stated that the Corps should reconsider basing permit eligibility on uplands area (acreage), which is outside the jurisdiction of the Corps, and instead focus on the improvement that such activities would have on the aquatic resources within the project area, which is within Corps jurisdiction. Another commenter said that this NWP should not authorize coal mining in any new areas, because of the potential for those activities to cause more than minimal adverse effects on the aquatic environment.

We would like to clarify that the ''remined'' area on which the 40 percent ratio is based includes any unmined lands required to reclaim the previously mined lands, as determined by the SMCRA agency. The allowance for an additional 40 percent of newly mined area is above and beyond the area required to complete the restoration of the previously mined land. This NWP was intended to authorize single and complete projects where a clear majority of the mining would be considered remining, and therefore offer operators incentives to reclaim previously mined lands. We thus believe that there needs to be both a limit on new mining and a requirement for an overall increase in aquatic resource functions for this NWP. We believe it is appropriate to authorize a limited amount of coal mining in new areas, as long as the remining and reclamation activities are conducted. In addition, the adverse effects of any new mining will be reviewed through the pre-construction notification process, and the permittee cannot begin work until written verification is received from the district engineer, after determining that the remining activity, plus any new mining, will result in minimal adverse effects on the aquatic environment.

Proposed Limits

One commenter suggested that while some impact limits may be appropriate, the limit should not be based on drainage area, because such an approach fails to recognize that small impacts that occur in the lower reaches of a watershed may result in more than minimal adverse effects on the aquatic environment. One commenter stated they supported the concept of this NWP but believe it should have the same restrictions as NWP 21. Several commenters recommended that if the Corps does issue this NWP, it should include limitations on the linear feet of stream that can be filled. One commenter suggested a limit of ½-acre per use (which is the same as that proposed for NWP 50 and other NWPs), and stated that without such a limit this NWP would allow impacts that far exceed those allowed under other NWPs. One commenter recommended imposing a 300 linear foot limit for losses of stream bed. Several commenters recommended limiting this NWP to activities that result in the loss of less than 300 linear feet of streams, to be consistent with other NWPs.

We did not propose impact limits based on drainage area. We also do not believe that specific acreage or linear feet of stream limits should be included on a national basis for this NWP and did not proposed such limits. If division engineers believe they need to add limits at a regional level to ensure that this NWP authorizes only activities with minimal adverse effects on the aquatic environment and which satisfy other public interest review factors, they may do so. We believe that at a national level the ratio limitation and the requirement for an overall increase in aquatic function are sufficient to ensure that this NWP authorize only activities that produce no more than minimal adverse impacts, both individually and cumulatively. Furthermore, this NWP is used to provide Section 404 authorization for surface coal mining activities that have also been authorized by OSM or states with approved programs under Title IV or Title V of SMCRA. The Corps believes that the analyses and environmental protection standards required by SMCRA in conjunction with the pre-construction notification review further ensure that the NWP activities result in minimal individual and cumulative adverse impacts on the aquatic environment. In fact, this NWP requires a net environmental benefit in the form of increased aquatic resource functions, which will be identified through functional assessment methods. Through the pre-construction notification process, district engineers can also impose special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal. Also, if the district engineer determines through this case-by-case review that the activity has the potential to result in more than minimal adverse effects to the aquatic environment, he or she can exercise discretionary authority to require an individual permit.

Functional Analysis

A couple of commenters stated that the Corps should not require a functional analysis of the pre-mining aquatic conditions. They state that in these cases, water quality is poor and can only be improved by completion of the authorized activities. Furthermore, many of the sites are located on waters that are listed on a state's 303(d) impaired waters lists. A couple of commenters stated that the Corps' requirement for a quantified prediction of the environmental benefits that will result is unnecessary because EPA data shows that remining operations will result in a net increase in aquatic resource functions. One commenter stated that, as the Corps has the data to show that reclamation projects in

formerly mined areas have a beneficial environment effect, every permittee should not need to prove this again, in a duplication of the SMCRA requirements. One commenter stated that the Corps should not specify that a net overall improvement to the site's aquatic functions is required, but should focus on whether the project will have minimal impacts to aquatic resources in the project area.

We agree that remining projects are generally beneficial, which is one of the reasons for proposing to issue this new NWP. However, we must track impacts and mitigation and show both on an individual and a cumulative basis that each project has a minimal impact on the aquatic environment. This can only be done by the applicant submitting information on pre-mining conditions as well as what they anticipate the post mining conditions will be. This permit requires that the reclamation plan result in a ''net increase in aquatic resource functions''. Studies typically show that remining operations do improve areas that were degraded by past mining. However, landscape characteristics vary, as do mining and reclamation practices. Furthermore, as an incentive, this permit also authorizes a limited amount of new mining in previously unmined areas adjoining the remined area. Therefore, improvements to aquatic resource functions must be demonstrated for any project authorized under this NWP. To do this, the permittee must submit functional assessments showing that the project as a whole, including remining, reclamation and any new mining, will result in improved functions, such as water quality, sediment transport or retention, and habitat, as appropriate for the specific type of aquatic habitat (e.g., stream or wetland). The functional assessments can be based on information developed as part of the SMCRA process, and should clearly identify and, if possible, quantify, the functional lift that will be achieved for each function. We realize the often poor quality of the environment where these projects are proposed and appreciate the benefits to the aquatic environment that can be achieved by completing these projects.

We understand coal mining is covered by many environmental regulations, however the Corps has determined that the current SMCRA process does not adequately address impacts to the aquatic environment as required under Section 404 of the Clean Water Act. Accordingly, this NWP does not duplicate the SMCRA permit process, but we rely on that process for information that is useful in our Section 404 analyses. We work with the other agencies to avoid potential duplication of effort, and currently uses appropriate work and studies done by or for others (i.e., ESA or SHPO surveys/findings) in our analyses of proposed projects.

Mitigation

A couple of commenters stated that the Corps should not require additional mitigation beyond what is already required of the applicant pursuant to the SMCRA permit, since the permitted activities will lead to significant water quality improvements both at the site and in the watershed. A number of commenters asserted that the Corps has not demonstrated that compensatory mitigation offsets the adverse impacts of this NWP. Several commenters also stated that mitigation must be based on an assessment of stream functions, for which the Corps has no approved methods. One commenter recommended that mitigation should result in at least a 1:1 replacement of acres lost in order to achieve no net loss of waters of the United States from this NWP. Two commenters stated that the CWA does not allow the Corps to issue general permits based on the use of compensatory mitigation to reduce the environmental impacts to minimal.

As a result of the pre-construction notification process the Corps will review each project proposed for authorization by this NWP on a case-by-case basis. Additional mitigation may not be required for a project. However, this will be determined through the district engineer's minimal impact determination. As stated in our regulations, we can rely on mitigation in making a minimal adverse environmental effects determination (see 33 CFR 330.1(e)(3)).

The Corps will review the impacts from the proposed final design using a functional assessment method. If the functions gained by the proposed project exceed the functions lost as a result of proposed activities then additional mitigation may not be required. We are currently developing new stream functional assessment protocols for identifying the functions lost through impacts and the functions gained or enhanced through mitigation.

General condition 20 establishes the framework for determining appropriate mitigation and achieving no net loss of aquatic resources. The Corps takes into account the fact that, in certain areas and circumstances, any compensatory mitigation required by the Corps may be fully encompassed or exceeded by requirements of others (e.g., reclamation requirements under SMCRA). As long as the impacts to the aquatic environment are fully mitigated, the Corps will not require additional compensation.

Pre-Construction Notification Requirement

One commenter requested the pre-construction notification requirement be removed. One commenter expressed approval of the requirement that the applicant receive written authorization from the district engineer prior to commencing the activity.

We believe that the pre-construction notification requirement helps ensure that no activity authorized by this permit will result in greater than minimal adverse impacts, either individually or cumulatively, on the aquatic environment, because it requires a specific case-by-case review of each project. If the district engineer determines through this case-by-case review that the activity has the potential to result in more than minimal adverse effects to the aquatic environment, he or she can exercise discretionary authority to require an individual permit.

Minimal Adverse Effects

A number of commenters stated that this NWP would result in more than minimal adverse environmental effects, particularly on a cumulative basis, and would result in significant degradation of streams. Therefore, the commenters believe NWPs should not be used to authorize these activities, and these activities should require individual permits. Several commenters cited the 2002 programmatic Environmental Impact Statement on surface coal mining, which documented impacts to waters, particularly in Appalachia. A few commenters cited studies conducted by EPA and other research on the ecological impacts of valley fill on streams and on fish populations.

We believe that a careful case-specific minimal impact determination is necessary for this NWP. In addition, as with NWP 21, this NWP requires a written verification before the project proponent may proceed with the work. The applicant must clearly demonstrate that the reclamation plan will result in a net increase in aquatic resource functions, and that any adverse impacts to the aquatic environment are minimal. If the district engineer determines through this case-by-case review that the activity has the potential to result in more than minimal adverse effects to the aquatic environment, he or she can exercise discretionary authority to require an individual permit.

Since the functions of aquatic resources vary widely across the country, assessment of cumulative impacts is conducted by Corps districts

on a watershed basis, based on regional and local conditions and procedures. If the use of this NWP results in more than minimal cumulative adverse effects on the aquatic environment in a watershed, the division engineer may modify, suspend, or revoke this NWP in that watershed. We believe the pre-construction notification requirements for this NWP ensures that authorized activities result in no more than minimal adverse impacts to the aquatic environment because each project is reviewed on a case-by-case basis and the district engineer either makes a minimal impacts determination on the project or asserts discretionary authority and requires an individual permit. Additionally, as noted above, division engineers can add regional conditions to any NWP to further restrict the use of the NWP to ensure that the NWP authorizes only activities with no more than minimal adverse effects on the aquatic environment in a particular watershed or other geographic region. Each district tracks losses of waters of the United States authorized by Department of the Army permits, including verified NWPs, as well as compensatory mitigation achieved through aquatic resource restoration, creation, and enhancement.

Impoundments

Several commenters stated that coal slurry impoundments should not be authorized by this NWP. The commenters also stated that NWPs 21, 49 and 50 cannot be used for both valley fills and coal slurry impoundments, as they are not activities that are ''similar in nature'', as required for authorization under an NWP.

The NWPs are issued in accordance with Section 404(e) of the CWA. NWPs authorize categories of activities that are similar in nature. The ''similar in nature'' requirement does not mean that activities authorized by an NWP must be identical to each other. We believe the ''categories of activities that are similar in nature'' requirement of Section 404(e) is to be interpreted broadly, for practical implementation of the NWP program. NWPs as well as other general permits are intended to reduce administrative burdens on the Corps and the regulated public. We believe that slurry impoundments are support features associated with coal mining and thus can be authorized by this NWP. However, the impacts associated with any such impoundments must be addressed in the required demonstration that the project will result in a net increase in aquatic resource functions.

Scope of Analysis

One commenter stated that only poor and isolated communities are being affected by surface coal mining. Another commenter noted that coal slurry impoundments can fail and release mining wastes into downstream waters. Two commenters stated that loss of forest and movement of dirt associated with surface coal mining has detrimental environmental effects.

Impacts to poor and isolated communities are outside of the Corps' scope of analysis pursuant to the National Environmental Policy Act. The Corps evaluation of coal mining activities is focused on impacts to aquatic resources. In accordance with E.O. 12898, the Corps has determined that the issuance of the NWPs, including NWP 49, will not cause disproportionate impacts to minority or low-income communities (see discussion of E.O. 12898 below). The design and safety of coal slurry impoundments are more appropriately addressed through the SMCRA process, which provides design and safety requirements for these facilities. Mining in general is permitted under a separate Federal law, the Surface Mining Control and Reclamation Act. Impacts associated with surface coal mining and reclamation operations are appropriately addressed by the Office of Surface Mining or the applicable state agency. Where relevant to potential impacts on aquatic resources, the Corps considers documentation prepared pursuant to SMCRA in its review of pre-construction notifications.

Public Participation

Several commenters stated that this NWP does not provide the public with an opportunity to comment on the specific conditions of the NWP authorizations that affect their communities and watersheds.

Section 404(e) of the Clean Water Act provides the statutory authority for the issuance of general permits on a nationwide basis for any category of activities that the Corps determines will have minimal adverse impacts on the aquatic environment, both individually and cumulatively. The Corps establishes NWPs in accordance with section 404(e), by publishing and requesting comments on the proposed permits. The general public has the opportunity to comment on NWPs at this time. In order to address the requirements of the National Environmental Policy Act, the Corps prepares an environmental assessment for each NWP, as well as a 404(b)(1) Guidelines analysis if the NWP authorizes activities under Section 404 of the Clean Water Act. The decision document discusses the anticipated impacts on the Corps' public interest factors from a national perspective. NWPs are issued at the conclusion of this process. The individual projects that are proposed for authorization under an NWP are not given a permit but a verification or authorization that the project complies with an NWP. There are no requirements for public comments on specific projects authorized under NWPs. However, as noted above, one of the bases for our determination that the activities authorized by this NWP will have minimal impacts is that they must also be authorized by a permit issued under SMCRA, which requires many of the same types of analyses that we would require under Section 404. In addition, each SMCRA permit action includes a public participation process. Therefore, as a practical matter, the public will have the opportunity to comment on each individual project authorized under this NWP.

General

One commenter stated that there is no rational basis for the creation of this proposed NWP since under SMCRA, the term ''surface coal mining operations'' includes both Title V permits authorizing remining of previously-mined lands as well as mining of lands that have not been previously disturbed. The commenter stated that the NWP may not conform to the Section 404(b)(1) Guidelines, which would require greater scrutiny for remining activities due to the availability of existing benches, roads and fills that could render new fill in waters of the United States unnecessary. The commenter also cited Section 301(p) of the Clean Water Act, which allows exceptions to effluent limits for surface coal remining operations. The commenter asserted that Section 404 does not have a similar exception for remining, and that this NWP cannot replace the requirements for avoidance, minimization and mitigation with the proposed amorphous standard of a ''net increase in aquatic resource function''. The commenter also stated that it was unclear from the text of this NWP how the Corps intends the remining authorization to work.

New coal mining activities eligible for authorization under this NWP may be authorized by NWP 21, but in contrast to NWP 21 this NWP also authorizes abandoned mined land reclamation activities under Title IV of SMRCA that involve coal extraction. We recognize the benefits of restoration of mine sites that are causing physical and or

chemical impacts to waters of the United States and the fact that due to changes in technology, additional coal may be excavated as part of the reclamation process. These sites may also be combined with adjacent unmined areas to develop a project that is economically viable. The net result of these combined remining/new mining projects is that sources of pollution to downstream waters, including acid mine drainage and sediment, will be eliminated or substantially reduced when the site is reclaimed. We believe this NWP will encourage applicants to consider reclamation of adjacent lands in their overall project plans. As noted previously, the applicant needs to show through a functional assessment method that the project will result in a net increase in aquatic resource functions.

As noted previously, Section 404(e) of the Clean Water Act provides the statutory authority for the issuance of general permits on a nationwide basis for any category of activities. As part of the establishment of the NWPs a decision document is prepared for each NWP along with a 404(b)(1) Guidelines analysis. Although analysis of offsite alternatives is not required in conjunction with general permits, each proposed project is evaluated for onsite avoidance and minimization, in accordance with general condition 20, Mitigation. This includes consideration of the availability of existing benches, roads, and fills that could be used instead of placing new fill in waters of the United States.

Proposed NWP E is issued as NWP 49, with the addition of authorization for projects authorized under Title IV of SMCRA that include coal extraction.

NWP 50. *Underground Coal Mining Activities.* This is a new NWP. Pre-construction notification is required for all activities proposed to be authorized by this permit. As with NWP 21, permittees must receive written authorization from the Corps before proceeding. Additionally, the projects must be authorized by OSM or by states with approved programs under Title V of SMCRA.

Proposed Limits

Numerous comments were received regarding the proposed ½ acre limit on this NWP. Many commenters stated that the ½ acre limit is too small to accommodate underground coal mining activities and attendant features and it should be deleted. One commenter recommended that any limits should be imposed regionally rather than nationally.

One commenter stated that the ½ acre limit was too high and the ½ acre limit applied to small streams could result in the fill of long segments of streams without proper mitigation. Two commenters stated that if NWP 50 is issued, it must include stringent limits on the amount of stream that can be filled. One commenter stated that the NWP should be limited to activities that fill less than 300 feet of streams and should not be used in watershed where the cumulative amount of filled streams is already likely causing more than minimal harm.

In consideration of the comments received, we have decided not to include the ½-acre limit. This permit replaces the 2002 version of NWP 21 for underground coal mining activities. The new NWP 21, which continues authorization for surface coal mining activities, does not include an acreage limit. Instead, NWP 21 relies on the SMCRA permitting process in combination with an enhanced pre-construction notification requirement which requires that permittees wait for written verification from the Corps before beginning their projects, even if the pre-construction notification review takes more than 45 days. After further consideration, we have determined that the same logic that applies to NWP 21 also applies to NWP 50, and so have adopted similar requirements with respect to limits and verification. Thus, the ½ acre limit has been dropped, and permittees must wait for written verification from the Corps before proceeding.

Pre-Construction Notification

Four commenters recommended that applicants should be required to receive written authorization prior to commencing the activity. As noted above, the Corps has now adopted this requirement for this permit and dropped the ½ acre threshold. This requirement is necessary to give the district engineer adequate time to determine whether or not to assert discretionary authority and require an individual permit if the impacts of the proposed activity are more than minimal, either individually or cumulatively.

Use of NWP 21 for Underground Mining

Concerns were expressed by several commenters regarding the continued use of NWP 21 to authorize underground mining activities. These commenters requested clarification regarding this issue. One commenter noted that if NWP 21 could not be used for underground mining then most underground mine discharges would require an individual permit. One commenter expressed concerns regarding the use of NWP 21 for coal preparation and processing activities outside of the mine site. The commenter noted that preparation activities were not part of a surface coal mining project.

The Corps envisions that activities that are not part of the underground mine site, which are outside the SMCRA permit area, can be authorized by NWP 21 if they met the conditions for its use. We note that many processing plants serve both underground and surface mine sites, some at considerable distance, and that construction of such plants does not involve underground disturbances in the way that underground mining does. Thus we believe it appropriate to continue allowing NWP 21 to authorize such activities. We believe the changes discussed above to NWP 50 address the concern that, under the proposed version of the permit, many underground coal mining activities would have required an individual permit. There is no longer an acreage limit on the use of this permit, although it can only be used to authorize activities which the district engineer has determined will have no more than minimal adverse effects, both individually and cumulatively, and only after the district engineer has notified the operator in writing that use of this NWP is authorized.

Minimal Adverse Impacts

Many commenters were opposed to issuance of this NWP. They stated that general permit procedures were inappropriate for such large scale activities and that these types of activities seemed to demand a thorough review, public notice, and an alternatives and minimization analysis. One commenter stated that the Clean Water Act does not allow the Corps to issue general permits on the basis that compensatory mitigation will reduce net adverse effects to a minimal level. Two comments stated that NWPs can only be used for activities that cause minimal environmental effects both individually and cumulatively, and if impacts are more than minimal, the project requires an individual permit with site-specific analysis and public comment. Several commenters stated that coal mining results in significant environmental impacts and degradation of streams in Appalachia.

The Corps believes that a careful case-specific determination of impacts is necessary for this NWP. The pre-construction notification process, along with the requirement for written verification from the Corps, will allow the district engineer to determine if the impacts of the proposed activity are no more than minimal, individually and

cumulatively, or whether an individual permit is required. Furthermore, we believe that the Corps can rely on mitigation in making a minimal adverse environmental effects determination.

We believe that an assessment of individual and cumulative impacts cannot be made on a national level, because the functions and values of aquatic resources vary widely across the country. Assessment of cumulative impacts is more appropriately conducted by Corps districts on a watershed basis, based on regional and local conditions and procedures. We believe our process for this NWP ensures that activities authorized by the NWP result in no more than minimal adverse impacts to the aquatic environment because each project is reviewed on a case-by-case basis and the district engineer either makes a minimal impacts determination on the project or asserts discretionary authority and requires an individual permit. Additionally, as noted above, division engineers can add regional conditions to any NWP to further restrict the use of the NWP to ensure that the NWP authorizes only activities with no more than minimal adverse effects on the aquatic environment in a particular watershed or other geographic region. Each district tracks losses of waters of the United States authorized by Department of the Army permits, including verified NWPs, as well as compensatory mitigation achieved through aquatic resource restoration, creation, and enhancement. Furthermore, as with NWP 21, all activities authorized by this permit require authorization under SMCRA, and the SMCRA analysis, documentation and process requirements largely substitute for the analysis, documentation and process requirements of an individual permit. This is not to say that discharges related to coal mining and their impacts on aquatic resources do not require independent review and authorization by the Corps with respect to the requirements of the CWA, but the Corps believes that the analytical and process requirements can be streamlined by relying on the SMCRA process to the extent appropriate. Where the district engineer determines that these process requirements are not adequate for a particular project, he or she will require an individual permit.

404(b)(1) Guidelines

Several commenters stated that any proposed disturbance to waters to support coal processing or underground coal mining activities should be subject to the Section 404(b)(1) Guidelines, and that alternatives that do not result in impacts to waters of the United States are available.

As noted previously, Section 404(e) of the Clean Water Act provides the statutory authority for the issuance of general permits on a nationwide basis for any category of activities. As part of the establishment of the NWPs a decision document is prepared for each NWP along with a 404(b)(1) Guidelines analysis. Although analysis of offsite alternatives is not required in conjunction with general permits, each proposed project is evaluated for onsite avoidance and minimization, in accordance with GC 20. This includes consideration of alternatives that do not result in impacts to waters of the United States.

One commenter stated that it was a duplication of effort to have a review of the applicants' reclamation plan.

The Corps understands coal mining is covered by many environmental regulations, however the Corps has determined that SMCRA does not currently adequately address impacts to the aquatic environment as required under Section 404 of the CWA. Therefore this NWP does not duplicate the SMCRA permit process but does rely on it for information used in the analysis. The Corps continues to work with the other agencies to avoid potential duplication of efforts. The reclamation plan can be used to consider proposed mitigation measures for the projects being proposed for authorization by NWP 50. This information will be used by the Corps in making a determination as to whether the impacts are no more than minimal.

Scope of Analysis

One commenter stated that there should be a way to figure out how to extract the coal and still protect the environment. Another commenter noted that the amount of earth moving by mining activities is sufficient by itself to demonstrate that environmental impacts of mining are significant. One commenter stated that the subsidence that may occur as a result of underground mining should be considered in determining the acreage impacts to waters for this NWP. One commenter noted that coal mining waste contains chemical components that are toxic to aquatic life and that waste impoundments may fail. The commenter believed that this justifies an independent review. One commenter stated that the ''facing up'' practice cannot be carved out from the full range of environmental impacts associated with underground mining operations and must be reviewed comprehensively and not piecemeal.

The Corps evaluation of coal mining activities is focused on impacts to aquatic resources. Other impacts of coal mining are addressed under a separate Federal law, SMCRA. Such impacts, including those associated with reclamation operations, are appropriately addressed by OSM or the applicable state agency, if program delegation has occurred. To the extent that reclamation activities affect waters of the United States, these will be addressed in the Corps review and appropriate mitigation required.

Similar in Nature

Several commenters stated that slurry impoundments should not be allowed under NWPs, and that NWPs can only be issued for activities that are similar in nature. The Corps has determined that slurry impoundments are related to underground mining activities. The NWPs are issued in accordance with Section 404(e) of the CWA. NWPs authorize categories of activities that are similar in nature. The ''similar in nature'' requirement does not mean that activities authorized by an NWP must be identical to each other. We believe the ''categories of activities that are similar in nature'' requirement of Section 404(e) is to be interpreted broadly, for practical implementation of the NWP program.

Mitigation

Several commenters stated that the mitigation done for coal mining impacts is scientifically indefensible and, absent such mitigation, the projects authorized under NWP 50 have more than minimal adverse effect and are therefore not eligible for an NWP. They stated that current mitigation projects have so far been unsuccessful and referenced a court case in the Southern District of West Virginia (*Ohio Valley Environmental Coalition* v. *Bulen*), where they noted that a Corps official stated that he did not know of a single instance of successful headwater stream creation. Also, the commenters stated that the Corps did not include any specific guidelines for how to assess stream function in order to determine the adequacy of compensatory mitigation. They also stated that the Corps has not shown that mitigation will offset the impacts authorized under NWP 50 or that off-site enhancement of streams would fully compensate for functions of streams that are destroyed. Other commenters stated that the Corps mistakenly allows the mitigation requirements of SMCRA and state water quality laws to satisfy the independent

requirements of Section 404 of the Clean Water Act. They stated that allowing a permittee to claim a compensatory mitigation or reclamation activity already required under SMCRA as compensatory mitigation under the Clean Water Act is ''double-counting'' and improperly blurs the requirements of sequencing (i.e., avoidance, minimization, mitigation) imposed under the 404(b)(1) guidelines. Other commenters recommended that a mitigation ratio of at least 1:1 should be required in order to achieve no net loss, and that mitigation also should be required for potential, as well as actual, impacts. Several commenters stated that final reclamation of wetland habitat will most likely occur in the absence of required compensatory mitigation.

In order to ensure that an activity results in no more than minimal adverse effects on the aquatic environment, the Corps will add permit conditions that require compensatory mitigation that meets specified success criteria. The Corps will generally require the permittee to monitor the mitigation site for five years and, if the mitigation site does not meet the success criteria at that time, remediation or additional mitigation will be required. This ensures that the authorized activity will not result in a net loss in aquatic functions. The Corps has increased its compliance efforts to ensure that projects authorized by DA permits are constructed as authorized and that mitigation is successful.

We are currently developing new stream functional assessment protocols to identify and quantify the functions lost through authorized impacts and the functions gained or enhanced through mitigation. The Corps coordinates with the SMCRA and state resource agencies to achieve appropriate aquatic restoration on mine sites, which can reduce or eliminate the amount of off-site compensatory mitigation needed. The Corps does not consider this ''double-counting'', because the areas restored are only counted once in the replacement of aquatic resource functions. As long as the functions lost as a result of the permitted activity are mitigated through the onsite restoration or enhancement, it does not matter if the restoration also meets other goals unrelated to the Section 404 impacts. General condition 20 establishes the framework for achieving no net loss of waters/wetlands, as well as the sequential review of mitigation approaches on-site. The Corps takes into account the fact that, in certain areas and circumstances, any Corps compensatory mitigation requirement may be fully encompassed or exceeded by requirements of others. As long as the impacts to the aquatic environment are fully mitigated, the Corps will not require additional compensation.

Proposed NWP F is issued as NWP 50, with the modifications discussed above.

General Conditions

One commenter supported the proposed change to the ordering of the general conditions. One commenter said that the proposed changes to general conditions will reduce environmental protection. A commenter stated that temporary impacts should be addressed through a new general condition, instead of requiring separate authorization under NWP 33.

The changes to the general conditions will help improve environmental protection, by providing clearer and more enforceable requirements for permittees. Department of the Army permits are required for temporary structures, work, or discharges into waters of the United States, including navigable waters, unless those activities are exempt from permit requirements. Therefore, those regulated activities cannot be authorized through a general condition. In some cases, temporary structures, work, or discharges associated with another permitted activity are included in the NWP authorization for that activity; in other cases temporary structures, work or discharges must be authorized separately under NWP 33.

One commenter said that the proposed ''Note'' for the NWP general conditions should contain language requiring permittees to comply with regional conditions and state water quality standards. This commenter also requested that the word ''should'' be replaced with ''must.''

The proposed ''Note'' clearly states that permittees are required to comply with regional conditions and that permittees should check on the status of water quality certifications and Coastal Zone Management Act consistency determinations before using an NWP. We cannot require prospective permittees to contact district offices to obtain this information (hence we have not replaced ''should'' with ''must'') but we have clarified that individual certification is required in cases where prior certification for the NWP has not been received. Permittees may also be able to obtain information on regional conditions and the status of water quality certifications and Coastal Zone Management Act consistency determinations through the Internet or other sources.

One commenter recommended adding a new general condition to address the downstream movement of substrate and wood. This general condition would require stream crossings, such as bridges and culverts, to allow downstream movement of substrate and wood during 100-year flow events, as well as movement of wood from upstream segments to downstream segments. Another commenter suggested adding a new general condition to address adverse impacts from invasive species.

We do not agree that it is necessary to add a new general condition, as there are other general conditions which already include adequate provisions to address this concern. General condition 2, Aquatic Life Movements, states that no activity may substantially disrupt the necessary life-cycle movements of those species that normally migrate through the area. General condition 9, Management of Water Flows, states that, to the maximum extent practicable, the activity must not restrict or impede the passage of normal or high flows, unless the primary purpose is to impound water. In general, blockages caused by restricted movement of wood or substrate would violate these conditions and must be prevented. Further, the ability for division and district engineers to exercise discretionary authority or regionally condition proposed activities under an NWP are sufficiently to address any site-specific concerns related to blocked movement of wood and ensure that authorized activities result in minimal adverse effects on the aquatic environment. The Corps does not have the regulatory authority to prohibit the introduction of invasive species. Invasive species may become established in areas through many mechanisms, not just disturbances caused by construction activities authorized by NWPs and other Corps permits. Such a condition would also be unenforceable and therefore such a general condition would be contrary to 33 CFR 325.4(a).

A number of commenters objected to the removal of the phrase ''including structures or work in navigable waters of the United States or discharges of dredged or fill material'' from text of certain general conditions. One commenter asked if removal of that phrase from those general conditions would reduce protection of aquatic resources.

The removal of that language will not affect protection of waters of the United States. The stricken language was considered redundant as it simply refers to the general types of activities regulated under sections 10 and 404.

General Conditions

GC 1. *Navigation.* We proposed to modify this general condition to require permittees to install any safety lights and signals prescribed by the U.S. Coast Guard. We also proposed to modify this general condition to notify permittees that they may be required to remove structures or work that cause unreasonable obstruction to navigation.

One commenter supported the requirement concerning safety lights and signals. One commenter said that the Federal government should bear the financial costs for the removal of structures or work it authorized. One commenter stated that the Federal government itself could be a permittee and be required to remove the structure or work at the Federal government's expense. One commenter said that this general condition should also include waters determined by states to be navigable waters.

There may be cases where activities authorized by Department of the Army permits interfere with navigation or an existing or future operation of the United States and need to be removed. The cost of removal is the responsibility of the permittee, even in cases where the permittee is the Federal government. If there is any question as to whether or not a particular activity or structure will interfere with navigation, the permittee should check with the Coast Guard before beginning the activity. Adverse effects to navigable waters identified by states that are not navigable waters of the United States should be addressed by state regulatory programs. The Corps lacks the authority to enforce state laws and regulations for state navigable waters.

The general condition is adopted as proposed.

GC 2. *Aquatic Life Movements.* We proposed to modify this general condition by adding the phrase ''if known'' before ''necessary life cycle movements'' because those life cycle movements that are important are not always well understood for indigenous aquatic species. The intent of this general condition is to ensure that the necessary movements of aquatic species are not substantially disrupted.

Many commenters expressed opposition to the proposed modification and recommended removing the phrase ''if known.'' They stated that the lack of knowledge concerning aquatic life movements should not be construed as authorization to allow disruption of aquatic life cycle movements. One commenter supported the proposed modification, and also recommended adding ''at the time of the permit application, if known, or if documented at the time of application.'' to this general condition.

Activities authorized by NWPs should not substantially disrupt the necessary life cycle movement of aquatic species, and the absence of species-specific information does not mean measures cannot be taken to prevent unnecessary obstructions to those movements. Even if the necessary life cycle movements are not known, inferences can be made to help ensure that those movements can continue. Those inferences can be based on general considerations of the mitigation measures necessary to ensure that adverse impacts to aquatic life movements are minimized to the maximum extent practicable. For example, properly sized culverts that are installed to retain low flow conditions will help ensure that life cycle movements will continue. Therefore, we are removing the phrase ''if known'' from this general condition to allow district engineers to continue to use their judgment, so that adverse effects to aquatic life movements are minimized, even if the necessary life cycle movements are not known, but can be generally inferred.

Two commenters requested clarification of the term ''substantially'' as used in this general condition. One commenter said that this term results in too high a threshold for the disruption of aquatic life movement. One commenter stated that aquatic life movement should be reviewed using hydraulic analyses performed for the range of flows expected after a basin is fully developed. Another commenter said that this general condition should require stream crossings to be constructed with bottom elevations below the normal substrate grade to avoid creating improper elevations or barriers that may substantially disrupt aquatic life movements. This commenter also recommended modifying this general condition to prohibit changes to stream morphology that could substantially interfere with aquatic life movements.

In general, activities in waters of the United States authorized by NWPs are likely to result in some disruption of necessary life cycle movements of aquatic species, since we are authorizing discharges of dredged or fill material into those waters or structures or work in navigable waters of the United States. The word ''substantially'' supports the requirement that NWPs authorize only those activities that result in minimal individual and cumulative adverse effects on the aquatic environment, while recognizing that some disruption may occur. Some disruptions to aquatic life movement are measurable but not substantial, and may be acceptable during construction or during natural seasonal events such as floods, winter ice conditions, or during construction conducted during dry seasons. It is not practicable, appropriate, or necessary to conduct hydrologic analyses for each NWP activity that has the potential to disrupt life cycle movements, based on the projected development for a watershed. Compliance with this general condition is to be assessed on a case-by-case basis, through available information or general knowledge of aquatic life movements. The current language in the general condition, especially the requirement to install culverts to maintain low flow conditions, is sufficient to ensure that stream crossings do not substantially disrupt aquatic life movements. This general condition, as well as the requirements of general condition 9, Management of Water Flows, will help ensure that NWP activities result only in minimal adverse effects to the movement of aquatic life via streams.

The general condition is adopted, with the modification discussed above

GC 3. *Spawning Areas.* We proposed to modify this general condition by removing language describing the general types of activities authorized by NWPs under sections 10 and 404.

One commenter stated that not enough protection is provided since avoidance is only necessary to the maximum extent practicable. One commenter requested a definition of the term ''important spawning area.'' One commenter said that this general condition should not apply to NWPs 27 or 48 because shellfish seeding can provide and/or increase availability of spawning habitat.

The removal of language describing the general applicability of NWPs will not affect protection of waters of the United States. This general condition applies to all NWPs. The phrase ''to the maximum extent practicable'' is necessary since some NWP activities may be time-sensitive and it is not possible to completely avoid activities in spawning areas. Since the NWPs authorize activities that have minimal adverse effects on the aquatic environment, some NWP activities may be conducted in spawning areas. Identification of important spawning areas is more appropriately addressed through either the regional conditioning processes or through the assessment of site-specific characteristics during the review of pre-construction notifications.

The general condition is adopted as proposed.

GC 4. *Migratory Bird Breeding Areas.* We proposed to modify this general condition to cover migratory birds generally, not just migratory waterfowl. We also proposed to remove language describing the general types of activities authorized by NWPs under sections 10 and 404.

One commenter said that the proposed modification would further restrict the use of the NWPs in wetlands. Another commenter asked how the change would affect non-waterfowl migratory birds in cases where their habitat requirements are different than the habitat requirements of waterfowl. One commenter fully supported the inclusion of migratory birds but requested a national no-work timing window in breeding areas from March 1 to July 15 to reduce uncertainty associated with the phrase ''to the maximum extent practicable.'' Another commenter indicated that this general condition should prohibit haying or grazing during the nesting season unless an emergency is declared. One commenter said that the proposed changes do not comply with the Migratory Bird Treaty Act and suggested that breeding areas should ''be avoided to the maximum extent practicable to assure minimal adverse impact on migratory birds and their breeding areas.'' This commenter asserted that authorized activities under any NWP must comply with the Migratory Bird Treaty Act. This commenter also urged expansion of the general condition to include protection of Important Bird Areas, which is an initiative by non-governmental entities to protect avian species of conservation concern. Another commenter said that this general condition should also state that the take of migratory birds, their eggs, nests, or parts is not allowed under the Migratory Bird Treaty Act without a permit.

Aquatic resources provide a diverse variety of breeding habitats for a wide variety of migratory avian species. The replacement of ''waterfowl'' with ''migratory birds'' will help reduce adverse impacts to aquatic habitats that are breeding areas of all migratory birds, not just waterfowl. It is not practicable to identify a uniform window of 4½ months during which no activities in any habitat potentially used as breeding areas by migratory birds is allowed. Furthermore, breeding patterns and seasons vary by region. Time-of-year restrictions to protect breeding areas are thus more appropriately addressed through regional conditions imposed by division engineers or special conditions added to NWP authorizations by district engineers. It would not be appropriate to amend this general condition to prohibit haying or grazing during nesting seasons for migratory birds, since the Corps cannot enforce such a provision.

The applicability of the Migratory Bird Treaty Act is addressed by Executive Order 13186, ''Responsibilities of Federal Agencies to Protect Migratory Birds,'' which was issued on January 10, 2001. This Executive Order does not apply to Department of the Army permits. Responsibility for complying with requirements of the Migratory Bird Treaty Act lies with the permittee, but this responsibility is independent of the Department of the Army permit. The provisions of the Migratory Bird Treaty Act are implemented by the U.S. Fish and Wildlife Service through the issuance of take permits under appropriate circumstances. It would not be appropriate to modify this general condition to include an explicit reference to Important Bird Areas, though to the extent that they are encompassed by the phrase, ''waters...that serve as breeding areas for migratory birds,'' they are already covered. There is no Federal statute or authority for establishing these areas. We believe the general condition as written is adequate to protect migratory birds.

The general condition is adopted as proposed.

GC 5. *Shellfish Beds.* We proposed to remove language describing the general types of activities authorized by NWPs under sections 10 and 404. We also proposed to add proposed NWP D, Commercial Shellfish Aquaculture Activities to the exception in this general condition.

One commenter stated that ''areas of concentrated shellfish populations'' should be defined. One commenter said that the general condition is too restrictive and should instead provide the district engineer with discretion to prohibit an activity that may have a deleterious effect on shellfish.

It would be inappropriate to define the term ''areas of concentrated shellfish populations'' at the national level. Such determinations should be made on a case-by-case basis, and take into account the characteristics of the shellfish species inhabiting the waters in which the NWP activity is located. Criteria for identifying areas of concentrated shellfish populations may vary by species and region. With the exception of NWPs 4 and 48, the NWPs should not authorize activities in concentrated shellfish beds to ensure that the activities authorized by NWPs result in minimal adverse effects on the aquatic environment. However, the district engineer may determine that this general condition does not apply in situations where a specific NWP activity will have little or no adverse effect on areas of concentrated shellfish populations. The reference to NWP D has been changed to NWP 48, to reflect the number assigned to that new NWP.

This general condition is adopted with the modification discussed above.

GC 6. *Suitable Material.* We proposed to modify this general condition by removing language describing the general types of activities authorized by NWPs under sections 10 and 404.

One commenter suggested the general condition contain a list of suitable materials rather than a list of unsuitable materials. One commenter said that asphalt should be removed from the list of examples in the general condition because research has shown that cured asphaltic concrete is inert. One commenter asserted that the general condition does not go far enough to protect aquatic resources, and recommended changing the text to prohibit ''unacceptable chemical pollution'' instead of requiring material to be free of toxic pollutants in toxic amounts. This commenter also said that the use of substances such as creosote and pentachlorophenol in open waters should be prohibited. One commenter suggested that the general condition contain language that the fill material must be obtained from an upland source and require it to be sufficiently sized and shaped to resist erosion for normal and expected high flows.

We do not agree that it is necessary to further define what constitutes ''suitable material'' for the purposes of this general condition. It is impractical to provide a comprehensive list of unsuitable materials. If there are questions concerning the suitability of a particular material, the permittee should contact the appropriate Corps district office and ask if that material is considered suitable for the purposes of this general condition. We continue to believe that ''asphalt'' is an unsuitable material for use in waters of the United States. Use of substances such as creosote and pentachlorophenol is prohibited by general condition 6, Suitable Material, if they would be released into the environment in toxic amounts. It is inappropriate to limit fill material only to material obtained from uplands, since material excavated from aquatic environments may also be suitable. Other general conditions, such as general conditions 12 (Soil Erosion and Sediment Controls) and 9 (Management of Water Flows) address

requirements for withstanding water flows.

This general condition is adopted as proposed.

GC 7. *Water Supply Intakes.* We proposed to modify this general condition by removing language describing the general types of activities authorized by NWPs under sections 10 and 404. We also proposed to add the phrase ''or improvement'' to account for adjustments of the public water supply intake structure that may be necessary to maintain or improve levels of service.

One commenter supported the proposed change. One commenter stated the general condition is overly restrictive and that the standard should be that activities that are likely to cause an impact to a public water supply intake should be prohibited. One commenter requested we define ''proximity.''

This general condition is not too restrictive, given the importance of water supply intakes for public, commercial and industrial use. District engineers will determine on a case-by-case basis what is necessary to comply with this general condition. We believe the term ''proximity'' is flexible enough to allow district engineers to determine that activities that will not adversely impact a public water supply intake are not in proximity to the intake. The term ''proximity'' should be defined on a case-by-case basis, after taking into account site characteristics and the nature of the waterbody and activity.

This general condition is adopted as proposed.

GC 8. *Adverse Effects from Impoundments.* We proposed to modify this general condition by removing language describing the general types of activities authorized by NWPs under sections 10 and 404.

One commenter recommended amending the language to prohibit the use of the NWPs in waters accessible to anadromous salmonids.

While the Corps recognizes the importance of protecting aquatic species, including salmonids, it would not be practicable to prohibit use of NWPs in all waters accessible to anadromous salmonids. Restricting or prohibiting the use of NWPs in waters inhabited by anadromous salmon species is more appropriately addressed through regional conditions imposed by division engineers, or assertion of discretionary authority by district engineers.

This general condition is adopted as proposed.

GC 9. *Management of Water Flows.* We proposed to modify this general condition by simplifying the language to require that permittees maintain the pre-construction course, condition, capacity, and location of open waters to the maximum extent practicable. Exceptions to this requirement may be made if the primary purpose of the NWP activity is to impound water or if the activity benefits the aquatic environment.

One commenter supported the proposed modification. One commenter supported the specific exception for impoundment activities, and two commenters supported the language that allows stream modifications if there are positive benefits to aquatic resources, such as for stream restoration projects. Two commenters supported the language requiring compliance only to the maximum extent practicable. One commenter said that the practicability considerations in this general condition should take into account sound engineering practices and project economics.

The term ''practicable'' is defined in the ''Definitions'' section of the NWPs. Costs, as well as existing technology and logistics, are considered when making practicability determinations.

One commenter stated that this general condition should not apply to ephemeral streams. One commenter said that this general condition should be modified to prohibit dewatering between October 1 and March 31 to protect hibernating species in the substrate of waterbodies. Another commenter requested that the general condition retain language stating that detailed studies or monitoring would not be required to ensure compliance, and that the Corps would normally defer to local and state officials on the issue. Another commenter said that this general condition provides only limited value because it is qualitative and does not require specific written documentation and assurances regarding how the requirements are met. One commenter stated the requirements of this general condition are inappropriate and hazardous with respect to regulation of stormwater management facilities. One commenter said that this general condition should require NWP activities to accommodate the passage of large woody debris and stream bed load, especially for stream crossing projects.

This requirement must apply to ephemeral streams, because they may carry substantial flow during storm events. Time-of-year restrictions on dewatering activities are more appropriately addressed through the regional conditioning process or through special conditions added to NWP authorizations by district engineers. We do not believe it is necessary to retain language stating that detailed studies or monitoring are not required to ensure compliance with this general condition, though it is not our intent to require such studies where compliance can be based on reasonable assumptions about flow. District engineers will use their judgment to determine whether a particular activity complies with this general condition. In order to ensure that this general condition does not unduly restrict the construction and maintenance of storm water management activities, we have clarified that it does not apply to activities that have a primary purpose of managing storm water flows. The issue of maintaining passage of large woody debris in streams is more appropriately addressed through regional conditions, in areas where changes to the movement of large woody debris may result in more than minimal adverse effects on the aquatic environment. Compliance with the requirements of this general condition will generally accommodate the movement of bed load along a stream channel.

This general condition is adopted as proposed.

GC 10. *Fills Within 100–Year Floodplains.* We proposed to modify this general condition by simply requiring permittees to comply with applicable state or local floodplain management requirements that have been approved by the Federal Emergency Management Agency (FEMA).

Several commenters supported the general condition. One commenter said that the proposed change may cause a slight increase in case-by-case review and assertion of discretionary authority. This commenter also requested that the Corps provide guidance to assure consistent implementation of this general condition. A number of commenters stated that local governments are better able to implement the FEMA program. Two commenters favored the proposed change because it avoids duplication with other regulatory agencies, and another commenter stated that it is a simple and straightforward requirement. One commenter said that the general condition will create an incentive to design projects that reduce impacts to waters of the United States to qualify for an expedited NWP authorization.

We do not agree that this general condition will increase case-by-case reviews and the number of times discretionary authority is exercised. The version of this general condition that was adopted in 2002 prohibited the use of NWPs 39, 40, 42, and 44 to authorize

permanent, above-grade fills in waters of the United States within mapped floodways. Those activities required authorization by regional general permits or individual permits. The general condition adopted today allows those activities to be authorized by NWP, provided the activities comply with applicable state and local floodplain management requirements and the district engineer determines, after reviewing the pre-construction notification, that the individual and cumulative adverse effects on the aquatic environment and other public interest review factors are minimal. We continue to support efforts that reduce duplication with other agencies.

Many commenters objected to the general condition and requested that the Corps retain the previous floodplain prohibitions for NWPs 39, 40, 42 and 44. They said that the Corps has an independent obligation and role in protecting waters of the United States. One commenter stated no fills should be permitted within the 100-year floodplain in specific watersheds. One commenter said that employing the use of discretionary authority on a case-by-case basis will produce uncertainty for prospective permittees.

We do not believe it is appropriate to use the Section 404 program to restrict activities in flood plains over and above the requirements of FEMA-approved state and local floodplain management programs, except in specific cases where the district engineer determines that an activity would result in more than minimal adverse effects. This general condition, in conjunction with reviews of pre-construction notifications, will provide sufficient protection to floodplain values that is appropriate to the scope of the Corps regulatory authorities and implementing regulations. This general condition will also support the application of FEMA-approved state or local floodplain management requirements that are established to reduce flood hazards. Restricting or prohibiting development of 100-year floodplains is more appropriately addressed through the land use planning and zoning authorities granted to state and local governments. The Corps considers impacts to floodplains and flood hazards during its review of pre-construction notifications. If the proposed activity will result in more than minimal adverse effects to floodplains or increases in flood hazards, the district engineer will exercise discretionary authority and require an individual permit for the proposed activity.

We disagree that the pre-construction notification review process will produce more uncertainty for permittees. If the proposed work will have minimal adverse effects on the aquatic environment and other public interest review factors, such as floodplain values and flood hazards, the activity can be authorized by the applicable NWP. One benefit of the modified general condition is that it applies to all NWP activities, not just NWPs 39, 40, 42, and 44.

One commenter indicated that FEMA regulations are only designed to assure development is reasonably safe from flooding not to protect the quality and quantity of downstream waterways or the aquatic resources associated with the floodplain and downstream water segments. Two commenters stated that floodplain managers will not receive pre-construction notifications and therefore they will not be aware of floodplain development activities because they will no longer receive public notices for these individual permits. Two commenters said that the National Flood Insurance Program standards are insufficient to minimize flood hazard and floodplain impacts. One commenter argued that the Corps should strengthen and not weaken the floodplain protections that are outlined in 33 CFR 320.4(l)(2) and Executive Order 11988, Floodplain Management. One commenter concluded that the NWPs will have more than minimal impacts because of the proposed modification of this general condition.

When reviewing pre-construction notifications, district engineers will assess adverse effects to the aquatic environment, including impacts to aquatic resources located within 100-year floodplains and downstream waterways. General condition 9 requires permittees, to maintain to the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters. State water quality certifications ensure that NWPs do not authorize activities that degrade downstream water quality. Floodplain development activities are already thoroughly reviewed by state and local governments under their planning and zoning authorities, especially in those floodplains that consist mostly of uplands, where development is more likely to occur. The Federal Emergency Management Agency is designated through E.O. 11988 as the lead Federal agency for floodplain management, and we are deferring to their program requirements for floodplain management. The proposed modification of this general condition complies with 33 CFR 320.4(l)(2). The modification of this general condition will not cause the NWP program to result in more than minimal individual and cumulative adverse environmental effects.

One commenter said that this general condition should be modified to require documentation of compliance with FEMA minimum standards by a licensed professional engineer, and require consultation with resource agencies. One commenter suggested modifying this general condition to require prospective permittees to demonstrate they have applied the National Environmental Policy Act process and to justify ''no reasonable option'' exists before filling within the base floodplain. One commenter noted that not all floodplains have been mapped and as such they do not fall under authority of a local government. Two commenters requested clarification on how the general condition will be applied when a 100-year floodplain is identified by an engineering study but FEMA approved management requirements are absent.

Requiring documentation of compliance with FEMA-approved standards is unnecessary for the purposes of the NWPs, because such requirements are more appropriately addressed through state and local construction authorizations. If a separate National Environmental Policy Act process is applicable for a particular development activity, then the lead Federal agency will conduct that process. For the purposes of the NWPs, compliance with the National Environmental Policy Act is achieved through the decision documents issued for each NWP. This general condition does not apply to 100-year floodplains where FEMA-approved state or local floodplain management requirements have not been established. In general, such floodplains have not been mapped. In such areas, district engineers will review pre-construction notifications and assess the adverse effects on floodplains and flood hazards to the extent practicable, and add special conditions as appropriate.

Two commenters requested clarification of the mechanism and documentation necessary to complete the public interest evaluation. One commenter asked if this process is expected to increase the amount of time needed to complete the review of a pre-construction notification.

The general condition simply requires permittees to comply with applicable FEMA-approved state or local floodplain management requirements. It does not require separate documentation to be provided to the

district engineer with a pre-construction notification. The modification of this general condition is not expected to cause an increase in the amount of time to prepare or review a pre-construction notification.

This general condition is adopted as proposed.

GC 11. *Equipment.* We proposed to modify the general condition to include mudflats, in addition to wetlands.

One commenter suggested changing this general condition to require heavy equipment to provide low ground pressure, to further minimize soil disturbance.

We do not agree that this change is necessary, because the general condition states that other measures can be used to minimize soil disturbance. This general condition is adopted as proposed.

GC 12. *Soil Erosion and Sediment Controls.* We did not propose any changes to this general condition.

One commenter expressed support for this general condition, stating that it provides sufficient flexibility to address emergency situations, public safety or infrastructure repairs, or situations where it is necessary to work in higher water conditions in order to adjust restoration design to meet on-site hydrologic and fluvial geomorphic conditions. One commenter said that the term ''low-flow'' is not adequately defined, and therefore it provides inadequate protection of the aquatic environment. One commenter suggested modifying this general condition to require permittees to follow state and/or local storm water sediment control requirements.

Determinations of low-flow conditions will be made by district engineers on a case-by-case basis. We believe the condition provides sufficient protection for the aquatic environment. Appropriate soil erosion and sediment control measures may be established by different levels of government or different agencies, so it would be more effective to retain the present language. Such requirements are independently applicable in any case.

This general condition is adopted as proposed.

GC 13. *Removal of Temporary Fills.* We proposed to modify this general condition by replacing the phrase ''their preexisting elevation'' with ''pre-construction conditions.''

One commenter supported the proposed change. Four commenters objected to the proposed change, stating that the language implies that the site needs to be revegetated or mitigated. One commenter suggested defining ''temporary'' as less than six months. One commenter recommended modifying the text of this general condition to recommend removal of temporary fills during dewatered or low-flow conditions. Another commenter said that this general condition should require filled areas to be restored, as much as possible, to the same elevation, contours, grade, substrate, vegetative composition, hydrology, and/or geomorphology.

We agree that the proposed modification can be difficult to implement and enforce. For example, the proposed language implies that to return an area inhabited by trees to its pre-construction conditions, trees would have to be planted. Therefore, we have changed the phrase ''pre-construction conditions'' to ''pre-construction elevations'' to require that the permittee return the affected area to its previous elevations. We have also added a new sentence that requires the permittee to revegetate the affected area, as appropriate. A temporarily filled area that was previously vegetated must be planted with appropriate plant materials and allowed to grow back after the temporary fill is removed and the pre-construction elevations restored. In some cases, such as stream channels, it may be sufficient to simply remove temporary fills to satisfy this general condition.

The general condition is adopted with the modifications discussed above.

GC 14. *Proper Maintenance.* We did not propose any changes to this general condition.

One commenter stated the Corps should require that a new stream crossing be constructed when a crossing requires two or more debris removal requests within 10 years. One commenter said that the general condition should be modified to require maintenance as necessary to ensure minimal impacts and public safety. One commenter stated that long-term maintenance of structures and/or fills should be evaluated during the permit process and authorized in the permit authorizing construction.

We disagree with these suggested changes. We cannot condition the NWPs to require a permittee to install a new stream crossing if debris accumulates at a certain frequency. Activities authorized by NWPs must already result in minimal adverse effects on the aquatic environment, and it is not necessary to add such a requirement to this general condition. Maintenance of authorized activities may be conducted either under the Clean Water Act exemption at Section 404(f)(1)(B) or under NWPs 3, 31, or 35.

The general condition is adopted as proposed.

GC 15. *Wild and Scenic Rivers.* We did not propose any changes to this general condition.

One commenter recommended expanding the prohibition to state wild and scenic and recreational river systems, and to any activities in rivers subject to the review of the National Park Service. One commenter expressed support for the general condition and recommended it be modified to require that the Federal agency with direct management responsibility for the river be contacted regarding the proposed use of an NWP and that the Corps receive a written statement from that agency regarding the effects the activity will have on the river.

State wild and scenic rivers are more appropriately addressed through state laws, regulations, and programs. The general condition contains language requiring the appropriate Federal agency with direct management responsibility for the river to determine in writing that the proposed activity will not adversely affect that river's designation. The Corps will not issue an NWP verification for an activity in a National Wild and Scenic River without the appropriate documentation.

This general condition is adopted without change.

GC 16. *Tribal Rights.* We did not propose any changes to this general condition. One commenter asked how the Corps will determine whether tribal rights are impacted, and if a tribal right is impaired.

We cannot define a specific threshold to be used to determine compliance with this general condition. District engineers make these determinations on a case-by-case basis, through appropriate consultations with Indian tribes.

This general condition is adopted without change.

GC 17. *Endangered Species.* We proposed to modify this general condition by stating that no activity is authorized by NWP, if it ''may affect'' a listed species or critical habitat unless Section 7 consultation has been completed. We also proposed to state that district engineers will make ''may affect'' or ''no effect'' determinations and notify prospective permittees within 45 days of receipt of a complete pre-construction notification.

Several commenters supported the proposed modifications of this general condition. One commenter recommended specifying the documentation that should be submitted with the pre-construction notification in circumstances when no listed species or

critical habitat will be affected. Two commenters requested that the 45 day time limit for notifying applicants of an effect determination be reduced to 30 days. One commenter requested clarification on whether the Corps has 45 days from submittal of the pre-construction notification or 45 days from receipt of a complete application, to notify the applicant of a ''may effect'' determination, and whether this will result in extra time to complete an NWP.

This general condition specifies that permittees shall notify the Corps if any listed species or critical habitat might be affected or is in the vicinity of the project. If this does not apply, no additional information is required to be submitted. We believe that 45 days is a reasonable and practical deadline, and it is consistent with the pre-construction notification time frame. The general condition states that the Corps will notify the applicant within 45 days of receipt of a complete pre-construction notification. However, if the applicant has provided notification to the Corps of possible effects on listed species or critical habitat, the applicant must wait for a Corps determination of either ''may affect'' or ''no effect'', even if this takes more than 45 days.

Several commenters expressed concern that requirement for Section 7 consultation in the absence of a ''no effect'' determination would delay processing of pre-construction notifications, and that the requirement to wait for the Corps ''no effect'' determination increases the administrative burden and uncertainty for applicants. Several commenters recommended that, if an applicant does not hear from the Corps within 45 days, the applicant may treat the lack of response as a ''no effect'' determination and proceed with the NWP activity. Other commenters stated that the open-ended period for the Corps to resolve concerns about species could result in NWPs taking much longer to issue than 45 days.

The 45-day period is necessary to allow district engineers to review proposed NWP activities that require notification because federally-listed species or critical habitat might be affected or are in the vicinity of the project (see 33 CFR 330.4(f)(2)). During that 45 day period, the district engineer will determine if the proposed project will have ''no effect'' or ''may affect'' listed species or critical habitat. If the proposed activity may affect listed species or critical habitat, the prospective permittee cannot begin the activity until the Endangered Species Act requirements have been satisfied, even if 45 days have passed since the district received a complete pre-construction notification. Many ''no effect'' determinations do not take the full 45 days. We acknowledge that some NWP verification requests may take longer than 45 days, but the Corps is legally obligated to comply with the Endangered Species Act. The ESA requires Section 7 consultation for any activity authorized by a Federal agency unless that agency determines that the activity will have ''no effect'' on listed species. In cases where the permittee has determined that no listed species or critical habitat are in the vicinity of the project or might be affected by it, and thus has not notified the Corps of any possible effects, then (but only in such cases) the permittee does not have to wait for further confirmation of ESA compliance from the Corps.

One commenter stated that the wording in the general condition differs from that in the Endangered Species Act and in the existing NWPs, as it applies the standard of ''may affect'' rather than ''takings'' of listed species. In addition, without clear guidance, the ''may effect'' standard is likely to be applied inconsistently from district to district.

Section 7 of the Endangered Species Act states that Federal agencies must consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service if an activity ''may affect'' listed species or habitat. This language is virtually the same as that in the 2002 NWPs, including the requirement that a permittee cannot begin work until notified by the Corps if the project might affect a listed species or critical habitat.

One commenter recommended clarification of the terms ''might be affected'' and ''may affect''.

As stated in the text of the general condition, the district engineer determines if an activity ''may affect'' listed species or critical habitat. A non-federal permittee must notify the district engineer if listed species or critical habitat might be affected, so the district engineer can determine if the activity ''may affect'' the habitat or species. We have modified the second sentence of paragraph (b) of this general condition by changing the word ''may'' to ''might'' in order to clearly distinguish the formal determination by the Corps (''may affect'' or ''no effect'') from the requirement on the applicant to notify the Corps where there is sufficient cause for concern to warrant a formal determination. This requirement applies if habitat or species is in the vicinity of the project or might be affected by it, or if the project is located in the habitat.

One commenter recommended modifying this general condition to exempt activities that occur in the vicinity of free-swimming species from the pre-construction notification requirement, provided the activities include reasonable efforts to avoid physical contact with listed species.

Any time a proposed NWP activity has the potential to affect listed species or critical habitat, the Corps must evaluate it and make a ''no effect'' or ''may affect'' determination. This requirement cannot be waived for free-swimming species, although efforts taken to avoid physical contact with listed species might result in a determination that the activity will have ''no effect'' on that species. Even in the case of a ''may effect'' determination, such efforts may help to expedite Section 7 consultation with the Services.

One commenter suggested clarifying that the work or activities that are prohibited from commencing until the Corps has provided notification of compliance with the Endangered Species Act only refers to work in waters of the United States, not upland areas. Several commenters stated that language requiring applicants to notify the Corps if listed species or habitat is in the ''vicinity'' of the activity creates uncertainty and should be eliminated.

District engineers must evaluate effects on listed species or habitat of any activity that is within the Corps' scope of analysis under the Endangered Species Act. This might include some areas outside of waters of the United States. However, it is correct that a Section 404 permit is only required for discharges of dredged or fill material into waters of the United States. The Corps has no authority to prohibit activities that do not involve such discharges. However, an activity in an upland area that adversely affects a listed species may make it more difficult for the Corps to later determine that an associated discharge of dredged or fill material into waters of the United States has ''no effect'' and/or may complicate any Section 7 consultation that is subsequently required. While defining the ''vicinity'' of an activity might be difficult, the Corps believes it must retain the ability to evaluate the effects of projects on species that are nearby, mobile, or otherwise could be affected. Defining the appropriate vicinity will also depend on the natural history of the particular species. If there is any doubt, permittees should contact the Corps or the local office of the USFWS or NMFS for guidance.

A couple of commenters stated that, as the U.S. Fish and Wildlife Service is

allowed to comment on coal mine permit applications during the Surface Mining Control and Reclamation Act (SMCRA) process, there is no need for consultation associated with Corps permits for coal mining.

Section 7(a)(2) of the Endangered Species Act requires Federal agencies to consult with the Services to ensure that they are not undertaking, funding, permitting, or authorizing actions likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. This responsibility cannot be waived, unless another Federal agency is the lead agency for the project and conducts the required consultation. In cases where SMCRA is administered by a state agency, the Corps is required to conduct the necessary Federal consultation. Information obtained during other environmental reviews, including any comments made by the Services during the SMCRA process, is used by the Corps in evaluating the NWP.

One commenter stated that neither applicants nor the Corps are adequately trained to make endangered species determinations and therefore the Corps should institute formal consultation for each proposed NWP activity. In addition, pre-construction notification thresholds should be eliminated or reduced so that applicants are not put in the position of deciding whether or not their project has impacts on protected species.

Section 7 consultation is a cooperative effort involving affected parties engaged in analyzing effects posed by proposed actions on listed species or critical habitat(s). Many NWP activities result in ''no effect'' to listed species or critical habitat, so it is not necessary to conduct formal consultation for each NWP activity. The determination of jeopardy/no jeopardy is based on a careful analysis of the best available scientific and commercial data. The Corps is engaging with the Services on programmatic Section 7 consultation for the NWPs, but project-specific evaluations and consultation are still required to ensure that permitted activities do not jeopardize the continued existence of a listed species or critical habitat. The pre-construction notification thresholds for NWPs provide a balance between efficient authorization of activities that have minimal adverse environmental impact, and environmental protection, including protection of listed species and critical habitat. The requirement for prospective permittees to notify the district engineer if a listed species or critical habitat might be affected or is in the vicinity of the project provides a relatively low bar for notification to the Corps of potential effects, while not bogging down the NWP process in cases where the applicant has performed due diligence and determined that there are no listed species or critical habitat in the vicinity of the project.

One commenter recommended that the general condition specify that the U.S. Fish and Wildlife Service or National Marine Fisheries Service has to make jeopardy determinations and that the Corps will initiate any required Section 7 consultation within 45 days of receiving a complete pre-construction notification.

We do not agree that it is necessary to modify this general condition to state that the U.S. Fish and Wildlife Service or National Marine Fisheries Service will make jeopardy determinations. Those determinations will be made when they issue biological opinions in response to a request for Section 7 consultation. The purpose of this general condition is to ensure compliance with the requirements of the Endangered Species Act, and to provide timely notification to prospective permittees, so that they do not begin work until the requirements of Section 7 have been fulfilled.

One commenter recommended that the prohibition on activities that adversely affect federally listed species should also apply to official state-listed endangered or threatened species.

The Endangered Species Act only applies to Federally-listed species. States may impose their own restrictions or prohibitions on activities that affect state-listed species.

One commenter suggested adding the word ''negatively'' to the second sentence of paragraph (a), to limit it to those activities that may negatively affect listed species or critical habitat. One commenter stated that this general condition should not apply to shellfish seeding activities authorized by NWPs 27 or 48, since traditional shellfish seeding activities do not negatively affect listed species or their habitat.

The term ''may affect'' comes from the ESA and is the statutory criterion for determining when Section 7 consultation is required. Changing this language to only apply to negative effects would not be consistent with the Corps' responsibilities under the Endangered Species Act. The general condition applies to all NWPs, to the extent that they have the potential to affect listed species or critical habitat. If an activity would not have an affect on listed species, no Section 7 consultation is required. The notification requirements in this general condition facilitate the Corps' compliance with its Section 7 obligations.

One commenter stated that many activities eligible for NWPs are covered under programmatic Section 7 consultations. Therefore, it should be clarified that if a project falls within the scope of a program that has been reviewed and approved under Section 7 consultation, then individual consultation is not required. One commenter recommended modifying this general condition to clarify the responsibilities of Federal permittees that use the NWPs.

If Section 7 consultation has been completed for an activity, either programmatically or individually, the activity can be authorized under NWPs. This is implied in the statement that ''no activity is authorized under any NWP which ''may affect'' a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.'' We do not believe additional clarification is necessary. When submitting a pre-construction notification for an activity that may affect a listed species, the applicant should indicate if Section 7 consultation has already been conducted, the Federal agency conducting the consultation, and the outcome of the consultation.

We have added a new paragraph to this general condition (paragraph (b)), to clarify that Federal agencies are to follow their own procedures for complying with the requirements of the Endangered Species Act, which is consistent with 33 CFR 330.4(f)(1). This paragraph also requires Federal permittees to provide appropriate documentation to the district engineer to demonstrate compliance with those requirements.

This general condition is adopted, with the modifications discussed above.

GC 18. *Historic Properties.* We proposed to modify this general condition by removing the reference to Appendix C of 33 CFR part 325 and stating that the district engineer will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. We also proposed to modify the general condition to state that district engineers will notify prospective permittees within 45 days of receipt of a complete pre-construction notification whether section 106 consultation is required.

One commenter agreed with the 45-day timeline for a Corps response. One commenter stated that the general condition should specify what documentation should be submitted with the pre-construction notification.

One commenter stated that it should be the applicant's responsibility, not the Corps', to find out if section 106 consultation is required.

The general condition states that, for activities that may have the potential to cause an effect on listed, eligible, or potentially eligible properties, the pre-construction notification must state which historic properties may be affected by the proposed work or include a map indicating the location of the project and the location of the historic properties. The Corps is responsible for making determinations and findings for the purposes of section 106. We have modified paragraph (a) of this general condition to clarify that NWP activities are not authorized until the requirements of section 106 have been satisfied, in cases where the district engineer determines that the NWP activity has the potential to cause an effect on a historic property. If the applicant has provided notification to the Corps of possible effects on historic properties the applicant must wait for a Corps determination of either ''potential to cause effects'' or ''no potential to cause effects'' even if this takes longer than 45 days.

Several commenters expressed concerns about the delay in NWP authorization resulting from the 45-day requirement and suggested that authorization be automatically granted if the Corps does not notify the applicant within 45 days.

The 45 day period is necessary to allow district engineers to adequately review those activities that may affect eligible properties. During that 45 day period, the district engineer will determine if the proposed project has the potential to cause effects on historic properties. If so, the prospective permittee cannot begin the activity until section 106 consultation has been completed, even if 45 days has passed since the district received a complete pre-construction notification (see 33 CFR 330.4(g)(2)). However, many determinations do not take the full 45 days. The Corps cannot waive section 106 compliance by allowing the applicant to assume ''no potential to cause effects'' if the Corps has not been able to respond within 45 days. Therefore, this provision has not been changed. In cases where the permittee has determined there are no historic properties for which the activity has the potential to cause effects, and has thus not notified the Corps of such properties (but only in such cases) the permittee does not have to wait for further confirmation of NHPA compliance from the Corps.

One commenter stated that the Corps should eliminate the language that requires an applicant to notify the Corps if an activity may affect any property which the ''prospective permittee has reason to believe may be eligible for listing,'' as the Corps is required only to take into account the effect of an undertaking on property that is included in or eligible for inclusion in the National Register. Two commenters recommended modifying this general condition to require a preliminary survey of the project area for the purposes of section 106 compliance.

The purpose of the notification requirement in this general condition is to provide the district engineer with the opportunity to consider effects to historic properties, in cases where pre-construction notification is not required by the NWP itself. Since the definition of ''historic property'' includes properties that are eligible for listing in the National Register of Historic Places, and the Federal agencies are required to carry out appropriate identification efforts, we believe that the concept in the proposed general condition is appropriate. We have modified this paragraph to provide further clarification of the role of the non-Federal permittee, and have added a sentence that states that district engineers are responsible for making final effect determinations. The notification requirement helps the Corps carry out those identification efforts. We have included a sentence in paragraph (c) to clarify that district engineers are to make reasonable and good faith efforts to identify historic properties when reviewing proposed NWP activities. We do not believe it is necessary to require a preliminary survey of the project area with the pre-construction notification. District engineers will review available information to determine if further investigations are warranted for section 106 compliance.

One commenter recommended that programmatic consultation and agreements should be allowed for section 106. One commenter stated that the Corps should initiate programmatic consultation on each NWP before reissuing them.

Programmatic agreements conducted in accordance with 36 CFR 800.14(b), meet the requirements of this general condition. We do not believe programmatic consultation on each NWP in advance is necessary or practical. Consultation will be conducted as appropriate for all activities that may affect historic properties listed on, eligible, or potentially eligible for listing in the National Register of Historic Places.

One commenter suggested clarifying that the work or activities that are prohibited from commencing until the Corps has provided notification of compliance with section 106 only refers to work in waters of the United States, not upland areas outside of this area. One commenter stated that this general condition shifts the burden of determining ''no effect'' on historic properties from applicants and the Corps to other agencies, which could delay authorization. One commenter recommended modifying this general condition to clarify the responsibilities of Federal permittees that use the NWPs.

District engineers must evaluate effects on eligible historic properties that are within the Corps' scope of analysis under section 106. This might include some areas outside of waters of the United States. However, it is correct that a Section 404 permit is only required for discharges of dredged or fill material into waters of the United States. The Corps has no authority to prohibit activities that do not involve such discharges. However, an activity in an upland area that adversely affects a historic property may make it more difficult for the Corps to later determine that a Section 106 consultation is not required for an associated discharge of dredged or fill material into waters of the United States, and/or may complicate any Section 106 consultation that is subsequently required. The district engineer is responsible for making determinations and findings under section 106. This process has not changed. We have added a new paragraph (b) to this general condition, which states that Federal permittees should follow their own procedures for complying with the requirements of section 106.

One commenter expressed concerns that the general condition lacks clarity about who is responsible for identification and evaluation of historic properties and determination of effects, how such identification will be accomplished, and the nature of consultation required. This commenter suggested revised wording for the general condition and recommended that the Corps include a definition for historic properties. We agree that the wording proposed by this commenter clarifies responsibilities and procedures and have revised the general condition accordingly. We have also added a definition for historic property in the ''Definitions'' section for the NWPs.

This commenter also noted that the Corps'' historic properties regulations

are not consistent with Advisory Council on Historic Preservation's regulations at 36 CFR part 800 and are not approved by the Council. As noted by the commenter, the Corps and the Council are currently involved in discussions to resolve the differences between the Corps' procedures and the Council's regulations at 36 CFR part 800. Pending the outcome of those discussions, the reference in this general condition to the Corps current procedures means the Corps ''Revised Interim Guidance for Implementing Appendix C of 33 CFR Part 325 with the Revised Advisory Council on Historic Preservation's Regulations at 36 CFR Part 800'' dated April 25, 2005.

The use of the interim guidance, as well as the Corps Regulatory Program procedures for the protection of historic properties at Appendix C of 33 CFR Part 325, are provisional measures to comply with the requirements of Section 106 of the National Historic Preservation Act until updated alternative procedures that are tailored to the Corps Regulatory Program can be promulgated through the appropriate processes.

This general condition is adopted with the modifications discussed above.

GC 19. *Designated Critical Resource Waters.* We proposed to modify this general condition to eliminate provisions that duplicate the requirements of other general conditions.

One commenter recommended adding proposed NWPs E and F to paragraph (a) of this general condition, to prohibit the use of those permits to authorize discharges of dredged or fill material in waters of the United States for activities in, or directly affecting, critical resource waters.

We have modified paragraph (a) of this general condition to include NWPs E and F (now designated as NWPs 49 and 50), since those activities have the potential to result in more than minimal adverse effects to designated critical resource waters and their adjacent wetlands. These mining activities may be authorized by individual permits or regional general permits in these waters.

One commenter stated that the Corps should not prohibit the use of an NWP in critical resource waters if the agency managing those critical resource waters approves those activities. This commenter recommended requiring pre-construction notification for all activities in critical resource waters and conducting coordination with the managing agency. Another commenter stated that limiting the use of NWPs in designated critical resource waters should be done through regional conditions and coordination with state and local agencies and resource agencies, instead of a general condition.

Paragraph (a) of this general condition lists those NWPs that have a greater potential to result in more than minimal adverse effects on the aquatic environment, if they involve discharges of dredged or fill material into those designated critical resource waters, or their adjacent wetlands. Therefore, it would be more appropriate to review those activities through the individual permit process, with agency coordination, or authorize those activities through regional general permits. The designated critical resource waters listed in this general condition are generally considered to be important to the national public interest. Proposed activities involving discharges of dredged or fill material into those waters and their adjacent wetlands warrant more thorough review, through either the pre-construction notification process or other forms of Department of the Army authorization, such as individual permits.

One commenter suggested that in order to provide consistency with state definitions, a definition for ''natural heritage sites'' should be included in the text of this general condition.

Natural heritage sites are defined and designated by state agencies. The criteria and processes for designating state natural heritage sites vary from state to state. District engineers will utilize the appropriate state designations when implementing this general condition. Therefore, we do not believe that it is appropriate to provide a definition of state natural heritage sites at the national level.

One commenter suggested that source waters used for drinking water or ground water recharge should be included in the definition of critical resource water. The same commenter suggested that there should be no provision for the use of discretionary authority regarding discharges of dredged or fill material into designated critical waters.

Concerns regarding impacts to sources for drinking water and ground water recharge are more appropriately addressed through regional conditioning of the NWPs or review of pre-construction notifications for specific and identified waters. Division engineers can regionally condition the NWPs to prohibit or limit their use in such high value waters. District engineers will exercise discretionary authority and require individual permits for activities proposed in high value waters that will result in more than minimal adverse effects on the aquatic environment.

One commenter said that critical resource waters should include the following areas: watersheds of nationally-designated wild and scenic rivers, waters within wilderness areas, national parks and wildlife refuges, and all waters with similar state designations. Another commenter recommended adding waters designated as National Monuments and National Historic Sites to the categories of waters in this general condition. This commenter also said that vernal pools, bogs and fens, native wet prairie, forested wetlands, eelgrass beds, and coral reefs should also be considered as designated critical resource waters subject to this general condition.

The use of NWPs in components of the National Wild and Scenic River System or designated study rivers is addressed by general condition 15, Wild and Scenic Rivers. Restricting or prohibiting the use of NWPs in waters of the United States within wilderness areas, national parks, national monuments, national historic sites, national wildlife refuges, or state-designated wilderness, parks, or refuges, is more appropriately addressed through the regional conditioning process. In areas where vernal pools, bogs and fens, native wet prairie, forested wetlands, eelgrass beds, and coral reefs warrant greater levels of protection, division engineers may impose regional conditions on NWPs to restrict or prohibit their use in those waters. Division engineers will determine whether regional conditions are necessary to ensure that the NWPs authorize only activities resulting in minimal individual and cumulative adverse effects on the aquatic environment in those areas.

This general condition is adopted with the modification discussed above.

GC 20. *Mitigation.* We proposed several modifications to this general condition, such as requiring compensatory mitigation for NWP activities that require a pre-construction notification and result in the loss of greater than 1/10 acre of wetlands. We also proposed to add a provision stating that compensatory mitigation may be required for activities that result in permanent adverse effects to certain aquatic resource functions and services.

Several commenters requested clarification as to whether compensatory mitigation is required only for permanent losses of waters of the United States, or whether it is also required for temporary impacts to those waters. A commenter asked if compensatory mitigation for stream bed

impacts should be quantified as linear feet or acres. A couple of commenters said that district engineers should be able to require compensatory mitigation for losses of other types of waters of the United States, such as streams. One commenter expressed support for watershed-based compensatory mitigation. One commenter said that it was unclear how the proposed compensatory mitigation rule published in the March 28, 2006, issue of the **Federal Register** (71 FR 15520) would apply to the NWP program. One commenter said that preservation should not be used as compensatory mitigation.

Compensatory mitigation is required only for permanent losses of waters of the United States, or for permanent adverse effects to aquatic resource functions (such as those described in paragraph (h) of this general condition). The restoration of waters of the United States where there were temporary fills and other impacts during the construction activity is not considered compensatory mitigation. Those actions are addressed by general condition 13. The unit of measure used to quantify stream bed impacts and compensatory mitigation is at the discretion of the district engineer. Compensatory mitigation may be required for losses of streams and other types of waters of the United States, to ensure that the NWP activity results in minimal individual and cumulative adverse effects on the aquatic environment. To clarify this concept, we have added a new paragraph (d) to this general condition, which states that the district engineer may require compensatory mitigation for losses of streams and other waters of the United States. When a final compensatory mitigation rule becomes effective, it will apply to all types of Department of the Army permits, including the NWPs. We are in the process of reviewing comments on the proposed rule and developing the final rule, in cooperation with the Environmental Protection Agency. Preservation of aquatic resources is an important form of compensatory mitigation which is appropriate in some cases to protect and maintain aquatic resource functions and services in the watershed. All compensatory mitigation should be determined, to the extent practicable, using a watershed approach that considers watershed needs holistically and identifies locations and types of compensatory mitigation that will be most beneficial to the watershed.

Two commenters said that prospective permittees should be required to submit statements with NWP pre-construction notifications that explain how avoidance and minimization of losses of waters of the United States was achieved. They said that this statement would assist district engineers in determining if avoidance and minimization has been achieved to the maximum extent practicable. One commenter objected to including temporary adverse effects in the language in paragraph (a) of this general condition, stating that it is contrary to the definition of ''loss of waters of the United States'' which refers only to permanent losses. Another commenter said that compensatory mitigation should be considered only after avoidance and minimization has occurred.

We do not agree that it is necessary to require an avoidance and minimization statement with pre-construction notifications to evaluate whether avoidance and minimization has been achieved to the maximum extent practicable on the project site. The information required for a complete pre-construction notification, including any plans submitted with the pre-construction notification, is sufficient for district engineers to determine compliance with this general condition. We believe the minimization of temporary impacts to waters of the United States is important for ensuring that NWP activities result in minimal adverse effects on the aquatic environment, even though those impacts do not result in permanent losses and generally do not require compensatory mitigation. The requirements of this general condition support the mitigation sequence of avoidance, minimization, and compensation. Compensatory mitigation requirements are determined after considering compliance with the avoidance and minimization provisions of this general condition.

Several commenters expressed support for the 1/10 acre threshold for requiring compensatory mitigation for wetland losses that require pre-construction notification. A number of commenters said that compensatory mitigation should be required for all wetland losses, because of the potential cumulative impacts resulting from many small wetland losses. Several commenters asserted that there are enough mitigation banks and in-lieu fee programs throughout the country to require compensatory mitigation for wetland losses of less than 1/10 acre. Two commenters recommended changing the compensatory mitigation threshold to 1/4 acre, and one commenter reasoned that the threshold should be higher because the NWP program already meets the ''no overall net loss'' goal for wetlands. Two commenters said that there should not be a mandatory compensatory mitigation requirement for the NWPs. Compensatory mitigation should be required only when necessary to ensure minimal adverse effects.

We are retaining the 1/10 acre compensatory mitigation threshold for wetland losses, with the provision allowing district engineers to waive this requirement on a case-by-case basis if the activity results in minimal adverse effects on the aquatic environment. This will help ensure that we continue to achieve the ''no overall net loss'' goal while providing appropriate flexibility and transparency to the wetlands compensatory mitigation requirements for the NWPs. We do not believe it is appropriate or practicable to require compensatory mitigation for all activities authorized by NWPs that result in wetland losses. Even though there are several hundred mitigation banks and in-lieu fee programs in the United States that are currently operational, these mitigation banks and in-lieu fee programs are not distributed throughout the country in a manner that would support the recommended change to this general condition. In many regions, individual permittee-sponsored projects are the only option available for compensatory mitigation to offset losses authorized by NWP activities. For very small impacts, such projects may not be practicable. Because most larger projects require more than one-for-one compensation, we are confident that we can continue to meet the ''no overall net loss'' goal without requiring mitigation for all impacts.

One commenter said that general condition 20 is not consistent with 33 CFR 320.4(r)(2), which states that compensatory mitigation will be for significant resource losses. This commenter articulated that there is large difference between ''no more than minimal'' and ''significant resource loss.'' This commenter also stated that if the proposed activity requires a pre-construction notification and will result in loss of greater than 1/10 acre of wetlands, but the activity will result in minimal adverse effects, then compensatory mitigation cannot be required. This commenter recommended removing the 1/10 acre threshold, and modifying the general condition to simply state that the district engineer will require compensatory mitigation when necessary to ensure minimal individual and cumulative adverse effects on the aquatic environment.

General condition 20 is consistent with the NWP regulations governing mitigation (see 33 CFR 330.1(e)(3)). That

regulation states that mitigation may be required to reduce the adverse effects of the NWP activity so that they are minimal. There is already sufficient flexibility in the general condition for the district engineer to waive the compensatory mitigation requirement for wetland losses that exceed 1/10 acre if the project impacts are minimal. We believe the threshold serves an important purpose in communicating to the public that in most cases, impacts of greater that 1/10 acre will be judged to be more than minimal and will require compensatory mitigation.

One commenter asked whether the 1/10 acre threshold for requiring compensatory mitigation for wetland losses also applies to non-wetland waters of the United States. Several commenters stated that compensatory mitigation should be required for all authorized impacts to waters of United States. One commenter said that compensatory mitigation for losses of non-wetland waters of the United States should be optional. Another commenter said that on-site restoration of temporarily impacted areas should be achieved before compensatory mitigation is required.

The 1/10 acre compensatory mitigation threshold in paragraph (c) applies only to wetland losses. We are adding a new paragraph (d) to this general condition, to clarify that the district engineer may require compensatory mitigation for losses of streams and other types of waters of the United States. We do not believe it is necessary to require compensatory mitigation for all authorized impacts to waters of the United States. In response to pre-construction notifications, compensatory mitigation requirements for losses of streams and other open waters will be determined by district engineers on a case-by-case basis, to ensure minimal adverse effects. The NWP general conditions, especially general condition 13, Removal of Temporary Fills, address the restoration of temporarily impacted areas. Compensatory mitigation is required only for permanent losses, however, temporary impacts must also be minimized.

Three commenters asked for specific criteria that would be used by district engineers to determine when compensatory mitigation would be required for NWP activities. Two commenters requested clarification regarding the circumstances when compensatory mitigation would be required for wetland losses of less than 1/10 acre. One commenter recommended that permittees who believe their project should not require compensatory mitigation be required to provide a justification for why compensatory mitigation is not necessary for their NWP activities.

Compensatory mitigation requirements will be determined by district engineers on a case-by-case basis, after considering relevant and available information, such as the ecological conditions of the project site, the type of activity, the impacts of the activity on the aquatic environment and other public interest factors, and the type of aquatic resources that will be adversely affected by the NWP activity. To the extent practicable, this evaluation will be conducted using a watershed approach. Compensatory mitigation will be required for wetland losses of less than 1/10 acre, when the district engineer determines it is necessary to ensure minimal adverse effects on the aquatic environment. This is particularly likely in areas where there is concern for the cumulative effects of multiple small losses. District engineers will review pre-construction notifications, and determine when compensatory mitigation will be required. It is not necessary to require permittees to provide a statement explaining why compensatory mitigation is not needed, however permittees are welcome to provide such information if they believe it will help the district engineer in determining the amount and type of required mitigation. Such statements are most useful when they are based on sound technical analysis using a watershed approach that draws on pre-existing assessments of watershed needs.

One commenter supported the provision allowing the district engineer to waive or reduce the compensatory mitigation requirement for wetland losses, when other forms of mitigation, such as the establishment and maintenance of riparian areas, would be better for the environment. One commenter said that off-site compensatory mitigation should be preferred in areas where invasive species are a problem. One commenter suggested that the general condition retain a preference for restoration.

The location of compensatory mitigation projects will be determined on a case-by-case basis. Off-site compensatory mitigation may be more appropriate for a variety of reasons, in addition to concerns for invasive species. Off-site compensatory mitigation may be more effective at replacing aquatic resource functions that will be lost as a result of the NWP activity. Off-site mitigation may also have a better chance of success, particularly if the proximity of the permitted activity is likely to adversely impact the mitigation (e.g., through altered hydrology). This general condition retains a preference for wetland restoration, but the text has been modified to reflect the language in the 1990 ''Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act 404(b)(1) Guidelines.''

One commenter agreed with the one-to-one mitigation ratio in paragraph (c) of this general condition, provided there is flexibility in determining the appropriate ratio for a specific NWP activity. Several commenters said that district engineers should be allowed to require higher ratios of compensatory mitigation, to help ensure effective mitigation.

The mitigation ratio in paragraph (c) is a recommended minimum ratio that can be adjusted upward as necessary to provide for more appropriate mitigation for a specific activity. For a particular NWP activity, the district engineer will determine the appropriate mitigation ratio. Ratios of greater than one-to-one are often required to ensure that appropriate amounts of compensatory mitigation are provided to satisfy the minimal adverse environmental effects requirements of the NWPs. Higher ratios may be used to address temporal losses, uncertainty in mitigation success, and/or differences in functions and services between the impact site and the mitigation site.

One commenter expressed support for paragraph (d) of this general condition.

We are retaining this paragraph, with slight changes to its text to provide greater clarity. The substance of this paragraph remains unchanged. Because of the addition of a new paragraph (d), this paragraph is redesignated as paragraph (e).

Several commenters objected to requiring riparian areas as compensatory mitigation for activities authorized by NWPs, stating that the Corps lacks authority to require non-wetland riparian areas as compensatory mitigation. One commenter provided support for the use of riparian areas as compensatory mitigation, and another commenter said that riparian areas should be required for all activities. This commenter said that using riparian areas as the only form of compensatory mitigation is appropriate when the project impacts would be more than minimal without the protection of the riparian area. Another commenter asserted that the Corps is attempting to expand its jurisdiction by requiring establishment and maintenance of

riparian areas. One commenter asked for clarification of the jurisdictional status of riparian areas under the Clean Water Act. A commenter said that riparian areas cannot be required as compensatory mitigation for NWP activities near streams because compensatory mitigation projects may only consist of areas that are, or will become, waters of the United States.

The establishment and maintenance of riparian areas can be required by the district engineer as compensatory mitigation, to help ensure that the NWP activity results in minimal individual and cumulative adverse effects on the aquatic environment. Such a requirement does not make non-wetland riparian areas subject to Clean Water Act jurisdiction. Since non-wetland riparian areas are not jurisdictional, this paragraph also states that legal protection should be provided to the riparian areas, for their protection and maintenance. In many areas, riparian areas will be wetlands subject to Clean Water Act jurisdiction. In other areas riparian areas will not meet the criteria in the Corps wetland definition at 33 CFR 328.3(b).

We do not agree that the establishment and maintenance of riparian areas should be required for all NWP activities. It may not be a practicable or appropriate form of compensatory mitigation for some NWP activities.

Regardless of whether they are wetland or non-wetland, riparian areas generally provide ecological functions that are important to the aquatic environment, and especially to the ecological integrity of streams. Examples of ecological functions provided by riparian areas include: removing nutrients and pollutants from surface runoff, which improves water quality; moderating storm flows to streams, which reduces downstream flooding and degradation of aquatic habitat; erosion reduction; moderating water temperature changes; providing detritus, a food source for many aquatic organisms; providing a source of large woody debris to stream channels, which provides habitat for aquatic organisms; providing habitat to a wide variety of aquatic and terrestrial species; trapping sediments, thereby reducing degradation of stream habitat quality; providing corridors for the movement and dispersal of many species of wildlife; and providing flood storage capacity.

Compensatory mitigation projects can include areas that are not waters of the United States, as long as the mitigation is directly related to the impacts of the proposed work on such waters and appropriate to the scope and degree of those impacts. Riparian areas are integral components of streams and other open waters, and are essential for their ecological integrity and functioning. The establishment and maintenance of riparian areas as compensatory mitigation for activities authorized by NWPs and other types of permits also helps advance the objective of the Clean Water Act, which is to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' Therefore, riparian areas can be required as compensatory mitigation for NWP activities.

One commenter asked whether the establishment and maintenance of riparian areas as compensatory mitigation is mandatory or discretionary. Two commenters said that in many areas with ephemeral waters, it may not be possible to establish and maintain riparian areas next to those waters. Another commenter stated that it is not always feasible to provide legal protection (*e.g.*, conservation easements) for riparian areas within highway rights-of-way. One commenter said that for ephemeral streams, vegetated buffers should be required instead of riparian areas.

The establishment and maintenance of riparian areas as a compensatory mitigation requirement is at the discretion of the district engineer. Compensatory mitigation requirements are established on a case-by-case basis, to ensure that the NWP activity results in minimal individual and cumulative adverse effects on the aquatic environment. If ephemeral streams are located on the project site, it may not be feasible to establish and maintain riparian areas next to those waters. Riparian areas should be self-sustaining. Also, if it is not possible to protect riparian areas through real estate instruments, the district engineer may require alternate arrangements or an alternative form of compensatory mitigation, as appropriate to the situation.

The general condition contains a recommended width of 25 to 50 feet for riparian areas on each side of the stream. Two commenters said that requiring 25 to 50 foot wide riparian areas may not always be feasible, and may be too costly. A commenter stated that the recommended width of riparian areas should be at least 150 feet to protect water quality, and wider to provide other ecological functions. Another commenter suggested a minimum width of 100 feet. One commenter indicated that wider riparian areas should be required to address habitat issues identified in federal or state watershed plans. Another commenter stated that wider riparian areas should be required to protect salmon habitat. One commenter requested clarification regarding the documentation necessary to determine the appropriate width of the riparian area.

The appropriate width of the riparian area will be determined by the district engineer, taking into account the ecological characteristics of the project site, as well as the nature and extent of the overall activity that will be constructed on the project site. The recommended width for riparian areas is intended to provide balance between environmental protection and the development of the project site. The recommended width is also intended to be commensurate with the level of impacts that need to be mitigated. The Corps' regulations require compensatory mitigation to be appropriate to the scope and degree of the authorized impacts. Requiring the establishment and maintenance of a 150-or 100-foot wide riparian area could comprise a substantial land area on a parcel, and would likely be an inappropriate amount of compensatory mitigation for an NWP activity, especially for an NWP that has a ½ acre limit for losses of waters of the United States. The information provided in the site plans, as well as supporting documentation, is normally sufficient to determine the appropriate width of the riparian area.

Another commenter said that there needs to be flexibility to allow use of other tools to protect water quality, such as storm water management features, instead of requiring the establishment and maintenance of riparian areas. One commenter stated that riparian areas should be planted only with local genetic stocks of native plant species.

Storm water management features, as well as best management practices, may be used instead of riparian areas to protect water quality, if site characteristics do not support the establishment and maintenance of riparian areas. Native species should be planted, but we do not agree that it is necessary to limit those plantings to local genetic stocks, though this should be encouraged where practicable. Such stocks may not be available in the area, and therefore such a requirement may not be practicable.

Two commenters stated that this general condition should clearly state that mitigation banks can be used to provide compensatory mitigation for NWPs. One commenter said that the use of mitigation banks to provide compensatory mitigation for NWP activities should be limited to the same

watershed as authorized impacts. Two commenters said that in-lieu fee programs should not be used for the NWPs. Another commenter stated that in-lieu fee programs should not be used for compensatory mitigation for NWP activities unless they comply with 2000 in-lieu fee guidance. Two commenters expressed support for the use of in-lieu fee programs to provide compensatory mitigation for NWP activities.

Both mitigation banks and in-lieu fee programs can be used to provide compensatory mitigation for activities authorized by NWP permits. The established service area of the mitigation bank, as well as the judgment of the district engineer, will be used to determine whether credits provided by that mitigation bank are appropriate compensation for a specific NWP activity. In-lieu fee programs can provide compensatory mitigation projects that benefit the aquatic environment, as well as the watershed. When the final Compensatory Mitigation Rule is published, any changes in mitigation requirements will be applied to the NWP program as necessary at that time.

Paragraph (g) of the proposed general condition stated that compensatory mitigation may be required to offset permanent adverse effects to certain functions and services provided by waters of the United States, such as converting a forested wetland to a herbaceous wetland. Three commenters objected to characterizing this as an adverse effect. Two commenters said that compensatory mitigation should not be required for these impacts. Two commenters asserted that this paragraph should be deleted, since there is ample guidance concerning when compensatory mitigation should be required for these types of impacts. Two other commenters supported adding this provision to the general condition.

We are retaining this provision, while redesignating it as paragraph (h). Compensatory mitigation can be required for adverse effects to aquatic resources, even specific functions provided by those aquatic resources.

One commenter recommend adding language to this general condition which would state that the district engineer will determine appropriate compensatory mitigation based on what is best for the aquatic environment on a watershed basis. Another commenter requested clarification that the establishment of upland buffers around compensatory mitigation projects is voluntary, and compensatory mitigation credit would be provided for such vegetated buffers.

We do not believe it is necessary to revise the general condition to specifically state that appropriate compensatory mitigation will be determined based on what would be best for the aquatic environment on a watershed basis, though this is certainly the policy of the Corps. Mitigation policy documents, such as Regulatory Guidance Letter 02–02, already support that concept. There is also an extensive discussion of the watershed approach in the preamble to the proposed Compensatory Mitigation Rule. District engineers may grant compensatory mitigation credit for upland buffers surrounding compensatory mitigation project sites, if those buffers contribute to the ecological functioning and sustainability of those projects. Any requirement to establish and maintain vegetated buffers around compensatory mitigation project sites should be based on considerations of practicability and appropriateness.

One commenter asserted that the Corps does not have the statutory authority to require conservation easements to protect compensatory mitigation projects. This commenter said that such a requirement is problematic for mining activities because different parties may own different rights (*e.g.*, surface rights v. mineral rights) associated with the parcel of land.

The district engineer has the discretion to require conservation easements for compensatory mitigation project sites, to protect those sites, if he or she determines that this is necessary to ensure minimal adverse impacts. In some cases, it may not be feasible to require conservation easements because the various rights associated with a particular parcel of land may belong to different individuals. In such cases, other methods of protecting the mitigation site should be explored.

One commenter said that this general condition should be revised to provide performance standards for compensatory mitigation projects required for NWP activities. This commenter also recommended retaining the requirement for NWP verifications to specify the party responsible for implementing the compensatory mitigation plan, instead of limiting it only to cases where the use of mitigation banks, in-lieu fee programs, and activity-specific compensatory mitigation is required.

Performance standards for compensatory mitigation projects are usually specific to certain types of aquatic resources and are, therefore, more appropriately determined by the district engineer. It would be inappropriate to establish national performance standards through this general condition, because of the considerable variation among aquatic resource types across the country. Paragraph (g) of this general condition requires the mitigation provisions of NWP verifications to specify the party responsible for providing compensatory mitigation. This requirement applies to all three types of compensatory mitigation, including compensatory mitigation provided by the permittee.

General condition 20 is adopted, with the modifications discussed above.

GC 21. *Water Quality.* We proposed to modify this general condition by simplifying the provision regarding requirements for water quality management measures.

Several commenters expressed support for the proposed changes to this general condition. One commenter suggested that this general condition should not apply to NWPs 27 or 48, because the activities authorized by these NWP result in improvements to water quality.

If an aquatic habitat restoration, establishment, or enhancement activity or a commercial shellfish aquaculture activity involves discharges of dredged or fill material that require a section 404 permit, then water quality certification must be obtained, either for the NWP generally or individually by the project proponent, or waived. This is a requirement of Section 401 of the Clean Water Act. Therefore, we cannot modify this general condition to exclude NWPs 27 or 48.

Several commenters stated that this general condition creates the potential for duplicative oversight of water quality issues by the Corps and EPA or its designated state agency. Another commenter said that it would be arbitrary for the Corps to attempt to regulate water quality by requiring some type of undefined water quality management measures.

Whether duplicative or not, Section 401 certification by EPA or a State or Tribe, as appropriate, is required by the Clean Water Act. District engineers can condition NWP authorizations to ensure that the authorized activity results in minimal individual and cumulative adverse effects on the aquatic environment and other factors of the public interest, including water quality. By requiring water quality management measures necessary to ensure that the authorized activity results in minimal adverse effects, the Corps is not attempting to regulate water quality. Appropriate water quality management measures will be identified on a case-

by-case basis through the NWP verification process.

A Section 401 certification must be obtained or waived prior to commencing the authorized activity. In cases where a state has not yet provided, or has denied, water quality certification, for an NWP generally, the permittee must request individual certification before proceeding and provide documentation of this request to the Corps. The district engineer will wait for a reasonable period of time after receipt of this documentation. The NWP regulations generally define this period of time as 60 days, after which the district engineer can assume a waiver of the water quality certification. The wait period may vary as a result of negotiations between the district engineer and the state, but it cannot exceed one year. The district engineer will inform the project sponsor of the appropriate waiting period for presumption of a waiver of certification. The activity may not proceed until the project sponsor has received individual certification from the state or the waiting period has elapsed. This general condition is adopted as proposed.

GC 22. *Coastal Zone Management.* We proposed to modify this general condition to state that the district engineer or state may require additional measures to ensure consistency with state coastal zone management requirements.

One commenter stated that use of the term ''waived'' in this general condition is inappropriate, because Coastal Zone Management Act (CZMA) consistency determinations cannot be waived. This commenter also stated that obtaining a CZMA consistency concurrence cannot be a condition of a Federal permit, because the CZMA states that a Federal permit cannot be issued until a CZMA consistency concurrence is issued.

We have modified this general condition by removing the phrase ''or waived'' and replacing it with the phrase ''or a presumption of concurrence must occur'' to be consistent with the implementing regulations for the CZMA. This general condition is an appropriate means of ensuring compliance with CZMA requirements, especially for those NWP activities that do not require pre-construction notification. For activities subject to the CZMA, the NWP authorization is not valid until the permittee has complied with the requirements of the CZMA, including the requirement to obtain CZMA consistency concurrence or a presumption of concurrence.

A CZMA concurrence or presumption of concurrence must be obtained prior to commencing the authorized activity. In cases where a state has not acted on, or has disagreed with the Corps' consistency determination, the permittee must provide the state with an individual consistency determination for concurrence, and must provide the district engineer with the state's individual consistency concurrence or a copy of the individual consistency determination provided to the state for concurrence. If the state fails to act on the permittee's consistency determination within six months of receipt by the state, concurrence will be presumed.

This general condition is adopted with the modification discussed above.

GC 23. *Regional and Case-by-Case Conditions.* We proposed to modify this general condition to clarify that water quality certifications may be issued by Indian Tribes or the U.S. Environmental Protection Agency, and that states issue CZMA consistency determinations.

One commenter recommended modifying this general condition to clarify that the U.S. EPA has delegated the section 401 water quality certification program to many states, and that in those cases it is the designated state that issues the water quality certification, not the U.S. EPA.

We do not agree that this suggested modification is necessary, since the wording already recognizes that delegated States or Tribes may issue Section 401 water quality certifications.

This general condition is adopted as proposed.

GC 24. *Use of Multiple Nationwide Permits.* We proposed to modify this general condition by making a grammatical adjustment.

Several commenters objected to the practice of using more than one NWP to authorize a single and complete project. In contrast, two commenters said that combining NWPs is both appropriate and desirable as a means for the Corps to reduce its workload and provide expedited approvals to the regulated public. Two comments said that the proposed general condition has the effect of raising the acreage limit when an NWP with an acreage limit is combined with another NWP that has no set limit. One commenter suggested rewording the general condition in the affirmative. One commenter suggested replacing the term ''temporary loss'' with ''temporary impact'' for purposes of calculating the loss of waters of the United States.

We agree that the ability to use multiple NWPs reduces our workload and expedites decisions for the regulated public while maintaining the necessary protections for the aquatic environment. When two NWPs are used to authorize a single and complete project, and one NWP has a specified limit and the other NWP has no specified limit, the general condition states that the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. The NWP with the specified acreage limit establishes the acreage limit for the single and complete project, not the NWP with no designated acreage limit. We believe phrasing this general condition as a prohibition assists in compliance. The reference to ''acreage loss'' in this general condition applies to permanent losses, to be consistent with the definition of ''loss of waters of the United States'' provided in the ''Definitions'' section of the NWPs.

This general condition is adopted as proposed.

GC 25. *Transfer of Nationwide Permit Verifications.* We proposed to add this new general condition to the NWPs.

Several commenters supported the proposed general condition. One commenter requested clarification whether there would be a standardized form for the parties to sign and submit. Another commenter recommended adding a permit transfer form as a separate section of the NWP verification or certificate of compliance.

This general condition provides specific language that must be included in all NWP verification transfer request letters from the original permittee to the appropriate Corps district office, to validate the transfer of the NWP verification to a new property owner. District engineers have the discretion to incorporate this language in NWP verification letters, either as language within the text of the letter, or as a separate form or attachment. At their discretion, district engineers may also ask permittees to include the referenced language as part of their own transfer request letter.

One commenter requested clarification whether the permit transfer information would be tracked in a database and made available to the public and other regulatory agencies.

The permit transfer authorization information will be retained in the appropriate recordkeeping facilities at Corps district or field offices. The information will be provided upon request to the public or other agencies.

One commenter recommended adding a sentence to the transfer statement to be signed, specifying that any changes in the permitted project must be evaluated by the district engineer and could require modifications to the permit.

Any requests for modification of an activity previously authorized by a DA permit will be reviewed by the district engineer. If the new proponent wants to modify the previously verified activity, the proposed modification must be submitted for the consideration of the Corps, to verify that the activity still complies with the terms and conditions of the applicable NWP. We do not believe it is necessary to add a sentence to this general condition to describe this requirement, which applies regardless of whether the permit is transferred or not.

Several commenters stated that this general condition only addresses the sale of the property associated with an NWP verification, and recommended that it be expanded to allow the transfer of a permit verification when responsibility over the project is transferred even if the lands in question do not undergo change in ownership. Another commenter suggested clarifying that the transfer provision is also applicable when only part of the property covered by the NWP is sold. This commenter also suggested changing the phrase ''associated liabilities associated with compliance with its terms and conditions'' to read ''obligations to comply with its terms and conditions.''

The language for the proposed general condition was taken from Appendix A of 33 CFR 325, which is the standard form for Department of the Army permits. This language is found at general condition 4 of Appendix A. We believe that the language in this general condition should be consistent with our standard permit language.

One commenter requested clarification on how the NWP verification transfer would affect off-site mitigation requirements associated with an NWP verification. One commenter requested clarification as to whether the transfer is a required condition or an option.

As stated in this general condition, when a property associated with an NWP verification is sold, the responsibilities and liabilities associated with the NWP verification are transferred to the new owner. This includes any mitigation requirements added as special conditions to the NWP authorization being transferred. Transferring the NWP verification to the new owner of the property is not necessary if the new owner decides not to conduct the authorized activity. The new owner also has the option of obtaining a different NWP verification. However, if the activity is (or was) conducted and any permit conditions are still applicable, the new owner must have some form of DA authorization.

This general condition is adopted as proposed.

GC 26. *Compliance Certification.* We did not propose any substantive changes to this general condition. One commenter suggested changing the name of this general condition to ''Compliance Verification'' to avoid confusion with other certifications such as water quality certifications.

We do not agree with the proposed name change for this condition. For this general condition, the permittee is certifying that he or she has completed the authorized work and any required mitigation.

This general condition is adopted as proposed.

GC 27. *Pre-Construction Notification.* We proposed to modify and simplify this general condition by removing language that is redundant with the terms of specific NWPs. We also proposed to modify the information requirements for pre-construction notifications. Other proposed modifications are discussed in the September 26, 2006, **Federal Register** notice.

Two commenters stated that the reference to using ENG FORM 4345 should be removed because this form does not contain the necessary information required for a complete pre-construction notification. One commenter requested that a complete pre-construction notification be defined.

It is not necessary to use ENG FORM 4345 for pre-construction notifications. Instead of using ENG FORM 4345, a prospective permittees may choose to supply the information in a letter. Some districts provide checklists to assist prospective permittees, especially if they have regional conditions that specify additional information that must be submitted with pre-construction notifications.

One commenter asked if a pre-construction notification is presumed to be complete if the district engineer does not request additional information necessary to make the pre-construction notification complete within 30 days. This commenter also requested clarification on when the 45-day pre-construction notification review period begins. One commenter suggested that the district engineer should be allowed to make more than one request of additional information in order to make a more informed decision.

If 30 days has passed since the pre-construction notification was received by the Corps district, the pre-construction notification will be presumed to be complete. The 45 day pre-construction notification review period begins on the date the complete pre-construction notification is received by the Corps district. If the district engineer requests additional information necessary to make the pre-construction notification complete, a new 45 day review period begins on the date the requested information is received by the Corps district. If no request for additional information is received, the original pre-construction notification is deemed complete and the 45 day review period begins on the date the pre-construction notification was received by the Corps district.

The provision limiting the district engineer to one request for additional information applies only to those requests for information necessary to complete the pre-construction notification. We have modified the second sentence of paragraph (a) to provide flexibility in cases where there are extenuating circumstances that warrant an additional request for information necessary to make a pre-construction notification complete. Such requests must also be made within the 30 calendar days of receipt of the pre-construction notification. This sentence has been modified to state that, as a general rule, the district engineer will make only one request for additional information to make the pre-construction notification complete. District engineers should endeavor to make only one request for additional information to make a pre-construction notification complete.

The information requirements for a complete pre-construction notification are provided in paragraph (b) of this general condition. We believe the information required for a complete pre-construction notification is the minimum information necessary for district engineers to begin the process of determining whether the proposed work will result in minimal adverse effects on the aquatic environment and is authorized by NWP.

If, as a result of the review of the complete pre-construction notification, the district engineer determines that additional information (such as a compensatory mitigation plan) is needed to make a final decision on whether the activity qualifies for NWP authorization or discretionary authority should be asserted, the district engineer may request that information. In cases where this additional information is necessary to make a decision on the pre-construction notification, the decision must still be made within 45 days of the receipt date for the complete pre-construction notification.

Two commenters said that the burden has shifted from the Corps to the prospective permittee for Endangered Species Act or National Historic Preservation Act compliance, and there is no relief provided in the 45 day clock for applicants when Endangered Species Act or section 106 consultation is necessary. Two commenters stated that if the 45 day period has passed, the NWP verification should be issued even if the Endangered Species Act or section 106 requirements have not been completed. One commenter inquired if the Corps could ensure that the Endangered Species Act or National Historic Preservation Act consultation processes will conclude within 45 days. One commenter said that paragraphs (b)(6) and (b)(7) of this general condition should clarify whether Federal permittees are required to submit information for compliance with the Endangered Species Act or Section 106 of the National Historic Preservation Act.

Permittees cannot presume NWP authorization if any endangered or threatened species or critical habitat might be affected or is in the vicinity of the project or if the project is located in designated critical habitat, or if the activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing, or potentially eligible for listing on the National Register of Historic Places (see general conditions 17 and 18). The NWP regulations state that if the prospective permittee notifies the district engineer that Federally-listed endangered or threatened species or critical habitat might be affected or are in the vicinity of the project, he or she cannot begin work until notified by the district engineer that the requirements of the Endangered Species Act have been satisfied (see 33 CFR 330.4(f)(2)). There is a similar provision for historic properties (see 33 CFR 330.4(g)(2)). We have modified general conditions 17 and 18 to require district engineers to inform permittees of the need to conduct these consultations within 45 days of receipt of complete pre-construction notifications, however, even if such notice is not received, the permittee cannot assume authorization. The permittee makes the first determination as to whether general conditions 17 or 18 are triggered, and will know if he or she has notified the Corps of any potential effects on listed species or critical habitat, or on historic properties. If so, the permittee must wait for written verification from the Corps that ESA and historic preservation requirements have been satisfied. In cases where Endangered Species Act or section 106 consultation is necessary, we cannot require those consultations to be concluded with 45 days of receipt of a complete pre-construction notification. Those consultations often take more than 45 days; their timeframes are only partially within the control of the Corps. The Corps will do what it can to expedite any required consultations.

We have inserted the phrase ''for non-Federal permit applicants'' in paragraphs (b)(6) and (b)(7) since Federal permittees are to follow their own procedures for complying with the Endangered Species Act and the National Historic Preservation Act. Non-federal permittees are required to submit the information required by these paragraphs, since the Corps will use that information to determine whether it is necessary to conduct Section 7 or Section 106 consultations for those activities that may affect listed species, critical habitat, or historic properties.

One commenter recommended modifying paragraph (b) of this general condition to include guidance on the types of information and analyses that should be submitted with pre-construction notifications to support ''effect'' determinations and consultation efforts under Section 7 of the Endangered Species Act. This commenter said that this guidance should include instructions on how prospective permittees can obtain species lists. This commenter also suggested amending paragraph (b) to include guidance on evaluating ''effects of the action'' and constructing ''consultation packages'' for informal and formal Section 7 consultation.

In paragraph (e) of general condition 17, Endangered Species, we have provided the links to the Web sites of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, where prospective permittees can go to obtain further information on endangered or threatened species or critical habitat. The available information regarding endangered or threatened species or critical habitat varies by Service field office, and we believe providing a general link is sufficient since their Web pages are likely to change over time. As for providing guidance regarding information and analyses to be used for Endangered Species Act compliance, it would be more appropriate for our district offices to work with the field offices of the Services to develop such guidance as necessary, since the appropriate types of information and analyses are likely to vary by species, and the type of activity being conducted.

One commenter stated that assuming the NWP verification after 45 days is problematic because many states require the Corps verification letter prior to commencing the water quality certification review.

In cases where the 45 day pre-construction review period has passed, the permittee must still comply with general condition 21, Water Quality. After the applicant has submitted an application for individual water quality certification, waiver of the requirement to obtain water quality certification for an NWP is assumed if the applicant has not heard from the state or Tribe within a reasonable amount of time, generally 60 days (see 33 CFR 330.4(c)(6)). If the state requires a Corps verification for water quality certification, the permittee must wait for the verification. The Corps will make every effort to provide verification letters within 45 days.

One commenter said that the 45 day default authorization provision should be eliminated and two commenters requested that the 45 day review period be reduced to 30 days. Two commenters asked if the time frames are measured in calendar days or business days. One commenter requested a list of potential differences in information requirements for pre-construction notifications for the various NWPs.

We are maintaining the 45 day default authorization provision. We are modifying the text of general condition 27 to clarify that calendar days are used. Paragraph (b) of this general condition lists all of the information necessary for a complete pre-construction notification. Corps districts can provide checklists to assist prospective permittees, especially if they have regional conditions that specify additional information that must be submitted with pre-construction notifications.

Two commenters expressed support for removing part of (a)(2) from the notification general condition adopted in 2002. One commenter suggested modifying paragraph (a)(2) to state that a prospective permittee cannot begin an NWP activity that requires a written waiver of NWP limits, until the written waiver is issued by the district engineer. One commenter said the district engineer should be required to provide written waivers to prospective permittees within the 45 day time-frame.

We have modified paragraph (a)(2) to state that the permittee cannot begin the activity until the district engineer issues the written waiver required by an NWP. Such waivers do not have to be

provided during the 45-day pre-construction notification review period, because the written waiver is required by the terms and conditions of the applicable NWP. For proposed projects that require any type of written waiver, district engineers must make a written determination that the proposed work will result in no more than minimal adverse effects on the aquatic environment. District engineers will try to determine whether or not to grant waivers as expeditiously as possible.

One commenter expressed support for the proposed changes to paragraph (b)(3). Another commenter said that paragraph (b)(3) contains an incomplete sentence. One commenter recommended adding a requirement for the prospective permittee to state how avoidance and minimization was accomplished in order for the Corps to make a better decision. One commenter suggested that the prospective permittee should list any waivers that are requested. One commenter said that paragraph (b)(3) should be modified to require analyses of losses of juvenile salmonid over wintering habitat and early rearing habitat.

We have inserted the words ''and to determine the need for'' before ''any necessary compensatory mitigation'' to complete the sentence in paragraph (b)(3). District engineers will review pre-construction notifications in accordance with general condition 20, Mitigation, to determine whether the prospective permittee has accomplished all practicable avoidance and minimization on the project site. The present information requirements in paragraph (b)(3) will suffice for determining whether waivers of NWP limits are being requested by the prospective permittee. Assessments of potential impacts to juvenile salmon are more appropriately addressed by Corps districts where significant salmon impacts are occurring.

Two commenters agreed with the requirement to include a delineation of wetlands and other waters of the United States with the pre-construction notification. One commenter asked if an approved jurisdictional determination is necessary for a complete pre-construction notification. One commenter said that the general condition should clarify whether a prospective permittee can assume that a delineation submitted with a pre-construction notification is an approved jurisdictional determination. One commenter stated a delineation of special aquatic sites should be required for NWPs 3, 11, 13, 19, 27, 29, 31 and 36. Two commenters voiced concern that delineating wetlands and waters of the United States beyond those actually impacted by the project is too burdensome when working on large project sites.

The permittee cannot assume that a delineation of waters of the United States submitted with a pre-construction notification is an approved jurisdictional determination. Jurisdictional determinations are made by the Corps and documented through the issuance of an NWP verification. The Corps is in the process of revising its procedures for issuing and documenting its jurisdictional determinations, and will be providing guidance shortly.

The 45-day pre-construction notification review period starts on the date that a complete pre-construction notification is received. If the district engineer determines that the delineation is incorrect and requests a revised delineation from the applicant, the 45-day review period starts again when the revised delineation is received by the district engineer. This general condition requires delineations of special aquatic sites and other waters of the United States on the project site, so it is not necessary to specify which NWPs require delineations with their pre-construction notifications. Since this paragraph refers to project site, it does not imply that all waters of the United States on the property need to be delineated. The delineation need only cover a sufficient area surrounding the proposed NWP activity.

One commenter stated the while the methodology for delineating wetlands is established, methods for delineating non-wetland waters of the United States are lacking. One commenter voiced concern with the language stating that the delineation must be prepared in accordance with the ''current method required by the Corps'' and requested that we state that wetland delineations cannot be based solely on National Wetland Inventory maps because they were not developed for the 404 program. Furthermore, it was urged that the Corps require field-based delineations and not approve any delineations for waters of the United States, including wetlands, without a field inspection.

Delineations of non-wetland waters of the United States should follow the definitions for these areas. For example, in using the definition for riffle and pool complexes, maps indicating stream segments containing riffle and pool complexes and their location can be used as delineations of these special aquatic sites. It is not necessary to precisely map each riffle and pool complex within a stream. Rather, the delineation need only show the locations of special aquatic sites at a sufficient level of detail for the district engineer to determine the potential for these sites to be impacted by project activities.

The reference to the ''current method'' means the 1987 Corps of Engineers Wetland Delineation Manual, associated guidance, and any approved regional supplements to the 1987 manual. National Wetland Inventory maps are useful for planning purposes but they do not provide delineations of waters of the United States. It is not necessary to require field inspections for all delineations of waters of the United States.

One commenter expressed concern regarding the language in paragraph (b)(4) that discusses situations where the Corps would conduct delineations. In this paragraph we are simply stating that if a prospective permittee relies on the Corps to conduct a delineation, that prospective permittee should anticipate delays due to the workloads facing the district engineers.

One commenter suggested modifying paragraphs (b)(5) and (e) to clarify that these paragraphs refer to permanent losses. One commenter recommended changing paragraph (b)(5) to require the prospective permittee to state why the project would exceed minimal adverse impacts without additional mitigation. Two commenters suggested that there should not be a requirement to submit detailed compensatory mitigation plans with a pre-construction notification, because of the costs to develop mitigation plans that may not be required once the district engineer makes a decision on the pre-construction notification.

It is unnecessary to modify these paragraphs to specify that we are referring to permanent losses, because the NWP definition for ''loss of waters of the United States'' refers only to permanent losses. In fulfilling the requirements of paragraph (b)(5), the prospective permittee's statement can explain how the proposed activity complies with general condition 20. Paragraph (c) of general condition 20 states that the district engineer can waive the requirement for wetlands compensatory mitigation or require an alternate form of mitigation. We are modifying paragraph (b)(5) of this general condition to allow project proponents to submit conceptual or detailed mitigation plans.

One commenter said that a conceptual mitigation plan is not sufficient and detailed plans should be required. One commenter requested that detailed compensatory mitigation monitoring plans be required for activities

authorized by NWPs 12, 14, 21, 29, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50.

Conceptual mitigation plans are appropriate for submittal with pre-construction notifications. These conceptual plans are useful in making initial determinations regarding the appropriateness of proposed compensatory mitigation. If not submitted with the pre-construction notification, detailed compensatory mitigation plans will be required prior to commencing the authorized activity in cases where the permittee is performing the mitigation. If the permittee is using a mitigation bank or in-lieu fee program, he or she must provide the name of the bank or program and the number and type of credits being purchased.

One commenter suggested that paragraph (d)(2) be modified to include NWPs 20 and 38 with NWP 37, because of the emergency nature of these activities. We do not agree that this is necessary, because NWP 20 does not require pre-construction notification and NWP 38 is not limited to emergency situations. We are adding numbers to the paragraphs within paragraph (d) to provide greater clarity.

One commenter recommended modifying paragraph (d) to reduce the acreage threshold for agency coordination from ½ acre to ⅒ acre, because of the ⅒ acre threshold for wetlands compensatory mitigation.

The present threshold for agency coordination is sufficient, since activities resulting in the loss of greater than ½ acre of waters of the United States have greater potential to result in more than minimal adverse effects. Decisions regarding the amount and type of compensatory mitigation that should be required for NWP activities are made by district engineers on a case-by-case basis in accordance with general condition 20 and other appropriate regulations and guidance. Requiring agency coordination for losses of less than ½ acre would result in a substantial workload increase to Corps districts and the resource agencies, and is unlikely to provide significant additional protection for the aquatic environment.

One commenter said that the authority to sign NWP verifications should not be delegated to Corps project managers.

Districts have the authority to determine the appropriate level of signature authority for NWP verifications, to implement the NWP program effectively.

This general condition is adopted with the modifications discussed above.

GC 28. *Single and Complete Project.* We are adding a new general condition to clarify that the NWPs authorize only single and complete projects. This is in response to a commenter's concern about the removal of language from the 2002 NWPs which limited the use of certain NWPs to a single and complete project or a part of a single and complete project. That language was in NWPs 13, 15, 18, 19, 29, 39, 42, 43, and 44.

Limiting all NWPs to authorize only single and complete projects is a long-standing practice. In this new general condition, the authorized activity must be a single and complete project. In addition, this general condition states that the same NWP can be used only once to authorize that single and complete project. For example, NWP 39 cannot be used twice to authorize a commercial development. This general condition is consistent with general condition 24, Use of Multiple Nationwide Permits. The new general condition will help improve environmental protection by clarifying that piecemealing of activities that require Department of the Army permits is prohibited.

Former general condition 27. Construction Period. We proposed to remove this NWP general condition.

Several commenters expressed support for the removal of this general condition, stating that it would eliminate confusion about the time frames when the NWPs are in effect. Several commenters objected to the elimination of this general condition, stating that it was needed since it took into account unexpected situations, which can delay the completion of a project. One commenter opposed the removal of this general condition, stating that it provided necessary flexibility at the end of a NWP cycle, and still allowed the permittee to complete the work without having to request another permit or verification from the Corps. Several other commenters said that elimination of this general condition could result in considerable delays and economic burdens for completion of projects with no more than minimal adverse effects. One commenter stated that removing this general condition would result in more individual permits for activities that would not result in more than minimal impacts.

We are removing this general condition, because it does not comply with Section 404(e)(2) of the Clean Water Act, which places a five-year limit on general permits issued under section 404. Since this general condition did not specify any limits on project completion dates, in effect it provided the district engineer with the authority to state that the NWP activity was authorized for any period of time. We believe that this is contrary to section 404(e)(2).

Under the current NWP regulations, district engineers may issue NWP verification letters that are valid for a period of two years. In cases where an NWP verification letter expires before the NWP itself expires, the activity continues to be authorized by the NWP until the NWP expires. It is not necessary to issue a new verification during the five year period the NWP is in effect. Any special conditions that were imposed by the district engineer remain in effect after the NWP verification expires, unless the district engineer removes those conditions.

Once the NWP expires, the permittee can utilize 33 CFR 330.6(b) to complete the work. That regulation allows permittees to continue work for one year in reliance on an NWP authorization, if that NWP has expired or been modified or revoked, and the activity is under construction or under contract to commence construction. If that work cannot be completed within that one-year time period, then the permittee would have to obtain another DA authorization. We continue to believe that 33 CFR 330.6(b) is sufficient to address the concern with projects that may not be completed before an NWP expires. For NWP activities that will require substantial amounts of time to complete, project proponents should consider whether it would be more advantageous to pursue an individual permit authorization. Individual permits can authorize greater flexibility in construction periods. An individual permit authorization can also be extended, as long as the district engineer determines that the time extension would be consistent with applicable regulations and would not be contrary to the public interest.

One commenter requested clarification on whether newly issued NWP verifications for specific projects would be valid for five years or for only one to two years. Two commenters suggested that all NWP verifications should be issued with five-year expiration periods. Another commenter suggested that all NWP verifications should be set to expire concurrently with the NWPs themselves. Similarly, another commenter requested clarification on whether applicants could request NWP verifications with expiration dates corresponding to the new NWPs expiration date.

In the November 30, 2004, issue of the **Federal Register** (69 FR 69567) we

published a proposed rule that would allow district engineers to issue NWP verifications that would expire on the same date the NWP expires. Until that final rule is issued, the current 33 CFR 330.6(a)(3)(ii) applies, which states that an NWP verification letter can be valid for no more than two years. However, as stated above the activity continues to be authorized by the NWP until the NWP expires.

Definitions

One commenter said that the NWP definitions should be promulgated through the Administrative Procedure Act rulemaking process, and placed in the Code of Federal Regulations since many of these terms apply to other aspects of the regulatory program.

The definitions adopted today have been promulgated through the Administrative Procedure Act process. These definitions apply only to the NWP program. A separate rulemaking action would be required to adopt definitions with general applicability to the Corps Regulatory Program.

One commenter asked for definitions of ordinary high water mark, adverse, land, waters of the United States, environmental, environmental impact, ''a timely manner'', regulatory efficiency, cumulative impacts, public interest factors, mitigation banks, permittee-responsible mitigation, in-lieu fee program, aquatic resource functions, and grandfathering. Another commenter requested a definition of ''temporary loss.''

We are providing a separate definition of ordinary high water mark. Previously, this definition was in the definitions of ''open water'' and ''waterbody.'' The term ''waters of the United States'' is defined at 33 CFR part 328. We do not believe it is necessary to define, for the purposes of the NWP program, the terms ''environmental,'' ''environmental impact,'' ''a timely manner,'' ''regulatory efficiency,'' or ''grandfathering.''

Commonly accepted definitions for those terms are sufficient for the implementation of the NWP program. The Corps uses the definition of the term ''cumulative impact'' from the Council on Environmental Quality's regulation at 40 CFR 1508.7. The terms ''mitigation bank'' and ''in-lieu fee program'' are currently defined by the November 28, 1995, mitigation banking guidance (60 FR 58605). The grandfather provisions for NWP authorizations are provided at 33 CFR 330.6(b). It is more appropriate to define the terms ''permittee-responsible mitigation'' and ''aquatic resource functions'' through the promulgation of the final compensatory mitigation rule required by Section 314 of the National Defense Authorization Act for Fiscal Year 2004. Defining ''temporary loss'' is not desirable, because it would likely result in a reduction in flexibility in implementation of the NWP program. Where there is ambiguity, district engineers should have flexibility to determine, on a case-by-case basis, whether a particular activity causes a temporary or permanent loss of waters of the United States.

Two commenters requested a definition of ''minimal effects.'' Another commenter said that this term should be defined regionally, since it cannot be defined at a national level.

We continue to maintain our position that the term ''minimal effects'' cannot be simply defined at a national level. It is challenging to define it precisely even at smaller scales, such as states or watersheds. There is considerable variation in aquatic resource functions, services, and values across the country. There is also wide variation in those functions, services, and values at smaller landscape scales. Site-specific factors, such as the types and amounts of functions provided by waters, the services those aquatic resource functions provide, the value society places on those functions and services, the geomorphic setting of those waters, and other factors are important to consider when determining whether an NWP activity will result in minimal adverse effects on the aquatic environment. We believe the term ''minimal,'' while not precise, is well understood by the public and has not caused undue confusion in the implementation of the Section 404 program to date. A certain amount of flexibility on the part of district engineers to determine what is ''minimal'' in a particular context, after consideration of the factors discussed above, is necessary for the practical implementation of the program.

Best management practices (BMPs). We proposed to modify this definition by removing the last sentence. One commenter suggested that we acknowledge that BMPs may have impacts on groundwater and subsurface water.

Although best management practices may impact hydrology, the definition need not address that issue. The definition is adopted as proposed.

Compensatory mitigation. We proposed to modify this definition by removing the phrase ''For the purpose of Section 10/404, compensatory mitigation is.'' We also proposed to replace ''creation'' with establishment (creation).'' One commenter expressed support for removing ''exceptional circumstances'' in relation to the use of preservation as a type of compensatory mitigation. One commenter stated that ''aquatic resource'' should be defined in the context of jurisdiction. Another commenter stated that this definition should be consistent with the other terms for different types of compensatory mitigation that are provided in this section, specifically the definition provided for establishment (creation).

Compensatory mitigation may be provided by aquatic resources that are not subject to the Corps regulatory jurisdiction. Therefore, it is not necessary to modify this definition by replacing ''aquatic resources'' with ''waters of the United States.'' We have added the word ''creation'', to be consistent with ''establishment (creation),'' which is defined in this section. The definition is adopted as proposed.

Currently serviceable. We proposed to move the term and definition from NWP 3 to this section since it is used for other NWPs. One commenter suggested that most culvert replacement projects, regardless of current serviceability, have minimal impacts and recommended adding language allowing a failed culvert to be considered currently serviceable, so that it would be eligible for NWP 3 authorization.

While we agree that most culvert replacements have minimal impacts, the definition encourages maintenance to be conducted before the structure or fill falls into such a state of disrepair that it can no longer be considered serviceable. The definition is adopted as proposed.

Discharge: We are adding a definition of the term ''discharge'' to clarify when a discharge of dredged or fill material occurs for an NWP activity. This definition clarifies that the term ''discharge'' as used in the NWPs, also applies to any activity that causes or results in a discharge, as defined at 33 CFR 323.2.

Enhancement. We proposed to modify this definition to be consistent with the wetland project type described in Regulatory Guidance Letter 02–02 and the definition in the Council on Environmental Quality's April 2006 report entitled ''Conserving America's Wetlands 2006: Two Years of Progress Implementing the President's Goal.'' We did not receive any comments on the proposed definition. The definition is adopted as proposed.

Ephemeral stream. We did not propose any changes to this definition. Four commenters said that this definition should address the jurisdictional status of ephemeral

streams. Some of these commenters said that this definition should be removed, because these features are not jurisdictional. One commenter stated that the hydrologic criteria in the second and third sentences should be qualified as occurring in a ''typical year.'' One commenter suggested we define them as features that lack a connection to the water table and are not waters of the United States. One commenter said that this definition should state that groundwater is not typically a source of water for an ephemeral stream.

We do not agree that it is appropriate to state in the definition of this term that ephemeral streams are not waters of the United States because many ephemeral streams are subject to Clean Water Act jurisdiction as waters of the United States. Further, neither the NWPs nor this preamble are intended to address jurisdictional issues. If an ephemeral stream is not a water of the United States, as defined at 33 CFR part 328, then no Section 404 permit is required for discharges of dredged or fill material into it. An ephemeral stream that meets the criteria at 33 CFR part 328 is a water of the United States. The phrase ''typical year'' applies to the entire definition, not just the first sentence. Groundwater is not a source of water for an ephemeral stream.

The definition is adopted as proposed.

Establishment (creation). We proposed to modify this definition to be consistent with the wetland project type described in Regulatory Guidance Letter 02–02 and the definition in the Council on Environmental Quality's April 2006 report entitled ''Conserving America's Wetlands 2006: Two Years of Progress Implementing the President's Goal.'' One commenter suggested defining ''upland'' and ''deepwater site,'' and retaining the flexibility of the current term ''creation'' when in-kind mitigation is conducted. One commenter said that the definition of ''creation'' should be retained until questions regarding the extent of the Corps jurisdiction are resolved. Another commenter recommended the removal of ''deepwater'' from this definition because deepwater areas are aquatic resources.

We do not believe it is necessary to define the word ''upland'' for purposes of the NWP program. This definition need not specifically address jurisdictional issues. What constitutes an ''upland'' in contrast to an ''aquatic resource'' will depend on the practices in place at the time the determination is made. We are removing the word ''deepwater'' because it is an aquatic resource. This definition is adopted with the modification discussed above.

Historic property. In response to one commenter, we are adding this term to the ''Definitions'' section. It is adapted from the Advisory Council on Historic Preservation's definition at 36 CFR 800.16(l)(1), and is provided for the convenience of users of the NWPs.

Independent utility. We did not receive any comments on the proposed definition. The definition is adopted as proposed.

Intermittent stream. We did not receive any comments on the proposed definition. The definition is adopted as proposed.

Loss of waters of the United States. We proposed to modify this definition by replacing the phrase ''above-grade, at-grade, or below-grade fills'' with ''discharges of dredged or fill material'' to be consistent with the definitions of ''fill material'' and ''discharge of fill material'' issued on May 9, 2002 (67 FR 31129) at 33 CFR 323.2. We also proposed to eliminate the sentence stating that impacts to ephemeral streams are not included in the linear foot limits for stream impacts in NWPs 39, 40, 42, and 43, because of the proposed changes to those NWPs. We also proposed to add a sentence to this definition to clarify that activities exempt from section 404 permit requirements are not included when calculating the loss of waters of the United States.

Three commenters stated that activities that are not regulated should not be included. One commenter asserted that temporary fills should be included as a loss because the functions and values may not return. Six commenters said that ephemeral streams should not be included when determining whether the proposed work exceeds the acreage limit of the NWP because the Corps lacks jurisdictional authority in these areas. One commenter stated that intermittent streams and artificially created wetlands should not be included for the same reason. Another commenter said that the acres of waters of the United States provided as compensatory mitigation should count towards the acreage limit. One commenter stated that the loss of stream bed should include inundation, in addition to filling and excavation.

The first sentence of this definition states that the permanent adverse effects are caused by the regulated activity. Therefore, unregulated or exempt activities are not included when calculating the loss of waters of the United States. Temporary fills should not be considered as losses of waters of the United States, since they are required to be restored (see General Condition 13, Removal of Temporary Fills). If they are not restored properly, then the district engineer may consider them to be permanent losses. District engineers may also consider permanent losses of specific aquatic resource functions and services when determining if mitigation is required (see paragraph (h) of general condition 20, Mitigation). Ephemeral streams, intermittent streams, and man-made wetlands that meet the regulatory definition of ''waters of the United States'' are included for the purposes of this definition. As discussed in paragraph (e) of general condition 20, compensatory mitigation cannot be used to decrease the acreage loss of waters of the United States for purposes of determining whether an NWP acreage threshold is exceeded. Mitigation can be used to ensure that adverse effects are minimal. Inundation does not usually result in the loss of stream bed. Once the cause of inundation has been removed, the normal water level of the stream will return. (Note: The use of the term ''flooding'' in the definition of ''loss of waters of the United States'' refers to the flooding of wetlands. This conversion of wetlands to open waters is considered a loss of waters.)

We have modified the first sentence of this definition to make it a complete sentence. In the third sentence of this definition, we replaced the word ''existing'' with ''jurisdictional'' to clarify that the measurement applies to waters of the United States.

The definition is adopted with the modifications discussed above.

Non-tidal wetland. We did not propose any changes to this definition. One commenter noted that not all wetlands are waters of the United States. We agree and have removed the parenthetical expression from this definition.

Open water. We proposed to change this definition by adding a sentence that describes what an ordinary high water mark is. One commenter said that the definition of ordinary high water mark should be removed because there is not common agreement regarding the definition of this term. One commenter recommended using the definition of ''ordinary high water mark'' from 1975 regulations. One commenter suggested removing the language defining ''ordinary high water mark'' and making it a separate definition. One commenter said that this definition should not include ephemeral waters because they are not open waters. Another commenter stated that this definition should be removed, because it is not used in the NWPs or general conditions.

We have removed the language defining ''ordinary high water mark'' and provided it as a separate definition in this section. The definition is from 33 CFR 328.3(e). Ephemeral waters are considered open waters, because they have flowing or standing water, at least for short periods of time. This definition is used in NWPs 4, 27, 30 and 47, as well as general conditions 9 and 20. The definition is adopted with the modification discussed above.

Ordinary high water mark. Several commenters recommended providing a stand alone definition of this term.

We have provided a definition of ordinary high water mark in this section. It is based on the definition at 33 CFR 328.3(e).

Perennial stream. We did not propose any changes to this definition. One commenter said that perennial flow is dependent on time, not the water source, and suggested modification of this definition to state that groundwater is usually the primary source of water, since some perennial streams are fed by snow melt rather than groundwater. Another commenter stated that this definition should recognize that some perennial streams appear to be intermittent because of surface and subsurface flows in areas of karst topography.

We acknowledge that in some parts of the country, some perennial streams are fed solely by snowmelt. For simplicity, we have not included snowmelt since a large majority of perennial streams have groundwater as the primary source of hydrology. When determining whether a particular stream segment is perennial, district engineers should consider the source of hydrology and the normal circumstance of that hydrology. They will make these determinations on a case-by-case basis. District engineers can account for karst topography and other geological features when identifying perennial streams on a case-by-case basis. It is not necessary to modify this definition to account for such geological features.

The definition is adopted as proposed.

Practicable. We proposed to move this definition from the current ''mitigation'' general condition (GC 20) to the ''Definitions'' section of the NWPs. One commenter suggested that this definition should be modified to include consideration of the availability of suitable locations and constructability, for the purposes of mitigation.

While we agree that these are factors involved with selecting mitigation sites, the term ''practicable'' applies to more than mitigation. The definition is adopted as proposed.

Pre-construction notification. We did not receive any comments on the proposed definition. The definition is adopted as proposed.

Preservation. We proposed to modify this definition to be consistent with the definition for ''protection/maintenance (preservation)'' in Regulatory Guidance Letter 02–02 and the definition in the Council on Environmental Quality's April 2006 report entitled ''Conserving America's Wetlands 2006: Two Years of Progress Implementing the President's Goal.'' One commenter expressed concern with the usage of ''aquatic resources'' in the definition because it is too expansive and should be defined and limited to waters of the United States.

Compensatory mitigation projects involving preservation may include areas that are not waters of the United States, such as non-wetland riparian areas next to streams or wetlands that are not subject to Clean Water Act jurisdiction. This definition is adopted as proposed.

Re-establishment. We proposed to add this definition to be consistent with the wetland project type described in Regulatory Guidance Letter 02–02 and the definition in the Council on Environmental Quality's April 2006 report entitled ''Conserving America's Wetlands 2006: Two Years of Progress Implementing the President's Goal.'' One commenter suggested the definition should indicate re-establishment is a form of restoration. We do not believe that such clarification is necessary, since it is addressed by the definition for restoration. The definition is adopted as proposed.

Rehabilitation. We proposed to add this definition to be consistent with the wetland project type described in Regulatory Guidance Letter 02–02 and the definition in the Council on Environmental Quality's April 2006 report entitled ''Conserving America's Wetlands 2006: Two Years of Progress Implementing the President's Goal.'' One commenter suggested the definition should state rehabilitation is a form of restoration. We do not believe that such clarification is necessary, since it is addressed by the definition for restoration. The definition is adopted as proposed.

Restoration. We proposed to modify this definition to be consistent with the wetland project type described in Regulatory Guidance Letter 02–02 and the definition in the Council on Environmental Quality's April 2006 report entitled ''Conserving America's Wetlands 2006: Two Years of Progress Implementing the President's Goal.'' We did not receive any comments on the proposed definition. The definition is adopted as proposed.

Riffle and pool complex. We did not propose any changes to this definition. One commenter said that a riffle and pool complex has a reoccurring pattern of riffles and pools, and is not limited to a single riffle and pool. One commenter stated that this definition should address steep gradients that are not conducive to forming riffle and pool complexes. One commenter said that riffle and pool complexes are too common to be a special aquatic site.

The definition of this term was taken from 40 CFR 230.45. District engineers will use their judgment to identify riffle and pool complexes at project sites and to distinguish between riffle and pool complexes (which are found in areas of moderate grades) and step-pool complexes (which are found in areas with steep grades, where the stream bed material consists mostly of boulders and large rocks). The definition is adopted as proposed.

Riparian areas. We proposed to replace the definition of ''vegetated buffers'' with a definition of ''riparian areas'' since the latter term more accurately reflects what is normally required as mitigation for NWP activities where there are streams and other open waters on a project site. Two commenters objected to replacing the definition of ''vegetated buffers'' with a definition of ''riparian areas'' and said the terms are not interchangeable. One commenter supported the proposed change. Another commenter said that this definition does not match the definition developed by the National Research Council, and should be revised accordingly. Five commenters said that the use of riparian areas should be limited to areas adjacent to streams and other waters of the United States, other than wetlands. They said that the definition implies wetlands have riparian areas due to the use of the words ''lands'' and ''waterbody,'' which includes wetlands by definition. Three commenters requested that the Corps acknowledge that not all riparian areas are jurisdictional. One commenter said that this definition should exclude intermittent and ephemeral streams as waterbodies.

We maintain that use of the term ''riparian areas'' is most appropriate, because it is the current term used to categorize the areas that meet the criteria in this definition. We also acknowledge that this definition does not contain all the concepts provided in the National Research Council's definition, but we have tried to provide

a simpler definition for use in the NWP program. We have modified this definition to clarify that lands next to wetlands are not riparian areas and to be consistent with the definition of ''waterbody.'' We acknowledge that not all riparian areas are subject to Clean Water Act jurisdiction, but it is not necessary to state that fact in this definition. However, the use of jurisdictional and non-jurisdictional riparian areas as compensatory mitigation is a legitimate method to provide compensatory mitigation for certain NWP activities. Riparian areas may be established and maintained next to intermittent streams, but in arid regions it may not be practicable to establish and maintain those areas next to ephemeral streams because there may not be sufficient water to sustain plant communities in those areas. The definition is adopted with the modification discussed above.

Shellfish seeding. We have added a definition of this term. This definition was derived from the definition provided in the preamble discussion for the September 26, 2006, proposal (see 71 FR 56275).

Single and complete project. We did not propose any changes to this definition. One commenter suggested that the district engineer be allowed to use multiple NWPs for projects that cross separate waterways. One commenter requested the definition be expanded to include phased projects.

The definition already allows the district engineer the ability to use multiple NWPs on separate waterways. Individual phases of phased projects can be considered as single and complete projects only if they have independent utility and they satisfy the requirements of the specific NWP. We have revised the wording of this definition slightly to further clarify that single and complete projects must have independent utility and to further clarify how multiple stream crossings for linear projects are treated. (See also the discussion of new general condition 28, Single and Complete Project, above.) The definition is adopted as modified.

Stormwater management. No comments were received on this definition. The definition is adopted as proposed.

Stormwater management facilities. We did not propose any changes to this definition. One commenter said that this definition is too restrictive. The definition does list examples of facilities and some of their roles but not in an exclusive manner. The definition is adopted as proposed.

Stream bed. We did not propose any changes to this definition. No comments were received on this definition. The definition is adopted as proposed.

Stream channelization. We proposed to simplify this definition, by generally considering man-made changes to a stream's course, condition, capacity, or location to be stream channelization activities. One commenter fully supported the definition. One commenter requested clarification that mitigation projects involving a ''natural channel design'' do not constitute ''stream channelization.'' Four commenters stated that many accepted techniques of bank stabilization may not satisfy the definition. As a result, one commenter recommended removing the word ''condition'' in order to allow minor changes to the bank. Another suggested modifying this definition to state that additional work undertaken to improve aquatic services or to increase the net sinuosity is not stream channelization.

Compensatory mitigation projects involving stream restoration activities normally would not be considered stream channelization, since they should not substantially disrupt normal stream process. The restoration activity should restore normal stream processes, based on comparison to reference stream systems in the vicinity of the proposed work. We acknowledge that some bank stabilization activities may result in stream channelization. This definition does not prohibit minor changes to the stream bank. As long as those changes are small, and do not disrupt normal stream processes, they would not be considered as stream channelization. District engineers will consider the overall net impacts, including beneficial and adverse impacts, to the course, condition, capacity or location of the stream when determining if a project will have more than minimal impacts on normal stream processes.

One commenter suggested inserting ''natural'' to describe the stream to exclude ditches from being considered a stream. District engineers will determine on a case-by-case basis the type of waterbody that is a stream. This definition is adopted as proposed.

Structure. We proposed to add this definition to the NWPs. One commenter said that references should be made to the structures included in NWPs 3 and 5 and that the definition ignores other common structures like culverts and bridges. One commenter observed that the definition involves examples that have fill. One commenter suggested the definition be rewritten as: ''man-made feature constructed in an area of regulated aquatic resources.''

Adding references to NWPs 3 and 5 in this definition is unnecessary. The examples in this definition were adapted from 33 CFR 322.2(b) and are not intended to be a complete list. Bridges may constitute structures, but bridges constructed over navigable waters are authorized by the U.S. Coast Guard. Culverts may consist mostly of fill material, in accordance with the definitions at 33 CFR 323.2. Our intent is not to imply that structures must not involve fill, since the construction of structures may also involve fill activities. We agree that structures must be manmade and have added this qualifier to the definition. The definition is adopted as modified.

Tidal wetland. We did not propose any changes to this definition. One commenter stated that not all wetlands are waters of the United States and suggested adding that certain vegetation is associated with the wetland. One commenter stated the high tide line is not the spring high tide line.

In the context of this definition, wetlands subject to the ebb and flow of the tide are waters of the United States. We acknowledge that the high tide line may include high tides other than spring high tides. Therefore, we have modified this definition by removing the language that discusses spring high tide lines. The definition is adopted as modified.

Vegetated shallows. We did not propose any changes to this definition. No comments were received on this definition. The definition is adopted as proposed.

Waterbody. We proposed to modify this definition to clarify that a waterbody is a jurisdictional water of the United States. We also proposed to include a definition of ''ordinary high water mark'' in the text of this definition. Five commenters said that the definition should be changed to reflect recent judicial rulings that affect Clean Water Act jurisdiction. They also stated that this term cannot be used to exert jurisdiction over areas that are not subject to Section 404 of the Clean Water Act.

As stated in the preamble to the September 26, 2006, **Federal Register** notice, the purpose of this definition is not to identify which waterbodies are jurisdictional, but to clarify how waters of the United States are grouped into waterbodies, especially for the purposes of implementing 33 CFR 330.2(i), which addresses single and complete projects for the NWPs. We agree, and have clarified in the definition, that only jurisdictional waters can be waterbodies for purposes of the NWPs.

One commenter asked for a list of other indicators to identify a waterbody and exert jurisdiction. One commenter requested that ''adjacent'' be defined. One commenter inquired how the loss of waters calculation will be made when wetlands and waterbodies that are considered a single aquatic unit.

It would not be appropriate to promulgate, through the NWP issuance process, a list of indicators to be used to identify waterbodies subject to regulatory jurisdiction. The term ''adjacent'' is defined at 33 CFR 328.3(c). District engineers will determine, on a case-by-case basis, when waterbodies are separate for the purposes of identifying single and complete projects. We note that, except in the case of linear crossings (see definition of ''single and complete project''), all losses of waters of the United States, whether separate water bodies or not, are added together to determine whether an activity is a single and complete project that meets the acreage thresholds. The definition is adopted as proposed.

Administrative Requirements

Regulatory Flexibility Act

One commenter objected to the proposed certification for Regulatory Flexibility Act compliance, and indicated that a Regulatory Impact Analysis is necessary. This commenter stated that the Corps failed to analyze the costs or other burdens that NWP impose on small entities, and compare those costs or burdens to alternatives. The commenter also said that the Corps needs to consider burdens placed on those small entities that need to get individual permits, since the proposed NWPs determine who qualifies for NWPs, as well as those who must get individual permits. One commenter said that an initial regulatory flexibility analysis must be provided for public comment, and stated that the Corps must withdraw the proposed NWPs and make an initial regulatory flexibility analysis available for public review and comment.

Our Regulatory Flexibility Act certification was done in the context of the statutory requirements underlying the NWP program: the permit requirements under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. The NWPs (or any other general permits) can only authorize activities with minimal individual and cumulative adverse effects on the environment; other activities must obtain individual permits. Because the permitted impacts are minimal, the burden on permittees for obtaining coverage under the NWP is also low. Generally, permittees are required to submit a pre-construction notification and adopt common sense, low-cost practices to ensure that adverse effects are minimal. Larger projects are also required to provide compensatory mitigation, but the scope of mitigation is commensurate with the impacts of the project and usually does not constitute a ''significant economic impact.'' Further, such larger projects are less likely to be undertaken by small businesses. We continue to believe that our certification that the NWPs will not have a significant economic impact on a substantial number of small entities is appropriate. As a result, a formal Regulatory Flexibility Analysis is not required.

Unfunded Mandates

One commenter said that the Corps must provide a quantified assessment of costs and benefits of the permits (rule), in accordance with the Unfunded Mandates Reform Act. The costs of these permits (mostly paperwork costs associated with filing pre-construction notifications, estimated at 10 hours per pre-construction notification) do not rise to the level of an unfunded mandate, as defined in the statute. As a result, it is not necessary under UMRA to quantify the costs and benefits of this action.

Paperwork Reduction Act

A commenter stated that the estimate of time required to prepare a complete pre-construction notification is too low, because of the requirement to submit a delineation of waters of the United States with the pre-construction notification.

We believe the time estimates are accurate, because many activities will not require a complex delineation of waters of the United States. Most pre-construction notifications will have simple delineations showing the locations of waters near the project. The estimated time is an average for all projects.

Regional Conditioning of the Nationwide Permits

Concurrent with this **Federal Register** notice, district engineers are issuing local public notices. In addition to the changes to some NWPs and NWP conditions required by the Chief of Engineers, division and district engineers may propose regional conditions or propose revocation of NWP authorization for all, some, or portions of the NWPs. Regional conditions may also be required by state or Tribal water quality certification or for state Coastal Zone Management Act consistency. District engineers will announce regional conditions or revocations by issuing local public notices. Information on regional conditions and revocation can be obtained from the appropriate district engineer, as indicated below. Furthermore, this and additional information can be obtained on the Internet at *http://www.usace.army.mil/where.html#State* by clicking on the appropriate district office.

Contact Information for Corps District Engineers

Alabama

Mobile District Engineer, ATTN: CESAM–RD, 109 St. Joseph Street, Mobile, AL 36602–3630.

Alaska

Alaska District Engineer, ATTN: CEPOA–CO–R, P.O. Box 6898, Elmendorf AFB, AK 99506–6898.

Arizona

Los Angeles District Engineer, ATTN: CESPL–CO–R, P.O. Box 532711, Los Angeles, CA 90053–2325.

Arkansas

Little Rock District Engineer, ATTN: CESWL–RO, P.O. Box 867, Little Rock, AR 72203–0867.

California

Sacramento District Engineer, ATTN: CESPK–CO–R, 1325 J Street, Sacramento, CA 95814–2922.

Colorado

Albuquerque District Engineer, ATTN: CESPA–OD–R, 4101 Jefferson Plaza NE, Albuquerque, NM 87109–3435.

Connecticut

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

Delaware

Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square East Philadelphia, PA 19107–3390.

Florida

Jacksonville District Engineer, ATTN: CESAJ–RD, P.O. Box 4970, Jacksonville, FL 32232–0019.

Georgia

Savannah District Engineer, ATTN: CESAS–OP–F, P.O. Box 889, Savannah, GA 31402–0889.

Hawaii

Honolulu District Engineer, ATTN: CEPOH–EC–R, Building 230, Fort Shafter, Honolulu, HI 96858–5440.

Idaho

Walla Walla District Engineer, ATTN: CENWW–RD, 201 North Third Avenue, Walla Walla, WA 99362–1876.

Illinois

Rock Island District Engineer, ATTN: CEMVR–OD–P, P.O. Box 2004, Rock Island, IL 61204–2004.

Indiana

Louisville District Engineer, ATTN: CELRL–OP–F, P.O. Box 59, Louisville, KY 40201–0059.

Iowa

Rock Island District Engineer, ATTN: CEMVR–OD–P, P.O. Box 2004, Rock Island, IL 61204–2004.

Kansas

Kansas City District Engineer, ATTN: CENWK–OD–R, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896.

Kentucky

Louisville District Engineer, ATTN: CELRL–OP–F, P.O. Box 59, Louisville, KY 40201–0059.

Louisiana

New Orleans District Engineer, ATTN: CEMVN–OD–S, P.O. Box 60267, New Orleans, LA 70160–0267.

Maine

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

Maryland

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715.

Massachusetts

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

Michigan

Detroit District Engineer, ATTN: CELRE–RG, P.O. Box 1027, Detroit, MI 48231–1027.

Minnesota

St. Paul District Engineer, ATTN: CEMVP–OP–R, 190 Fifth Street East, St. Paul, MN 55101–1638.

Mississippi

Vicksburg District Engineer, ATTN: CEMVK–OD–F, 4155 Clay Street, Vicksburg, MS 39183–3435.

Missouri

Kansas City District Engineer, ATTN: CENWK–OD–R, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896.

Montana

Omaha District Engineer, ATTN: CENWO–OD–R, 106 South 15th Street, Omaha, NE 68102–1618.

Nebraska

Omaha District Engineer, ATTN: CENWO–OD–R, 106 South 15th Street, Omaha, NE 68102–1618.

Nevada

Sacramento District Engineer, ATTN: CESPK–CO–R, 1325 J Street, Sacramento, CA 95814–2922.

New Hampshire

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

New Jersey

Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390.

New Mexico

Albuquerque District Engineer, ATTN: CESPA–OD–R, 4101 Jefferson Plaza NE, Albuquerque, NM 87109–3435.

New York

New York District Engineer, ATTN: CENAN–OP–R, 26 Federal Plaza, New York, NY 10278–0090.

North Carolina

Wilmington District Engineer, ATTN: CESAW–RG, P.O. Box 1890, Wilmington, NC 28402–1890.

North Dakota

Omaha District Engineer, ATTN: CENWO–OD–R, 106 South 15th Street, Omaha, NE 68102–1618.

Ohio

Huntington District Engineer, ATTN: CELRH–OR–F, 502 8th Street, Huntington, WV 25701–2070.

Oklahoma

Tulsa District Engineer, ATTN: CESWT–RO, 1645 S. 101st East Ave, Tulsa, OK 74128–4609.

Oregon

Portland District Engineer, ATTN: CENWP–OD–G, P.O. Box 2946, Portland, OR 97208–2946.

Pennsylvania

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715.

Rhode Island

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

South Carolina

Charleston District Engineer, ATTN: CESAC–CO–P, 69A Hagood Ave, Charleston, SC 29403–5107.

South Dakota

Omaha District Engineer, ATTN: CENWO–OD–R, 106 South 15th Street, Omaha, NE 68102–1618.

Tennessee

Nashville District Engineer, ATTN: CELRN–OP–F, 3701 Bell Road, Nashville, TN 37214.

Texas

Galveston District Engineer, ATTN: CESWG–PE–R, P.O. Box 1229, Galveston, TX 77553–1229.

Utah

Sacramento District Engineer, ATTN: CESPK–CO–R, 1325 J Street, CA 95814–2922.

Vermont

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

Virginia

Norfolk District Engineer, ATTN: CENAO–OP–R, 803 Front Street, Norfolk, VA 23510–1096.

Washington

Seattle District Engineer, ATTN: CENWS–OP–RG, P.O. Box 3755, Seattle, WA 98124–3755.

West Virginia

Huntington District Engineer, ATTN: CELRH–OR–F, 502 8th Street, Huntington, WV 25701–2070.

Wisconsin

St. Paul District Engineer, ATTN: CEMVP–OP–R, 190 Fifth Street East, St. Paul, MN 55101–1638.

Wyoming

Omaha District Engineer, ATTN: CENWO–OD–R, 106 South 15th Street, Omaha, NE 68102–1618.

District of Columbia

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715.

Pacific Territories (American Samoa, Guam, & Commonwealth of the Northern Mariana Islands)

Honolulu District Engineer, ATTN: CEPOH–EC–R, Building 230, Fort Shafter, Honolulu, HI 96858–5440.

Puerto Rico and Virgin Islands

Jacksonville District Engineer, ATTN: CESAJ–RD, P.O. Box 4970, Jacksonville, FL 32232–0019.

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, (63 FR 31855) regarding plain language, this preamble is written using plain language. The use of ''we'' in this notice refers to the Corps. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

These NWPs will increase the number of permittees who are required to submit a pre-construction notification. The content of the pre-construction notification is not changed from the current NWPs, but the paperwork burden will increase because of the increased number of pre-construction notifications submitted. The Corps estimates the increased paperwork burden at 4,500 hours per year. This is based on an average burden to complete and submit a pre-construction notification of 10 hours, and an estimated 450 additional projects that will require pre-construction notifications. Prospective permittees who are required to submit a pre-construction notification for a particular NWP, or who are requesting verification that a particular activity qualifies for NWP authorization, may use the current standard Department of the Army permit application form or submit the required information in a letter. The total burden for filing pre-construction notifications is estimated at 300,000 hours per year (10 hours times 30,000 projects per year requiring pre-construction notification). In addition, we are adding a requirement for existing aquaculture activities using NWP 48 that do not require a pre-construction notification to instead file a short report indicating basic information about the existing shellfish production operation. The estimated burden for this new requirement is 1,800 hours per year (900 existing aquaculture facilities times 2 hours per report). The information in the report is a subset of the information required for a full pre-construction notification.

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 Office of Management and Budget (OMB) control number. For the Corps Regulatory Program under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information collection requirements is maintained by the Corps of Engineers (OMB approval number 0710–0003, which expires on April 30, 2008).

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is ''significant'' and therefore subject to review by OMB and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, we have determined that this action is a ''significant regulatory action'' and it was submitted to OMB for review.

Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the Corps to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The issuance of NWPs does not have federalism implications. We do not believe that the NWPs will have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The NWPs will not impose any additional substantive obligations on State or local governments. Therefore, Executive Order 13132 does not apply to these final NWPs.

Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed issuance and modification of NWPs on small entities, a small entity is defined as: (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The statutes under which the Corps issues, reissues, or modifies NWPs are Section 404(e) of the Clean Water Act (33 U.S.C. 1344(e)) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). Under section 404, Department of the Army (DA) permits are required for discharges of dredged or fill material into waters of the United States. Under section 10, DA permits are required for any structures or other work that affect the course, location, or condition of navigable waters of the United States. Small entities proposing to discharge dredged or fill material into waters of the United States and/or conduct work in navigable waters of the United States must obtain DA permits to conduct those activities, unless a particular activity is exempt from those permit requirements. Individual permits and general permits can be issued by the Corps to satisfy the permit requirements of these two statutes. Nationwide permits are a form of general permit issued by the Chief of Engineers.

Nationwide permits automatically expire and become null and void if they are not modified or reissued within five years of their effective date (see 33 CFR 330.6(b)). Furthermore, Section 404(e) of the Clean Water Act states that general permits, including NWPs, can be issued for no more than 5 years. If the current NWPs are not reissued small entities and other project proponents would be required to obtain alternative forms of DA permits (i.e., standard permits, letters of permission, or regional general permits) for activities involving discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States. Regional general permits that authorize similar activities as the NWPs may be available in some geographic areas, so small entities conducting regulated activities outside those geographic areas would have to obtain individual permits for activities that require DA permits.

Nationwide permits help relieve regulatory burdens on small entities who need to obtain DA permits. They provide an expedited form of authorization, provided the project proponent meets all terms and conditions of the NWPs. In FY 2003, the Corps issued 35,317 NWP verifications, with an average processing time of 27 days. Those numbers do not include activities that are authorized by NWP, where the project proponent was not required to submit a pre-construction notification or did not voluntarily seek verification that an activity qualified for NWP authorization. The average processing times for the 4,035 standard permits and the 3,040 letters of permission issued during FY 2003 were 187 days and 89 days, respectively. The NWPs issued today are expected to result in a slight increase in the numbers of activities potentially qualifying for NWP authorization. The estimated numbers of activities qualifying for NWP authorization are provided in the decision documents that were prepared for each NWP. The NWPs issued today are not expected to significantly increase cost or paperwork burden for authorized activities (relative to the NWPs issued in 2002), including those conducted by small businesses.

The costs for obtaining coverage under an NWP are low. We estimate the average time to prepare and file a pre-construction notification, for those activities where a pre-construction notification is required, is 10 hours. We do not believe this constitutes a ''significant economic impact'' on project proponents, including small businesses.

Another requirement of Section 404(e) of the Clean Water Act is that general permits, including NWPs, authorize only those activities that result in minimal adverse environmental effects, individually and cumulatively. The terms and conditions of the NWPs, such as acreage or linear foot limits, are imposed to ensure that the NWPs authorize only those activities that result in minimal adverse effects on the aquatic environment and other public interest review factors. In addition to the paperwork burden of filing a pre-construction notification, many NWPs require that low-cost, common sense practices be used to minimize adverse effects. These requirements also do not constitute ''significant economic impacts.''

After considering the economic impacts of these NWPs on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. Small entities may obtain required DA authorizations through the NWPs, in cases where there are applicable NWPs authorizing those activities and the proposed work will result in minimal adverse effects on the aquatic environment and other public interest review factors. The terms and conditions of these NWPs will not impose substantially higher costs on small entities than those of the previous NWPs. If an NWP is not available to authorize a particular activity, then another form of DA authorization, such as an individual permit or regional general permit, must be secured. However, as noted above, we expect a slight increase in the number of activities than can be authorized through NWPs, because we have issued several new NWPs, and we are removing some limitations in existing NWPs and replacing them with pre-construction notification requirements that will allow the district engineer to judge whether any adverse effects of the proposed project are more than minimal, and authorize the project under an NWP if they are not.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, Section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows an agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Before an agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the NWPs issued today do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The NWPs are generally consistent with current agency practice, do not impose new substantive requirements and therefore do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, the NWPs issued today are not subject to the requirements of Sections 202 and 205 of the UMRA. For the same reasons, we have determined that the NWPs contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed issuance and modification of NWPs is not subject to the requirements of Section 203 of UMRA.

Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically

significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

The NWPs issued today are not subject to this Executive Order because they are not economically significant as defined in Executive Order 12866. In addition, these NWPs do not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The phrase ''policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The NWPs issued today do not have tribal implications. They are generally consistent with current agency practice and will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, Executive Order 13175 does not apply to this proposal. Corps districts are conducting government-to-government consultation with Indian tribes to develop regional conditions that help protect tribal rights and trust resources, and to facilitate compliance with general condition 16, Tribal Rights.

Environmental Documentation

A decision document, which includes an environmental assessment and Finding of No Significant Impact (FONSI), has been prepared for each NWP. These decision documents are available at: *http://www.regulations.gov* (docket ID number COE–2006–0005). They are also available by contacting Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street, NW., Washington, DC 20314–1000.

Congressional Review Act

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

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

The NWPs issued today are not expected to negatively impact any community, and therefore are not expected to cause any disproportionately high and adverse impacts to minority or low-income communities.

Executive Order 13211

The proposed NWPs are not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Authority

We are issuing new NWPs, modifying existing NWPs, and reissuing NWPs without change under the authority of Section 404(e) of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 et seq.).

Dated: March 1, 2007.

Don T. Riley,

Major General, U.S. Army, Director of Civil Works.

Nationwide Permits, Conditions, Further Information, and Definitions

A. Index of Nationwide Permits, Conditions, Further Information, and Definitions

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3. Maintenance.
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5. Scientific Measurement Devices.
6. Survey Activities.
7. Outfall Structures and Associated Intake Structures.
8. Oil and Gas Structures on the Outer Continental Shelf.
9. Structures in Fleeting and Anchorage Areas.
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36. Boat Ramps.
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46. Discharges in Ditches.
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9. Management of Water Flows.
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B. Nationwide Permits

1. *Aids to Navigation.* The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66). (Section 10)

2. *Structures in Artificial Canals.* Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR 322.5(g)). (Section 10)

3. *Maintenance.* (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of and within existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the district engineer under separate authorization. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) This NWP also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation or beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). Where maintenance dredging is proposed, the pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.* Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, and

clam and oyster digging, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Sections 10 and 404)

5. *Scientific Measurement Devices.* Devices, whose purpose is to measure and record scientific data, such as staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. (Sections 10 and 404)

6. *Survey Activities.* Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, and historic resources surveys. For the purposes of this NWP, the term ''exploratory trenching'' means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge does not exceed 25 cubic yards. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404)

7. *Outfall Structures and Associated Intake Structures.* Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or that are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the Clean Water Act). The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

8. *Oil and Gas Structures on the Outer Continental Shelf.* Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Minerals Management Service. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). The district engineer will review such proposals to ensure compliance with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this NWP will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, nor will such structures be permitted in EPA or Corps designated dredged material disposal areas.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 10)

9. *Structures in Fleeting and Anchorage Areas.* Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the U.S. Coast Guard has established such areas for that purpose. (Section 10)

10. *Mooring Buoys.* Non-commercial, single-boat, mooring buoys. (Section 10)

11. *Temporary Recreational Structures.* Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

12. *Utility Line Activities.* Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than ½ acre of waters of the United States.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A ''utility line'' is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term ''utility line'' does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than ½ acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than

a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the total discharge from a single and complete project does not cause the loss of greater than ½-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) The activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 27.) (Sections 10 and 404)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters), copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

13. *Bank Stabilization.* Bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:

(a) No material is placed in excess of the minimum needed for erosion protection;

(b) The activity is no more than 500 feet in length along the bank, unless this criterion is waived in writing by the district engineer;

(c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless this criterion is waived in writing by the district engineer;

(d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless this criterion is waived in writing by the district engineer;

(e) No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any water of the United States;

(f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and, (g) The activity is not a stream channelization activity.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) Involves discharges into special aquatic sites; (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. (See general condition 27.) (Sections 10 and 404)

14. *Linear Transportation Projects.* Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than ½-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than ⅓-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The loss of waters of the United States exceeds 1/10 acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

15. *U.S. Coast Guard Approved Bridges.* Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require a separate section 404 permit. (Section 404)

16. *Return Water From Upland Contained Disposal Areas.* Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. (Section 404)

17. *Hydropower Projects.* Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 5000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404)

18. *Minor Discharges.* Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

(a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;

(b) The discharge will not cause the loss of more than 1/10 acre of waters of the United States; and

(c) The discharge is not placed for the purpose of a stream diversion.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404)

19. *Minor Dredging.* Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (i.e., section 10 waters). This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR 322.5(g)). (Sections 10 and 404)

20. *Oil Spill Cleanup.* Activities required for the containment and cleanup of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761. (Sections 10 and 404)

21. *Surface Coal Mining Operations.* Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

22. *Removal of Vessels.* Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See general condition 27.) If condition 1 above is triggered, the permittee cannot commence the activity until informed by the district engineer that compliance with the ''Historic Properties'' general condition is completed. (Sections 10 and 404)

Note 1: If a removed vessel is disposed of in waters of the United States, a permit from the U.S. EPA may be required (see 40 CFR 229.3). If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.

Note 2: Compliance with general condition 17, Endangered Species, and general condition 18, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the likelihood that submerged vessels may be historic properties.

23. *Approved Categorical Exclusions.* Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor

cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW–CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Sections 10 and 404)

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW–CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are the: Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05–07, which is available at: *http://www.usace.army.mil/inet/functions/cw/cecwo/reg/rglsindx.htm.* Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same Web site.

24. *Indian Tribe or State Administered Section 404 Programs.* Any activity permitted by a state or Indian Tribe administering its own section 404 permit program pursuant to 33 U.S.C. 1344(g)–(l) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. (Section 10)

Note 1: As of the date of the promulgation of this NWP, only New Jersey and Michigan administer their own section 404 permit programs.

Note 2: Those activities that do not involve an Indian Tribe or State section 404 permit are not included in this NWP, but certain structures will be exempted by Section 154 of Pub. L. 94–587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.3(a)(2)).

25. *Structural Discharges.* Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways, or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a section 10 permit if located in navigable waters of the United States. (Section 404)

26. [Reserved]

27. *Aquatic Habitat Restoration, Establishment, and Enhancement Activities.* Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas and the restoration and enhancement of non-tidal streams and other non-tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland that has not been abandoned or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal

or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity result in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting: For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) The binding wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSM or the applicable state agency. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Notification. The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27), except for the following activities:

(1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, or their designated state cooperating agencies;

(2) Voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or

(3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSM or the applicable state agency.

However, the permittee must submit a copy of the appropriate documentation. (Sections 10 and 404)

Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee programs. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

28. *Modifications of Existing Marinas.* Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the United States is authorized by this NWP. (Section 10)

29. *Residential Developments.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This NWP authorizes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Subdivisions: For residential subdivisions, the aggregate total loss of waters of United States authorized by this NWP cannot exceed 1/2 acre. This includes any loss of waters of the United States associated with development of individual subdivision lots.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

30. *Moist Soil Management for Wildlife.* Discharges of dredged or fill material into non-tidal waters of the United States and maintenance activities that are associated with moist soil management for wildlife for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to, plowing or discing to impede succession, preparing seed beds, or establishing fire breaks. Sufficient riparian areas must be maintained adjacent to all open water bodies, including streams to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. The activity must not result in a net loss of aquatic resource functions and services. This NWP does not authorize the conversion of wetlands to uplands, impoundments, or other open water bodies. (Section 404).

Note: The repair, maintenance, or replacement of existing water control structures or the repair or maintenance of dikes may be authorized by NWP 3. Some such activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

31. *Maintenance of Existing Flood Control Facilities.* Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (i) were previously authorized by the Corps by individual permit, general permit, by 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the ''maintenance baseline,'' as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this NWP. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged material must be placed in an upland site or an authorized disposal site in waters of the United States, and proper siltation controls must be used.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district engineer will approve the maintenance baseline

based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels, but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.

Mitigation: The district engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental impacts are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the district engineer will not delay needed maintenance, provided the district engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline. In determining appropriate mitigation, the district engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require compensatory mitigation and/or best management practices as appropriate.

Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer before any maintenance work is conducted (see general condition 27). The pre-construction notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five-year (or less) maintenance plan. The pre-construction notification must include a description of the maintenance baseline and the dredged material disposal site. (Sections 10 and 404)

32. *Completed Enforcement Actions.* Any structure, work, or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of Section 404 of the Clean Water Act, provided that:

(a) The unauthorized activity affected no more than 5 acres of non-tidal waters or 1 acre of tidal waters;

(b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

(c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, Section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself. Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Sections 10 and 404)

33. *Temporary Construction, Access, and Dewatering.* Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged

material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to upland areas, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Sections 10 and 404)

34. *Cranberry Production Activities.* Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, must not exceed 10 acres of waters of the United States, including wetlands. The activity must not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.

Notification: The permittee must submit a pre-construction notification to the district engineer once during the period that this NWP is valid, and the NWP will then authorize discharges of dredge or fill material at an existing operation for the permit term, provided the 10-acre limit is not exceeded. (See general condition 27.) (Section 404)

35. *Maintenance Dredging of Existing Basins.* Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less, provided the dredged material is deposited at an upland site and proper siltation controls are used. (Section 10)

36. *Boat Ramps.* Activities required for the construction of boat ramps, provided the activity meets all of the following criteria:

(a) The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the 50 cubic yard limit is waived in writing by the district engineer;

(b) The boat ramp does not exceed 20 feet in width, unless this criterion is waived in writing by the district engineer;

(c) The base material is crushed stone, gravel or other suitable material;

(d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland; and,

(e) No material is placed in special aquatic sites, including wetlands.

The use of unsuitable material that is structurally unstable is not authorized. If dredging in navigable waters of the United States is necessary to provide access to the boat ramp, the dredging may be authorized by another NWP, a regional general permit, or an individual permit.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See general condition 27.) (Sections 10 and 404)

37. *Emergency Watershed Protection and Rehabilitation.* Work done by or funded by:

(a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);

(b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13);

(c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);

(d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR subchapter R), where the activity does not involve coal extraction; or

(e) The Farm Service Agency under its Emergency Conservation Program (7 CFR part 701).

In general, the prospective permittee should wait until the district engineer issues an NWP verification before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre-construction notification any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). (Sections 10 and 404)

38. *Cleanup of Hazardous and Toxic Waste.* Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

Note: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

39. *Commercial and Institutional Developments.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants,

business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses, new ski areas, or oil and gas wells is not authorized by this NWP.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

40. *Agricultural Activities.* Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities.

This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds.

This NWP also authorizes discharges of dredged or fill material into non-tidal waters of the United States to relocate existing serviceable drainage ditches constructed in non-tidal streams.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in non-tidal streams, unless for drainage ditches constructed in intermittent and ephemeral streams, this 300 linear foot limit is waived in writing by the district engineer.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404)

Note: Some discharges for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This NWP authorizes the construction of farm ponds that do not qualify for the Clean Water Act Section 404(f)(1)(C) exemption because of the recapture provision at Section 404(f)(2).

41. *Reshaping Existing Drainage Ditches.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the ditch as originally constructed (i.e., the capacity of the ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality.

This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity, if more than 500 linear feet of drainage ditch will be reshaped. (See general condition 27.) (Section 404)

42. *Recreational Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this NWP include playing fields (e.g., football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404)

43. *Stormwater Management Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction and maintenance of stormwater management facilities, including the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Notification: For the construction of new stormwater management facilities, or the expansion of existing stormwater management facilities, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility. (Section 404)

44. *Mining Activities.* Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities. The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. This NWP does not authorize discharges into

non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)

45. *Repair of Uplands Damaged by Discrete Events.* This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period.

Minor dredging is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody.

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 27) within 12-months of the date of the damage. The pre-construction notification should include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Sections 10 and 404)

Note: Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR 328.5.)

46. *Discharges in Ditches.* Discharges of dredged or fill material into non-tidal ditches that are: (1) Constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) are determined to be waters of the United States. The discharge must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize discharges of dredged or fill material into ditches constructed in streams or other waters of the United States, or in streams that have been relocated in uplands. This NWP does not authorize discharges of dredged or fill material that increase the capacity of the ditch and drain those areas determined to be waters of the United States prior to construction of the ditch.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404)

47. *Pipeline Safety Program Designated Time Sensitive Inspections and Repairs.* Activities required for the inspection, repair, rehabilitation, or replacement of any currently serviceable structure or fill for pipelines that have been identified by the Pipeline and Hazardous Materials Safety Administration's Pipeline Safety Program (PHP) within the U.S. Department of Transportation as time-sensitive (see 49 CFR parts 192 and 195) and additional maintenance activities done in conjunction with the time-sensitive inspection and repair activities. All activities must meet the following criteria:

(a) Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable when temporary structures, work and discharges, including cofferdams, are necessary for construction activities or access fills or dewatering of construction sites;

(b) Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect);

(c) Temporary fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate;

(d) In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench so that there is no change in preconstruction contours;

(e) To the maximum extent practicable, the restoration of open waters must be to the pre-construction course, condition, capacity, and location of the waterbody;

(f) Any exposed slopes and stream banks must be stabilized immediately upon completion of the project;

(g) Additional maintenance activities done in conjunction with the time-sensitive inspection or repair must not result in additional losses of waters of the United States; and,

(h) The permittee is a participant in the Pipeline Repair and Environmental Guidance System (PREGS).

Reporting: The permittee must submit a post construction report to the PHP within seven days after completing the work. The report must be submitted electronically to PHP via PREGS. The report must contain the following information: Project sites located in waters of the United States, temporary access routes, stream dewatering sites, temporary fills and temporary structures identified on a map of the pipeline corridor; photographs of the pre- and post-construction work areas located in waters of the United States; and a list of best management practices employed for each pipeline segment shown on the map. (Section 10 and 404)

Note: Division engineers may modify this NWP by adding regional conditions to protect the aquatic environment, as long as those regional conditions do not require pre-construction notification or other actions that would delay time sensitive inspections and repairs. Examples of appropriate regional conditions include best management practices.

48. *Existing Commercial Shellfish Aquaculture Activities.* This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures necessary for the continued operation of the existing commercial aquaculture activity. This NWP also authorizes discharges of dredged or fill material necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize new operations or the expansion of the project area for an existing commercial shellfish aquaculture activity. This NWP does not authorize the cultivation of new species (i.e., species not previously cultivated in the waterbody). This NWP

does not authorize attendant features such as docks, piers, boat ramps, stockpiles, staging areas, or the deposition of shell material back into waters of the United States as waste.

Reporting: For those activities that do not require pre-construction notification, the permittee must submit a report to the district engineer that includes the following information: (1) The size of the project area for the commercial shellfish aquaculture activity (in acres); (2) the location of the activity; (3) a brief description of the culture method and harvesting method(s); (4) the name(s) of the cultivated species; and (5) whether canopy predator nets are being used. This is a subset of the information that would be required for pre-construction notification. This report may be provided by letter or using an optional reporting form provided by the Corps. Only one report needs to be submitted during the period this NWP is valid, as long as there are no changes to the operation that require pre-construction notification. The report must be submitted to the district engineer within 90 days of the effective date of this NWP.

Notification: The permittee must submit a pre-construction notification to the district engineer if: (1) The project area is greater than 100 acres; or (2) there is any reconfiguration of the aquaculture activity, such as relocating existing operations into portions of the project area not previously used for aquaculture activities; or (3) there is a change in species being cultivated; or (4) there is a change in culture methods (e.g., from bottom culture to off-bottom culture); or (5) dredge harvesting, tilling, or harrowing is conducted in areas inhabited by submerged aquatic vegetation. (See general condition 27.) (Sections 10 and 404)

Note: The permittee should notify the applicable U.S. Coast Guard office regarding the project.

49. *Coal Remining Activities.* Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal, provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI) Office of Surface Mining (OSM), or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act of 1977. Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts. The permittee must clearly demonstrate to the district engineer that the reclamation plan will result in a net increase in aquatic resource functions. As part of the project, the permittee may conduct coal mining activities in an adjacent area, provided the newly mined area is less than 40 percent of the area being remined plus any unmined area necessary for the reclamation of the remined area.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

50. *Underground Coal Mining Activities.* Discharges of dredged or fill material into non-tidal waters of the United States associated with underground coal mining and reclamation operations provided the activities are authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.

This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize coal preparation and processing activities outside of the mine site.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)

Note: Coal preparation and processing activities outside of the mine site may be authorized by NWP 21.

C. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP.

1. *Navigation.* (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. *Aquatic Life Movements.* No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

3. *Spawning Areas.* Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. *Migratory Bird Breeding Areas.* Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. *Shellfish Beds.* No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48.

6. *Suitable Material.* No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. *Water Supply Intakes.* No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement

of public water supply intake structures or adjacent bank stabilization.

8. *Adverse Effects From Impoundments.* If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. *Management of Water Flows.* To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. *Fills Within 100-Year Floodplains.* The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. *Equipment.* Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. *Soil Erosion and Sediment Controls.* Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. *Removal of Temporary Fills.* Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. *Proper Maintenance.* Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

15. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a ''study river'' for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. *Tribal Rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

17. *Endangered Species.* (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which ''may affect'' a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity ''may affect'' or will have ''no effect'' to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have ''no effect'' on listed species or critical habitat, or until Section 7 consultation has been completed.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the ''take'' of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with ''incidental take'' provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal ''takes'' of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at *http://www.fws.gov/* and *http://www.noaa.gov/fisheries.html* respectively.

18. *Historic Properties.* (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State

Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h–2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

19. *Designated Critical Resource Waters.* Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. *Mitigation.* The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland

compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

21. *Water Quality.* Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

22. *Coastal Zone Management.* In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

23. *Regional and Case-By-Case Conditions.* The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

24. *Use of Multiple Nationwide Permits.* The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed ⅓-acre.

25. *Transfer of Nationwide Permit Verifications.* If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

''When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.''

_____

(Transferee)

_____

(Date)

26. *Compliance Certification.* Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

27. *Pre-Construction Notification.* (a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) If 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is ''no effect'' on listed species or ''no potential to cause effects'' on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to

determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) *District Engineer's Decision:* In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

28. *Single and Complete Project.* The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

D. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

E. Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Discharge: The term ''discharge'' means any discharge of dredged or fill material and any activity that causes or results in such a discharge.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of ''open waters'' include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: Re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete project: The term ''single and complete project'' is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see definition). For linear projects, a ''single and complete project'' is all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional

water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent—meaning bordering, contiguous, or neighboring—to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of ''waterbodies'' include streams, rivers, lakes, ponds, and wetlands.

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Monday,
March 12, 2007

Part III

Environmental Protection Agency

40 CFR Part 122, 136, et al.

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations; Analysis and Sampling Procedures; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 136, 141, 143, 430, 455, and 465

[EPA–HQ–OW–2003–0070; FRL–8203–8]

RIN 2040–AD71

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations; Analysis and Sampling Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule modifies the testing procedures approved for analysis and sampling under the Clean Water Act and Safe Drinking Water Act. EPA proposed these changes for public comment on August 18, 2003 and April 6, 2004. The Clean Water Act changes adopted in this final rule fall into the following categories: new vendor-developed methods as well as EPA and voluntary consensus standard bodies (VCSB) methods, updated versions of currently approved methods, revisions to method modification and analytical requirements, withdrawal of certain outdated methods, and changes to sample collection, preservation, and holding time requirements. This rule also changes regulations under the Safe Drinking Water Act that establish drinking water sampling and analysis procedures. The changes include approval of vendor-developed methods, new EPA and VCSB methods, updated VCSB methods, and approval of a modification to the test kit used with Syngenta Method AG–625 that restricts its use in certain circumstances. The addition of new and updated methods to the wastewater and drinking water regulations provides increased flexibility to the regulated community and laboratories in the selection of analytical methods.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–OW–2003–0070. All documents in the docket are listed on the *http://www.regulations.gov* web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the HQ Water Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number is (202) 566–2426 for the HQ Water Docket Center.

DATES: This regulation is effective April 11, 2007. The incorporation by reference of these methods is approved by the Director of the Federal Register on April 11, 2007. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. (Eastern time) on March 26, 2007 as provided at 40 CFR 23.2 and 23.7.

FOR FURTHER INFORMATION CONTACT: For information regarding the changes to wastewater regulations, contact Meghan Hessenauer, Engineering and Analysis Division (4303T), USEPA Office of Science and Technology, 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202–566–1040 (e-mail: *hessenauer.meghan@epa.gov*). For information regarding the changes to drinking water regulations, contact Patricia Snyder Fair, Technical Support Center (MS 140), USEPA, Office of Ground Water and Drinking Water, 26 West Martin Luther King Drive, Cincinnati, OH 45268, 513–569–7937 (e-mail: *fair.pat@epa.gov*).

SUPPLEMENTARY INFORMATION:

A. Potentially Regulated Entities

1. Clean Water Act

EPA Regions, as well as States, Territories and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits with conditions designed to ensure compliance with the technology-based and water quality-based requirements of the Clean Water Act (CWA). These permits may include restrictions on the quantity of pollutants that may be discharged as well as pollutant measurement and reporting requirements. If EPA has approved test procedures for analysis of a specific pollutant, the NPDES permittee must use an approved test procedure (or an approved alternate test procedure) for the specific pollutant when measuring the required waste constituent. Similarly, if EPA has established sampling requirements, measurements taken under an NPDES permit must comply with these requirements. Therefore, entities with NPDES permits will potentially be regulated by the actions in this rulemaking. Categories and entities that may potentially be subject to the requirements of today's rule include:

Category	Examples of potentially regulated entities
State, Territorial, and Indian Tribal Governments.	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401.
Industry	Facilities that must conduct monitoring to comply with NPDES permits.
Municipalities	POTWs that must conduct monitoring to comply with NPDES permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability language at 40 CFR 122.1, (NPDES purpose and scope), 40 CFR 136.1 (NPDES permits and CWA), 40 CFR 403.1 (Pretreatment standards purpose and applicability). If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

2. Safe Drinking Water Act

Public water systems are the regulated entities required to measure contaminants in drinking water samples. In addition, EPA Regions, as well as States, and Tribal governments with authority to administer the regulatory program for public water systems under the Safe Drinking Water Act, may also measure contaminants in water samples. When EPA establishes a maximum contaminant level (MCL) for a given drinking water contaminant, the Agency also approves standardized test procedures for analysis of the contaminant. Public water systems required to test water samples must use

one of the approved test procedures. Categories and entities that may ultimately be subject to the requirements of today's rule include:

Category	Examples of potentially regulated entities	NAICS [1]
State, Local, & Tribal Governments	States, local and tribal governments that analyze water samples on behalf of public water systems required to conduct such analysis; States, local and tribal governments that themselves operate community and non-transient non-community water systems required to monitor.	924110
Industry	Private operators of community and non-transient non-community water systems required to monitor.	221310
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor.	924110

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. The table lists types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability language at 40 CFR 141.2 (definition of public water system). If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Process Governs Judicial Review of This Rule?

Under Section 509(b)(1) of the Clean Water Act (CWA), judicial review of today's CWA rule may be obtained by filing a petition for review in the United States Circuit Court of Appeals within 120 days from the date of promulgation of this rule. For judicial review purposes, this final rule is promulgated as of 1 p.m. (Eastern time) on March 26, 2007 as provided at 40 CFR 23.2. Under section 1448 (a) of the Safe Drinking Water Act (SDWA), judicial review of today's SDWA rule may be obtained by filing a petition for review only in the United States Court of Appeal for the District of Columbia Circuit within 45 days from the date of promulgation of this rule. For SDWA judicial review purposes, this final rule is promulgated as of 1 p.m. (Eastern time) on March 26, 2007 as provide at 40 CFR 23.7. The requirements of this regulation may also not be challenged later in civil or criminal proceedings brought by EPA.

C. Abbreviations and Acronyms Used in the Preamble and Final Rule

AOAC: AOAC-International
ASTM: ASTM International
ATP: Alternate Test Procedure
CWA: Clean Water Act
EPA: Environmental Protection Agency
FLAA: Flame Atomic Absorption Spectroscopy
ICP–AES: Inductively Coupled Plasma-Atomic Emission Spectroscopy
ICP–MS: Inductively Coupled Plasma-Mass Spectroscopy
NPDES: National Pollutant Discharge Elimination System
NPDWR: National Primary Drinking Water Regulations
NSDWR: National Secondary Drinking Water Regulations
QC: Quality Control
SDWA: Safe Drinking Water Act
STGFAA: Stabilized Temperature Graphite Furnace Atomic Absorption Spectroscopy
USGS: United States Geological Survey
VCSB: Voluntary Consensus Standard Body

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I. Statutory Authority

A. Clean Water Act

EPA is promulgating today's rule pursuant to the authority of sections 301(a), 304(h), and 501(a) of the Clean Water Act (''CWA'' or the ''Act''), 33 U.S.C. 1311(a), 1314(h), 1361(a). Section 301(a) of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the Act. Section 304(h) of the Act requires the Administrator of the EPA to ''* * * promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification

pursuant to [section 401 of this Act] or permit application pursuant to [section 402 of this Act].'' Section 501(a) of the Act authorizes the Administrator to''* * * prescribe such regulations as are necessary to carry out this function under [the Act].'' EPA generally has codified its test procedure regulations (including analysis and sampling requirements) for CWA programs at 40 CFR Part 136, though some requirements are codified in other Parts (e.g., 40 CFR Chapter I, Subchapters N and O).

B. Safe Drinking Water Act

The Safe Drinking Water Act (SDWA), as amended in 1996, requires EPA to promulgate national primary drinking water regulations (NPDWRs) that specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants (SDWA section 1412 (42 U.S.C. 300g–1)). NPDWRs apply to public water systems pursuant to SDWA sections 1401(1)(A) (42 U.S.C. 300f(1)(A)). According to SDWA section 1401(1)(D), NPDWRs include ''* * * criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures * * *'' (42 U.S.C. 300f(1)(D)). In addition, SDWA section 1445(a) authorizes the Administrator to establish regulations for monitoring to help determine whether persons are acting in compliance with the requirements of the SDWA (42 U.S.C. 300j–4). EPA's promulgation of analytical methods for NPDWRs is authorized under these sections of the SDWA as well as the general rulemaking authority in SDWA section 1450(a) (42 U.S.C. 300j–9(a)).

The SDWA also authorizes EPA to promulgate national secondary drinking water regulations (NSDWRs) for contaminants in drinking water that primarily affect the aesthetic qualities relating to the public acceptance of drinking water (SDWA section 1412 (42 U.S.C. 300g–1)). These regulations are not Federally enforceable but are guidelines for the States (40 CFR 143.1). The NSDWRs also include analytical techniques for determining compliance with the regulations (40 CFR 143.4). EPA's promulgation of analytical methods for NSDWRs is authorized under general rulemaking authority in SDWA section 1450(a) (42 U.S.C. 300j–9(a)).

II. Summary of Final Rule

The following sections describe the changes EPA is making in today's final rule.

A. 40 CFR Part 122

1. Some EPA Effluent Guideline regulations, as well as EPA's Sewage Sludge Use and Disposal Regulations, require the use of analytical methods specifically prescribed by the Guideline (see e.g. 40 CFR Part 420.21(c)). This rule amends the National Pollutant Discharge Elimination System (NPDES) regulations at 40 CFR Part 122 to clarify when an NPDES permittee must use for its monitoring and reporting the analytical methods specifically required in Title 40 of the CFR, Chapter I, Subchapters N and O (effluent guidelines and sewage sludge, respectively) rather than the methods in 40 CFR Part 136. The regulatory language has been amended to explicitly require either use of methods at 40 CFR Part 136, or other methods that are specifically prescribed for the particular wastestream or for sewage sludge monitoring requirements.

2. The rule also corrects inconsistencies in sampling requirements by referencing back to 40 CFR Part 136 to explicitly require use of procedures at 40 CFR Part 136.

3. Sections 122.21(g)(7), 122.21(h)(4)(i), and 122.21(j)(4)(viii) require an NPDES permit applicant to report quantitative data for certain pollutants. The rule adds *E. coli* and Enterococci to the list of parameters at 40 CFR 122.21(g)(7) and 122.21(h)(4)(i), and adds *E. coli* to the list of parameters at 40 CFR 122.21(j)(4)(viii).

B. 40 CFR Part 136

This rule approves new and revised methods for inclusion in 40 CFR Part 136. Many of those methods are from the voluntary consensus standards body (VCSB) that publishes Standard Methods for the Examination of Water and Wastewater. Those ''Standard Methods'' are now available in both hard copy and electronic formats. The publisher identifies Standard Methods in two ways, depending on the medium of publication. Hard copy methods are identified by the method number (e.g., SM 4500–Cl E) and the edition of the manual in which they appear (e.g., 18th, 19th, 20th Editions), while the electronic versions available on-line are identified by the same method number and the year the method was approved for release (e.g., 4500–Cl E–00).

The following discussion briefly describes the changes to Part 136 methods approved today.

1. This rule amends the regulations at 40 CFR Part 136 to approve three new methods submitted as alternate test procedures for monitoring chemical pollutants. These methods are ''Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte'' (D6508, Rev. 2) by Waters Corporation, ''Digestion and Distillation of Total Cyanide in Drinking and Wastewaters using MICRO DIST and Determination of Cyanide by Flow Injection Analysis'' (QuikChem Method 10–204–00–1–X) by Lachat Instruments, and ''Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate'' (Kelada–01) by Dr. Nabih Kelada.

2. The rule approves a broad purpose digestion procedure for total recoverable elements digestion. EPA is approving EPA Method 200.2 (Revision 2.8, 1994) for use with Inductively Coupled Plasma-Atomic Emission Spectroscopy (ICP–AES), Inductively Coupled Plasma-Mass Spectroscopy (ICP–MS), Stabilized Temperature Graphite Furnace Atomic Absorption (STGFAA), and Flame Atomic Absorption Spectroscopy (FLAA) methods.

3. The rule approves three new multi-element test procedures. The approved methods are EPA Method 200.8 (Revision 5.4, 1994), AOAC Method 993.14 [16th Edition], and ASTM D5673–03 for determination of elements by ICP–MS.

4. EPA is also approving a new multi-element test procedure, EPA Method 200.9 (Revision 2.2, 1994), for determination of elements by STGFAA.

5. The rule approves four new methods for determination of hexavalent chromium by ion chromatography. The methods are EPA Method 218.6, AOAC Method 993.23 [16th Edition], and ASTM D5257–97—SM 3500–Cr C [20th Edition] and SM 3500–Cr E [18th, 19th Editions].

6. The rule approves five new methods for determination of anions by ion chromatography. The methods are EPA Method 300.0 (Revision 2.1, 1993), EPA Method 300.1 (Revision 1.0, 1997), AOAC Method 993.30 [16th Edition], ASTM D4327, and SM 4110 B [18th, 19th, and 20th Editions].

7. The rule approves the use of six automated cadmium reduction methods to determine nitrate and nitrite individually, as well as in combination. The methods are EPA Method 353.2 (Revision 2.0, 1993), ASTM D3867–99 (A) and (B), SM 4500–NO_3^-–E and F [18th, 19th, 20th Editions] and 4500–NO_3^-–E and F (2000), and USGS Method I–4545–85.

8. The rule approves a new method for determination of chlorine by low level amperometry—SM 4500–Cl E [18th, 19th, 20th Editions] and SM 4500–Cl E (2000).

9. The rule replaces EPA Method 180.1 (1978) for determination of turbidity with EPA Method 180.1 (Revision 2.0, 1993).

10. The rule replaces EPA Method 200.7 (1990) for determination of elements by ICP–AES with EPA Method 200.7 (Revision 4.4, 1994).

11. The rule replaces EPA Method 245.1 (1974) for determination of mercury with EPA Method 245.1 (Revision 3.0, 1994).

12. The rule replaces EPA Method 335.3 (1978) for determination of total cyanide with EPA Method 335.4 (Revision 1.0, 1993) with a footnote to clarify the proper procedure for removing sulfide interferences.

13. The rule replaces EPA Method 350.1 (1978) for determination of ammonia with EPA Method 350.1 (Revision 2.0, 1993).

14. The rule replaces EPA Method 351.2 (1978) for determination of total Kjeldahl nitrogen (TKN) with EPA Method 351.2 (Revision 2.0 1993).

15. The rule replaces EPA Method 353.2 (1978) for determination of nitrate-nitrite with EPA Method 353.2 (Revision 2.0, 1993).

16. The rule replaces EPA Method 365.1 (1978) for determination of phosphorus (all forms) with EPA Method 365.1 (Revision 2.0, 1993).

17. The rule replaces EPA Method 375.2 (1978) for determination of sulfate with EPA Method 375.2 (Revision 2.0, 1993).

18. The rule replaces EPA Method 410.4 (1978) for determination of chemical oxygen demand (COD) with EPA Method 410.4 (Revision 2.0, 1993).

19. The rule replaces EPA Method 420.2 (1974) for determination of total phenols with EPA Method 420.4 (Revision 1.0, 1993).

20. The rule approves a new method for the determination of mercury, EPA Method 245.7 ''Mercury in Water by Cold Vapor Atomic Fluorescence Spectrometry'' [Revision 2.0, 2005] (EPA–821–R–05–001).

21. The rule approves a new method for determination of available cyanide by ligand exchange followed by flow injection analysis, ASTM D6888–04.

22. The rule approves a new method for determination of cations by ion chromatography, ASTM D6919–03.

23. The rule approves a new method for determination of chloride by potentiometry, SM 4500–Cl^-D [18th, 19th, 20th Editions] and SM 4500–Cl^-D (2000).

24. The rule approves a new method for determination of chloride by ion selective electrode, ASTM D512–89 (1999).

25. The rule approves two new methods for determination of total cyanide by ion selective electrode, SM 4500–CN^-F [18th, 19th, 20th Editions] and SM 4500–CN^-F (2000), and ASTM D2036–98 A.

26. The rule approves two new methods for determination of sulfide by ion selective electrode, SM 4500–S_2^-G [18th, 19th, 20th Editions] and ASTM D4658–03 (1996).

27. The rule approves a new method for determination of nitrate by ion selective electrode, SM 4500–NO_3^-[18th, 19th, 20th Editions] and SM 4500–NO_3^-(2000).

28. The rule approves an errata sheet to correct typographical errors in the following methods manuals, ''Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms,'' Fourth Edition, U.S. Environmental Protection Agency, Office of Water, Washington DC, EPA/821/R–02/013 (the ''freshwater chronic manual''), and ''Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms,'' Fifth Edition, U.S. Environmental Protection Agency, Office of Water, Washington DC, EPA/821/R–02/012 (the ''freshwater acute manual'').

29. The rule approves the use of newer versions of 74 methods published by ASTM International. The new versions are published in the 1994, 1996, and 1999 Annual Book of ASTM Standards Vols. 11.01 and 11.02, in the 2000 Annual Book of ASTM Standards, Vol. 11.02 and in individual standards published after 2000.

30. The rule approves the use of newer versions of 88 methods published by the Standard Methods Committee and adopts a new numbering system to track the approved versions of Standard Methods. The new versions are published in Standard Methods Online (APHA 2003).

31. The rule approves the use of newer versions of 19 methods published by AOAC–International. The new versions of these methods are published in Official Methods of Analysis of AOAC–International, 16th Edition, 1995.

32. The rule approves the replacement of the mercuric sulfate catalyst with copper sulfate in methods approved for the determination of total Kjeldahl nitrogen (TKN).

33. The rule approves the use of styrene divinyl benzene beads and stabilized formazin as alternatives to the presently approved formazin standard for determination of turbidity.

34. As described in the preamble to the April 2004 proposed rule (69 FR 18213), EPA is adopting a new § 136.6 to introduce greater flexibility in the use of approved methods. The section describes the circumstances in which approved methods may be modified and the requirements that analysts must meet to use these modified methods in required measurements without prior EPA approval. The rule also includes language at § 136.6(c) to clarify that analysts need only meet method performance requirements for target analytes (those analytes being measured for NPDES reporting) when using multi-analyte methods for compliance monitoring purposes. The rule also includes the language at § 136.6(d) to allow explicitly the use of capillary (open tubular) GC columns with EPA Methods 601–613, 624, 625, and 1624B as alternatives to the packed GC columns specified in those methods, provided that analysts generate new retention time tables with capillary columns to be kept on file with other information for review by auditors.

35. The rule withdraws 109 methods contained in EPA's ''Methods for the Chemical Analysis of Water and Wastes'' for which approved alternatives published by voluntary consensus standards bodies (*e.g.*, ASTM and Standard Methods) are available.

36. The rule withdraws liquid-liquid extraction (LLE) methods, including EPA Methods 612 and 625, as approved procedures for determination of 1,2-dichlorobenzene, 1,3-dichlorobenzene, and 1,4-dichlorobenzene.

37. The rule withdraws approval of all oil and grease methods that use chlorofluorocarbon-113 (CFC–113; Freon–113) as an extraction solvent.

38. The rule revises Table II (Required Containers, Preservation Techniques, and Holding Times) and the footnotes to the table at 40 CFR 136.3(e). The table and footnotes specify approved sampling, preservation, and holding time requirements for the methods approved for compliance monitoring to reduce confusion, resolve any conflicts with instructions in the underlying compliance monitoring method, and reflect current understanding of sample preservation requirements. The most significant of the changes are those made to Footnote 6, which addresses the preservation of samples to be analyzed for cyanide. Based on information gathered during the development of new cyanide methods approved in this rulemaking, and information collated from various commenters and experts in cyanide analyses, EPA revised footnote 6 to Table II by adding text that describes procedures that are recommended for removal or suppression of cyanide interferences, including interferences

from sulfur, sulfide, sulfite, thiocyanate, and aldehydes. The recommended procedures may differ from those described in the older approved methods.

39. EPA is changing ''Director of the Environmental Monitoring Systems Laboratory'' and ''Director, Analytical Methods Staff'' to ''Alternate Test Procedure Program Coordinator, Washington, DC'' every place the phrases appear in the regulations. This reflects the current organizational structure and title for the head of EPA's Alternate Test Procedure (ATP) Program management. In addition, addresses for submission of ATPs are being updated to reflect the current location of the Alternate Test Procedure Program Coordinator.

40. The rule makes other minor editorial revisions to clarify existing regulations.

C. 40 CFR Parts 141 and 143

1. This rule amends the regulations at 40 CFR Part 141 and Part 143 to allow the use of 66 methods in ''Standard Methods Online'' (APHA 2003) (40 CFR 141.21, 141.23, 141.74, and 143.4).

2. This rule allows the use of 28 newer versions of methods published by ASTM International. The new versions are published in the 1999 ''Annual Book of ASTM Standards,''' Vols.11.01 and 11.02, in the 2000 ''Annual Book of ASTM Standards,'' Vol. 11.02 and in individual standards published after 2000 (40 CFR 141.23).

3. This rule approves a new method submitted as an alternate test procedure for the determination of common anions—chloride, fluoride, nitrate, nitrite, orthophosphate, and sulfate, ''Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte'' (D6508, Rev. 2) by Waters Corporation (40 CFR 141.23 and 143.4).

4. This rule approves two new methods for determination of available cyanide, ''Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry,'' Method OIA–1677, DW (January 2004), and ASTM D6888–04 (40 CFR 141.23).

5. This rule approves the use of EPA Method 300.1 (Revision 1.0, 1997) for compliance determinations of chloride, fluoride, nitrate, nitrite, orthophosphate, and sulfate (40 CFR 141.23 and § 143.4).

6. This rule approves the use of EPA Method 552.3 (Revision 1.0, 2003) for compliance determinations of dalapon (40 CFR 141.24).

7. This rule amends 40 CFR 141.25 to add a new method for determination of radium-226 and radium-228. This method, ''The Determination of Radium-226 and Radium-228 in Drinking Water by Gamma-ray Spectrometry Using HPGE or Ge(Li) Detectors'' (Revision 1.2, December 2004), was developed by the Environmental Resources Center at the Georgia Institute of Technology, and was originally submitted to EPA as an alternate test procedure to the currently approved methods for determination of radium-226 and radium-228.

8. This rule allows States the option of approving ITS Free chlorine test strips as a test kit for the measurement of free chlorine using ''Free Chlorine Species'' (HOCl- and OCl-) by Test Strip,'' ITS Method D99–003 (Revision 3.0, November 21, 2003) by Industrial Test Systems, Inc. (40 CFR 141.74).

9. This rule approves EPA Method 327.0 (Revision 1.1, 2005) for measurement of chlorine dioxide residuals (40 CFR 141.74).

10. This rule approves the use of styrene divinyl benzene beads and stabilized formazin as alternatives to the presently approved formazin standard for determination of turbidity (40 CFR 141.74).

11. This rule revises footnote 17 to the table at 40 CFR 141.23 to allow the use of a 450–W UV lamp in the Kelada Method-01 for determination of cyanide.

12. This rule allows the use of Syngenta Method AG–625, with the modified immunoassay testing product manufactured by Beacon Analytical Systems, for the measurement of atrazine under certain conditions. It may only be used by those systems that do not use chlorine dioxide for drinking water treatment. In addition, the results of the analysis of samples with concentrations of atrazine more than one-half the atrazine MCL (*i.e.*, more than 1.5 μg/L) must be confirmed using another approved method (40 CFR 141.24).

13. This rules also revises footnote 8 to the table in paragraph (a)(1) to correct a long-standing discrepancy between the footnote and the specifications in Standard Method 9221 E. The table in question lists Standard Method 9221 E as one of two procedures that may be used for monitoring fecal coliforms. Footnote 8 simply notes the holding time for the A–1 broth used in this procedure. Today's action corrects the holding time specified in the footnote 8 to match the 7-day holding time that is specified in Standard Method 9221 E (40 CFR 141.74)

D. 40 CFR Part 430

This rule amends the Effluent Limitations Guidelines for the pulp, paper, and paperboard point source category at 40 CFR Part 430 to approve a new method for determination of chlorinated phenolics in wastewaters generated by these industries. The rule adds a new section, 430.02(g), to allow the use of ''Chlorinated Phenolics in Water by In situ Acetylation and GC/MS Determination'' (Method CP–86.07) developed by the National Council for Air and Stream Improvement (NCASI) as an alternative to otherwise required Method 1653 in Part 430, Appendix A.

E. 40 CFR Part 455

This rule amends the regulations at 40 CFR Part 455 by moving Table 7 from 40 CFR Part 455 to 40 CFR Part 136.3(a) as new Table IG.

F. 40 CFR Part 465

This rule amends the Effluent Limitations Guidelines for the coil coating point source category at 40 CFR Part 465 to replace the method listed at section 465.03(c) for determination of oil and grease in wastewater samples from all subcategories of coil coating with EPA Method 1664A for determination of non-polar materials (NPM), which is generally equivalent to total petroleum hydrocarbons.

III. Changes Between the Proposed Rule and the Final Rule

Except as noted below, the content of the final rule is the same as that of the proposed rule. In some instances, EPA revised for clarity the language of the final rule from that in the proposed rule.

A. Silver Determinations

EPA received comments on the Agency's proposed withdrawal of EPA Method 272.1 which included information on how to keep silver in solution in samples with known or suspected high levels of silver by adding a solution containing cyanogen chloride. As a result, EPA has added a footnote to Table IB at § 136.3 to include procedures for preparation and addition of this reagent to digested samples of this type to keep the silver in solution for analysis by any of the approved methods. The Agency is withdrawing EPA Method 272.1, as proposed in April 2004 (69 FR 18183 April 6, 2004).

B. ASTM Method D5673–02 ''Standard Test Method for Elements in Water by Inductively Coupled Plasma—Mass Spectrometry''

Based on comment received on the Agency's proposed approval of ASTM Method D5673–02, EPA is approving an updated version of this method ASTM D5673–03. EPA included the updated version of this method in a notice of data availability (70 FR 7909, February 16, 2005) and requested public

comment on whether it should be approved. EPA received no adverse comments.

C. Ammonia Determinations

EPA received comment on the Agency's proposed approval of an updated version of EPA Method 350.1. The commenter stated that mandating the use of ethylene-diamine-tetra-acetate (EDTA) in the method could adversely affect method performance when using an automated analyzer and submitted data to support this claim. Based on EPA's review of the data, the Agency is adding a footnote to Table IB at § 136.3 allowing analysts to omit EDTA from EPA Method 350.1, provided that all of the quality control (QC) acceptance criteria in the method are met.

D. Available Cyanide Determinations

The Agency solicited comment regarding problems encountered with the use of ligand exchange-amperometric detection methods for determination of available cyanide in samples that contain significant amounts of solids and solicited potential solutions to these problems. Based on public comment, EPA is adding a footnote to Table IB at § 136.3 that includes suggestions for sample filtration and for limiting the time between addition of ligand exchange reagents and analysis to solve these problems when necessary. The Agency proposed ASTM Method D6888–03 for determining available cyanide. Since publication of the proposal, EPA has received a revised version of this method. EPA included this revised version in a Notice of Data Availability (NODA) and requested public comment on the approval of this revised version of the method (70 FR 7909, February 16, 2005). D6888–04 contains a new online sulfide removal procedure and represents a refinement to the proposed version. EPA received no adverse comments on this revised version of the method and is approving ASTM Method D6888–04 in today's rule.

E. Kelada-01 Method for Determination of Available Cyanide and Total Cyanide

Based on a comment and data received on the Agency's proposed approval of the Kelada-01 method for determination of available cyanide and total cyanide for use in NPDES compliance monitoring, a note has been added at 40 CFR 136.3, Table IB, Footnote 55 to allow the use of 450–W UV lamp instead of the 550–W lamp specified in the method if it provides performance within the quality control acceptance criteria of the method in a given instrument. Similarly, modified flow cell configurations and flow conditions may be used in the method, provided that the QC acceptance criteria are met. The Agency also is adding the note at 40 CFR 141.23, Footnote 17, as this method was previously approved for use in drinking water compliance monitoring.

F. Mandatory Replacement of Mercuric Sulfate With Copper Sulfate in Methods for Determination of Total Kjeldahl Nitrogen

The Agency proposed the mandatory replacement of mercury sulfate with copper sulfate in total Kjeldahl nitrogen (TKN) digestion. Comments expressed concern that copper sulfate will provide inferior performance in some samples, and suggested that EPA allow the continued use of mercury sulfate in analyses, offering copper sulfate as an option. Based on EPA's evaluation of these comments, the Agency has decided that it will continue to allow the use of mercury sulfate in TKN analyses.

G. Approval of Additional Standards for Turbidity Determinations

Based on comments received on the proposed approval of additional standards for use in methods to determine turbidity, the Agency is replacing turbidity standard trade names with more generic listings in the footnote to Table IB at § 136.3. An example formulation for each generic listing is also included in order to provide a reference to at least one source of the generic standard material. The Agency also is adding a similar footnote to the table in 40 CFR 141.74 where the approved methods for the determination of turbidity in drinking water are listed.

H. Allowed Use of Capillary Columns in EPA Methods 601–613, 624, 625, and 1624B

The Agency proposed new language that explicitly allows the use of capillary columns in place of packed columns with EPA Methods 601–613, 624, 625, and 1624B, provided that all QC tests in these methods are performed and all QC acceptance criteria are met. Based on comments received on this proposal, EPA is clarifying the regulations at § 136.6 to state that retention times will change with the switch from packed to capillary columns, so analysts are not required to meet the retention times specified in the method when the switch is made. Instead, analysts must generate new retention time tables with capillary columns to be kept on file with other information for review by auditors.

I. Changes to Sampling Requirements at 40 CFR Parts 122, 136, and 403

The Agency proposed changes to the sampling requirements specified at 40 CFR Parts 122, 136 and 403. Based on comments received on these proposed updates, the sampling requirements have been modified to include clarifying language with respect to grab and composite sampling requirements, and to add *E. coli* and Enterococci to the parameters listed at Part 122.21 for which an NPDES applicant must provide analytical information. In addition, on October 14, 2005, EPA published in the **Federal Register** final changes to its General Pretreatment Regulations (70 FR 60134). In these regulations, EPA consolidated monitoring requirements for indirect dischargers into 40 CFR 403.12(g). In the proposal for the current rule, EPA proposed to modify 40 CFR 403.12 (b). Based on changes made to 40 CFR Part 403 on October 14, 2005, however, the proposed modifications to CFR 403.12 (b) are no longer required.

J. Approval Status of Total Elements Digestion

The Agency proposed to approve a ''total recoverable'' elements digestion procedure, and also to retain ''total'' elements digestion for graphite furnace atomic absorption (GFAA) analyses. Based on comments received on this proposal, EPA is clarifying the language in Table IB at § 136.3 to specify Section 4.1.3 of Methods for Chemical Analysis of Water and Wastes (MCAWW) as the approved digestion procedure for use with non-platform graphite furnace atomic absorption determinations.

K. EPA Method 245.7 for Determination of Mercury

The Agency proposed approval of EPA Method 245.7 (December 2003) as an additional method for determination of mercury. Based on comments received on this proposal, EPA has revised the method and is approving EPA Method 245.7 (Revision 2.0, 2005) in this rule. Specifically, EPA has approved the method with the following changes: includes a discussion of the gas-liquid separator in Section 2.6, reduces the amount of hydrochloric acid used during sample digestion, includes the addition of hydrochloric acid (HCl) to standard solutions, clarifies that additional procedures for handling difficult matrices may be used provided that laboratories meet the method performance criteria, and revises procedures for preparing reagent blanks to remove the addition of stannous chloride ($SnCl_2$) and include addition of

HCl. EPA also has corrected section numbering and references throughout Sections 4 and 7 of the method.

L. Clarification of Reporting Requirements

The Agency proposed to add a new § 136.7 that would clarify that a quality control (QC) failure does not relieve a permittee of the duty to report results and that results are to be reported to the level specified in the method or required in the permit, whichever is lower. EPA agrees with public comment that the proposed revision was unclear. In this rule, EPA is revising this action to clarify our intent in text at § 136.3, rather than take final action on the proposed text at § 136.7.

EPA proposed a new § 136.7 amendment to resolve conflicts between current reporting requirements at 40 CFR Parts 122 and 125 and preservation requirements at 40 CFR 136.3(e) and instructions in compliance monitoring methods specified in the tables at 40 CFR 136.3(a). For example, some methods provide ''reject tests'' (e.g. Method 5210 B 5-day BOD, section 6a, Standard Methods, 20th edition) or state that a ''result may not be reported for regulatory compliance purposes'' (e.g. Method OIA 1677: Available Cyanide, section 9.3.4, OI Analytical) if an analytical quality control measure is outside its control limit range (acceptance criteria). However, it may be necessary to report such results if resampling, reanalysis or other corrective action is not possible. Not reporting these results may cause a permittee to be in violation of Part 122 or 125 reporting requirements. Reporting such available data is recommended as a good laboratory practice (D3856–95 Standard Guide for Good Laboratory Practices in Laboratories Engaged in Sampling and Analysis of Water, *Annual Book of ASTM Standards,* Water and Environmental Technology, Vol 11.01 Water (I), p. 353, 2003).

For clarification, in this rule, EPA is adding a statement to the text preceding Tables IA to IG at § 136.3(a), and Table II at § 136.3(e) to state that reporting requirements of Parts 122 or 125 may take precedence over the otherwise applicable reporting or preservation requirements of a particular analytical method.

M. Corrections to 40 CFR Part 136, Tables IA, IB, IC, ID, IE and Footnotes

The Agency is correcting errors that were published in the proposed Table IA (List of Approved Biological Methods), Table IB (List of Approved Inorganic Test Procedures), Table IC (List of Approved Test Procedures for Non-Pesticide Organic Compounds), Table ID (List of Approved Test Procedures for Pesticides), and Table IE (List of Approved Radiologic Test Procedures) and the footnotes to those tables.

N. Revisions to 40 CFR Part 136, Table II

The rule revises Table II (Required Containers, Preservation Techniques, and Holding Times), and the footnotes to Table II at 40 CFR 136.3(e). The action of updating Table II at § 136.3(e) reflects EPA's evaluation of comments received on the April 6, 2004 proposal. EPA revised footnote 1 to more clearly distinguish between polyethylene (P), fluoropolymer (FP), glass (G), and low-density polyethylene (LDPE) and has made it explicit that a sample to be used to determine fluoride is to be collected in a polyethylene bottle. EPA revised footnotes 2 and 7 to add language to make more clear that preservation must be within 15 minutes after collection of a grab sample, a composite sample, or an aliquot split from a composite sample collected automatically over time.

EPA modified footnote 4 to clarify the start of holding times for the different types of sample collection (grab samples, composite samples collected automatically, and a set of grab samples that is composited in the laboratory). The revisions remove the requirement for collection of samples to determine cyanide in amber glass bottles with PTFE-lined caps from footnote 6. Footnotes 5 and 6 describe procedures recommended for removal or suppression of cyanide interferences, including interferences from oxidants, sulfide, sulfite, thiocyanate, and aldehydes. In addition, the footnote also provides that other procedures for removal or suppression of cyanide interferences may be employed, provided the analyst demonstrates that such other procedures more accurately measure cyanide.

EPA clarified requirements in footnote 17 specific to sampling for trace mercury, added EPA Method 245.7 to footnote 17, and removed footnote 17 from the ''Preservation'' and ''Maximum Holding Time'' headers. EPA has clarified footnote 18 to indicate that the number of significant figures is intended to establish an absolute upper limit on sample temperature and preclude meeting the specification through rounding of numbers and added an exception to footnote 18 for a sample analyzed immediately (in less than 15 minutes from collection). EPA deleted footnote 19 because the information is now in footnote 5. Deletion of this footnote resulted in renumbering all of the subsequent footnotes to Table II.

EPA has also clarified that preservation is not required for soil and sediment samples. EPA also has revised preservation requirements for acrolein, acrylonitrile, and purgeable aromatics to remove inconsistences, revised requirements for collection of samples to be tested for Cryptosporidium and Giardia, and established 0–8 °C as the holding temperature for samples to be tested for Cryptosporidium. In addition, the Agency is correcting minor formatting and typographical errors that were published in the proposed Table II.

EPA recognizes that the requirements at § 136.3 may differ from those described in some older approved methods and today's action clarifies that this section supersedes instructions in a compliance method. Where there are conflicts with existing methods published by EPA, VCSBs, or other entities, we expect that the next revisions of these methods will conform to the requirements at § 136.3(e).

O. Corrections to Tables 40 CFR Parts 141.23, 141.24, 141.25, and 141.74 and Footnotes

The final rule corrects a number of errors in the proposed tables at § 141.23 (Inorganic Chemical Sampling and Analytical Requirements), 141.24 (Organic Chemicals, Sampling and Analytical Requirements), 141.25 (Analytical Methods for Radioactivity) and 141.74 (Analytical and Monitoring Requirements) and the footnotes to those tables. The Agency also revised the wording of several entries for the cyanide methods in the tables at 40 CFR 141.23 to more clearly distinguish among the various methodologies listed in those tables.

P. Retention of Syngenta Method AG–625 for Determination of Atrazine

The Agency proposed to withdraw approval of Syngenta Method AG–625 for the determination of atrazine in drinking water. Based on comments received regarding the April 6, 2004 proposal and comments received regarding additional data submitted in response to the Notice of Data Availability (70 FR 7909, February 16, 2005), EPA has decided to retain Syngenta Method AG–625 with some restrictions on its use. The revised approval requires confirmation of any compliance monitoring results for atrazine that are greater than one half of the MCL for atrazine, using an alternate approved method. EPA based its approval on the use of the modified immunoassay testing product produced

by Beacon Analytical Systems, the only version of the product that is currently offered for sale. However, use is not authorized for public water systems which use chlorine dioxide for drinking water treatment.

Q. EPA Method 327.0 for Determination of Chlorine Dioxide

The Agency proposed to approve EPA Method 327.0 (Revision 1.0, 2003) for the determination of chlorine dioxide (40 CFR 141.74). In the final rule, the Agency has approved EPA Method 327.0 (Revision 1.1, 2005) and corrected three typographical errors in the proposed method.

R. Deferral of Action on Microtox® 1010

Because EPA is continuing to evaluate public comment about use of the Microtox® 1010 test procedure for determinations of acute whole effluent toxicity, and the data supporting use of this test procedure, EPA is not taking final action on the proposal to approve Microtox® 1010 for compliance monitoring.

IV. Response to Comments

EPA received two comments regarding methods included in this final rule from the August 18, 2003 proposal (68 FR 49548), 115 comments on the April 6, 2004 proposal (69 FR 18166), and nine comments on the February 16, 2005 Notice of Data Availability (NODA) (70 FR 7909). Commenters represented a number of different interests, including analytical laboratories, water utilities, instrument manufacturers, State and local governments, trade associations, scientists, and private citizens. A summary of major public comments on the proposed rules and the NODA and the Agency's responses is presented in this section, and section III of this preamble. The public docket for this rule includes the Agency's response to all comments.

A. Use of Syngenta Method AG–625 for Determination of Atrazine

EPA proposed withdrawing approval of Syngenta Method AG–625 (Syngenta Crop Protection Inc.) for the determination of atrazine. Based on comments and additional data submitted in response to the NODA, EPA has decided to retain Syngenta Method AG–625 as an approved method for atrazine, subject to certain conditions. Today's amended rule will require the use of an alternate approved method for atrazine to confirm any results from the Syngenta method that are greater than one half of the MCL for atrazine. EPA's decision to retain the approval of Method AG–625 is based on using the modified immunoassay testing product manufactured by Beacon Analytical Systems (Atrazine Plate Kit–Cat# CPP–004), the only version of the product currently offered for sale. However, based on data submitted in response to the NODA, EPA is not approving Method AG–625 for use when chlorine dioxide is used for drinking water treatment.

One commenter supported the withdrawal of Syngenta Method AG–625, citing EPA's Environmental Technology Verification (ETV) study, and suggested that the method had not been validated adequately prior to EPA's earlier approval. The commenter also suggested that approval of a modified version of AG–625 may be preferable, but was concerned that the method using the original testing product could lead to reports of non-compliance and/or increased treatment cost based on erroneous atrazine measurements in the interim.

Other comments questioned the validity of data submitted by the American Water Works Association (AWWA) that demonstrated method deficiencies and requested that the data not be considered by EPA. The commenters noted that data were not accompanied by suitable quality control checks and that some tests (*i.e.*, testing the effect of humic acid) were not reproducible in later studies by the same investigator. The commenters also suggested that data generated by AWWA was not generated according to Method AG–625, but rather by simply using the commercial testing product without reference to the method.

As reported by Adams (Adams *et al.*, JAWWA, 2004, pp. 126–139), the original immunoassay test kit used with Method AG–625 was subject to a positive bias in the measurement of atrazine in the presence of disinfectants used in drinking water treatment, such as chlorine, monochloroamine, chloramine T, chlorine dioxide and other substances. Additionally, data reported by Adams using the modified Beacon test kit, data from the Environmental Technology Verification (ETV) Program, and, in fact, data in the December 2004 Syngenta study (Atrazine: Final Report, Syngenta Number T006141–04, 12/10/2004), demonstrate that test kits marketed by Beacon, Abraxis, and SDI show a modest positive bias in raw and finished drinking water for most samples (*i.e.*, the measured concentrations in most samples were higher than the expected values). For a distinct minority of samples in these two studies, no bias or a negative bias was shown (*i.e.*, the measured concentrations were equal to or lower than the expected concentrations in a few samples). The December 2004 Syngenta study submitted to EPA demonstrated that the modified Beacon immunoassay test kit performed suitably in the presence of chlorine, monochloroamine, chloramine T, chloroform, and humic acid. However the data show that an interference occurred in the presence of chlorine dioxide unless samples were analyzed within one day of collection.

EPA agrees that data from both Syngenta and AWWA (Adams) indicate that, except for cases involving chlorine dioxide, the modified testing product performed substantially better with regard to the positive bias and interferences than did the original product in the presence of disinfectants and other interferences. EPA also agrees that, in general, the immunoassay products examined in these studies exhibit some positive bias for atrazine. Low results were only obtained from analyses of a few samples.

EPA recognizes that a potential positive bias is a concern for water utilities, particularly those located in areas such as the Midwest, where atrazine is used extensively to control weeds in corn and sorghum crops. However, in many other areas, where it is not used, atrazine is not likely to be found in drinking water samples at all. Because accurate information on the occurrence of contaminants at concentrations close to the MCL is necessary for EPA to meet its obligation to review MCLs every six years, EPA has retained approval of Syngenta Method AG–625 for atrazine with the conditions on its use described below. The following conditions have been added as Footnote 5 to the table at 40 CFR 141.24(e)(1).

''This method may not be used for the analysis of atrazine in any system where chlorine dioxide is used for drinking water treatment. In samples from all other systems, any result for atrazine generated by Method AG–625 that is greater than one-half the maximum contaminant level (MCL) (i.e., greater than 0.0015 mg/L or 1.5 μg/L) must be confirmed using another approved method for this contaminant and should use additional volume of the original sample collected for compliance monitoring. In instances where a result from Method AG–625 triggers such confirmatory testing, the confirmatory result is to be used to determine compliance.''

The MCL for atrazine is 0.003 mg/L (3 μg/L). Thus, any results from Method AG–625 greater than 0.0015 mg/L (1.5 μg/L) must be confirmed through the use of another approved method for atrazine. In such instances, the

confirmatory result is used to determine compliance, because the methods used for confirmatory testing are considered more accurate.

EPA acknowledges that this requirement for confirmation may cause some utilities to choose not to employ Method AG–625. However, the approval of a method at 40 CFR Part 141 does not constitute a requirement for its use when other approved methods are available. Furthermore, EPA has concluded that, given the distribution of atrazine use nationwide, the majority of water utilities will not be negatively affected by the confirmation requirement and can take advantage of the potential cost savings afforded by Method AG–625 relative to other approved methods for atrazine. EPA notes that if utilities are monitoring for a broad range of contaminants using approved methods that cover multiple analytes (e.g., Method 525.2), then the use of a test kit may not offer a cost advantage because of the ability to include atrazine in a broad spectrum method.

Based on the data provided in response to the proposed rule and NODA, EPA agrees that the presence of chlorine dioxide has substantial potential to interfere with Method AG–625. Therefore, EPA has not approved the method for use in water systems where chlorine dioxide is used for drinking water treatment. While the data from one study suggest that the atrazine results are not affected if samples are analyzed within 24 hours after sample collection, the circumstances surrounding this observation in the study have not been fully characterized. At a future date, EPA may reconsider the use of Method AG–625 by water systems using chlorine dioxide, if more information is available characterizing the performance of the method.

B. Results From Use of Revised Methods, ''The Determination of Radium-226 and Radium-228 in Drinking Water by Gamma-ray Spectrometry Using HPGE or Ge(Li) Detectors.'' (Revision 1.2, December 2004)

The final rule establishing radionuclide drinking water standards published on December 7, 2000 (65 FR 76708) required drinking water systems to sample and report on radionuclides in their drinking water supplies during the period from December 8, 2003 to December 31, 2007, including the combined result for radium-226 and radium-228. Prior to today's rule, separate methods were required for the measurement of radium-226 and radium-228. The separate results of the two isotopes are summed to provide the ''combined'' result that is compared to the MCL. One commenter supported the approval of the method from the Georgia Institute of Technology because one method can be used to measure both radium isotopes and would make for a faster result. The commenter also noted that there are approximately 150,000 Public Water Supply source water taps across the country that would have to be sampled. Given these monitoring requirements, the commenter was concerned about sufficient laboratory capacity to meet the monitoring requirements of the December 2000 rule because approval of the Georgia Institute of Technology method would not become effective until promulgation of today's rule.

In response to this comment, EPA is allowing community water systems to use samples collected after January 1, 2005 and analyzed using the analytical method approved in this rule to satisfy the radium-226 and radium-228 monitoring requirements for the 2005–2007 compliance period. (Minor corrections to the method were made in December 2004 and are reflected in the version approved in this rule, so it was not available for analyzing samples collected prior to 2005.) Allowing this early use of the method should alleviate some of the laboratory capacity concerns. EPA has included a footnote in the revised table of analytical methods for radioactivity at § 141.25 to indicate that samples analyzed using the newly approved method are acceptable. Such ''grandfathered'' data must be based on results from the analytical method approved for use by this final rule. The term ''grandfathered data'' used in this rule does not apply to data collected to meet other grandfathering provisions specified in the radionuclide final rule that was published on December 7, 2000 (65 FR 76708).

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule does not impose any information collection, reporting, or recordkeeping requirements. This rule merely adds new and updated versions of testing procedures, withdraws some older testing procedures, and establishes new sample collection, preservation, and holding time requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency

certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities for methods under the Clean Water Act, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment (5 U.S.C. 601(3)–(5)). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of this rule on small entities for methods under the Safe Drinking Water Act, EPA considered small entities to be public water systems serving 10,000 or fewer persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration, and expressed its intention to use the alternative definition for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this regulation as well.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action approves new and updated versions of testing procedures, withdraws some older testing procedures, and approves new sample collection, preservation, and holding time requirements. Generally, these changes will have a positive impact on small entities by increasing method flexibility, thereby allowing entities to reduce costs by choosing more cost-effective methods. In some cases, analytical costs may increase slightly due to the additional QC requirements included in the methods that are being approved to replace older EPA methods. However, most laboratories that analyze samples for EPA compliance monitoring have already instituted QC requirements as part of their laboratory practices. We have determined that a small number of small entities that are still using the CFC–113 based oil and grease methods may need to devote resources to analyst training when they switch to hexane-based methods. However, due to the decreased availability of CFC–113 in the marketplace, we anticipate that the cost differential, if any, will soon favor the use of the hexane-based methods. The phaseout of CFC–113 based methods is required to comply with the Montreal Protocol which prohibits the use of CFC–113 based methods after December 31, 2005.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Anticipating the prohibition of CFC–113 based methods, EPA promulgated hexane-based methods in May 1999. EPA has determined that most laboratories have now switched to hexane-based oil and grease methods, making the analysis costs competitive with the CFC–113 based methods.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

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

This rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or Tribal governments or the private sector. The rule imposes no enforceable duty on any State, local, or Tribal governments or the private sector. In fact, this rule should (on the whole) save money for governments and the private sector by increasing method flexibility, and allowing these entities to reduce monitoring costs by taking advantage of innovations. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Generally, this action will have a positive impact by increasing method flexibility, thereby allowing method users to reduce costs by choosing more cost effective methods. In some cases, analytical costs may increase slightly due to changes in methods, but these increases are neither significant nor unique to small governments. This rule merely approves new and updated versions of testing procedures, withdraws some older testing procedures, and approves new sample collection, preservation, and holding time requirements. Thus, today's rule is not subject to the requirements of Section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include

regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule merely approves new and updated versions of testing procedures, withdraws some older testing procedures, and approves new sample collection, preservation, and holding time requirements. The costs to State and local governments will be minimal (in fact, governments may see a cost savings), and the rule does not preempt State law. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This rule merely approves new and updated versions of testing procedures, withdraws some older testing procedures, and approves new sample collection, preservation, and holding time requirements. The costs to Tribal governments will be minimal (in fact, governments may see a cost savings), and the rule does not preempt State law. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to the Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. Further it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This action approves new and updated versions of testing procedures, withdraws some older testing procedures, and approves new sample collection, preservation, and holding time requirements.

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

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

I. National Technology Transfer and Advancement Act

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), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule approves the use of over 150 standards developed by Standard Methods and ASTM International for use in compliance monitoring.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. Section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S. C Section 804(2). This rule will be effective April 11, 2007.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 136

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 141

Chemicals, Environmental protection, Incorporation by reference, Indians-lands, Intergovernmental relations, Radiation Protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 143

Chemicals, Environmental protection, Incorporation by reference, Indians-lands, Water supply.

40 CFR Part 430

Environmental protection, Paper and paper products industry, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 455

Chemicals, Environmental protection, Packaging and containers, Pesticides and pests, Waste treatment and disposal, Water pollution control.

40 CFR Part 465

Coil coating industry, Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: July 21, 2006.

Stephen L. Johnson,

Administrator.

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

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

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

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 2. Section 122.1 is amended by revising paragraph (a)(4) to read as follows:

§ 122.1 Purpose and Scope.

(a) * * *

(4) Regulatory provisions in Parts 125, 129, 133, 136 of this chapter and 40 CFR subchapter N and subchapter O of this chapter also implement the NPDES permit program.

* * * * *

■ 3. Section 122.21 is amended as follows:

■ a. By revising paragraph (g)(7)(i).

■ b. By revising introductory text in paragraph (h)(4)(i).

■ c. By revising paragraph (j)(4)(viii).

§ 122.21 Application for a permit (applicable to State programs, see § 123.25)

* * * * *

(g) * * *

(7) *Effluent characteristics.* (i) Information on the discharge of pollutants specified in this paragraph (g)(7) (except information on storm water discharges which is to be provided as specified in § 122.26). When ''quantitative data'' for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under Part 136 of this chapter unless use of another method is required for the pollutant under 40 CFR subchapters N or O. When no analytical method is approved under Part 136 or required under subchapters N or O, the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that quantitative data as applying to the substantially identical outfall. The requirements in paragraphs (g)(7)(vi) and (vii) of this section state that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. When paragraph (g)(7) of this section requires analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including *E. coli*), and Enterococci (previously known as fecal streptococcus at § 122.26 (d)(2)(iii)(A)(3)), or volatile organics, grab samples must be collected for those pollutants. For all other pollutants, a 24-hour composite sample, using a minimum of four (4) grab samples, must be used unless specified otherwise at 40 CFR Part 136. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. Results of analyses of individual grab samples for any parameter may be averaged to obtain the daily average. Grab samples that are not required to be analyzed immediately (see Table II at 40 CFR 136.3 (e)) may be composited in the laboratory, provided that container, preservation, and holding time requirements are met (see Table II at 40 CFR 136.3 (e)) and that sample integrity is not compromised by compositing.

* * * * *

(h) * * *

(4) * * *

(i) Quantitative data for the pollutants or parameters listed below, unless testing is waived by the Director. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136. When analysis of pH, temperature, residual chlorine, oil and grease, or fecal coliform (including *E. coli*), and Enterococci (previously known as fecal streptococcus) and volatile organics is required in paragraphs (h)(4)(i)(A) through (K) of this section, grab samples must be collected for those pollutants. For all other pollutants, a 24-hour composite sample, using a minimum of four (4) grab samples, must be used unless specified otherwise at 40 CFR Part 136. For a composite sample, only one analysis of the composite of aliquots is required. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

* * * * *

(j) * * *

(4) * * *

(viii) Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 unless an alternative is specified in the existing NPDES permit. When analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including *E. coli*), or volatile organics is required in paragraphs (j)(4)(ii) through (iv) of this section, grab samples must be collected for those pollutants. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

* * * * *

■ 4. Section 122.41 is amended by revising paragraphs (j)(4) and (l)(4)(ii) to read as follows:

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).

* * * * *

(j) * * *

(4) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O.

* * * * *

(l) * * *

(4) * * *

(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136, or another method required for an industry-specific waste stream under 40 CFR subchapters N or O, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

* * * * *

■ 5. Section 122.44 is amended by revising paragraph (i)(1)(iv) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs; see § 123.25).

* * * * *

(i) * * *

(1) * * *

(iv) According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants or another method is required under 40 CFR subchapters N or O. In the case of pollutants for which there are no approved methods under 40 CFR Part 136 or otherwise required under 40 CFR subchapters N or O, monitoring must be conducted according to a test procedure specified in the permit for such pollutants.

* * * * *

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

■ 6. The authority citation for Part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977.)

■ 7. Section 136.3 is amended as follows:

■ a. In paragraph (a) by revising the introductory text and Tables IA, IB, IC, ID, and IE.

■ b. In paragraph (a) by adding Table IG after the notes of Table IF.

■ c. In paragraph (b) by revising references 6, 10, and 17, and adding references 63 through 69.

■ d. By revising paragraphs (c), (d), and (e).

§ 136.3 Identification of test procedures.

(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables IA, IB, IC, ID, IE, IF, and IG. In the event of a conflict between the reporting requirements of 40 CFR Parts 122 and 125 and any reporting requirements associated with the methods listed in these tables, the provisions of 40 CFR Parts 122 and 125 are controlling and will determine a permittee's reporting requirements. The full text of the referenced test procedures are incorporated by reference into Tables IA, IB, IC, ID, IE, IF, and IG. The incorporation by reference of these documents, as specified in paragraph (b) of this section, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed in paragraph (b) of this section. You can get information about obtaining these documents from the EPA Office of Water Engineering and Analysis Division at 202–566–1000. Documents may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue, NW., Washington, DC (Telephone: 202–566–2426); 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*

These test procedures are incorporated as they exist on the day of approval and a notice of any change in these test procedures will be published in the **Federal Register**. The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables IA, IB, IC, IE, IF, and IG or by any alternate test procedure which has been approved by the Administrator under the provisions of paragraph (d) of this section and §§ 136.4 and 136.5. Under certain circumstances (paragraph (b) or (c) of this section or 40 CFR 401.13) other test procedures may be used if such other test procedures have been previously approved by the Regional Administrator of the Region in which the discharge will occur, and the Director of the State in which such discharge will occur does not object to the use of an additional or alternate test procedure.

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS

Parameter and units	Method [1]	EPA	Standard methods 18th, 19th, 20th Ed.	Standard methods online	AOAC, ASTM, USGS	Other
Bacteria:						
1. Coliform (fecal), number per 100 mL.	Most Probable Number (MPN), 5 tube 3 dilution, or	p. 132 [3]	9221C or E	9221C or E–99.		
	Membrane filter (MF) [2], single step.	p. 124 [3]	9222D	9222D–97	B–0050–85 [5].	
2. Coliform (fecal) in presence of chlorine, number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 132 [3]	9221C or E	9221C or E–99.		
	MF, single step [6]	p. 124 [3]	9222D	9222D–97.		
3. Coliform (total), number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 114 [3]	9221B	9221B–99.		
	MF [2], single step or two step.	p. 108 [3]	9222B	9222B–97	B–0025–85 [5].	
4. Coliform (total), in presence of chlorine, number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 114 [3]	9221B	9221B–99.		
	MF [2] with enrichment	p. 111 [3]	9222 (B+B.5c)	9222 (B+B.5c)–97.		
5. E. coli, number per 100 mL [28].	MPN [7, 9, 15], multiple tube,		9221B.1/9221F [12 14].	9221B.1–99/9221F [12 14].		

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS—Continued

Parameter and units	Method [1]	EPA	Standard methods 18th, 19th, 20th Ed.	Standard methods online	AOAC, ASTM, USGS	Other
	multiple tube/multiple well,	.....	9223B [13]	9223B–97 [13]	991.15 [11]	Colilert® [13, 17], Colilert-18® [13, 16, 17]
	MF two step, or	1103.1 [20]	9222B/9222G [19], 9213D.	9222B–97/9222G [19].	D5392–93 [10].	
	single step	1603 [21], 1604 [22]	.....	.....	.....	mColiBlue-24® [18]
6. Fecal streptococci, number per 100 mL.	MPN, 5 tube, 3 dilution,	p. 139 [3]	9230B	9230B–93.		
	MF [2], or	p. 136 [3]	9230C	9230C–93	B–0055–85 [5].	
	Plate count	p. 143 [3].				
7. Enterococci, number per 100 mL [28].	MPN [7, 9] multiple tube, ..	.....	9230B	9230B–93.		
	multiple tube/multiple well.	.....	.....	.....	D6503–99 [10].	Entero-lert® [13, 23]
	MF [2, 6, 7, 8, 9], two step ...	1106.1 [24]	9230C	9230C–93	D5259–92 [10].	
	single step, or	1600 [25].				
	Plate count	p. 143 [3].				
Protozoa:						
8. *Cryptosporidium* [28].	Filtration/IMS/FA	1622 [26], 1623 [27].				
9. *Giardia* [28]	Filtration/IMS/FA	1623 [27].				
Aquatic Toxicity:						
10. Toxicity, acute, fresh water organisms, LC_{50}, percent effluent.	*Ceriodaphnia dubia* acute.	2002.0 [29].				
	Daphnia puplex and *Daphnia magna* acute.	2021.0 [29].				
	Fathead Minnow, *Pimephales promelas,* and Bannerfin shiner, *Cyprinella leedsi,* acute.	2000.0 [29].				
	Rainbow Trout, *Oncorhynchus mykiss,* and brook trout, *Salvelinus fontinalis,* acute.	2019.0 [29].				
11. Toxicity, acute, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, LC_{50}, percent effluent.	Mysid, *Mysidopsis bahia,* acute.	2007.0 [29].				
	Sheepshead Minnow, *Cyprinodon variegatus,* acute.	2004.0 [29].				
	Silverside, *Menidia beryllina, Menidia menidia,* and *Menidia peninsulae,* acute.	2006.0 [29].				
12. Toxicity, chronic, fresh water organisms, NOEC or IC_{25}, percent effluent.	Fathead minnow, *Pimephales promelas,* larval survival and growth.	1000.0 [30].				
	Fathead minnow, *Pimephales promelas,* embryo-larval survival and teratogenicity.	1001.0 [30].				
	Daphnia, *Ceriodaphnia dubia,* survival and reproduction.	1002.0 [30].				

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS—Continued

Parameter and units	Method [1]	EPA	Standard methods 18th, 19th, 20th Ed.	Standard methods online	AOAC, ASTM, USGS	Other
13. Toxicity, chronic, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, NOEC or IC_{25}, percent effluent.	Green alga, *Selenastrum capricornutum,* growth.	1003.0 [30].				
	Sheepshead minnow, *Cyprinodon variegatus,* larval survival and growth.	1004.0 [31].				
	Sheepshead minnow, *Cyprinodon variegatus,* embryo-larval survival and teratogenicity.	1005.0 [31].				
	Inland silverside, *Menidia beryllina,* larval survival and growth.	1006.0 [31].				
	Mysid, *Mysidopsis bahia,* survival, growth, and fecundity.	1007.0 [31].				
	Sea urchin, *Arbacia punctulata,* fertilization.	1008.0 [31].				

[1] The method must be specified when results are reported.

[2] A 0.45-μ membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated and to be free of extractables which could interfere with their growth.

[3] USEPA. 1978. Microbiological Methods for Monitoring the Environment, Water, and Wastes. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, OH, EPA/600/8–78/017.

[4] [Reserved]

[5] USGS. 1989. U.S. Geological Survey Techniques of Water-Resource Investigations, Book 5, Laboratory Analysis, Chapter A4, Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples, U.S. Geological Survey, U.S. Department of Interior, Reston, VA.

[6] Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.

[7] Tests must be conducted to provide organism enumeration (density). Select the appropriate configuration of tubes/filtrations and dilutions/volumes to account for the quality, character, consistency, and anticipated organism density of the water sample.

[8] When the MF method has not been used previously to test ambient waters with high turbidity, large number of noncoliform bacteria, or samples that may contain organisms stressed by chlorine, a parallel test should be conducted with a multiple-tube technique to demonstrate applicability and comparability of results.

[9] To assess the comparability of results obtained with individual methods, it is suggested that side-by-side tests be conducted across seasons of the year with the water samples routinely tested in accordance with the most current *Standard Methods for the Examination of Water and Wastewater* or EPA alternate test procedure (ATP) guidelines.

[10] ASTM. 2000, 1999, 1996. *Annual Book of ASTM Standards—Water and Environmental Technology.* Section 11.02. ASTM International. 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[11] AOAC. 1995. *Official Methods of Analysis of AOAC International,* 16th Edition, Volume I, Chapter 17. Association of Official Analytical Chemists International. 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

[12] The multiple-tube fermentation test is used in 9221B.1. Lactose broth may be used in lieu of lauryl tryptose broth (LTB), if at least 25 parallel tests are conducted between this broth and LTB using the water samples normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliform using lactose broth is less than 10 percent. No requirement exists to run the completed phase on 10 percent of all total coliform-positive tubes on a seasonal basis.

[13] These tests are collectively known as defined enzyme substrate tests, where, for example, a substrate is used to detect the enzyme β-glucuronidase produced by *E. coli.*

[14] After prior enrichment in a presumptive medium for total coliform using 9221B.1, all presumptive tubes or bottles showing any amount of gas, growth or acidity within 48 h ± 3 h of incubation shall be submitted to 9221F. Commercially available EC–MUG media or EC media supplemented in the laboratory with 50 μg/mL of MUG may be used.

[15] Samples shall be enumerated by the multiple-tube or multiple-well procedure. Using multiple-tube procedures, employ an appropriate tube and dilution configuration of the sample as needed and report the Most Probable Number (MPN). Samples tested with Colilert® may be enumerated with the multiple-well procedures, Quanti-Tray® or Quanti-Tray® 2000, and the MPN calculated from the table provided by the manufacturer.

[16] Colilert-18® is an optimized formulation of the Colilert® for the determination of total coliforms and *E. coli* that provides results within 18 h of incubation at 35 °C rather than the 24 h required for the Colilert® test and is recommended for marine water samples.

[17] Descriptions of the Colilert®, Colilert-18®, Quanti-Tray®, and Quanti-Tray®/2000 may be obtained from IDEXX Laboratories, Inc., 1 IDEXX Drive, Westbrook, ME 04092.

[18] A description of the mColiBlue24® test, Total Coliforms and *E. coli,* is available from Hach Company, 100 Dayton Ave., Ames, IA 50010.

[19] Subject total coliform positive samples determined by 9222B or other membrane filter procedure to 9222G using NA MUG media.

[20] USEPA. 2002. Method 1103.1: *Escherichia coli* (*E. coli*) In Water By Membrane Filtration Using membrane-Thermotolerant *Escherichia coli* Agar (mTEC). U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA–821–R–02–020.

[21] USEPA. 2002. Method 1603: *Escherichia coli* (*E. coli*) In Water By Membrane Filtration Using Modified membrane-Thermotolerant *Escherichia coli* Agar (modified mTEC). U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA–821–R–02–023.

[22] Preparation and use of MI agar with a standard membrane filter procedure is set forth in the article, Brenner *et al.* 1993. ''New Medium for the Simultaneous Detection of Total Coliform and *Escherichia coli* in Water.'' Appl. Environ. Microbiol. 59:3534–3544 and in USEPA. 2002. Method 1604: Total Coliforms and *Escherichia coli* (*E. coli*) in Water by Membrane Filtration by Using a Simultaneous Detection Technique (MI Medium). U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA 821–R–02–024.

[23] A description of the Enterolert® test may be obtained from IDEXX Laboratories, Inc., 1 IDEXX Drive, Westbrook, ME 04092.

[24] USEPA. 2002. Method 1106.1: Enterococci In Water By Membrane Filtration Using membrane-Enterococcus-Esculin Iron Agar (mE–EIA). U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA–821–R–02–021.

[25] USEPA. 2002. Method 1600: Enterococci in Water by Membrane Filtration Using membrane-Enterococcus Indoxyl-β-D-Glucoside Agar (mEI). U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA–821–R–02–022.

[26] Method 1622 uses filtration, concentration, immunomagnetic separation of oocysts from captured material, immunofluorescence assay to determine concentrations, and confirmation through vital dye staining and differential interference contrast microscopy for the detection of *Cryptosporidium.* USEPA. 2001. Method 1622: *Cryptosporidium* in Water by Filtration/IMS/FA. U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA–821–R–01–026.

[27] Method 1623 uses filtration, concentration, immunomagnetic separation of oocysts and cysts from captured material, immunofluorescence assay to determine concentrations, and confirmation through vital dye staining and differential interference contrast microscopy for the simultaneous detection of *Cryptosporidium* and *Giardia* oocysts and cysts. USEPA. 2001. Method 1623. *Cryptosporidium* and *Giardia* in Water by Filtration/IMS/FA. U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA–821–R–01–025.

[28] Recommended for enumeration of target organism in ambient water only.

[29] USEPA. October 2002. Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms. Fifth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA/821/R–02/012.

[30] USEPA. October 2002. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms. Fourth Edition. U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA/821/R–02/013.

[31] USEPA. October 2002. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Third Edition. U.S. Environmental Protection Agency, Office of Water, Washington, DC, EPA/821/R–02/014.

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter	Methodology [58]	Reference (method number or page)					
		EPA [35, 52]	Standard methods (18th, 19th)	Standard methods (20th)	Standard methods online	ASTM	USGS/AOAC/other
1. Acidity, as $CaCO_3$, mg/L	Electrometric endpoint or phenolphthalein endpoint.		2310 B(4a)	2310 B(4a)	2310 B(4a)–97	D1067–92, 02	I–1020–85 [2]
2. Alkalinity, as $CaCO_3$, mg/L	Electrometric or Colorimetric titration to pH 4.5, manual, or		2320 B	2320 B	2320 B–97	D1067–92, 02	973.43 [3], I–1030–85 [2]
	automatic	310.2 (Rev. 1974) [1].					I–2030–85 [2]
3. Aluminum—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 D		3111 D–99		I–3051–85 [2]
	AA furnace		3113 B		3113 B–99.		
	STGFAA	200.9, Rev. 2.2 (1994).					
	ICP/AES [36]	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99		I–4471–9750
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
	Direct Current Plasma (DCP) [36]					D4190–94, 99	See footnote [34]
	Colorimetric (Eriochrome cyanine R)		3500–Al D	3500–Al B	3500–Al B–01.		
4. Ammonia (as N), mg/L	Manual, distillation (at pH 9.5) [6] followed by:	350.1, Rev. 2.0 (1993).	4500–NH_3 B	4500–NH_3 B	4500–NH_3 B–97		973.49 [3]
	Nesslerization		4500–NH_3 C (18th only).			D1426–98, 03 (A)	973.49 [3], I–3520–85 [2]
	Titration		4500–NH_3 C (19th) and 4500–NH_3 E (18th).	4500–NH_3 C	4500–NH_3 C–97.		
	Electrode		4500–NH_3 D or E (19th) and 4500–NH_3 F or G (18th).	4500–NH_3 D or E	4500–NH_3 D or E–97.	D1426–98, 03 (B).	
	Automated phenate, or	350.1 [60], Rev. 2.0 (1993).	4500–NH_3 G (19th) and 4500–NH_3 H (18th).	4500–NH_3 G	4500–NH_3 G–97		I–4523–85 [2]
	Automated electrode						See footnote 7
	Ion Chromatography					D6919–03.	
5. Antimony—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 B		3111 B–99.		
	AA furnace		3113 B		3113 B–99.		
	STGFAA	200.9, Rev. 2.2 (1994).					
	ICP/AES [36]	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99.		
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
6. Arsenic—Total, [4] mg/L	Digestion [4] followed by	206.5 (Issued 1978) [1].					
	AA gaseous hydride		3114 B 4.d		3114 B 4.d–97	D2972–97, 03 (B)	I–3062–85 [2]
	AA furnace		3113 B		3113 B–99	D2972–97, 03 (C)	I–4063–98 [49]
	STGFAA	200.9, Rev. 2.2 (1994).					
	ICP/AES [36]	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99.		
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
	Colorimetric (SDDC)		3500–As C	3500–As B	3500–As B–97	D2972–97, 03 (A)	I–3060–85
7. Barium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 D		3111 D–99		I–3084–85 [2]
	AA furnace		3113 B		3113 B–99	D4382–95, 02.	

	ICP/AES [36]	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99.		
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
	DCP [36]						See footnote [34]
8. Beryllium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 D		3111 D–99	D3645–93 (88), 03 (A).	I–3095–85 [2]
	AA furnace		3113 B		3113 B–99	D3645–93 (88), 03 (B).	
	STGFAA	200.9, Rev. 2.2 (1994).					
	ICP/AES	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99		I–4471–97 [50]
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
	DCP, or					D4190–94, 99	See footnote [34]
	Colorimetric (aluminon)		3500–Be D.				
9. Biochemical oxygen demand (BOD_5), mg/L.	Dissolved Oxygen Depletion		5210 B	5210 B	5210 B–01		973.44,[3] p. 17.[9], I–1578–78 [8]
10. Boron—Total,[37] mg/L	Colorimetric (curcumin)		4500–B B	4500–B B	4500–B B–00		I–3112–85 [2]
	ICP/AES, or	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B99		I–4471–97 [50]
	DCP					D4190–94, 99	See footnote 34
11. Bromide, mg/L	Titrimetric					D1246–95, 99 (C)	p. S44.[10]
							I–1125–85 [2]
	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997).	4110 B	4110 B	4110 B–00	D4327–97, 03	993.30 [3]
	CIE/UV						D6508, Rev. 2 [54]
12. Cadmium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 B or C		3111 B or C–99	D3557–95, 02 (A or B).	974.27,[3] p. 37.[9], I–3135–85 [2] or I–3136–85 [2]
	AA furnace		3113 B		3113 B–99	D3557–95, 02 (D)	I–4138–89 [51]
	STGFAA	200.9, Rev. 2.2 (1994).					
	ICP/AES [36]	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99		I–1472–85[2] or I–4471–97 [50]
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
	DCP [36]					D4190–94, 99	See footnote [34]
	Voltametry [11], or					D3557–95, 02 (C).	
	Colorimetric (Dithizone)		3500–Cd D.				
13. Calcium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 B		3111 B–99	D511–93, 03(B)	I–3152–85 [2]
	ICP/AES	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99		I–4471–97 [50]
	DCP, or						See footnote [34]
	Titrimetric (EDTA)		3500–Ca D	3500–Ca B	3500–Ca B–97	D511–93, 03(A).	
	Ion Chromatography					D6919–03.	
14. Carbonaceous biochemical oxygen demand ($CBOD_5$), mg/L [12].	Dissolved Oxygen Depletion with nitrification inhibitor.		5210 B	5210 B	5210 B–01.		
15. Chemical oxygen demand (COD), mg/L	Titrimetric	410.3 (Rev. 1978) [1].	5220 C	5220 C	5220 C–97	D1252–95, 00 (A)	973.46 [3], p. 17 [9] I–3560–85 [2]
	Spectrophotometric, manual or automatic.	410.4, Rev. 2.0 (1993).	5220 D	5220 D	5220 D–97	D1252–95, 00 (B)	See footnotes [13, 14]. I–3561–85 [2]
16. Chloride, mg/L	Titrimetric: (silver nitrate) or		4500–Cl–B	4500–Cl–B	4500–Cl–B–97	D512–89(99) (B)	I–1183–85 [2]
	(Mercuric nitrate)		4500–Cl–C	4500–Cl–C	4500–Cl–C–97	D512–89 (99) (A)	973.51 [3], I–1184–85 [2]
	Colorimetric: manual or						I–1187–85 [2]
	Automated (Ferricyanide)		4500–Cl–E	4500–Cl–E	4500–Cl–E–97		I–2187–85 [2]
	Potentiometric Titration		4500–Cl–D	4500–Cl–D	4500–Cl–D–97.		
	Ion Selective Electrode					D512–89(99)(C).	

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	Reference (method number or page)					
		EPA [35, 52]	Standard methods (18th, 19th)	Standard methods (20th)	Standard methods online	ASTM	USGS/AOAC/other
	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997).	4110 B	4110 B	4110 B–00	D4327–97, 03	993.30 [3]
	CIE/UV						D6508, Rev. 2 [54]
17. Chlorine—Total residual, mg/L; Titrimetric	Amperometric direct, or		4500–Cl D	4500–Cl D	4500–Cl D–00	D1253–86 (96), 03.	
	Amperometric direct (low level)		4500–Cl E	4500–Cl E	4500–Cl E–00.		
	Iodometric direct		4500–Cl B	4500–Cl B	4500–Cl B–00.		
	Back titration ether end–point [15] or		4500–Cl C	4500–Cl C	4500–Cl C–00.		
	DPD–FAS		4500–Cl F	4500–Cl F	4500–Cl F–00.		
	Spectrophotometric, DPD or		4500–Cl G	4500–Cl G	4500–Cl G–00.		
	Electrode						See footnote [16]
18. Chromium VI dissolved, mg/L	0.45–micron Filtration followed by:						
	AA chelation–extraction or		3111 C		3111 C–99		I–1232–85
	Ion Chromatography	218.6, Rev. 3.3 (1994).	3500–Cr E	3500–Cr C	3500–Cr C–01	D5257–97	993.23
	Colorimetric (Diphenyl–carbazide)		3500–Cr D	3500–Cr B	3500–Cr B–01	D1687–92, 02 (A)	I–1230–85
19. Chromium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 B		3111 B–99	D1687–92, 02 (B)	974.27 [3], I–3236–85 [2]
	AA chelation–extraction		3111 C		3111 C–99.		
	AA furnace		3113 B		3113 B–99	D1687–92, 02 (C)	I–3233–93 [46]
	STGFAA	200.9, Rev. 2.2 (1994).					
	ICP/AES [36]	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99.		
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
	DCP,[36] or					D4190–94, 99	See footnote [34]
	Colorimetric (Diphenyl–carbazide)		3500–Cr D	3500–Cr B	3500–Cr B–01.		
20. Cobalt—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 B or C		3111 B or C–99	D3558–94, 03 (A or B).	p. 37 [9], I–3239–85 [2]
	AA furnace		3113 B		3113 B–99	D3558–94, 03 (C)	I–4243–89 [51]
	STGFAA	200.9, Rev. 2.2 (1994).					
	ICP/AES	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99		I–4471–97 [50]
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
	DCP					D4190–94, 99	See footnote [34]
21. Color, platinum cobalt units or dominant wavelength, hue, luminance purity.	Colorimetric (ADMI), or		2120 E	2120 E			See footnote [18]
	(Platinum cobalt), or		2120 B	2120 B	2120 B–01		I–1250–85 [2]
	Spectrophotometric		2120 C	2120 C.			
22. Copper—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 B or C		3111 B or C–99	D1688–95, 02 (A or B).	974.27 [3] p. 37 [9] I–3270–85 [2] or I–3271–85 [2]
	AA furnace		3113 B		3113 B–99	D1688–95, 02 (C)	I–4274–89 [51]
	STGFAA	200.9, Rev. 2.2 (1994).					
	ICP/AES [36]	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99		I–4471–97 [50]
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
	DCP [36] or					D4190–94, 99	See footnote [34]
	Colorimetric (Neocuproine) or		3500–Cu D	3500–Cu B	3500–Cu B–99.		
	(Bicinchoninate)		3500–Cu E	3500–Cu C	3500–Cu C–99		See footnote [19]

23. Cyanide—Total, mg/L	Automated Distillation and Colorimetry, or.						Kelada–01 [55]
	Manual distillation with $MgCl_2$ followed by:	335.4, Rev. 1.0 (1993) [57].	4500–CN–C	4500–CN–C		D2036–98(A)	10–204–00–1–X [56]
	Titrimetric or		4500–CN–D	4500–CN–D	4500–CN–D–99		p. 22 [9]
	Spectrophotometric, manual or		4500–CN–E	4500–CN–E	4500–CN–E–99	D2036–98(A)	I–3300–85
	Automated [20] or	335.4, Rev. 1.0 (1993) [57].					10–204–00–1–X [56], I–4302–85 [2]
	Ion Selective Electrode		4500–CN–F	4500–CN–F	4500–CN–F–99	D2036–98(A).	
24. Available Cyanide, mg/L	Cyanide Amenable to Chlorination (CATC); Manual distillation with $MgCl_2$ followed by Titrimetric or Spectrophotometric.		4500–CN–G	4500–CN–G	4500–CN–G–99	D2036–98(B).	
	Flow injection and ligand exchange, followed by amperometry [61].					D6888–04	OIA–1677 [44]
	Automated Distillation and Colorimetry.						Kelada–01 [55]
25. Fluoride—Total, mg/L	Manual distillation [6] followed by:		4500–F–B	4500–F–B	4500–F–B–97.		
	Electrode, manual or		4500–F–B	4500–F–B	4500–F–C–97	D1179–93, 99 (B).	
	Automated						I–4327–85 [2]
	Colorimetric, (SPADNS) or		4500–F–D	4500–F–D	4500–F–D–97	D1179–93, 99 (A).	
	Automated complexone		4500–F–E	4500–F–E	4500–F–E–97.		
	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997).	4110 B	4110 B	4110 B–00	D4327–97,03	993.30 [3]
	CIE/UV						D6508, Rev. 2 [54]
26. Gold—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration, or		3111 B		3111 B–99.		
	AA furnace, or	231.2 (Rev. 1978) [1].					
	DCP						See footnote [34]
27. Hardness—Total, as $CaCO_3$, mg/L	Automated colorimetric,	130.1 (Issued 1971) [1].					
	Titrimetric (EDTA) or		2340 B or C	2340 B or C	2340 B or C–97	D1126–86(92), 02	973.5 2B [3], I–1338–85[2]
	Ca plus Mg as their carbonates, by inductively coupled plasma or AA direct aspiration. (See Parameters 13 and 33)..						
28. Hydrogen ion (pH), pH units	Electrometric measurement or		4500–H^+ B	4500–H^+ B	4500–H^+ B–00	D1293–84 (90), 99 (A or B).	973.41.[3], I–1586–85 [2]
	Automated electrode	150.2 (Dec. 1982) [1].					See footnote[21], I–2587–85[2]
29. Iridium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration or		3111 B		3111 B–99.		
	AA furnace	235.2 (Issued 1978) [1].					
30. Iron—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 B or C		3111 B or C–99	D1068–96, 03 (A or B).	974.27 [3], I–3381–85 [2]
	AA furnace		3113 B		3113 B–99	D1068–96, 03 (C).	
	STGFAA	200.9, Rev. 2.2 (1994).					
	ICP/AES [36]	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99		I–4471–97 [50]
	DCP [36] or					D4190–94, 99	See footnote [34]
	Colorimetric (Phenanthroline)		3500–Fe D	3500–Fe B	3500–Fe B–97	D1068–96, 03 (D)	See footnote [22]
31. Kjeldahl Nitrogen [5]—Total, (as N), mg/L	Digestion and distillation followed by: [20]		4500–N_{org} B or C and 4500–NH_3 B.	4500–N_{org} B or C and 4500–NH_3 B.	4500–N_{org} B or C–97 and 4500–NH_3 B–97.	D3590–89, 02 (A).	
	Titration or		4500–NH_3 C (19th) and 4500–NH_3 E (18th).	4500–NH_3 C	4500–NH_3 C–97	D3590–89, 02 (A)	973.48 [3]

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	Reference (method number or page)					
		EPA [35, 52]	Standard methods (18th, 19th)	Standard methods (20th)	Standard methods online	ASTM	USGS/AOAC/other
	Nesslerization or		4500–NH_3 C (18th Only).			D3590–89, 02 (A).	
	Electrode		4500–NH_3 F or G (18th) and 4500–NH_3 D or E (19th).	4500–NH_3 D or E	4500–NH_3 D or E–97.		
	Automated phenate colorimetric	351.1 (Rev. 1978) [1].					I–4551–78 [8]
	Semi-automated block digestor colorimetric.	351.2, Rev. 2.0 (1993).				D3590–89, 02 (B)	I–4515–91 [45]
	Manual or block digestor potentiometric.					D3590–89, 02 (A).	
	Block digester, followed by Auto distillation and Titration, or.						See footnote [39]
	Nesslerization, or						See footnote [40]
	Flow injection gas diffusion						See footnote [41]
32. Lead—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 B or C		3111 B or C–99	D3559–96, 03 (A or B).	974.27 [3], I–3399–85 [2]
	AA furnace		3113 B		3113 B–99	D3559–96, 03 (D)	I–4403–89 [51]
	STGFAA	200.9, Rev. 2.2 (1994).					
	ICP/AES [36]	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99		I–4471–97 [50]
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
	DCP [36]					D4190–94, 99	See footnote [34]
	Voltametry [11] or					D3559–96, 03 (C).	
	Colorimetric (Dithizone)		3500–Pb D	3500–Pb B	3500–Pb B–97.		
33. Magnesium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 B		3111 B–99	D511–93, 03(B)	974.27 [3], I–3447–85 [2]
	ICP/AES	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99		I–4471–97 [50]
	DCP or						See footnote [34]
	Gravimetric		3500–Mg D.				
	Ion Chromatography					D6919–03.	
34. Manganese—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 B		3111 B–99	D858–95, 02 (A or B).	974.27 [3], I–3454–85 [2]
	AA furnace		3113 B		3113 B–99	D858–95, 02 (C).	
	STGFAA	200.9, Rev. 2.2 (1994).					
	ICP/AES [36]	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99		I–4471–97 [50]
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
	DCP36, or					D4190–94, 99	See footnote [34]
	Colorimetric (Persulfate), or		3500—Mn D	3500–Mn B	3500–Mn B–99		920.203 [3]
	(Periodate)						See footnote [23]
35. Mercury—Total [4], mg/L	Cold vapor, manual or	245.1, Rev. 3.0 (1994).	3112 B		3112 B–99	D3223–97, 02	977.22 [3], I–3462–85 [2]
	Automated	245.2 (Issued 1974).					
	Cold vapor atomic fluorescence spectrometry (CVAFS).	245.7 Rev. 2.0 (2005) [59].					
	Purge and Trap CVAFS	1631E [43].					
36. Molybdenum—Total [4], mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 D		3111 D–99		I–3490–85 [2]

	AA furnace		3113 B		3113 B–99		I–3492–96 [47]
	ICP/AES	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99		I–4471–97 [50]
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
	DCP						See footnote [34]
37. Nickel—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 B or C		3111 B or C–99	D1886–90, 94 (98) (A or B).	I–3499–85 [2]
	AA furnace		3113 B		3113 B–99	D1886–90, 94 (98) (C).	I–4503–89 [51]
	STGFAA	200.9, Rev. 2.2 (1994).					
	ICP/AES [36]	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99		I–4471–97 [50]
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
	DCP [36], or					D4190–94, 99	See footnote [34]
	Colorimetric (heptoxime)		3500–Ni D (17th Edition).				
38. Nitrate (as N), mg/L	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997).	4110 B	4110 B	4110 B–00	D4327–97, 03	993.30 [3]
	CIE/UV						D6508, Rev. 2 [54]
	Ion Selective Electrode		4500–NO_3^-–D	4500–NO_3^-–D	4500–NO_3^-–D–00.		
	Colorimetric (Brucine sulfate), or	352.1 [1]					973.50 [3], 419D [1,7], p. 28 [9]
	Nitrate-nitrite N minus Nitrite N (See parameters 39 and 40)..						
39. Nitrate-nitrite (as N), mg/L	Cadmium reduction, manual or		4500–NO_3^-–E	4500–NO_3^-–E	4500–NO3–E–00	D3867–99(B).	
	Automated, or	353.2, Rev. 2.0 (1993).	4500–NO_3^-–F	4500–NO_3^-–F	4500–NO_3^-–F–00	D3867–99(A)	I–4545–85 [2]
	Automated hydrazine		4500–NO_3^-–H	4500–NO_3^-–H	4500–NO_3^-–H–00.		
	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997).	4110 B	4110 B	4110 B–00	D4327–97	993.30 [3]
	CIE/UV						D6508, Rev. 2 [54]
40. Nitrite (as N), mg/L	Spectrophotometric: Manual or		4500–NO_2^-–B	4500–NO_2^-–B	4500–NO_2^-–B–00		See footnote [25]
	Automated (Diazotization)						I–4540–85 [2]
	Automated (*bypass cadmium reduction).	353.2, Rev. 2.0 (1993).	4500–NO_3^-–F	4500–NO_3^-–F	4500–NO_3^-–F–00	D3867–99(A)	I–4545–85 [2]
	Manual (*bypass cadmium reduction)		4500–NO_3^-–E	4500–NO_3^-–E	4500–NO_3^-–E–00	D3867–99(B).	
	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997).	4110 B	4110 B	4110 B–00	D4327–97, 03	993.30 [3]
	CIE/UV						D6508, Rev.2 [54]
41. Oil and grease—Total recoverable, mg/L	Hexane extractable material (HEM): n–Hexane extraction and gravimetry.	1664A [42]		5520 B [38]	5520 B–01 [38].		
	Silica gel treated HEM (SGT–HEM): Silica gel treatment and gravimetry..	1664A [42].					
42. Organic carbon—Total (TOC), mg/L	Combustion or oxidation		5310 B, C, or D	5310 B, C, or D	5310 B, C, or D–00	D2579–93 (A or B)	973.47,[3] p. 14 [24]
43. Organic nitrogen (as N), mg/L	Total Kjeldahl N (Parameter 31) minus ammonia N (Parameter 4).						
44. Orthophosphate (as P), mg/L	Ascorbic acid method:.						
	Automated, or	365.1, Rev. 2.0 (1993).	4500–P F	4500–P F			973.56 [3], I–4601–85 [2]
	Manual single reagent		4500–P E	4500–P E		D515–88(A)	973.55 [3]
	Manual two reagent	365.3 (Issued 1978)[1].					

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	Reference (method number or page)					
		EPA [35, 52]	Standard methods (18th, 19th)	Standard methods (20th)	Standard methods online	ASTM	USGS/AOAC/other
	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997).	4110 B	4110 B	4110 B–00	D4327–97, 03	993.30 [3]
	CIE/UV						D6508, Rev. 2 [54]
45. Osmium—Total [4], mg/L	Digestion [4] followed by:						
	AA direct aspiration, or		3111 D		3111 D–99.		
	AA furnace	252.2 (Issued 1978) [1].					
46. Oxygen, dissolved, mg/L	Winkler (Azide modification), or		4500–O C	4500–O C	4500–O C–01	D888–92, 03 (A)	973.4 5B [3], I–1575–78 [8]
	Electrode		4500–O G	4500–O G	4500–O G–01	D888–92, 03 (B)	I–1576–78 [8]
47. Palladium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration, or		3111 B		3111 B–99		p. S27 [10]
	AA furnace	253.2 [1] (Issued 1978).					p. S28 [10]
	DCP						See footnote [34]
48. Phenols, mg/L	Manual distillation [26] Followed by:	420.1 [1] (Rev. 1978).					See footnote [27]
	Colorimetric (4AAP) manual, or	420.1 [1] (Rev. 1978).					See footnote [27]
	Automated	420.4 Rev. 1.0 (1993).					
49. Phosphorus (elemental), mg/L	Gas–liquid chromatography						See footnote [28]
50. Phosphorus—Total, mg/L	Persulfate digestion followed by: [20]		4500–P B.5	4500–P B.5			973.55 [3]
	Manual or	365.3 [1] (Issued 1978).	4500–P E	4500–P E		D515–88(A).	
	Automated ascorbic acid reduction	365.1 Rev. 2.0 (1993).	4500–P F	4500–P F			973.56 [3], I–4600–85 [2]
	Semi–automated block digestor	365.4 [1] (Issued 1974).				D515–88(B)	I–4610–91 [48]
51. Platinum—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 B		3111 B–99.		
	AA furnace	255.2 [1].					
	DCP						See footnote [34]
52. Potassium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 B		3111 B–99		973.53 [3], I–3630–85 [2]
	ICP/AES	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99.		
	Flame photometric, or		3500–K D	3500–K B	3500–K B–97.		
	Colorimetric						317 B [17]
	Ion Chromatography					D6919–03.	
53. Residue—Total, mg/L	Gravimetric, 103–105°		2540 B	2540 B	2540 B–97		I–3750–85 [2]
54. Residue—filterable, mg/L	Gravimetric, 180°		2540 C	2540 C	2540 C–97		I–1750–85 [2]
55. Residue—non–filterable (TSS), mg/L	Gravimetric, 103–105 °C post washing of residue.		2540 D	2540 D	2540 D–97		I–3765–85 [2]
56. Residue—settleable, mg/L	Volumetric, (Imhoff cone), or gravimetric.		2540 F	2540 F	2540 F–97.		
57. Residue—Volatile, mg/L	Gravimetric, 550 °C	160.4 [1]					I–3753–85 [2]
58. Rhodium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration, or		3111 B		3111 B–99.		
	AA furnace	265.2 [1].					
59. Ruthenium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration, or		3111 B		3111 B–99.		
	AA furnace	267.2 [1].					
60. Selenium—Total,[4] mg/L	Digestion [4] followed by:						
	AA furnace		3113 B		3113 B–99	D3859–98, 03 (B)	I–4668–98 [49]

	STGFAA	200.9, Rev. 2.2 (1994).					
	ICP/AES [36]	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99.		
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
	AA gaseous hydride		3114 B		3114 B–97	D3859–98, 03 (A)	I–3667–85 [2]
61. Silica—Dissolved,[37] mg/L	0.45 micron filtration followed by:						
	Colorimetric, Manual or		4500–Si D	4500–SiO_2 C	4500–SiO_2C–97	D859–94, 00	I–1700–85 [2]
	Automated (Molybdosilicate), or						I–2700–85 [2]
	ICP/AES	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99		I–4471–97 [50]
62. Silver—Total,[4, 31] mg/L	Digestion [4, 29] followed by:						
	AA direct aspiration		3111 B or C		3111 B or C–99		974.27 [3], p. 37 [9], I–3720–85 [2]
	AA furnace		3113 B		3113 B–99		I–4724–89 [51]
	STGFAA	200.9, Rev. 2.2 (1994).					
	ICP/AES	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99		I–4471–97 [50]
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
	DCP						See footnote [34]
63. Sodium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 B		3111 B–99		973.54 [3], I–3735–85 [2]
	ICP/AES	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99		I–4471–97 [50]
	DCP, or						See footnote [34]
	Flame photometric		3500–Na D	3500–Na B	3500–Na B–97.		
	Ion Chromatography					D 6919–03.	
64. Specific conductance, micromhos/cm at 25°C.	Wheatstone bridge	120.1 [1] (Rev. 1982).	2510 B	2510 B	2510 B–97	D1125–95 (99) (A)	973.40 [3], I–2781–85 [2]
65. Sulfate (as SO_4), mg/L	Automated colorimetric	375.2, Rev. 2.0 (1993).					
	Gravimetric		4500–SO_4^{2-}C or D	4500–SO_4^{2-}C or D			925.54 [3]
	Turbidimetric					D516–90, 02	426C [30]
	Ion Chromatography	300.0, Rev 2.1 (1993) and 300.1, Rev 1.0 (1997).	4110 B	4110 B	4110 B–00	D4327–97, 03	993.30 [3]
	CIE/UV						D6508, Rev. 2 [54]
66. Sulfide (as S), mg/L	Titrimetric (iodine), or		4500–S^{2-}F (19th) 4500–S^{2-}E (18th).	4500–S^{2-}F	4500–S^{2-}F–00		I–3840–85 [2]
	Colorimetric (methylene blue)		4500–S^{2-}D	4500–S^{2-}D	4500–S^{2-}D–00.		
	Ion Selective Electrode		4500–S^{2-}G	4500–S^{2-}G	4500–S^{2-}G–00	D4658–03.	
67. Sulfite (as SO_3), mg/L	Titrimetric (iodine-iodate)		4500–SO_3^{2-}B	4500–SO_3^{2-}B	4500–SO_3^{2-}B–00.		
68. Surfactants, mg/L	Colorimetric (methylene blue)		5540 C	5540 C	5540 C–00	D2330–88, 02.	
69. Temperature, °C	Thermometric		2550 B	2550 B	2550 B–00		See footnote [32]
70. Thallium—Total, [4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 B		3111 B–99.		
	AA furnace	279.2 [1] (Issued 1978).					
	STGFAA	200.9, Rev. 2.2 (1994).					
	ICP/AES	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99.		
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
71. Tin—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 B		3111 B–99		I–3850–78 [8]
	AA furnace, or		3113 B		3113 B–99.		
	STGFAA	200.9, Rev. 2.2 (1994).					

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	Reference (method number or page)					
		EPA [35, 52]	Standard methods (18th, 19th)	Standard methods (20th)	Standard methods online	ASTM	USGS/AOAC/other
	ICP/AES	200.7, Rev. 4.4 (1994).					
72. Titanium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 D		3111 D–99.		
	AA furnace	283.2 [1] (Issued 1978).					
	DCP						See footnote [34]
73. Turbidity, NTU [53]	Nephelometric	180.1, Rev. 2.0 (1993).	2130 B	2130 B	2130 B–01	D1889–94, 00	I–3860–85 [2]
74. Vanadium—Total,[4] mg/L	Digestion [4] followed by:						
	AA direct aspiration		3111 D		3111 D–99.		
	AA furnace					D3373–93, 03.	
	ICP/AES	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99		I–4471–97 [50]
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
	DCP, or					D4190–94, 99	See footnote [34]
	Colorimetric (Gallic Acid)		3500–V D	3500–V B	3500–V B–97.		
75. Zinc –Total [4], mg/L	Digestion [4] followed by:						
	AA direct aspiration [36]		3111 B or C		3111 B or C–99	D1691–95, 02 (A or B).	974.27 [3], p. 37 [9], I–3900–85 [2]
	AA furnace	289.2 [1] (Issued 1978).					
	ICP/AES [36]	200.7, Rev. 4.4 (1994).	3120 B	3120 B	3120 B–99 [59]		I–4471–97 [50]
	ICP/MS	200.8, Rev. 5.4 (1994).				D5673–03	993.14 [3]
	DCP,[36] or					D4190–94, 99	See footnote [34]
	Colorimetric (Dithizone) or		3500–Zn E.				
	(Zincon)		3500–Zn F	3500–Zn B	3500–Zn B–97		See footnote [33]

Table 1B Notes:

[1] "Methods for Chemical Analysis of Water and Wastes," Environmental Protection Agency, Environmental Monitoring Systems Laboratory–Cincinnati (EMSL–CI), EPA–600/4–79–020 (NTIS PB 84–128677), Revised March 1983 and 1979 where applicable.

[2] Fishman, M. J., *et al.* "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water-Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] "Official Methods of Analysis of the Association of Official Analytical Chemists," Methods Manual, Sixteenth Edition, 4th Revision, 1998.

[4] For the determination of total metals (which are equivalent to total recoverable metals) the sample is not filtered before processing. A digestion procedure is required to solubilize analytes in suspended material and to break down organic-metal complexes (to convert the analyte to a detectable form for colorimetric analysis). For non–platform graphite furnace atomic absorption determinations a digestion using nitric acid (as specified in Section 4.1.3 of Methods for the Chemical Analysis of Water and Wastes) is required prior to analysis. The procedure used should subject the sample to gentle, acid refluxing and at no time should the sample be taken to dryness. For direct aspiration flame atomic absorption determinations (FLAA) a combination acid (nitric and hydrochloric acids) digestion is preferred prior to analysis. The approved total recoverable digestion is described as Method 200.2 in Supplement I of "Methods for the Determination of Metals in Environmental Samples" EPA/600R–94/111, May, 1994, and is reproduced in EPA Methods 200.7, 200.8, and 200.9 from the same Supplement. However, when using the gaseous hydride technique or for the determination of certain elements such as antimony, arsenic, selenium, silver, and tin by non–EPA graphite furnace atomic absorption methods, mercury by cold vapor atomic absorption, the noble metals and titanium by FLAA, a specific or modified sample digestion procedure may be required and in all cases the referenced method write–up should be consulted for specific instruction and/or cautions. For analyses using inductively coupled plasma-atomic emission spectrometry (ICP–AES), the direct current plasma (DCP) technique or the EPA spectrochemical techniques (platform furnace AA, ICP–AES, and ICP–MS) use EPA Method 200.2 or an approved alternate procedure (*e.g.,* CEM microwave digestion, which may be used with certain analytes as indicated in Table IB); the total recoverable digestion procedures in EPA Methods 200.7, 200.8, and 200.9 may be used for those respective methods. Regardless of the digestion procedure, the results of the analysis after digestion procedure are reported as "total" metals.

[5] Copper sulfate may be used in place of mercuric sulfate.

[6] Manual distillation is not required if comparability data on representative effluent samples are on file to show that this preliminary distillation step is not necessary: however, manual distillation will be required to resolve any controversies.

[7] Ammonia, Automated Electrode Method, Industrial Method Number 379–75 WE, dated February 19, 1976, Bran & Luebbe (Technicon) Auto Analyzer II, Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[8] The approved method is that cited in "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments", USGS TWRI, Book 5, Chapter A1 (1979).

[9] American National Standard on Photographic Processing Effluents, April 2, 1975. Available from ANSI, 25 West 43rd st., New York, NY 10036.

[10] "Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency," Supplement to the Fifteenth Edition of *Standard Methods for the Examination of Water and Wastewater* (1981).

[11] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

[12] Carbonaceous biochemical oxygen demand ($CBOD_5$) must not be confused with the traditional BOD_5 test method which measures "total BOD." The addition of the nitrification inhibitor is not a procedural option, but must be included to report the $CBOD_5$ parameter. A discharger whose permit requires reporting the traditional BOD_5 may not use a nitrification inhibitor in the procedure for reporting the results. Only when a discharger's permit specifically states $CBOD_5$ is required can the permittee report data using a nitrification inhibitor.

[13] OIC Chemical Oxygen Demand Method, Oceanography International Corporation, 1978, 512 West Loop, P.O. Box 2980, College Station, TX 77840.

[14] Chemical Oxygen Demand, Method 8000, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[15] The back titration method will be used to resolve controversy.

[16] Orion Research Instruction Manual, Residual Chlorine Electrode Model 97–70, 1977, Orion Research Incorporated, 840 Memorial Drive, Cambridge, MA 02138. The calibration graph for the Orion residual chlorine method must be derived using a reagent blank and three standard solutions, containing 0.2, 1.0, and 5.0 mL 0.00281 N potassium iodate/100 mL solution, respectively.

[17] The approved method is that cited in *Standard Methods for the Examination of Water and Wastewater,* 14th Edition, 1976.

[18] National Council of the Paper Industry for Air and Stream Improvement, Inc., Technical Bulletin 253, December 1971.

[19] Copper, Biocinchoinate Method, Method 8506, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[20] When using a method with block digestion, this treatment is not required.

[21] Hydrogen ion (pH) Automated Electrode Method, Industrial Method Number 378–75WA, October 1976, Bran & Luebbe (Technicon) Autoanalyzer II. Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[22] Iron, 1,10-Phenanthroline Method, Method 8008, 1980, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[23] Manganese, Periodate Oxidation Method, Method 8034, Hach Handbook of Wastewater Analysis, 1979, pages 2–113 and 2–117, Hach Chemical Company, Loveland, CO 80537.

[24] Wershaw, R. L.,*et al.*, ''Methods for Analysis of Organic Substances in Water,'' Techniques of Water-Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A3, (1972 Revised 1987) p. 14.

[25] Nitrogen, Nitrite, Method 8507, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[26] Just prior to distillation, adjust the sulfuric-acid-preserved sample to pH 4 with 1 + 9 NaOH.

[27] The approved method is cited in *Standard Methods for the Examination of Water and Wastewater,* 14th Edition. The colorimetric reaction is conducted at a pH of 10.0±0.2. The approved methods are given on pp 576–81 of the 14th Edition: Method 510A for distillation, Method 510B for the manual colorimetric procedure, or Method 510C for the manual spectrometric procedure.

[28] R.F. Addison and R. G. Ackman, ''Direct Determination of Elemental Phosphorus by Gas–Liquid Chromatography,'' *Journal of Chromatography,* Vol. 47, No.3, pp. 421–426, 1970.

[29] Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists as an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer of sodium thiosulfate and sodium hydroxide to pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$ and NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the approved method is satisfactory.

[30] The approved method is that cited in *Standard Methods for the Examination of Water and Wastewater,* 15th Edition.

[31] For samples known or suspected to contain high levels of silver (*e.g.*, in excess of 4 mg/L), cyanogen iodide should be used to keep the silver in solution for analysis. Prepare a cyanogen iodide solution by adding 4.0 mL of concentrated NH_4OH, 6.5 g of KCN, and 5.0 mL of a 1.0 N solution of I_2 to 50 mL of reagent water in a volumetric flask and dilute to 100.0 mL. After digestion of the sample, adjust the pH of the digestate to >7 to prevent the formation of HCN under acidic conditions. Add 1 mL of the cyanogen iodide solution to the sample digestate and adjust the volume to 100 mL with reagent water (NOT acid). If cyanogen iodide is added to sample digestates, then silver standards must be prepared that contain cyanogen iodide as well. Prepare working standards by diluting a small volume of a silver stock solution with water and adjusting the pH>7 with NH_4OH. Add 1 mL of the cyanogen iodide solution and let stand 1 hour. Transfer to a 100-mL volumetric flask and dilute to volume with water.

[32] Stevens, H.H., Ficke, J. F., and Smoot, G. F., ''Water Temperature—Influential Factors, Field Measurement and Data Presentation,'' Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 1, Chapter D1, 1975.

[33] Zinc, Zincon Method, Method 8009, Hach Handbook of Water Analysis, 1979, pages 2–231 and 2–333, Hach Chemical Company, Loveland, CO 80537.

[34] ''Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029,'' 1986—Revised 1991, Thermo Jarrell Ash Corporation, 27 Forge Parkway, Franklin, MA 02038

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, ''Precision and Recovery Statements for Methods for Measuring Metals.''

[36] Microwave-assisted digestion may be employed for this metal, when analyzed by this methodology. ''Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals'', CEM Corporation, P.O. Box 200, Matthews, NC 28106–0200, April 16, 1992. Available from the CEM Corporation.

[37] When determining boron and silica, only plastic, PTFE, or quartz laboratory ware may be used from start until completion of analysis.

[38] Only use n-hexane extraction solvent when determining Oil and Grease parameters—Hexane Extractable Material (HEM), or Silica Gel Treated HEM (analogous to EPA Method 1664A). Use of other extraction solvents (*e.g.,* those in the 18th and 19th editions) is prohibited.

[39] Nitrogen, Total Kjeldahl, Method PAI-DK01 (Block Digestion, Steam Distillation, Titrimetric Detection), revised 12/22/94, OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.

[40] Nitrogen, Total Kjeldahl, Method PAI–DK02 (Block Digestion, Steam Distillation, Colorimetric Detection), revised 12/22/94, OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.

[41] Nitrogen, Total Kjeldahl, Method PAI–DK03 (Block Digestion, Automated FIA Gas Diffusion), revised 12/22/94, OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.

[42] Method 1664, Revision A ''*n*-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated *n*-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry'' EPA–821–R–98–002, February 1999. Available at NTIS, PB–121949, U.S. Department of Commerce, 5285 Port Royal, Springfield, VA 22161.

[43] USEPA. 2001. Method 1631, Revision E, ''Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry'' September 2002, Office of Water, U.S. Environmental Protection Agency (EPA–821–R–02–024). The application of clean techniques described in EPA's draft Method 1669: *Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels* (EPA–821–R–96–011) are recommended to preclude contamination at low-level, trace metal determinations.

[44] Available Cyanide, Method OIA–1677, ''Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry,'' ALPKEM, A Division of OI Analytical, P.O. Box 9010, College Station, TX 77842–9010.

[45] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Ammonia Plus Organic Nitrogen by a Kjeldahl Digestion Method,'' Open File Report (OFR) 00–170.

[46] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Chromium in Water by Graphite Furnace Atomic Absorption Spectrophotometry,'' Open File Report (OFR) 93–449.

[47] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Molybdenum by Graphite Furnace Atomic Absorption Spectrophotometry,'' Open File Report (OFR) 97–198.

[48] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Total Phosphorus by Kjeldahl Digestion Method and an Automated Colorimetric Finish That Includes Dialysis'' Open File Report (OFR) 92–146.

[49] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Arsenic and Selenium in Water and Sediment by Graphite Furnace-Atomic Absorption Spectrometry'' Open File Report (OFR) 98–639.

[50] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Elements in Whole-water Digests Using Inductively Coupled Plasma-Optical Emission Spectrometry and Inductively Coupled Plasma-Mass Spectrometry,'' Open File Report (OFR) 98-165.

[51] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediment,'' Open File Report (OFR) 93–125.

[52] All EPA methods, excluding EPA Method 300.1, are published in ''Methods for the Determination of Metals in Environmental Samples,'' Supplement I, National Exposure Risk Laboratory-Cincinnati (NERL–CI), EPA/600/R–94/111, May 1994; and ''Methods for the Determination of Inorganic Substances in Environmental Samples,'' NERL–CI, EPA/600/R–93/100, August, 1993. EPA Method 300.1 is available from *http://www.epa.gov/safewater/methods/pdfs/met300.pdf.*

[53] Styrene divinyl benzene beads (*e.g.* AMCO–AEPA–1 or equivalent) and stabilized formazin (e.g., Hach StablCal™ or equivalent) are acceptable substitutes for formazin.

[54] Method D6508, Rev. 2, ''Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte,'' available from Waters Corp, 34 Maple St., Milford, MA, 01757, Telephone: 508/482–2131, Fax: 508/482–3625.

[55] Kelada-01, ''Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate,'' EPA 821–B–01–009, Revision 1.2, August 2001, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 [Order Number PB 2001–108275]. The toll free telephone number is: 800–553–6847. Note: A 450–W UV lamp may be used in this method instead of the 550–W lamp specified if it provides performance within the quality control (QC) acceptance criteria of the method in a given instrument. Similarly, modified flow cell configurations and flow conditions may be used in the method, provided that the QC acceptance criteria are met.

[56] QuikChem Method 10–204–00–1–X, ''Digestion and Distillation of Total Cyanide in Drinking and Wastewaters using MICRO DIST and Determination of Cyanide by Flow Injection Analysis'' is available from Lachat Instruments 6645 W. Mill Road, Milwaukee, WI 53218, Telephone: 414–358–4200.

[57] When using sulfide removal test procedures described in Method 335.4, reconstitute particulate that is filtered with the sample prior to distillation.

[58] Unless otherwise stated, if the language of this table specifies a sample digestion and/or distillation ''followed by'' analysis with a method, approved digestion and/or distillation are required prior to analysis.

[59] Method 245.7, Rev. 2.0, ''Mercury in Water by Cold Vapor Atomic Fluorescence Spectrometry,'' February 2005, EPA–821–R–05–001, available from the U.S. EPA Sample Control Center (operated by CSC), 6101 Stevenson Avenue, Alexandria, VA 22304, Telephone: 703–461–2100, Fax: 703–461–8056.

[60] The use of EDTA may decrease method sensitivity in some samples. Analysts may omit EDTA provided that all method specified quality control acceptance criteria are met.

[61] Samples analyzed for available cyanide using Methods OIA–1677 or D6888–04 that contain particulate matter may be filtered only after the ligand exchange reagents have been added to the samples, because the ligand exchange process converts complexes containing available cyanide to free cyanide, which is not removed by filtration. Analysts are further cautioned to limit the time between the addition of the ligand exchange reagents and sample analysis to no more than 30 minutes to preclude settling of materials in samples.

TABLE IC.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS

Parameter [1]	EPA method number [2, 7]			Other approved methods			
	GC	GC/MS	HPLC	Standard Methods [Edition(s)]	Standard Methods Online	ASTM	Other
1. Acenaphthene	610	625, 1625B	610	6440 B [18th, 19th, 20th].		D4657–92 (99)	See footnote [9], p. 27
2. Acenaphthylene	610	625, 1625B	610	6410 B, 6440 B, [18th, 19th, 20th].	6410 B–00	D4657–92 (99)	See footnote [9], p. 27
3. Acrolein	603	624 [4], 1624B.					
4. Acrylonitrile	603	624 [4], 1624B.					
5. Anthracene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92 (99)	See footnote [9], p. 27
6. Benzene	602	624, 1624B		6200 B [20th] and 6210 B [18th,19th], 6200 C [20th] and 6220 B [18th,19th].	6200 B and C–97.		
7. Benzidine		625 [5], 1625B	605				See footnote [3], p.1
8. Benzo(a)anthracene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92 (99)	See footnote [9], p. 27
9. Benzo(a)pyrene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92 (99)	See footnote [9], p. 27
10. Benzo(b)fluoranthene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92 (99)	See footnote [9], p. 27
11. Benzo(g,h,i) perylene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92 (99)	See footnote [9], p. 27
12. Benzo(k) fluoranthene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92 (99)	See footnote [9], p. 27
13. Benzyl chloride							See footnote [3], p. 130: See footnote [6], p. S102
14. Benzyl butyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
15. Bis(2-chloroethoxy) methane.	611	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
16. Bis(2-chloroethyl) ether	611	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
17. Bis(2-ethylhexyl) phthalate.	606	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
18. Bromodichloro-methane.	601	624, 1624B		6200 C [20th] and 6230 B [18th, 19th], 6200 B [20th] and 6210 B [18th, 19th].	6200 B and C–97.		
19. Bromoform	601	624, 1624B		6200 C [20th] and 6230 B [18th, 19th], 6200 B [20th] and 6210 B [18th, 19th].	6200 B and C–97.		
20. Bromomethane	601	624, 1624B		6200 C [20th] and 6230 B [18th, 19th], 6200 B [20th] and 6210 B [18th, 19th].	6200 B and C–97.		
21. 4-Bromophenyl phenyl ether.	611	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
22. Carbon tetrachloride	601	624, 1624B		6200 C [20th] and 6230 B [18th, 19th].	6200 C–97		See footnote [3], p. 130
23. 4-Chloro-3-methyl phenol.	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].	6410 B–00, 6420 B–00.		See footnote [9], p. 27
24. Chlorobenzene	601, 602	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		See footnote [3], p. 130
25. Chloroethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		
26. 2-Chloroethylvinyl ether.	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		

TABLE IC.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2, 7]			Other approved methods			
	GC	GC/MS	HPLC	Standard Methods [Edition(s)]	Standard Methods Online	ASTM	Other
27. Chloroform	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		See footnote [3], p. 130
28. Chloromethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th] 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		
29. 2-Chloronaph-thalene	612	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
30. 2-Chlorophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].	6410 B(00, 6420 B–00.		See footnote [9], p. 27
31. 4-Chlorophenyl phenyl ether.	611	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
32. Chrysene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92 (99)	See footnote [9], p. 27
33. Dibenzo(a,h)an-thracene.	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92 (99)	See footnote [9], p. 27
34. Dibromochloro-meth-ane.	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th] 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		
35. 1,2-Dichloro-benzene	601, 602	624, 1625B		6200 C [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 C–97		See footnote [9], p. 27
36. 1,3-Dichloro-benzene	601, 602	624, 1625B		6200 C [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 C–97		See footnote [9], p. 27
37. 1,4-Dichloro-benzene	601, 602	624, 1625B		6200 C [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 C–97		See footnote [9], p. 27
38. 3,3-Dichloro-benzidine		625, 1625B	605	6410 B [18th, 19th, 20th].	6410 B–00.		
39. Dichlorodifluoro-meth-ane.	601			6200 C [20th] and 6230 B [18th, 19th].	6200 C–97.		
40. 1,1-Dichloroethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		
41. 1,2-Dichloroethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		
42. 1,1-Dichloroethene	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		
43. trans-1,2-Dichloro-ethene.	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		
44. 2,4-Dichlorophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].	6410 B–00, 6420 B–00.		See footnote [9], p. 27
45. 1,2-Dichloro-propane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		
46. cis-1,3-Dichloro-propene.	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		

TABLE IC.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2, 7]			Other approved methods			
	GC	GC/MS	HPLC	Standard Methods [Edition(s)]	Standard Methods Online	ASTM	Other
47. trans-1,3-Dichloro-propene.	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		
48. Diethyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
49. 2,4-Dimethylphenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].	6410 B–00, 6420 B–00.		See footnote [9], p. 27
50. Dimethyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
51. Di-n-butyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
52. Di-n-octyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
53. 2,3-Dinitrophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].	6410 B–00, 6420 B–00.		
54. 2,4-Dinitrotoluene	609	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
55. 2,6-Dinitrotoluene	609	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
56. Epichlorohydrin							See footnote [3], p. 130; See footnote [6], p. S102
57. Ethylbenzene	602	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th].	6200 B and C–97		
58. Fluoranthene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92 (99)	See footnote [9], p. 27
59. Fluorene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92 (99)	See footnote [9], p. 27
60. 1,2,3,4,6,7,8-Heptachloro-dibenzofuran.		1613B [10].					
61. 1,2,3,4,7,8,9-Heptachloro-dibenzofuran.		1613B [10].					
62. 1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin.		1613B [10].					
63. Hexachlorobenzene	612	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
64. Hexachloro-butadiene	612	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
65. Hexachlorocyclo-pentadiene.	612	625 [5], 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
66. 1,2,3,4,7,8-Hexachlorodibenzofuran.		1613B [10].					
67. 1,2,3,6,7,8-Hexachlorodibenzofuran.		1613B [10].					
68. 1,2,3,7,8,9-Hexachlorodibenzofuran.		1613B [10].					
69. 2,3,4,6,7,8-Hexachlorodibenzofuran.		1613B [10].					
70. 1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin.		1613B [10].					
71. 1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin.		1613B [10].					
72. 1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin 1613B [10].		1613B [10].					
73. Hexachloroethane	612	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
74. Ideno(1,2,3-cd) pyrene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92 (99)	See footnote [9], p. 27
75. Isophorone	609	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
76. Methylene chloride	601	624, 1624B		6200 C [20th] and 6230 B [18th, 19th].	6200 C–97		See footnote [3], p. 130
77. 2-Methyl-4,6-dinitrophenol.	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].	6410 B–00, 6420 B–00.		See footnote [9], p. 27
78. Naphthalene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27

TABLE IC.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2, 7]			Other approved methods			
	GC	GC/MS	HPLC	Standard Methods [Edition(s)]	Standard Methods Online	ASTM	Other
79. Nitrobenzene	609	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00	D4657–92 (99)	See footnote [9], p. 27
80. 2-Nitrophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].	6410 B–00, 6420 B–00.		See footnote [9], p. 27
81. 4-Nitrophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].	6410 B–00, 6420 B–00.		See footnote [9], p. 27
82. N-Nitrosodimethylamine.	607	6255, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
83. N-Nitrosodi-n-propylamine.	607	6255, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
84. N-Nitrosodiphenylamine.	607	6255, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [9], p. 27
85. Octachlorodibenzofuran.		1613B [10]*.					
86. Octachlorodibenzo-p-dioxin.		1613B [10].					
87. 2,2'-Oxybis(2-chloropropane) [also known as bis(2-chloroisopropyl) ether].	611	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00.		
88. PCB–1016	608	625		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [3], p. 43; See footnote [8]
89. PCB–1221	608	625		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [3], p. 43; See footnote [8]
90. PCB–1232	608	625		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [3], p. 43; See footnote [8]
91. PCB–1242	608	625		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [3], p. 43; See footnote [8]
92. PCB–1248	608	625.					
93. PCB–1254	608	625		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [3], p. 43; See footnote [8]
94. PCB–1260	608	625		6410 B, 6630 B [18th, 19th, 20th].	6410 B–00		See footnote 3, p. 43; See footnote 8
95. 1,2,3,7,8-Pentachlorodibenzofuran .		1613B[10].					
96. 2,3,4,7,8-Pentachlorodibenzofuran .		1613B[10].					
97. 1,2,3,7,8,-Pentachlorodibenzo-*p*-dioxin.		1613B[10].					
98. Pentachlorophenol	604	625, 1625B		6410 B, 6630 B [18th, 19th, 20th].	6410 B–00		See footnote [3], p. 140; See footnote [9], p. 27
99. Phenanthrene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92 (99)	See footnote [9], p. 27
100. Phenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].	6410 B–00, 6420 B–00.		See footnote [9], p. 27
101. Pyrene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	6410 B–00	D4657–92 (99)	See footnote [9], p. 27
102. 2,3,7,8-Tetrachlorodibenzofuran.		1613B10.					
103. 2,3,7,8-Tetrachlorodibenzo-p-dioxin.		613, 625 [5a], 1613B [10].					
104. 1,1,2,2-Tetra-chloro ethane .	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		See footnote [3], p. 130
105. Tetrachloroethene	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97		See footnote [3], p. 130
106. Toluene	602	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th].	6200 B and C–97.		
107. 1,2,4-Trichloro-benzene.	612	625, 1625B		6410 B [18th, 19th, 20th].	6410 B–00		See footnote [3], p. 130; See footnote [9], p. 27

TABLE IC.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2, 7]			Other approved methods			
	GC	GC/MS	HPLC	Standard Methods [Edition(s)]	Standard Methods Online	ASTM	Other
108. 1,1,1-Trichloro-ethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		
109. 1,1,2-Trichloro-ethane	601	624, 1624B	6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th]	6200 B and C–97		See footnote [3], p. 130.	
110. Trichloroethene	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		
111. Trichlorofluoro-methane.	601	624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		
112. 2,4,6-Trichlorophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].	6410 B–00, 6420 B–00.		See footnote [9], p. 27
113. Vinyl chloride	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], ≤6200 C [20th] and 6230 B [18th, 19th].	6200 B and C–97.		

[1] All parameters are expressed in micrograms per liter (μg/L) except for Method 1613B in which the parameters are expressed in picograms per liter (pg/L).

[2] The full text of Methods 601–613, 624, 625, 1624B, and 1625B, are given at Appendix A, ''Test Procedures for Analysis of Organic Pollutants,'' of this Part 136. The full text of Method 1613B is incorporated by reference into this Part 136 and is available from the National Technical Information Services as stock number PB95–104774. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, ''Definition and Procedure for the Determination of the Method Detection Limit,'' of this Part 136.

[3] ''Methods for Benzidine: Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater,'' U.S. Environmental Protection Agency, September, 1978.

[4] Method 624 may be extended to screen samples for Acrolein and Acrylonitrile. However, when they are known to be present, the preferred method for these two compounds is Method 603 or Method 1624B.

[5] Method 625 may be extended to include benzidine, hexachlorocyclopentadiene, N-nitrosodimethylamine, and N-nitrosodiphenylamine. However, when they are known to be present, Methods 605, 607, and 612, or Method 1625B, are preferred methods for these compounds.

[5a] 625, screening only.

[6] ''Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency,'' Supplement to the *Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater* (1981).

[7] Each analyst must make an initial, one-time demonstration of their ability to generate acceptable precision and accuracy with Methods 601–603, 624, 625, 1624B, and 1625B (See Appendix A of this Part 136) in accordance with procedures each in Section 8.2 of each of these methods. Additionally, each laboratory, on an ongoing basis must spike and analyze 10% (5% for methods 624 and 625 and 100% for methods 1624B and 1625B) of all samples to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect. The results should be reported, but cannot be used to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other methods cited.

[8] ''Organochlorine Pesticides and PCBs in Wastewater Using Empore™ Disk'' 3M Corporation Revised 10/28/94.

[9] USGS Method 0–3116–87 from ''Methods of Analysis by U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments,'' U.S. Geological Survey, Open File Report 93–125.

[10] Analysts may use Fluid Management Systems, Inc. PowerPrep system in place of manual cleanup provided that the analysis meet the requirements of Method 1613B (as specified in Section 9 of the method) and permitting authorities.

TABLE ID.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]

Parameter	Method	EPA [2, 7]	Standard Methods 18th, 19th, 20th Ed.	Standard Methods Online	ASTM	Other
1. Aldrin	GC	608	6630 B & C		D3086–90, D5812-96 (2002)	See footnote [3], p. 7; See footnote [4], p. 27; See footnote [8]
	GC/MS	625	6410 B	6410 B–00.		
2. Ametryn	GC					See footnote [3], p. 83; See footnote [6], p S68
3. Aminocarb	TLC					See footnote [3], p. 94; See footnote [6], p. S16
4. Atraton	GC					See footnote [3], p. 83; See footnote [6], p. S68
5. Atrazine	GC					See footnote [3], p. 83; See footnote [6], p. S68; See footnote [9]
6. Azinphos methyl	GC					See footnote [3], p. 25; See footnote [6], p. S51
7. Barban	TLC					See footnote [3], p. 104; See footnote [6], p. S64
8. α–BHC	GC	608	6630 B & C		D3086–90, D5812–96(02)	See footnote [3], p. 7; See footnote [8]
	GC/MS	625 [5]	6410 B	6410 B–00.		
9. β–BHC	GC	608	6630 C		D3086–90, D5812–96(02)	See footnote [8]
	GC/MS	625 [5]	6410 B	6410 B–00.		

TABLE ID.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter	Method	EPA [2, 7]	Standard Methods 18th, 19th, 20th Ed.	Standard Methods Online	ASTM	Other
10. δ–BHC	GC	608	6630 C		D3086–90, D5812–96(02)	See footnote [8]
	GC/MS	625 [5]	6410 B	6410 B–00.		
11. γ-BHC (Lindane)	GC	608	6630 B & C		D3086–90, D5812–96(02)	See footnote [3], p. 7; See footnote [4], p. 27; See footnote [8]
	GC/MS	625	6410 B	6410 B–00.		
12. Captan	GC		6630 B		D3086–90, D5812–96(02)	See footnote [3], p. 7
13. Carbaryl	TLC					See footnote [3], p. 94, See footnote [6], p. S60
14. Carbo-phenothion	GC					See footnote [4], p. 27; See footnote [6], p. S73
15. Chlordane	GC	608	6630 B & C		D3086–90, D5812–96(02)	See footnote [3], p. 7; See footnote [4], p. 27; See footnote [8]
	GC/MS	625	6410 B	6410 B–00.		
16. Chloro-propham	TLC					See footnote [3], p. 104; See footnote [6], p. S64.
17. 2,4-D	GC		6640 B			See footnote [3], p. 115; See footnote [4], p. 40
18. 4,4′-DDD	GC	608	6630 B & C		D3086–90, D5812–96(02)	See footnote [3], p. 7; See footnote [4], p. 27; See footnote [8]
	GC/MS	625	6410 B	6410 B–00.		
19. 4,4′-DDE	GC	608	6630 B & C		D3086–90, D5812–96(02)	See footnote [3], p. 7; See footnote [4], p. 27; See footnote [8]
	GC/MS	625	6410 B	6410 B–00.		
20. 4,4′-DDT	GC	608	6630 B & C		D3086–90, D5812–96(02)	See footnote [3], p. 7; See footnote [4], p. 27; See footnote [8]
	GC/MS	625	6410 B	6410 B–00.		
21. Demeton-O	GC					See footnote [3], p. 25; See footnote [6], p. S51
22. Demeton-S	GC					See footnote [3], p. 25; See footnote [6], p. S51
23. Diazinon	GC					See footnote [3], p. 25; See footnote [4], p. 27; See footnote [6], p. S51
24. Dicamba	GC					See footnote [3], p. 115
25. Dichlofen-thion	GC					See footnote [4], p. 27; See footnote [6], p. S73
26. Dichloran	GC		6630 B & C			See footnote [3], p. 7
27. Dicofol	GC				D3086–90, D5812–96(02).	
28. Dieldrin	GC	608	6630 B & C			See footnote [3], p. 7; See footnote [4], p. 27; See footnote [8]
	GC/MS	625	6410 B	6410 B–00.		
29. Dioxathion	GC					See footnote [4], p. 27; See footnote [6], p. S73
30. Disulfoton	GC					See footnote [3], p. 25; See footnote [6], p. S51
31. Diuron	TLC					See footnote [3], p. 104; See footnote [6], p. S64
32. Endosulfan I	GC	608	6630 B & C		D3086–90, D5812–96(02)	See footnote [3], p. 7; See footnote [4], p. 27; See footnote [8]
	GC/MS	625 [5]	6410 B	6410 B–00.		
33. Endosulfan II	GC	608	6630 B & C		D3086–90, D5812–96(02)	See footnote [3], p. 7; See footnote [8]
	GC/MS	625 [5]	6410 B	6410 B–00.		
34. Endosulfan Sulfate	GC	608	6630 C			See footnote [8]
	GC/MS	625	6410 B	6410 B–00.		
35. Endrin	GC	608	6630 B & C		D3086–90, D5812–96(02)	See footnote [3], p. 7; See footnote [4], p. 27; See footnote [8]
	GC/MS	625 [5]	6410 B	6410 B–00.		
36. Endrin aldehyde	GC	608				See footnote [8]
	GC/MS	625				
37. Ethion	GC					See footnote [4], p. 27; See footnote [6], p. S73
38. Fenuron	TLC					See footnote [3], p. 104; See footnote [6], p. S64
39. Fenuron-TCA	TLC					See footnote [3], p. 104; See footnote [6], p. S64
40. Heptachlor	GC	608	6630 B & C		D3086–90, D5812–96(02)	See footnote [3], p. 7; See footnote [4], p. 27; See footnote [8]
	GC/MS	625	6410 B	6410 B–00.		
41. Heptachlor epoxide	GC	608	6630 B & C		D3086–90, D5812– 96(02)	See footnote [3], p. 7; See footnote [4], p. 27; See footnote [6], p. S73; See footnote [8]
	GC/MS	625	6410 B	6410 B–00.		
42. Isodrin	GC					See footnote [4], p. 27; See footnote [6], p. S73
43. Linuron	GC					See footnote [3], p. 104; See footnote [6], p. S64
44. Malathion	GC		6630 C			See footnote [3], p. 25; See footnote [4], p. 27; See footnote [6], p. S51

TABLE ID.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter	Method	EPA [2, 7]	Standard Methods 18th, 19th, 20th Ed.	Standard Methods Online	ASTM	Other
45. Methiocarb	TLC					See footnote [3], p. 94; See footnote [6], p. S60
46. Methoxy-chlor	GC		6630 B & C		D3086–90, D5812–96(02).	See footnote [3], p. 7; See footnote [4], p. 27; See footnote [8]
47. Mexacar-bate	TLC					See footnote [3], p. 94; See footnote [6], p.S60
48. Mirex	GC		6630 B & C			See footnote [3], p. 7; See footnote [4], p. 27
49. Monuron	TLC					See footnote [3], p. 104; See footnote [6], p. S64
50. Monuron-TCA	TLC					See footnote [3], p. 104; See footnote [6], p. S64
51. Nuburon	TLC					See footnote [3], p. 104; See footnote [6], p. S64
52. Parathion methyl	GC		6630 C			See footnote [3], p. 25; See footnote [4], p. 27
53. Parathion ethyl	GC		6630 C			See footnote [3], p. 25; See footnote [4], p. 27
54. PCNB	GC		6630 B & C			See footnote [3], p. 7
55. Perthane	GC				D3086–90, D5812–96(02).	See footnote [4], p. 27
56. Prometon	GC					See footnote [3], p. 83; See footnote [6], p. S68; See footnote [9]
57. Prometryn	GC					See footnote [3], p. 83; See footnote [6], p. S68; See footnote [9]
58. Propazine	GC					See footnote [3], p. 83; See footnote [6], p. S68; See footnote [9]
59. Propham	TLC					See footnote [3], p. 104; See footnote [6], p. S64
60. Propoxur	TLC					See footnote [3], p. 94; See footnote [6], p. S60
61. Secbumeton	TLC					See footnote [3], p. 83; See footnote [6], p. S68
62. Siduron	TLC					See footnote [3], p. 104; See footnote [6], p. S64
63. Simazine	GC					See footnote [3], p. 83; See footnote [6], p. S68; See footnote [9]
64. Strobane	GC		6630 B & C			See footnote [3], p. 7
65. Swep	TLC					See footnote [3], p. 104; See footnote [6], p. S64
66. 2,4,5–T	GC		6640 B			See footnote [3], p. 115; See footnote [4], p. 40
67. 2,4,5–TP (Silvex)	GC		6640 B			See footnote [3], p. 115; See footnote [4], p. 40
68. Terbuthylazine	GC					See footnote [3], p. 83; See footnote [6], p. S68
69. Toxaphene	GC	608	6630 B & C		D3086–90, D5812–96(02).	See footnote [3], p. 7; See footnote [4], p. 27; See footnote [8]
	GC/MS	625	6410 B	6410 B–00.		
70. Trifluralin	GC		6630 B			See footnote [3], p. 7; See footnote [9]

[1] Pesticides are listed in this table by common name for the convenience of the reader. Additional pesticides may be found under Table IC, where entries are listed by chemical name.
[2] The full text of Methods 608 and 625 are given at Appendix A, ''Test Procedures for Analysis of Organic Pollutants,'' of this Part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, ''Definition and Procedure for the Determination of the Method Detection Limit,'' of this Part 136.
[3] ''Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater,'' U.S. Environmental Protection Agency, September 1978. This EPA publication includes thin-layer chromatography (TLC) methods.
[4] ''Methods for Analysis of Organic Substances in Water and Fluvial Sediments,'' Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A3 (1987).
[5] The method may be extended to include α-BHC, γ-BHC, endosulfan I, endosulfan II, and endrin. However, when they are known to exist, Method 608 is the preferred method.
[6] ''Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency.'' Supplement to the Fifteenth Edition of *Standard Methods for the Examination of Water and Wastewater* (1981).
[7] Each analyst must make an initial, one-time, demonstration of their ability to generate acceptable precision and accuracy with Methods 608 and 625 (See Appendix A of this Part 136) in accordance with procedures given in Section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis, must spike and analyze 10% of all samples analyzed with Method 608 or 5% of all samples analyzed with Method 625 to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect. The results should be reported, but cannot be used to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other methods cited.
[8] ''Organochlorine Pesticides and PCBs in Wastewater Using Empore™ Disk'', 3M Corporation, Revised 10/28/94.
[9] USGS Method 0–3106–93 from ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Triazine and Other Nitrogen-containing Compounds by Gas Chromatography with Nitrogen Phosphorus Detectors'' U.S. Geological Survey Open File Report 94–37.

TABLE IE.—LIST OF APPROVED RADIOLOGIC TEST TEST PROCEDURES

Parameter and units	Method	Reference (method number or page)				
		EPA [1]	Standard Methods 18th, 19th, 20th Ed.	Standard Methods Online	ASTM	USGS [2]
1. Alpha-Total, pCi per liter.	Proportional or scintillation counter.	900.0	7110 B	7110 B–00	D1943–90, 96	pp. 75 and 78 [3]
2. Alpha-Counting error, pCi per liter.	Proportional or scintillation counter.	Appendix B	7110 B	7110 B–00	D1943–90, 96	p. 79
3. Beta-Total, pCi per liter.	Proportional counter	900.0	7110 B	7110 B–00	D1890–90, 96	pp. 75 and 78 [3]

TABLE IE.—LIST OF APPROVED RADIOLOGIC TEST TEST PROCEDURES—Continued

Parameter and units	Method	Reference (method number or page)				
		EPA [1]	Standard Methods 18th, 19th, 20th Ed.	Standard Methods Online	ASTM	USGS [2]
4. Beta-Counting error, pCi.	Proportional counter	Appendix B	7110 B	7110 B–00	D1890–90, 96	p. 79
5. (a) Radium Total pCi per liter.	Proportional counter	903.0	7500-Ra B	7500-Ra B–01	D2460–90, 97	
(b) Ra, pCi per liter	Scintillation counter	903.1	7500-Ra C	7500-Ra C–01	D3454–91, 97	p. 81

[1] Prescribed Procedures for Measurement of Radioactivity in Drinking Water, EPA–600/4–80–032 (1980), U.S. Environmental Protection Agency, August 1980.
[2] Fishman, M. J. and Brown, Eugene, ''Selected Methods of the U.S. Geological Survey of Analysis of Wastewaters,'' U.S. Geological Survey, Open-File Report 76–177 (1976).
[3] The method found on p. 75 measures only the dissolved portion while the method on p. 78 measures only the suspended portion. Therefore, the two results must be added to obtain the ''total.''

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TABLE IG.—TEST METHODS FOR PESTICIDE ACTIVE INGREDIENTS

EPA Survey Code	Pesticide name	CAS No.	EPA Analytical Method No.(s)
8	Triadimefon	43121–43–3	507/633/525.1/1656
12	Dichlorvos	62–73–7	1657/507/622/525.1
16	2,4–D; 2,4–D Salts and Esters [2,4–Dichloro-phenoxyacetic acid]	94–75–7	1658/515.1/615/515.2/555
17	2,4–DB; 2,4–DB Salts and Esters [2,4–Dichlorophenoxybutyric acid]	94–82–6	1658/515.1/615/515.2/555
22	Mevinphos	7786–34–7	1657/507/622/525.1
25	Cyanazine	21725–46–2	629/507
26	Propachlor	1918–16–7	1656/508/608.1/525.1
27	MCPA; MCPA Salts and Esters [2–Methyl-4-chlorophenoxyacetic acid]	94–74–6	1658/615/555
30	Dichlorprop; Dichlorprop Salts and Esters [2–(2,4–Dichlorophenoxy) propionic acid]	120–36–5	1658/515.1/615/515.2/555
31	MCPP; MCPP Salts and Esters [2–(2–Methyl-4-chlorophenoxy) propionic acid]	93–65–2	1658/615/555
35	TCMTB [2–(Thiocyanomethylthio) benzo-thiazole]	21564–17–0	637
39	Pronamide	23950–58–5	525.1/507/633.1
41	Propanil	709–98–8	632.1/1656
45	Metribuzin	21087–64–9	507/633/525.1/1656
52	Acephate	30560–19–1	1656/1657
53	Acifluorfen	50594–66–6	515.1/515.2/555
54	Alachlor	15972–60–8	505/507/645/525.1/1656
55	Aldicarb	116–06–3	531.1
58	Ametryn	834–12–8	507/619/525.1
60	Atrazine	1912–24–9	505/507/619/525.1/1656
62	Benomyl	17804–35–2	631
68	Bromacil; Bromacil Salts and Esters	314–40–9	507/633/525.1/1656
69	Bromoxynil	1689–84–5	1625/1661
69	Bromoxynil octanoate	1689–99–2	1656
70	Butachlor	23184–66–9	507/645/525.1/1656
73	Captafol	2425–06–1	1656
75	Carbaryl [Sevin]	63–25–2	531.1/632/553
76	Carbofuran	1563–66–2	531.1/632
80	Chloroneb	2675–77–6	1656/508/608.1/525.1
82	Chlorothalonil	1897–45–6	508/608.2/525.1/1656
84	Stirofos	961–11–5	1657/507/622/525.1
86	Chlorpyrifos	2921–88–2	1657/508/622
90	Fenvalerate	51630–58–1	1660
103	Diazinon	333–41–5	1657/507/614/622/525.1
107	Parathion methyl	298–00–0	1657/614/622
110	DCPA [Dimethyl 2,3,5,6-tetrachloro-terephthalate]	1861–32–1	508/608.2/525.1/515.1/515.2/1656
112	Dinoseb	88–85–7	1658/515.1/615/515.2/555
113	Dioxathion	78–34–2	1657/614.1
118	Nabonate [Disodium cyanodithio-imidocarbonate]	138–93–2	630.1
119	Diuron	330–54–1	632/553
123	Endothall	145–73–3	548/548.1
124	Endrin	72–20–8	1656/505/508/608/617/525.1
125	Ethalfluralin	55283–68–6	1656/627 See footnote 1
126	Ethion	563–12–2	1657/614/614.1
127	Ethoprop	13194–48–4	1657/507/622/525.1
132	Fenarimol	60168–88–9	507/633.1/525.1/1656
133	Fenthion	55–38–9	1657/622
138	Glyphosate [N(Phosphonomethyl) glycine]	1071–83–6	547
140	Heptachlor	76–44–8	1656/505/508/608/617/525.1
144	Isopropalin	33820–53–0	1656/627
148	Linuron	330–55–2	553/632
150	Malathion	121–75–5	1657/614
154	Methamidophos	10265–92–6	1657
156	Methomyl	16752–77–5	531.1/632

TABLE IG.—TEST METHODS FOR PESTICIDE ACTIVE INGREDIENTS—Continued

EPA Survey Code	Pesticide name	CAS No.	EPA Analytical Method No.(s)
158	Methoxychlor	72–43–5	1656/505/508/608.2/617/525.1
172	Nabam	142–59–6	630/630.1
173	Naled	300–76–5	1657/622
175	Norflurazon	27314–13–2	507/645/525.1/1656
178	Benfluralin	1861–40–1	11656/1627
182	Fensulfothion	115–90–2	1657/622
183	Disulfoton	298–04–4	1657/507/614/622/525.1
185	Phosmet	732–11–6	1657/622.1
186	Azinphos Methyl	86–50–0	1657/614/622
192	Organo-tin pesticides	12379–54–3	Ind-01/200.7/200.9
197	Bolstar	35400–43–2	1657/622
203	Parathion	56–38–2	1657/614
204	Pendimethalin	40487–42–1	1656
205	Pentachloronitrobenzene	82–68–8	1656/608.1/617
206	Pentachlorophenol	87–86–5	625/1625/515.2/555/515.1/ 525.1
208	Permethrin	52645–53–1	608.2/508/525.1/1656/1660
212	Phorate	298–02–2	1657/622
218	Busan 85 [Potassium dimethyldithiocarbamate]	128–03–0	630/630.1
219	Busan 40 [Potassium N-hydroxymethyl-N-methyldithiocarbamate]	51026–28–9	630/630.1
220	KN Methyl [Potassium N-methyl-dithiocarbamate]	137–41–7	630/630.1
223	Prometon	1610–18–0	507/619/525.1
224	Prometryn	7287–19–6	507/619/525.1
226	Propazine	139–40–2	507/619/525.1/1656
230	Pyrethrin I	121–21–1	1660
232	Pyrethrin II	121–29–9	1660
236	DEF [S,S,S–Tributyl phosphorotrithioate]	78–48–8	1657
239	Simazine	122–34–9	505/507/619/525.1/1656
241	Carbam-S [Sodium dimethyldithiocarbanate]	128–04–1	630/630.1
243	Vapam [Sodium methyldithiocarbamate]	137–42–8	630/630.1
252	Tebuthiuron	34014–18–1	507/525.1
254	Terbacil	5902–51–2	507/633/525.1/1656
255	Terbufos	13071–79–9	1657/507/614.1/525.1
256	Terbuthylazine	5915–41–3	619/1656
257	Terbutryn	886–50–0	507/619/525.1
259	Dazomet	533–74–4	630/630.1/1659
262	Toxaphene	8001–35–2	1656/505/508/608/617/525.1
263	Merphos [Tributyl phosphorotrithioate]	150–50–5	1657/507/525.1/622
264	Trifluralin	1582–09–8	1656/508/617/627/525.1
268	Ziram [Zinc dimethyldithiocarbamate]	137–30–4	630/630.1

[1] Monitor and report as total Trifluralin.

(b) * * *

References, Sources, Costs, and Table Citations

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(6) American Public Health Association. 1992, 1995, and 1998. *Standard Methods for the Examination of Water and Wastewater.* 18th, 19th, and 20th Edition (respectively). Available from: American Public Health Association, 1015 15th Street, NW., Washington, DC 20005. Standard Methods Online are available through the Standard Methods Web site (*http://www.standardmethods.org*). Tables IA, IB, IC, ID, IE.

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(10) ASTM International. Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02, 1994, 1996, 1999, Volume 11.02, 2000, and individual standards published after 2000. Available from: ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, or *http://www.astm.org.* Tables IA, IB, IC, ID, and IE.

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(17) AOAC-International. Official Methods of Analysis of AOAC-International, 16th Edition, (1995). Available from: AOAC-International, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877. Table IB, See footnote 3.

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(63) Waters Corporation. Method D6508, Rev. 2, ''Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte,'' available from Waters Corp, 34 Maple Street, Milford, MA 01757, Telephone: 508/482–2131, Fax: 508/482–3625, Table IB, See footnote 54.

(64) Kelada-01, ''Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate,'' EPA 821–B–01–009 Revision 1.2, August 2001 is available from National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 [Order Number PB 2001–108275]. Telephone: 800–553–6847. Table IB, See footnote 55.

(65) QuikChem Method 10–204–00–1–X, ''Digestion and Distillation of Total Cyanide in Drinking and Wastewaters using MICRO DIST and Determination of Cyanide by Flow Injection Analysis'' Revision 2.2, March 2005 is available from Lachat Instruments 6645 W. Mill Road, Milwaukee, WI 53218, Telephone: 414–358–4200. Table IB, See footnote 56.

(66) ''Methods for the Determination of Metals in Environmental Samples,'' Supplement I, National Exposure Risk Laboratory-Cincinnati (NERL–CI), EPA/600/R–94/111, May 1994; and ''Methods for the Determination of Inorganic Substances in Environmental Samples,'' NERL–CI, EPA/600/R–93/100, August, 1993 are available from National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. Telephone: 800–553–6847. Table IB.

(67) ''Determination of Inorganic Ions in Drinking Water by Ion Chromatography,'' Rev. 1.0, 1997 is available from from *http://www.epa.gov/safetwater/methods/met300.pdf.* Table IB.

(68) Table IG Methods are available in ''Methods For The Determination of Nonconventional Pesticides In

Municipal and Industrial Wastewater, Volume I,'' EPA 821–R–93–010A, August 1993 Revision I, and ''Methods For The Determination of Nonconventional Pesticides In Municipal and Industrial Wastewater, Volume II,'' EPA 821–R–93–010B (August 1993) are available from National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. Telephone: 800–553–6847.

(69) Method 245.7, Rev. 2.0, ''Mercury in Water by Cold Vapor Atomic Fluorescence Spectrometry,'' February 2005, EPA–821–R–05–001, available from the U.S. EPA Sample Control Center (operated by CSC), 6101 Stevenson Avenue, Alexandria, VA 22304, Telephone: 703–461–8056. Table IB, See footnote 59.

(c) Under certain circumstances, the Regional Administrator or the Director in the Region or State where the discharge will occur may determine for a particular discharge that additional parameters or pollutants must be reported. Under such circumstances, additional test procedures for analysis of pollutants may be specified by the Regional Administrator, or the Director upon recommendation of the Alternate Test Procedure Program Coordinator, Washington, DC.

(d) Under certain circumstances, the Administrator may approve additional alternate test procedures for nationwide use, upon recommendation by the Alternate Test Procedure Program Coordinator, Washington, DC.

(e) Sample preservation procedures, container materials, and maximum allowable holding times for parameters are cited in Tables IA, IB, IC, ID, IE, IF, and IG are prescribed in Table II. Information in the table takes precedence over information in specific methods or elsewhere. Any person may apply for a variance from the prescribed preservation techniques, container materials, and maximum holding times applicable to samples taken from a specific discharge. Applications for variances may be made by letters to the Regional Administrator in the Region in which the discharge will occur. Sufficient data should be provided to assure such variance does not adversely affect the integrity of the sample. Such data will be forwarded by the Regional Administrator, to the Alternate Test Procedure Program Coordinator, Washington, DC, for technical review and recommendations for action on the variance application. Upon receipt of the recommendations from the Alternate Test Procedure Program Coordinator, the Regional Administrator may grant a variance applicable to the specific discharge to the applicant. A decision to approve or deny a variance will be made within 90 days of receipt of the application by the Regional Administrator.

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Parameter number/name	Container [1]	Preservation [2,3]	Maximum holding time [4]
Table IA—Bacterial Tests:			
1–5. Coliform, total, fecal, and *E. coli*	PA, G	Cool, <10 °C, 0.0008% $Na_2S_2O_3$ [5].	6 hours
6. Fecal streptococci	PA, G	Cool, <10 °C, 0.0008% $Na_2S_2O_3$ [5].	6 hours
7. Enterococci	PA, G	Cool, <10 °C, 0.0008% $Na_2S_2O_3$ [5].	6 hours
Table IA—Protozoan Tests:			
8. *Cryptosporidium*	LDPE; field filtration	0–8 °C	96 hours [21]
9. *Giardia*	LDPE; field filtration	0–8 °C	96 hours [21]
Table IA—Aquatic Toxicity Tests:			
10–13. Toxicity, acute and chronic	P, FP, G	Cool, ≤6 °C [16]	36 hours
Table IB—Inorganic Tests:			
1. Acidity	P, FP, G	Cool, ≤6 °C [18]	14 days
2. Alkalinity	P, FP, G	Cool, ≤6 °C [18]	14 days
4. Ammonia	P, FP, G	Cool, ≤6 °C [18], H_2SO_4 to pH<2.	28 days
9. Biochemical oxygen demand	P, FP, G	Cool, ≤6 °C [18]	48 hours
10. Boron	P, FP, or Quartz	HNO_3 to pH<2	6 months
11. Bromide	P, FP, G	None required	28 days
14. Biochemical oxygen demand, carbonaceous	P, FP G	Cool, ≤6 °C [18]	48 hours
15. Chemical oxygen demand	P, FP, G	Cool, ≤6 °C [18], H_2SO_4 to pH<2.	28 days
16. Chloride	P, FP, G	None required	28 days
17. Chlorine, total residual	P, G	None required	Analyze within 15 minutes
21. Color	P, FP, G	Cool, ≤6 °C [18]	48 hours
23–24. Cyanide, total or available (or CATC)	P, FP, G	Cool, ≤6 °C [18], NaOH to pH>12 [6], reducing agent [5].	14 days
25. Fluoride	P	None required	28 days
27. Hardness	P, FP, G	HNO_3 or H_2SO_4 to pH<2.	6 months
28. Hydrogen ion (pH)	P, FP, G	None required	Analyze within 15 minutes
31, 43. Kjeldahl and organic N	P, FP, G	Cool, ≤6 °C [18], H_2SO_4 to pH<2.	28 days
Table IB—Metals: [7]			
18. Chromium VI	P, FP, G	Cool, ≤6 °C [18], pH = 9.3–9.7 [20].	28 days
35. Mercury (CVAA)	P, FP, G	HNO_3 to pH<2	28 days

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES—Continued

Parameter number/name	Container [1]	Preservation [2,3]	Maximum holding time [4]
35. Mercury (CVAFS)	FP, G; and FP-lined cap [17].	5 mL/L 12N HCl or 5 mL/L BrCl [17].	90 days [17]
3, 5–8, 12, 13, 19, 20, 22, 26, 29, 30, 32–34, 36, 37, 45, 47, 51, 52, 58–60, 62, 63, 70–72, 74, 75. Metals, except boron, chromium VI, and mercury.	P, FP, G	HNO_3 to pH<2, or at least 24 hours prior to analysis [19].	6 months
38. Nitrate	P, FP, G	Cool, ≤6 °C [18]	48 hours
39. Nitrate-nitrite	P, FP, G	Cool, ≤6 °C 18, H_2SO_4 to pH<2.	28 days
40. Nitrite	P, FP, G	Cool, ≤6 °C [18]	48 hours
41. Oil and grease	G	Cool to ≤6 °C [18], HCl or H_2SO_4 to pH<2.	28 days
42. Organic Carbon	P, FP, G	Cool to ≤6 °C [18], HCl, H_2SO_4, or H_3PO_4 to pH<2.	28 days
44. Orthophosphate	P, FP, G	Cool, ≤6 °C [18]	Filter within 15 minutes; Analyze within 48 hours
46. Oxygen, Dissolved Probe	G, Bottle and top	None required	Analyze within 15 minutes
47. Winkler	G, Bottle and top	Fix on site and store in dark.	8 hours
48. Phenols	G	Cool, ≤6 °C [18], H_2SO_4 to pH<2.	28 days
49. Phosphorous (elemental)	G	Cool, ≤6 °C [18]	48 hours
50. Phosphorous, total	P, FP, G	Cool, ≤6 °C [18], H_2SO_4 to pH<2.	28 days
53. Residue, total	P, FP, G	Cool, ≤6 °C [18]	7 days
54. Residue, Filterable	P, FP, G	Cool, ≤6 °C [18]	7 days
55. Residue, Nonfilterable (TSS)	P, FP, G	Cool, ≤6 °C [18]	7 days
56. Residue, Settleable	P, FP, G	Cool, ≤6 °C [18]	48 hours
57. Residue, Volatile	P, FP, G	Cool, ≤6 °C [18]	7 days
61. Silica	P or Quartz	Cool, ≤6 °C [18]	28 days
64. Specific conductance	P, FP, G	Cool, ≤6 °C [18]	28 days
65. Sulfate	P, FP, G	Cool, ≤6 °C [18]	28 days
66. Sulfide	P, FP, G	Cool, ≤6 °C [18], add zinc acetate plus sodium hydroxide to pH>9.	7 days
67. Sulfite	P, FP, G	None required	Analyze within 15 minutes
68. Surfactants	P, FP, G	Cool, ≤6 °C [18]	48 hours
69. Temperature	P, FP, G	None required	Analyze
73. Turbidity	P, FP, G	Cool, ≤6 °C 18	48 hours
Table IC—Organic Tests [8]			
13, 18–20, 22, 24–28, 34–37, 39–43, 45–47, 56, 76, 104, 105, 108–111, 113. Purgeable Halocarbons.	G, FP-lined septum	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5].	14 days
6, 57, 106. Purgeable aromatic hydrocarbons	G, FP-lined septum	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5], HCl to pH 2 [9].	14 days [9]
3, 4. Acrolein and acrylonitrile	G, FP-lined septum	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5], pH to 4-5 [10].	14 days [10]
23, 30, 44, 49, 53, 77, 80, 81, 98, 100, 112. Phenols [11]	G, FP-lined cap	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5].	7 days until extraction, 40 days after extraction
7, 38. Benzidines [11, 12]	G, FP-lined cap	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$ [5].	7 days until extraction [13]
14, 17, 48, 50–52. Phthalate esters [11]	G, FP-lined cap	Cool, ≤6 °C [18]	7 days until extraction, 40 days after extraction
82–84. Nitrosamines [11 14]	G, FP-lined cap	Cool, ≤6 °C 18, store in dark, 0.008% $Na_2S_2O_3$[5].	7 days until extraction, 40 days after extraction
88–94. PCBs [11]	G, FP-lined cap	Cool, ≤6 °C [18]	1 year until extraction, 1 year after extraction
54, 55, 75, 79. Nitroaromatics and isophorone [11]	G, FP-lined cap	Cool, ≤6 °C [18], store in dark, 0.008% $Na_2S_2O_3$[5].	7 days until extraction, 40 days after extraction

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES—Continued

Parameter number/name	Container [1]	Preservation [2,3]	Maximum holding time [4]
1, 2, 5, 8–12, 32, 33, 58, 59, 74, 78, 99, 101. Polynuclear aromatic hydrocarbons [11]	G, FP-lined cap	Cool, ≤6 °C [18], store in dark, 0.008% $Na_2S_2O_3$[5].	7 days until extraction, 40 days after extraction
15, 16, 21, 31, 87. Haloethers [11]	G, FP-lined cap	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$[5].	7 days until extraction, 40 days after extraction
29, 35-37, 63-65, 107. Chlorinated hydrocarbons [11]	G, FP-lined cap	Cool, ≤6 °C [18]	7 days until extraction, 40 days after extraction
60-62, 66-72, 85, 86, 95-97, 102, 103. CDDs/CDFs [11].			
Aqueous Samples: Field and Lab Preservation	G	Cool, ≤6 °C [18], 0.008% $Na_2S_2O_3$[5], pH<9.	1 year
Solids and Mixed-Phase Samples: Field Preservation	G	Cool, ≤6 °C [18]	7 days
Tissue Samples: Field Preservation	G	Cool, ≤6 °C 18	24 hours
Solids, Mixed-Phase, and Tissue Samples: Lab Preservation	G	Freeze, ≤−10 °C.	1 year
Table ID—Pesticides Tests:			
1–70. Pesticides [11]	G, FP-lined cap	Cool, ≤6 °C 18, pH 5–9 [15].	7 days until extraction, 40 days after extraction
Table IE—Radiological Tests:			
1–5. Alpha, beta, and radium	P, FP, G	HNO_3 to pH<2	6 months

[1] "P" is polyethylene; "FP" is fluoropolymer (polytetrafluoroethylene (PTFE; Teflon®), or other fluoropolymer, unless stated otherwise in this Table II; "G" is glass; "PA" is any plastic that is made of a sterlizable material (polypropylene or other autoclavable plastic); "LDPE" is low density polyethylene.

[2] Except where noted in this Table II and the method for the parameter, preserve each grab sample within 15 minutes of collection. For a composite sample collected with an automated sampler (e.g., using a 24-hour composite sampler; see 40 CFR 122.21(g)(7)(i) or 40 CFR Part 403, Appendix E), refrigerate the sample at ≤6 °C during collection unless specified otherwise in this Table II or in the method(s). For a composite sample to be split into separate aliquots for preservation and/or analysis, maintain the sample at ≤6 °C, unless specified otherwise in this Table II or in the method(s), until collection, splitting, and preservation is completed. Add the preservative to the sample container prior to sample collection when the preservative will not compromise the integrity of a grab sample, a composite sample, or an aliquot split from a composite sample ; otherwise, preserve the grab sample, composite sample, or aliquot split from a composite sample with in 15 minutes of collection. If a composite measurement is required but a composite sample would compromise sample integrity, individual grab samples must be collected at prescribed time intervals (e.g., 4 samples over the course of a day, at 6-hour intervals). Grab samples must be analyzed separately and the concentrations averaged. Alternatively, grab samples may be collected in the field and composited in the laboratory if the compositing procedure produces results equivalent to results produced by arithmetic averaging of the results of analysis of individual grab samples. For examples of laboratory compositing procedures, see EPA Method 1664A (oil and grease) and the procedures at 40 CFR 141.34(f)(14)(iv) and (v) (volatile organics).

[3] When any sample is to be shipped by common carrier or sent via the U.S. Postal Service, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR Part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirements of Table II, the Office of Hazardous Materials, Materials Transportation Bureau, Department of Transportation has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater); Nitric acid (HNO_3) in water solutions at concentrations of 0.15% by weight or less (pH about 1.62 or greater); Sulfuric acid (H_2SO_4) in water solutions at concentrations of 0.35% by weight or less (pH about 1.15 or greater); and Sodium hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).

[4] Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before the start of analysis and still be considered valid (e.g., samples analyzed for fecal coliforms may be held up to 6 hours prior to commencing analysis). Samples may be held for longer periods only if the permittee or monitoring laboratory has data on file to show that, for the specific types of samples under study, the analytes are stable for the longer time, and has received a variance from the Regional Administrator under § 136.3(e). For a grab sample, the holding time begins at the time of collection. For a composite sample collected with an automated sampler (e.g., using a 24-hour composite sampler; see 40 CFR 122.21(g)(7)(i) or 40 CFR Part 403, Appendix E), the holding time begins at the time of the end of collection of the composite sample. For a set of grab samples composited in the field or laboratory, the holding time begins at the time of collection of the last grab sample in the set. Some samples may not be stable for the maximum time period given in the table. A permittee or monitoring laboratory is obligated to hold the sample for a shorter time if it knows that a shorter time is necessary to maintain sample stability. See § 136.3(e) for details. The date and time of collection of an individual grab sample is the date and time at which the sample is collected. For a set of grab samples to be composited, and that are all collected on the same calendar date, the date of collection is the date on which the samples are collected. For a set of grab samples to be composited, and that are collected across two calendar dates, the date of collection is the dates of the two days; e.g., November 14–15. For a composite sample collected automatically on a given date, the date of collection is the date on which the sample is collected. For a composite sample collected automatically, and that is collected across two calendar dates, the date of collection is the dates of the two days; e.g., November 14–15.

[5] Add a reducing agent only if an oxidant (e.g., chlorine) is present. Reducing agents shown to be effective are sodium thiosulfate ($Na_2S_2O_3$), ascorbic acid, sodium arsenite ($NaAsO_2$), or sodium borohydride ($NaBH_4$). However, some of these agents have been shown to produce a positive or negative cyanide bias, depending on other substances in the sample and the analytical method used. Therefore, do not add an excess of reducing agent. Methods recommending ascorbic acid (e.g., EPA Method 335.4) specify adding ascorbic acid crystals, 0.1—0.6 g, until a drop of sample produces no color on potassium iodide (KI) starch paper, then adding 0.06 g (60 mg) for each liter of sample volume. If $NaBH_4$ or $NaAsO_2$ is used, 25 mg/L $NaBH_4$ or 100 mg/L $NaAsO_2$ will reduce more than 50 mg/L of chlorine (see method (Kelada-01" and/or Standard Method 4500-CN− for more information). After adding reducing agent, test the sample using KI paper, a test strip (e.g. for chlorine, SenSafe™ Total Chlorine Water Check 480010) moistened with acetate buffer solution (see Standard Method 4500-Cl.C.3e), or a chlorine/oxidant test method (e.g., EPA Method 330.4 or 330.5), to make sure all oxidant is removed. If oxidant remains, add more reducing agent. Whatever agent is used, it should be tested to assure that cyanide results are not affected adversely.

[6] Sample collection and preservation: Collect a volume of sample appropriate to the analytical method in a bottle of the material specified. If the sample can be analyzed within 48 hours and sulfide is not present, adjust the pH to >12 with sodium hydroxide solution (e.g., 5 % w/v), refrigerate as specified, and analyze within 48 hours. Otherwise, to extend the holding time to 14 days and mitigate interferences, treat the sample immediately using any or all of the following techniques, as necessary, followed by adjustment of the sample pH to >12 and refrigeration as specified. There may be interferences that are not mitigated by approved procedures. Any procedure for removal or suppression of an interference may be employed, provided the laboratory demonstrates that it more accurately measures cyanide. Particulate cyanide (e.g., ferric ferrocyanide) or a strong cyanide complex (e.g., cobalt cyanide) are more accurately measured if the laboratory holds the sample at room temperature and pH >12 for a minimum of 4 hours prior to analysis, and performs UV digestion or dissolution under alkaline (pH=12) conditions, if necessary.

(1) Sulfur: To remove elemental sulfur (S_8), filter the sample immediately. If the filtration time will exceed 15 minutes, use a larger filter or a method that requires a smaller sample volume (e.g., EPA Method 335.4 or Lachat Method 01). Adjust the pH of the filtrate to >12 with NaOH, refrigerate the filter and filtrate, and ship or transport to the laboratory. In the laboratory, extract the filter with 100 mL of 5% NaOH solution for a minimum of 2 hours. Filter the extract and discard the solids. Combine the 5% NaOH-extracted filtrate with the initial filtrate, lower the pH to approximately 12 with concentrated hydrochloric or sulfuric acid, and analyze the combined filtrate. Because the detection limit for cyanide will be increased by dilution by the filtrate from the solids, test the sample with and without the solids procedure if a low detection limit for cyanide is necessary. Do not use the solids procedure if a higher cyanide concentration is obtained without it. Alternatively, analyze the filtrates from the sample and the solids separately, add the amounts determined (in µg or mg), and divide by the original sample volume to obtain the cyanide concentration.

(2) Sulfide: If the sample contains sulfide as determined by lead acetate paper, or if sulfide is known or suspected to be present, immediately conduct one of the volatilization treatments or the precipitation treatment as follows: Volatilization—Headspace expelling. In a fume hood or well-ventilated area, transfer 0.75 liter of sample to a 4.4-L collapsible container (e.g., Cubitainer™). Acidify with concentrated hydrochloric acid to pH <2. Cap the container and shake vigorously for 30 seconds. Remove the cap and expel the headspace into the fume hood or open area by collapsing the container without expelling the sample. Refill the headspace by expanding the container. Repeat expelling a total of five headspace volumes. Adjust the pH to >12, refrigerate, and ship or transport to the laboratory. Scaling to a smaller or larger sample volume must maintain the air to sample volume ratio. A larger volume of air will result in too great a loss of cyanide (> 10%). Dynamic stripping: In a fume hood or well-ventilated area, transfer 0.75 liter of sample to a container of the material specified and acidify with concentrated hydrochloric acid to pH <2. Using a calibrated air sampling pump or flowmeter, purge the acidified sample into the fume hood or open area through a fritted glass aerator at a flow rate of 2.25 L/min for 4 minutes. Adjust the pH to >12, refrigerate, and ship or transport to the laboratory. Scaling to a smaller or larger sample volume must maintain the air to sample volume ratio. A larger volume of air will result in too great a loss of cyanide (>10%). Precipitation: If the sample contains particulate matter that would be removed by filtration, filter the sample prior to treatment to assure that cyanide associated with the particulate matter is included in the measurement. Ship or transport the filter to the laboratory. In the laboratory, extract the filter with 100 mL of 5% NaOH solution for a minimum of 2 hours. Filter the extract and discard the solids. Combine the 5% NaOH-extracted filtrate with the initial filtrate, lower the pH to approximately 12 with concentrated hydrochloric or sulfuric acid, and analyze the combined filtrate. Because the detection limit for cyanide will be increased by dilution by the filtrate from the solids, test the sample with and without the solids procedure if a low detection limit for cyanide is necessary. Do not use the solids procedure if a higher cyanide concentration is obtained without it. Alternatively, analyze the filtrates from the sample and the solids separately, add the amounts determined (in µg or mg), and divide by the original sample volume to obtain the cyanide concentration. For removal of sulfide by precipitation, raise the pH of the sample to >12 with NaOH solution, then add approximately 1 mg of powdered cadmium chloride for each mL of sample. For example, add approximately 500 mg to a 500-mL sample. Cap and shake the container to mix. Allow the precipitate to settle and test the sample with lead acetate paper. If necessary, add cadmium chloride but avoid adding an excess. Finally, filter through 0.45 micron filter. Cool the sample as specified and ship or transport the filtrate and filter to the laboratory. In the laboratory, extract the filter with 100 mL of 5% NaOH solution for a minimum of 2 hours. Filter the extract and discard the solids. Combine the 5% NaOH-extracted filtrate with the initial filtrate, lower the pH to approximately 12 with concentrated hydrochloric or sulfuric acid, and analyze the combined filtrate. Because the detection limit for cyanide will be increased by dilution by the filtrate form the solids, test the sample with and without the solids procedure if a low detection limit for cyanide is necessary. Do not use the solids procedure if a higher cyanide concentration is obtained without it. Alternatively, analyze the filtrates from the sample and the solids separately, add the amounts determined (in (g or mg), and divide by the original sample volume to obtain the cyanide concentration. If a ligand-exchange method is used (e.g., ASTM D6888), it may be necessary to increase the ligand-exchange reagent to offset any excess of cadmium chloride.

(3) Sulfite, thiosulfate, or thiocyanate: If sulfite, thiosulfate, or thiocyanate is known or suspected to be present, use UV digestion with a glass coil (Method Kelada-01) or ligand exchange (Method OIA–1677) to preclude cyanide loss or positive interference.

(4) Aldehyde: If formaldehyde, acetaldehyde, or another water-soluble aldehyde is known or suspected to be present, treat the sample with 20 mL of 3.5% ethylenediamine solution per liter of sample.

(5) Carbonate: Carbonate interference is evidenced by noticeable effervescence upon acidification in the distillation flask, a reduction in the pH of the absorber solution, and incomplete cyanide spike recovery. When significant carbonate is present, adjust the pH to ≥ 12 using calcium hydroxide instead of sodium hydroxide. Allow the precipitate to settle and decant or filter the sample prior to analysis (also see Standard Method 4500-CN.B.3.d).

(6) Chlorine, hypochlorite, or other oxidant: Treat a sample known or suspected to contain chlorine, hypochlorite, or other oxidant as directed in footnote 5.

[7] For dissolved metals, filter grab samples within 15 minutes of collection and before adding preservatives. For a composite sample collected with an automated sampler (e.g., using a 24-hour composite sampler; see 40 CFR 122.21(g)(7)(i) or 40 CFR Part 403, Appendix E), filter the sample within 15 minutes after completion of collection and before adding preservatives. If it is known or suspected that dissolved sample integrity will be compromised during collection of a composite sample collected automatically over time (e.g., by interchange of a metal between dissolved and suspended forms), collect and filter grab samples to be composited (footnote 2) in place of a composite sample collected automatically.

[8] Guidance applies to samples to be analyzed by GC, LC, or GC/MS for specific compounds.

[9] If the sample is not adjusted to pH 2, then the sample must be analyzed within seven days of sampling.

[10] The pH adjustment is not required if acrolein will not be measured. Samples for acrolein receiving no pH adjustment must be analyzed within 3 days of sampling.

[11] When the extractable analytes of concern fall within a single chemical category, the specified preservative and maximum holding times should be observed for optimum safeguard of sample integrity (i.e., use all necessary preservatives and hold for the shortest time listed). When the analytes of concern fall within two or more chemical categories, the sample may be preserved by cooling to ≤6 °C, reducing residual chlorine with 0.008% sodium thiosulfate, storing in the dark, and adjusting the pH to 6-9; samples preserved in this manner may be held for seven days before extraction and for forty days after extraction. Exceptions to this optional preservation and holding time procedure are noted in footnote 5 (regarding the requirement for thiosulfate reduction), and footnotes 12, 13 (regarding the analysis of benzidine).

[12] If 1,2-diphenylhydrazine is likely to be present, adjust the pH of the sample to 4.0 ± 0.2 to prevent rearrangement to benzidine.

[13] Extracts may be stored up to 30 days at <0 °C.

[14] For the analysis of diphenylnitrosamine, add 0.008% $Na_2S_2O_3$ and adjust pH to 7–10 with NaOH within 24 hours of sampling.

[15] The pH adjustment may be performed upon receipt at the laboratory and may be omitted if the samples are extracted within 72 hours of collection. For the analysis of aldrin, add 0.008% $Na_2S_2O_3$.

[16] Sufficient ice should be placed with the samples in the shipping container to ensure that ice is still present when the samples arrive at the laboratory. However, even if ice is present when the samples arrive, it is necessary to immediately measure the temperature of the samples and confirm that the preservation temperature maximum has not been exceeded. In the isolated cases where it can be documented that this holding temperature cannot be met, the permittee can be given the option of on-site testing or can request a variance. The request for a variance should include supportive data which show that the toxicity of the effluent samples is not reduced because of the increased holding temperature.

[17] Samples collected for the determination of trace level mercury (<100 ng/L) using EPA Method 1631 must be collected in tightly-capped fluoropolymer or glass bottles and preserved with BrCl or HCl solution within 48 hours of sample collection. The time to preservation may be extended to 28 days if a sample is oxidized in the sample bottle. A sample collected for dissolved trace level mercury should be filtered in the laboratory within 24 hours of the time of collection. However, if circumstances preclude overnight shipment, the sample should be filtered in a designated clean area in the field in accordance with procedures given in Method 1669. If sample integrity will not be maintained by shipment to and filtration in the laboratory, the sample must be filtered in a designated clean area in the field within the time period necessary to maintain sample integrity. A sample that has been collected for determination of total or dissolved trace level mercury must be analyzed within 90 days of sample collection.

[18] Aqueous samples must be preserved at ≤6 °C, and should not be frozen unless data demonstrating that sample freezing does not adversely impact sample integrity is maintained on file and accepted as valid by the regulatory authority. Also, for purposes of NPDES monitoring, the specification of "≤ °C" is used in place of the "4 °C" and "<4 °C" sample temperature requirements listed in some methods. It is not necessary to measure the sample temperature to three significant figures (1/100th of 1 degree); rather, three significant figures are specified so that rounding down to 6 °C may not be used to meet the ≤6 °C requirement. The preservation temperature does not apply to samples that are analyzed immediately (less than 15 minutes).

[19] An aqueous sample may be collected and shipped without acid preservation. However, acid must be added at least 24 hours before analysis to dissolve any metals that adsorb to the container walls. If the sample must be analyzed within 24 hours of collection, add the acid immediately (see footnote 2). Soil and sediment samples do not need to be preserved with acid. The allowances in this footnote supersede the preservation and holding time requirements in the approved metals methods.

[20] To achieve the 28-day holding time, use the ammonium sulfate buffer solution specified in EPA Method 218.6. The allowance in this footnote supersedes preservation and holding time requirements in the approved hexavalent chromium methods, unless this supersession would compromise the measurement, in which case requirements in the method must be followed.

[21] Holding time is calculated from time of sample collection to elution for samples shipped to the laboratory in bulk and calculated from the time of sample filtration to elution for samples filtered in the field.

■ 8. Section 136.4 is amended by revising the first sentence of paragraph (d) introductory text to read as follows:

§ 136.4 Application for alternate test procedures.

* * * * *

(d) An application for approval of an alternate test procedure for nationwide use may be made by letter in triplicate to the Alternate Test Procedure Program Coordinator, Office of Science and Technology (4303), Office of Water, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. * * *

* * * * *

■ 9. Section 136.5 is amended as follows:

■ a. In paragraph (b) by revising the last sentence.

■ b. By revising paragraph (c).

■ c. In paragraph (d) by revising the second and third sentences.

■ d. By revising paragraphs (e)(1) and (e)(2).

§ 136.5 Approval of alternate test procedures.

* * * * *

(b) * * * Where the Director recommends rejection of the application for scientific and technical reasons which he provides, the Regional Administrator shall deny the application and shall forward this decision to the Director of the State Permit Program and to the Alternate Test Procedure Program Coordinator, Office of Science and Technology (4303), Office of Water, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(c) Before approving any application for an alternate test procedure proposed by the responsible person or firm making the discharge, the Regional Administrator shall forward a copy of the application to the Alternate Test Procedure Program Coordinator, Office of Science and Technology (4303), Office of Water, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(d) * * * Prior to the expiration of such ninety day period, a recommendation providing the scientific and other technical basis for acceptance or rejection will be forwarded to the Regional Administrator by the Alternate Test Procedure Program Coordinator, Washington, DC. A copy of all approval and rejection notifications will be forwarded to the Alternate Test Procedure Program Coordinator, Office of Science and Technology (4303), Office of Water, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, for the purposes of national coordination.

(e) *Approval for nationwide use.* (1) As expeditiously as is practicable after receipt by the Alternate Test Procedure Program Coordinator, Washington, DC, of an application for an alternate test procedure for nationwide use, the Alternate Test Procedure Program Coordinator, Washington, DC, shall notify the applicant in writing whether the application is complete. If the application is incomplete, the applicant shall be informed of the information necessary to make the application complete.

(2) As expeditiously as is practicable after receipt of a complete package, the Alternate Test Procedure Program Coordinator shall perform any analysis necessary to determine whether the alternate test procedure satisfies the applicable requirements of this part, and the Alternate Test Procedure Program Coordinator shall recommend to the Administrator that he/she approve or reject the application and shall also notify the application of the recommendation.

* * * * *

■ 10. Section 136.6 is added to Part 136 to read as follows:

§ 136.6 Method Modifications and Analytical Requirements.

(a) Definitions of terms used in this Section.

(1) *Analyst* means the person or laboratory using a test procedure (analytical method) in this Part.

(2) *Chemistry of the Method* means the reagents and reactions used in a test procedure that allow determination of the analyte(s) of interest in an environmental sample.

(3) *Determinative Technique* means the way in which an analyte is identified and quantified (*e.g.*, colorimetry, mass spectrometry).

(4) *Equivalent Performance* means that the modified method produces results that meet the QC acceptance

criteria of the approved method at this part.

(5) *Method-defined Analyte* means an analyte defined solely by the method used to determine the analyte. Such an analyte may be a physical parameter, a parameter that is not a specific chemical, or a parameter that may be comprised of a number of substances. Examples of such analytes include temperature, oil and grease, total suspended solids, total phenolics, turbidity, chemical oxygen demand, and biochemical oxygen demand.

(6) *QC* means ''quality control.''

(b) *Method Modifications.*

(1) *Allowable Changes.* Except as set forth in paragraph (b)(3) of this section, an analyst may modify an approved test procedure (analytical method) provided that the chemistry of the method or the determinative technique is not changed, and provided that the requirements of paragraph (b)(2) of this section are met.

(i) Potentially acceptable modifications regardless of current method performance include changes between automated and manual discrete instrumentation; changes in the calibration range (provided that the modified range covers any relevant regulatory limit); changes in equipment such as using similar equipment from a vendor other than that mentioned in the method (*e.g.*, a purge-and-trap device from OIA rather than Tekmar), changes in equipment operating parameters such as changing the monitoring wavelength of a colorimeter or modifying the temperature program for a specific GC column; changes to chromatographic columns (treated in greater detail in paragraph (d) of this section); and increases in purge-and-trap sample volumes (provided specifications in paragraph (e) of this section are met). The changes are only allowed provided that all the requirements of paragraph (b)(2) of this section are met.

(ii) If the characteristics of a wastewater matrix prevent efficient recovery of organic pollutants and prevent the method from meeting QC requirements, the analyst may attempt to resolve the issue by using salts as specified in *Guidance on Evaluation, Resolution, and Documentation of Analytical Problems Associated with Compliance Monitoring* (EPA 821–B–93–001, June 1993), provided that such salts do not react with or introduce the target pollutant into the sample (as evidenced by the analysis of method blanks, laboratory control samples, and spiked samples that also contain such salts) and that all requirements of paragraph (b)(2) of this section are met. Chlorinated samples must be dechlorinated prior to the addition of such salts.

(iii) If the characteristics of a wastewater matrix result in poor sample dispersion or reagent deposition on equipment and prevents the analyst from meeting QC requirements, the analysts may attempt to resolve the issue by adding an inert surfactant (*i.e.* a surfactant that will not affect the chemistry of the method), which may include Brij-35 or sodium dodecyl sulfate (SDS), provided that such surfactant does not react with or introduce the target pollutant into the sample (as evidenced by the analysis of method blanks, laboratory control samples, and spiked samples that also contain such surfactant) and that all requirements of paragraph (b)(2) of this section are met. Chlorinated samples must be dechlorinated prior to the addition of such surfactant.

(2) *Requirements.* A modified method must produce equivalent performance to the approved methods for the analyte(s) of interest, and the equivalent performance must be documented.

(i) *Requirements for Establishing Equivalent Performance*

(A) If the approved method contains QC tests and QC acceptance criteria, the modified method must use these QC tests and the modified method must meet the QC acceptance criteria. The Analyst may only rely on QC tests and QC acceptance criteria in a method if it includes wastewater matrix QC tests and QC acceptance criteria (e.g., as matrix spikes) and both initial (start-up) and ongoing QC tests and QC acceptance criteria.

(B) If the approved method does not contain QC tests and QC acceptance criteria, or if the QC tests and QC acceptance criteria in the method do not meet the requirements of paragraph (b)(2)(i)(A) of this section, the analyst must employ QC tests specified in *Protocol for EPA Approval of Alternate Test Procedures for Organic and Inorganic Analytes in Wastewater and Drinking Water* (EPA–821–B–98–002, March 1999) and meet the QC provisions specified therein. In addition, the Analyst must perform on-going QC tests, including assessment of performance of the modified method on the sample matrix (*e.g.*, analysis of a matrix spike/matrix spike duplicate pair for every twenty samples of a discharge analyzed), and analysis of an ongoing precision and recovery sample and a blank with each batch of 20 or fewer samples.

(C) Calibration must be performed using the modified method and the modified method must be tested with every wastewater matrix to which it will be applied (up to nine distinct matrices; as described in the ATP Protocol, after validation in nine distinct matrices, the method may be applied to all wastewater matrices), in addition to any and all reagent water tests. If the performance in the wastewater matrix or reagent water does not meet the QC acceptance criteria the method modification may not be used.

(D) Analysts must test representative effluents with the modified method, and demonstrate that the results are equivalent or superior to results with the unmodified method.

(ii) *Requirements for Documentation.* The modified method must be documented in a method write-up or an addendum that describes the modification(s) to the approved method. The write-up or addendum must include a reference number (*e.g.*, method number), revision number, and revision date so that it may be referenced accurately. In addition, the organization that uses the modified method must document the results of QC tests and keep these records, along with a copy of the method write-up or addendum, for review by an auditor.

(3) *Restrictions.* An analyst may not modify an approved analytical method for a method-defined analyte. In addition, an analyst may not modify an approved method if the modification would result in measurement of a different form or species of an analyte (*e.g.*, a change to a metals digestion or total cyanide distillation). An analyst may also may not modify any sample preservation and/or holding time requirements of an approved method.

(c) *Analytical Requirements for Multi-analyte Methods (Target Analytes).* For the purpose of NPDES reporting, the discharger or permittee must meet QC requirements only for the analyte(s) being measured and reported under the NPDES permit.

(d) The following modifications to approved methods are authorized in the circumstances described below:

(1) *Capillary Column.* Use of a capillary (open tubular) GC column rather than a packed column is allowed with EPA Methods 601–613, 624, 625, and 1624B in Appendix A to this part, provided that all QC tests for the approved method are performed and all QC acceptance criteria are met. When changing from a packed column to a capillary column, retention times will change. Analysts are not required to meet retention time specified in the approved method when this change is made. Instead, analysts must generate new retention time tables with capillary columns to be kept on file along with

other startup test and ongoing QC data, for review by auditors.

(2) *Increased sample volume in purge and trap methodology.* Use of increased sample volumes, up to a maximum of 25 mL, is allowed for an approved method, provided that the height of the water column in the purge vessel is at least 5 cm. The analyst should also use one or more surrogate analytes that are chemically similar to the analytes of interest in order to demonstrate that the increased sample volume does not adversely affect the analytical results.

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■ 11. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 12. Section 141.21 is amended by adding four sentences to the end of footnote 1 to the Table in paragraph (f)(3) to read as follows:

§ 141.21 Coliform sampling.

* * * * *

(f) * * *

(3) * * *

[1]* * * In addition, the following online versions may also be used: 9221 A, B, D–99, 9222 A, B, C–97, and 9223 B–97. Standard Methods Online are available at *http://www.standardmethods.org.* The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only Online versions that may be used.

* * * * *

■ 13. Section 141.23 is amended as follows:

■ a. In paragraph (a)(4)(i) by revising the table entries for ''Cyanide,'' ''Nitrate,'' and ''Nitrite''.

■ b. In paragraph (k)(1) by revising the table.

§ 141.23 Inorganic chemical sampling and analytical requirements.

* * * * *

(a) * * *

(4) * * *

(i) * * *

DETECTION LIMITS FOR INORGANIC CONTAMINANTS

Contaminant	MCL (mg/L)	Methodology	Detection Limit (mg/L)
*	*	* * * * *	
Cyanide	0.2	Distillation, Spectrophotometric[3]	0.02
		Distillation, Automated, Spectrophotometric[3]	0.005
		Distillation, Amenable, Spectrophotometric[4]	0.02
		Distillation, Selective Electrode[3, 4]	0.05
		UV, Distillation, Spectrophotometric[9]	0.0005
		Micro Distillation, Flow Injection, Spectrophotometric[3]	0.0006
		Ligand Exchange with Amperometry[4]	0.0005
*	*	* * * * *	
Nitrate	10 (as N)	Manual Cadmium Reduction	0.01
		Automated Hydrazine Reduction	0.01
		Automated Cadmium Reduction	0.05
		Ion Selective Electrode	1
		Ion Chromatography	0.01
		Capillary Ion Electrophoresis	0.076
Nitrite	1 (as N)	Spectrophotometric	0.01
		Automated Cadmium Reduction	0.05
		Manual Cadmium Reduction	0.01
		Ion Chromatography	0.004
		Capillary Ion Electrophoresis	0.103
*	*	* * * * *	

* * * * *

[3] Screening method for total cyanides.

[4] Measures ''free'' cyanides when distillation, digestion, or ligand exchange is omitted.

* * * * *

[9] Measures total cyanides when UV-digestor is used, and ''free'' cyanides when UV-digestor is bypassed.

* * * * *

(k) * * *

(1) * * *

Contaminant	Methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	SM Online [22]	Other
1. Alkalinity	Titrimetric		D1067–92, 02 B	2320 B	2320 B	2320 B–97	
	Electrometric titration					I–1030–85 [5].	
2. Antimony	Inductively Coupled Plasma (ICP)—Mass Spectrometry.	200.8 [2]					
	Hydride-Atomic Absorption.		D3697–92, 02.				
	Atomic Absorption; Platform.	200.9 [2]					
	Atomic Absorption; Furnace.			3113 B		3113 B–99	
3. Arsenic [14]	Inductively Coupled Plasma [15].	200.7 [2]		3120 B	3120 B	3120 B–99.	
	ICP-Mass Spectrometry	200.8 [2]					

Contaminant	Methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	SM Online [22]	Other
	Atomic Absorption; Platform.	200.9 [2]					
	Atomic Absorption; Furnace.	.....	D2972–97, 03 C	3113 B	.....	3113 B–99.	
	Hydride Atomic Absorption.	.....	D2972–97, 03 B	3114 B	.....	3114 B–97.	
4. Asbestos	Transmission Electron Microscopy.	100.1 [9]					
	Transmission Electron Microscopy.	100.2 [10]					
5. Barium	Inductively Coupled Plasma.	200.7 [2]	.....	3120 B	3120 B	3120 B–99.	
	ICP-Mass Spectrometry	200.8 [2]					
	Atomic Absorption; Direct	.....	.....	3111D	.....	3111 D–99.	
	Atomic Absorption; Furnace.	.....	.....	3113 B	.....	3113 B–99.	
6. Beryllium	Inductively Coupled Plasma.	200.7 [2]	.....	3120 B	3120 B	3120 B–99.	
	ICP-Mass Spectrometry	200.8 [2]					
	Atomic Absorption; Platform.	200.9 [2]					
	Atomic Absorption; Furnace.	.....	D3645–97, 03 B	3113 B	.....	3113 B–99.	
7. Cadmium	Inductively Coupled Plasma.	200.7 [2]					
	ICP-Mass Spectrometry	200.8 [2]					
	Atomic Absorption; Platform.	200.9 [2]					
	Atomic Absorption; Furnace.	.....	.....	3113 B	.....	3113 B–99.	
8. Calcium	EDTA titrimetric	.....	D511–93, 03 A	3500–Ca D	3500–Ca B	3500–Ca B–97.	
	Atomic Absorption; Direct Aspiration.	.....	D511–93, 03 B	3111 B	.....	3111 B–99.	
	Inductively Coupled Plasma.	200.7 [2]	.....	3120 B	3120 B	3120 B–99.	
	Ion Chromatography	.....	D6919–03.				
9. Chromium	Inductively Coupled Plasma.	200.7 [2]	.....	3120 B	3120 B	3120 B–99.	
	ICP-Mass Spectrometry	200.8 [2]					
	Atomic Absorption; Platform.	200.9 [2]					
	Atomic Absorption; Furnace.	.....	.....	3113 B	.....	3113 B–99.	
10. Copper	Atomic Absorption; Furnace.	.....	D1688–95, 02 C	3113 B	.....	3113 B–99.	
	Atomic Absorption; Direct Aspiration.	.....	D1688–95, 02 A	3111 B	.....	3111 B–99.	
	Inductively Coupled Plasma.	200.7 [2]	.....	3120 B	3120 B	3120 B–99.	
	ICP-Mass spectrometry	200.8 [2]					
	Atomic Absorption; Platform.	200.9 [2]					
11. Conductivity	Conductance	.....	D1125–95 (Reapproved 1999) A.	2510 B	2510 B	2510 B–97.	
12. Cyanide	Manual Distillation followed by	.....	D2036–98 A	4500–CN$^-$ C	4500–CN$^-$ C.		
	Spectrophotometric, Amenable.	.....	D2036–98 B	4500–CN$^-$ G	4500–CN$^-$ G	4500–CN$^-$ G–99.	
	Spectro-photometric Manual.	.....	D2036–98 A	4500–CN$^-$ E	4500–CN$^-$ E	4500–CN$^-$ E–99.	I–3300–85 [5]
	Spectro-photometric Semi-automated.	335.4 [6]					
	Selective Electrode	.....	.....	4500–CN$^-$ F	4500–CN$^-$ F	4500–CN$^-$ F–99.	
	UV, Distillation, Spectrophotometric.	.....	.....	.....	.....	.....	Kelada–01 [17]
	Micro Distillation, Flow Injection, Spectrophotometric.	.....	.....	.....	.....	.....	QuikChem 10–204–00–1–X [18]
	Ligand Exchange and Amperometry [21].	.....	D6888–04	.....	.....	.....	OIA–1677, DW [20]
13. Fluoride	Ion Chromatography	300.0 [6], 300.1 [19]	D4327–97, 03	4110 B	4110 B	4110 B–00.	
	Manual Distill.; Color. SPADNS.	.....	.....	4500–F$^-$ B, D	4500–F$^-$ B, D	4500–F$^-$ B, D–97.	
	Manual Electrode	.....	D1179–93, 99 B	4500–F$^-$ C	4500–F$^-$ C	4500–F$^-$ C–97.	
	Automated Electrode	.....	.....	.....	.....	.....	380–75WE [11]
	Automated Alizarin	.....	.....	4500–F$^-$ E	4500–F$^-$ E	4500–F$^-$ E–97	129–71W [11]
	Capillary Ion Electrophoresis.	.....	.....	.....	.....	.....	D6508, Rev. 2 [23]
14. Lead	Atomic Absorption; Furnace.	.....	D3559–96, 03 D	3113 B	.....	3113 B–99.	
	ICP–Mass spectrometry	200.8 [2]					

Contaminant	Methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	SM Online [22]	Other
	Atomic Absorption; Platform.	200.9 [2]					
	Differential Pulse Anodic Stripping Voltametry.	.....	.....	.....	.....	.....	Method 1001 [16]
15. Magnesium	Atomic Absorption	.....	D511–93, 03 B	3111 B	.....	3111 B–99.	
	ICP	200.7 [2]	.....	3120 B	3120 B	3120 B–99.	
	Complexation Titrimetric Methods.	.....	D511–93, 03 A	3500–Mg E	3500–Mg B	3500–Mg B–97.	
	Ion Chromatography	.....	D6919–03.				
16. Mercury	Manual, Cold Vapor	245.1 [2]	D3223–97, 02	3112 B	.....	3112 B–99.	
	Automated, Cold Vapor	245.2 [1]					
	ICP–Mass Spectrometry	200.8 [2]					
17. Nickel	Inductively Coupled Plasma.	200.7 [2]	.....	3120 B	3120 B	3120 B–99.	
	ICP–Mass Spectrometry	200.8 [2]					
	Atomic Absorption; Platform.	200.9 [2]					
	Atomic Absorption; Direct	.....	.....	3111 B	.....	3111 B–99.	
	Atomic Absorption; Furnace.	.....	.....	3113 B	.....	3113 B–99.	
18. Nitrate	Ion Chromatography	300.0 [6] 300.1 [19]	D4327–97, 03	4110 B	4110 B	4110 B–00	B–1011 [8]
	Automated Cadmium Reduction.	353.2 [6]	D3867–90 A	4500–NO_3^- F	4500–NO_3^- F	4500–NO_3^- F–00.	
	Ion Selective Electrode	.....	.....	4500–NO_3^- D	4500–NO_3^- D	4500–NO_3^- D–00.	601 [7]
	Manual Cadmium Reduction.	.....	D3867–90 B	4500–NO_3^- E	4500–NO_3^- E	4500–NO_3^- E–00.	
	Capillary Ion Electrophoresis.	.....	.....	.....	.....	.....	D6508, Rev. 2 [23]
19. Nitrite	Ion Chromatography	300.0 [6] 300.1 [19]	D4327–97, 03	4110 B	4110 B	4110 B–00	B–1011 [8]
	Automated Cadmium Reduction.	353.2 [6]	D3867–90 A	4500–NO_3^- F	4500–NO_3^- F	4500–NO_3^- F–00.	
	Manual Cadmium Reduction.	.....	D3867–90 B	4500–NO_3^- E	4500–NO_3^- E	4500–NO_3^- E–00.	
	Spectrophotometric	.....	.....	4500–NO_2^- B	4500–NO_2^- B	4500–NO_2^- B–00.	
	Capillary Ion Electrophoresis.	.....	.....	.....	.....	.....	D6508, Rev. 2 [23]
20. Ortho-phosphate [12].	Colorimetric, Automated, Ascorbic Acid.	365.1 [6]	.....	4500–P F	4500–P F.		
	Colorimetric, ascorbic acid, single reagent.	.....	D515–88 A	4500–P E	4500–P E.		
	Colorimetric	.....	.....	.....	.....	.....	I–1601–85 [5]
	Phosphomolybdate;						
	Automated-segmented flow;	.....	.....	.....	.....	.....	I–2601–90 [5]
	Automated Discrete	.....	.....	.....	.....	.....	I–2598–85 [5]
	Ion Chromatography	300.0 [6] 300.1 [19]	D4327–97, 03	4110 B	4110 B	4110 B–00.	
	Capillary Ion Electrophoresis.	.....	.....	.....	.....	.....	D6508, Rev. 2 [23]
21. pH	Electrometric	150.1, 150.2 [1]	D1293–95, 99	4500–H^+ B	4500–H^+ B	4500–H^+ B–00.	
22. Selenium	Hydride-Atomic Absorption.	.....	D3859–98, 03 A	3114 B	.....	3114 B–97.	
	ICP–Mass Spectrometry	200.8 [2]					
	Atomic Absorption; Platform.	200.9 [2]					
	Atomic Absorption; Furnace.	.....	D3859–98, 03 B	3113 B	.....	3113 B–99.	
23. Silica	Colorimetric, Molybdate Blue.	.....	.....	.....	.....	.....	I–1700–85 [5]
	Automated-segmented Flow.	.....	.....	.....	.....	.....	I–2700–85 [5]
	Colorimetric	.....	D859–94, 00.				
	Molybdosilicate	.....	.....	4500–Si D	4500–SiO_2 C	4500–SiO_2 C–97.	
	Heteropoly blue	.....	.....	4500–Si E	4500–SiO_2 D	4500–SiO_2 D–97.	
	Automated for Molybdate-reactive Silica.	.....	.....	4500–Si F	4500–SiO_2 E	4500–SiO_2 E–97.	
	Inductively Coupled Plasma.	200.7 [2]	.....	3120 B	3120 B	3120 B–99.	
24. Sodium	Inductively Coupled Plasma.	200.7 [2]					
	Atomic Absorption; Direct Aspiration.	.....	.....	3111 B	.....	3111 B–99.	
	Ion Chromatography	.....	D6919–03.				
25. Temperature	Thermometric	.....	.....	2550	2550	2550–00.	
26. Thallium	ICP–Mass Spectrometry	200.8 [2]					

Contaminant	Methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	SM Online [22]	Other
	Atomic Absorption; Platform.	200.9 [2].					

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes 1–11, 16–20, and 22–23 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue, NW., Room 3334, Washington, DC 20460 (Telephone: 202–566–2426); 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.*

[1] ''Methods for Chemical Analysis of Water and Wastes,'' EPA/600/4–79/020, March 1983. Available at NTIS, PB84–128677.

[2] ''Methods for the Determination of Metals in Environmental Samples—Supplement I,'' EPA/600/R–94/111, May 1994. Available at NTIS, PB95–125472.

[3] *Annual Book of ASTM Standards,* 1994, 1996, 1999, or 2003, Vols. 11.01 and 11.02, ASTM International; any year containing the cited version of the method may be used. The previous versions of D1688–95A, D1688–95C (copper), D3559–95D (lead), D1293–95 (pH), D1125–91A (conductivity) and D859–94 (silica) are also approved. These previous versions D1688–90A, C; D3559–90D, D1293–84, D1125–91A and D859–88, respectively are located in the *Annual Book of ASTM Standards,* 1994, Vol. 11.01. Copies may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] *Standard Methods for the Examination of Water and Wastewater,* 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. The cited methods published in any of these three editions may be used, except that the versions of 3111 B, 3111 D, 3113 B and 3114 B in the 20th edition may not be used.

[5] Method I–2601–90, Methods for Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediment, Open File Report 93–125, 1993; For Methods I–1030–85; I–1601–85; I–1700–85; I–2598–85; I–2700–85; and I–3300–85 See Techniques of Water Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A–1, 3rd edition., 1989; Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425.

[6] ''Methods for the Determination of Inorganic Substances in Environmental Samples,'' EPA/600/R–93/100, August 1993. Available at NTIS, PB94–120821.

[7] The procedure shall be done in accordance with the Technical Bulletin 601 '' Standard Method of Test for Nitrate in Drinking Water,'' July 1994, PN 221890–001, Analytical Technology, Inc. Copies may be obtained from ATI Orion, 529 Main Street, Boston, MA 02129.

[8] Method B–1011, ''Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography,'' August 1987. Copies may be obtained from Waters Corporation, Technical Services Division, 34 Maple Street, Milford, MA 01757, Telephone: 508/482–2131, Fax: 508/482–3625.

[9] Method 100.1, ''Analytical Method For Determination of Asbestos Fibers in Water,'' EPA/600/4–83/043, EPA, September 1983. Available at NTIS, PB83–260471.

[10] Method 100.2, ''Determination of Asbestos Structure Over 10-μm In Length In Drinking Water,'' EPA/600/R–94/134, June 1994. Available at NTIS, PB94–201902.

[11] Industrial Method No. 129–71W, ''Fluoride in Water and Wastewater,'' December 1972, and Method No. 380–75WE, ''Fluoride in Water and Wastewater,'' February 1976, Technicon Industrial Systems. Copies may be obtained from Bran & Luebbe, 1025 Busch Parkway, Buffalo Grove, IL 60089.

[12] Unfiltered, no digestion or hydrolysis.

[13] Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2x preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (i.e., no sample digestion) will be higher. For direct analysis of cadmium and arsenic by Method 200.7, and arsenic by Method 3120 B, sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Method 3113 B; and lead by Method D3559–90D, unless multiple in-furnace depositions are made.

[14] If ultrasonic nebulization is used in the determination of arsenic by Methods 200.7, 200.8, or SM 3120 B, the arsenic must be in the pentavalent state to provide uniform signal response. For Methods 200.7 and 3120 B, both samples and standards must be diluted in the same mixed acid matrix concentration of nitric and hydrochloric acid with the addition of 100 μL of 30% hydrogen peroxide per 100 mL of solution. For direct analysis of arsenic with Method 200.8 using ultrasonic nebulization, samples and standards must contain 1 mg/L of sodium hypochlorite.

[15] Starting January 23, 2006, analytical methods using the ICP–AES technology may not be used because the detection limits for these methods are 0.008 mg/L or higher. This restriction means that the two ICP–AES methods (EPA Method 200.7 and SM 3120 B) approved for use for the MCL of 0.05 mg/L may not be used for compliance determinations for the revised MCL of 0.010 mg/L. However, prior to January 23, 2006, systems may have compliance samples analyzed with these less sensitive methods.

[16] The description for Method Number 1001 for lead is available from Palintest, LTD, 21 Kenton Lands Road, P.O. Box 18395, Erlanger, KY 41018. Or from the Hach Company, P.O. Box 389, Loveland, CO 80539.

[17] The description for the Kelada-01 Method, ''Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, And Thiocyanate,'' Revision 1.2, August 2001, EPA # 821–B–01–009 for cyanide is available from the National Technical Information Service (NTIS), PB 2001–108275, 5285 Port Royal Road, Springfield, VA 22161. The toll free telephone number is 800–553–6847. **Note:** A 450–W UV lamp may be used in this method instead of the 550–W lamp specified if it provides performance within the quality control (QC) acceptance criteria of the method in a given instrument. Similarly, modified flow cell configurations and flow conditions may be used in the method, provided that the QC acceptance criteria are met.

[18] The description for the QuikChem Method 10–204–00–1–X, ''Digestion and distillation of total cyanide in drinking and wastewaters using MICRO DIST and determination of cyanide by flow injection analysis,'' Revision 2.1, November 30, 2000, for cyanide is available from Lachat Instruments, 6645 W. Mill Rd., Milwaukee, WI 53218. Telephone: 414–358–4200.

[19] ''Methods for the Determination of Organic and Inorganic Compounds in Drinking Water,'' Vol. 1, EPA 815–R–00–014, August 2000. Available at NTIS, PB2000–106981.

[20] Method OIA–1677, DW ''Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry,'' January 2004. EPA–821–R–04–001, Available from ALPKEM, A Division of OI Analytical, P.O. Box 9010, College Station, TX 77842–9010.

[21] Sulfide levels below those detected using lead acetate paper may produce positive method interferences. Test samples using a more sensitive sulfide method to determine if a sulfide interference is present, and treat samples accordingly.

[22] Standard Methods Online are available at *http://www.standardmethods.org.* The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

[23] Method D6508, Rev. 2, ''Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte,'' available from Waters Corp, 34 Maple St, Milford, MA, 01757, Telephone: 508/482–2131, Fax: 508/482–3625.

* * * * *

■ 14. Section 141.24 is amended as follows:

■ a. By revising the introductory text of paragraph (e)(1).

■ b. By revising entries 23, 24, 26, 30, 49, and 50 in the table to paragraph (e)(1).

■ c. By adding a new footnote 5 to the table to paragraph (e)(1).

§ 141.24 Organic chemicals, sampling and analytical requirements.

* * * * *

(e) * * *

(1) The following documents are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be inspected at EPA's Drinking Water Docket, 1301 Constitution Avenue, NW., EPA West, Room 3334, Washington, DC 20460 (Telephone: 202–566–2426); 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.* Method 508A and 515.1 are in *Methods for the Determination of Organic Compounds in Drinking Water,* EPA/600/4–88–039, December 1988, Revised, July 1991. Methods 547, 550 and 550.1 are in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement I,* EPA/600–4–90–020, July 1990. Methods 548.1, 549.1, 552.1 and 555 are in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement II,* EPA/600/R–92–129, August 1992. Methods 502.2, 504.1, 505, 506, 507, 508, 508.1, 515.2, 524.2 525.2, 531.1, 551.1 and 552.2 are in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement III,* EPA/600/R–95–131, August 1995. Method 1613 is titled ''Tetra–through Octa–Chlorinated Dioxins and Furans by Isotope–Dilution HRGC/HRMS,'' EPA/821–B–94–005, October 1994. These documents are available from the National Technical Information Service, NTIS PB91–231480, PB91–146027, PB92–207703, PB95–261616 and PB95–104774, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll free number is: 800–553–6847. Method 6651 shall be followed in accordance with *Standard Methods for the Examination of Water and Wastewater,* 18th edition (1992), 19th edition (1995), or 20th edition (1998), American Public Health Association (APHA); any of these three editions may be used. Method 6610 shall be followed in accordance with *Standard Methods for the Examination of Water and Wastewater,* (18th Edition Supplement) (1994), or with the 19th edition (1995) or 20th edition (1998) of *Standard Methods for the Examination of Water and Wastewater;* any of these publications may be used. The APHA documents are available from APHA, 1015 Fifteenth Street NW., Washington, DC 20005. Other required analytical test procedures germane to the conduct of these analyses are contained in *Technical Notes on Drinking Water Methods,* EPA/600/R–94–173, October 1994, NTIS PB95–104766. EPA Methods 515.3 and 549.2 are available from U.S.

Environmental Protection Agency, National Exposure Research Laboratory (NERL)–Cincinnati, 26 West Martin Luther King Drive, Cincinnati, OH 45268. ASTM Method D 5317–93, 98 (Reapproved 2003) is available in the *Annual Book of ASTM Standards,* (1999), Vol. 11.02, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, any edition containing the cited version of the method may be used. EPA Method 515.4, ''Determination of Chlorinated Acids in Drinking Water by Liquid-Liquid Microextraction, Derivatization and Fast Gas Chromatography with Electron Capture Detection,'' Revision 1.0, April 2000, EPA/815/B–00/001 and EPA Method 552.3, ''Determination of Haloacetic Acids and Dalapon in Drinking Water by Liquid-Liquid Microextraction, Derivatization, and Gas Chromatography with Electron Capture Detection,'' Revision 1.0, July 2003, EPA 815–B–03–002, can be accessed and downloaded directly online at *http://www.epa.gov/safewater/methods/sourcalt.html.* Syngenta Method AG–625, ''Atrazine in Drinking Water by Immunoassay,'' February 2001, is available from Syngenta Crop Protection, Inc., 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419. Telephone: 336–632–6000. Method 531.2 ''Measurement of N-methylcarbamoyloximes and N-methylcarbamates in Water by Direct Aqueous Injection HPLC with Postcolumn Derivatization,'' Revision 1.0, September 2001, EPA 815–B–01–002, can be accessed and downloaded directly online at *http://www.epa.gov/safewater/methods/sourcalt.html.*

Contaminant	EPA Method[1]	Standard Methods	ASTM	Other
* * *	*	*	*	*
23. 2,4–D[4] (as acids, salts, and esters)	515.2, 555, 515.1, 515.3, 515.4.	.....	D5317–93, 98 (Reapproved 2003).	
24. 2,4,5–TP[4] (Silvex)	515.2, 555, 515.1, 515.3, 515.4.	.....	D5317–93, 98 (Reapproved 2003).	
* * *	*	*	*	*
26. Atrazine[2]	507, 525.2, 508.1, 505, 551.1.	.....	.....	Syngenta[5] AG–625
* * *	*	*	*	*
30. Dalapon	552.1 515.1, 552.2, 515.3, 515.4, 552.3.			
* * *	*	*	*	*
49. Pentachlorophenol	515.2, 525.2, 555, 515.1, 515.3, 515.4.	.....	D5317–93, 98 (Reapproved 2003).	
50. Picloram[4]	515.2, 555, 515.1, 515.3, 515.4.	.....	D5317–93, 98 (Reapproved 2003).	
* * *	*	*	*	*

[1] For previously approved EPA methods which remain available for compliance monitoring until June 1, 2001, see paragraph (e)(2) of this section.

[2] Substitution of the detector specified in Method 505, 507, 508, or 508.1 for the purpose of achieving lower detection limits is allowed as follows: Either an electron capture or nitrogen phosphorus detector may be used provided all regulatory requirements and quality control criteria are met.

* * * * *

[4] Accurate determination of the chlorinated esters requires hydrolysis of the sample as described in EPA Methods 515.1, 515.2, 515.3, 515.4, and 555 and ASTM Method D 5317–93, 98 (Reapproved 2003).

[5] This method may not be used for the analysis of atrazine in any system where chlorine dioxide is used for drinking water treatment. In samples from all other systems, any result for atrazine generated by Method AG–625 that is greater than one-half the maximum contaminant level (MCL) (in other words, greater than 0.0015mg/L or 1.5 µg/L) must be confirmed using another approved method for this contaminant and should use additional volume of the original sample collected for compliance monitoring. In instances where a result from Method AG–625 triggers such confirmatory testing, the confirmatory result is to be used to determine compliance.

* * * * *

■ 15. Section 141.25 is amended by revising the table in paragraph (a) to read as follows:

§ 141.25 Analytical methods for radioactivity.

(a) * * *

Contaminant	Methodology	Reference (Method of Page Number)								
		EPA[1]	EPA[2]	EPA[3]	EPA[4]	SM[5]	ASTM[6]	USGS[7]	DOE[8]	Other
Naturally Occurring:										
Gross alpha[11] and beta	Evaporation	900.0	p. 1	00–01	p. 1	302, 7110 B, 7110 B–00.	.....	R–1120–76.		
Gross alpha[11]	Coprecipitation	.....	.....	00–02	.....	7110 C, 7110 C–00.				

Contaminant	Methodology	Reference (Method of Page Number)								
		EPA [1]	EPA [2]	EPA [3]	EPA [4]	SM [5]	ASTM [6]	USGS [7]	DOE [8]	Other
Radium 226	Radon emanation	903.1	p. 16	Ra–04	p. 19	305, 7500–Ra C, 7500–Ra C–01.	D3454–97	R–1141–76	Ra-04	NY [9],
	Radiochemical	903.0	p. 13	Ra-03		304, 7500–Ra B, 7500–Ra B–01.	D2460–97	R–1140–76		GA [14]
Radium 228	Radiochemical	904.0	p. 24	Ra-05	p. 19	7500–Ra D, 7500–Ra D–01.		R–1142–76		NY [9], NJ [10], GA [14]
Uranium [12]	Radiochemical	908.0				7500–U B, 7500–U B–00.				
	Fluorometric	908.1				7500–U C (17th Ed.).	D2907–97	R–1180–76, R–1181–76.	U–04.	
	ICP–MS	200.8 [13]				3125	D5673–03.			
	Alpha Spectrometry			00–07	p. 33	7500–U C (18th, 19th, or 20th Ed.), 7500–U C–00.	D3972–97, 02.	R–1182–76	U–02.	
	Laser Phosphorimetry.						D5174–97, 02.			
Man-Made:										
Radioactive Cesium	Radiochemical	901.0	p. 4			7500–Cs B, 7500–Cs B–00.	D2459–72	R–1111–76.		
	Gamma Ray Spectrometry.	901.1			p. 92	7120, 7120–97.	D3649–91, 98a.	R–1110–76	4.5.2.3.	
Radioactive Iodine	Radiochemical	902.0	p. 6			7500–I B, 7500–I B–00.				
			p. 9			7500–I C, 7500–I C–00.				
						7500–I D, 7500–I D–00.	D3649–91, 98a.			
	Gamma Ray Spectrometry.	901.1			p. 92	7120, 7120–97.	D4785–93, 00a.		4.5.2.3.	
Radioactive Strontium 89, 90.	Radiochemical	905.0	p. 29	Sr–04	p. 65	303, 7500–Sr B, 7500–Sr B–01.		R–1160–76	Sr–01, Sr–02.	
Tritium	Liquid Scintillation	906.0	p. 34	H–02	p. 87	306, 7500–^{3}H B, 7500–^{3}H B–00.	D4107–91, 98 (Reapproved 2002).	R–1171–76.		
Gamma Emitters	Gamma Ray Spectrometry.	901.1			p. 92	7120, 7120–97.	D3649–91, 98a.	R–1110–76	Ga–01–R.	
		902.0				7500–Cs B, 7500–Cs B–00.	D4785–93, 00a.			
		901.0				7500–I B, 7500–I B–00.				

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of documents 1 through 10 and 13 through 14 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue, NW., Room 3334 , Washington, DC 20460 (Telephone: 202–566–2426); 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.*

[1] ''Prescribed Procedures for the Measurement of Radioactivity in Drinking Water,'' EPA 600/4–80–032, August 1980. Available at the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 80–224744.

[2] ''Interim Radiochemical Methodology for Drinking Water,'' EPA 600/4–75–008 (revised), March 1976. Available NTIS, ibid.

[3] ''Radiochemistry Procedures Manual,'' EPA 520/5–84–006, December 1987. Available NTIS, ibid.

[4] ''Radiochemical Analytical Procedures for Analysis of Environmental Samples,'' March 1979. Available at NTIS, ibid. EMSL LV 053917.

[5] ''Standard Methods for the Examination of Water and Wastewater,'' 13th, 17th, 18th, 19th or 20th edition, 1971, 1989, 1992, 1995, 1998. Available at American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. Methods 302, 303, 304, 305 and 306 are only in the 13th edition. Methods 7110B, 7500–Ra B, 7500–Ra C, 7500–Ra D, 7500–U B, 7500–Cs B, 7500–I B, 7500–I C, 7500–I D, 7500–Sr B, and 7500–^{3}H B are in the 17th, 18th, 19th and 20th editions. Method 7110 C is in the 18th, 19th and 20th editions. Method 7500–U C Fluorometric Uranium is only in the 17th Edition, and 7500–U C Alpha spectrometry is only in the 18th, 19th and 20th editions. Method 7120 is only in the 19th and 20th editions. Method 3125 is only in the 20th edition. Methods 7110 B–00, 7110 C–00, 7500–Ra B–01, 7500–Ra C–01, 7500–Ra D–01, 7500–U B–00, 7500–U C–00, 7500–I B–00, 7500–I C–00, 7500–I D–00, 7120–97, 7500–Sr B–01, and 7500–^{3}H B–00 are available online at *http://www.standardmethods.org.* The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

[6] *Annual Book of ASTM Standards,* Vol. 11.01 and 11.02, 2002; ASTM International; any year containing the cited version of the method may be used. Copies of these two volumes and the 2003 version of D 5673–03 may be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959.

[7] ''Methods for Determination of Radioactive Substances in Water and Fluvial Sediments,'' Chapter A5 in Book 5 of *Techniques of Water-Resources Investigations of the United States Geological Survey,* 1977. Available at U.S. Geological Survey (USGS) Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.

[8] ''EML Procedures Manual,'' 28th (1997) or 27th (1990) Editions, Volumes 1 and 2; either edition may be used. In the 27th Edition Method Ra-04 is listed as Ra-05 and Method Ga-01–R is listed as Sect. 4.5.2.3. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.

[9] ''Determination of Ra–226 and Ra–228 (Ra–02),'' January 1980, Revised June 1982. Available at Radiological Sciences Institute for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.

[10] ''Determination of Radium 228 in Drinking Water,'' August 1980. Available at State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.

[11] Natural uranium and thorium-230 are approved as gross alpha calibration standards for gross alpha with co-precipitation and evaporation methods; americium-241 is approved with co-precipitation methods.

[12] If uranium (U) is determined by mass, a 0.67 pCi/µg of uranium conversion factor must be used. This conversion factor is based on the 1:1 activity ratio of U–234 and U–238 that is characteristic of naturally occurring uranium.

[13] ''Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry,'' Revision 5.4, which is published in ''Methods for the Determination of Metals in Environmental Samples—Supplement I,''' EPA 600–R–94–111, May 1994. Available at NTIS, PB 95–125472.

[14] "The Determination of Radium-226 and Radium-228 in Drinking Water by Gamma-ray Spectrometry Using HPGE or Ge(Li) Detectors," Revision 1.2, December 2004. Available from the Environmental Resources Center, Georgia Institute of Technology, 620 Cherry Street, Atlanta, GA 30332–0335, USA, Telephone: 404–894–3776. This method may be used to analyze for radium-226 and radium-228 in samples collected after January 1, 2005 to satisfy the radium-226 and radium-228 monitoring requirements specified at 40 CFR 141.26.

* * * * *

■ 16. Section 141.74 is amended as follows:

■ a. By revising the entry for turbidity in the table in paragraph (a)(1).

■ b. By revising footnotes 1, 8, 10, 11, and 12 to the table in paragraph (a)(1).

■ c. By adding footnote 13 to the table in paragraph (a)(1).

■ d. By revising paragraph (a)(2).

§ 141.74 Analytical and monitoring requirements.

(a) * * *

(1) * * *

Organism	Methodology	Citation [1]
*	* * * * * *	*
Turbidity [13]	Nephelometric Method	2130 B
	Nephelometric Method	180.1 [9]
	Great Lakes Instruments	Method 2 [10]
	Hach FilterTrak	10133 [12]

* * * * *

[1] Except where noted, all methods refer to *Standard Methods for the Examination of Water and Wastewater*, 18th edition (1992), 19th edition (1995), or 20th edition (1998), American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. The cited methods published in any of these three editions may be used. In addition, the following online versions may also be used: 2130 B–01, 9215 B–00, 9221 A, B, C, E–99, 9222 A, B, C, D–97, and 9223 B–97. Standard Methods Online are available at *http://www.standardmethods.org.* The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only Online versions that may be used.

* * * * *

[8] A–1 broth may be held up to 7 days in a tightly closed screw cap tube at 4 °C.

[9] "Methods for the Determination of Inorganic Substances in Environmental Samples," EPA/600/R–93/100, August 1993. Available at NTIS, PB94–121811.

[10] GLI Method 2, "Turbidity," November 2, 1992, Great Lakes Instruments, Inc., 8855 North 55th Street, Milwaukee, WI 53223.

[11] A description of the SimPlate method, "IDEXX SimPlate TM HPC Test Method for Heterotrophs in Water," November 2000, can be obtained from IDEXX Laboratories, Inc., 1 IDEXX Drive, Westbrook, ME 04092, telephone (800) 321–0207.

[12] A description of the Hach FilterTrak Method 10133, "Determination of Turbidity by Laser Nephelometry," January 2000, Revision 2.0, can be obtained from; Hach Co., P.O. Box 389, Loveland, CO 80539–0389, telephone: 800–227–4224.

[13] Styrene divinyl benzene beads (*e.g.* AMCO-AEPA–1 or equivalent) and stabilized formazin (*e.g.* Hach StablCal™ or equivalent) are acceptable substitutes for formazin.

(2) Public water systems must measure residual disinfectant concentrations with one of the analytical methods in the following table. If approved by the State, residual disinfectant concentrations for free chlorine and combined chlorine also may be measured by using DPD colorimetric test kits. In addition States may approve the use of the ITS free chlorine test strip for the determination of free chlorine. Use of the test strips is described in Method D99–003, "Free Chlorine Species (HOCl- and OCl-) by Test Strip," Revision 3.0, November 21, 2003, available from Industrial Test Systems, Inc., 1875 Langston St., Rock Hill, SC 29730. Free and total chlorine residuals may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument provided the chemistry, accuracy, and precision remain the same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five days, or with a protocol approved by the State.

Residual	Methodology	SM [1]	SM Online [2]	Other
Free Chlorine	Amperometric Titration	4500–Cl D	4500–Cl D–00	D1253–03 [3]
	DPD Ferrous Titrimetric	4500–Cl F	4500–Cl F–00.	
	DPD Colorimetric	4500–Cl G	4500–Cl G–00.	
	Syringaldazine (FACTS)	4500–Cl H	4500–Cl H–00.	
Total Chlorine	Amperometric Titration	4500–Cl D	4500–Cl D–00	D1253–03 [3]
	Amperometric Titration (low level measurement).	4500–Cl E	4500–Cl E–00.	
	DPD Ferrous Titrimetric	4500–Cl F	4500–Cl F–00.	
	DPD Colorimetric	4500–Cl G	4500–Cl G–00.	
	Iodometric Electrode	4500–Cl I	4500–Cl I–00.	
Chlorine Dioxide	Amperometric Titration	4500–ClO_2 C	4500–ClO_2 C–00.	
	DPD Method	4500–ClO_2 D.		
	Amperometric Titration	4500–ClO_2 E	4500–ClO_2 E–00.	
	Spectrophotometric			327.0, Revision 1.1 [4]
Ozone	Indigo Method	4500–O_3 B	4500–O_3 B–97.	

[1] All the listed methods are contained in the 18th, 19th, and 20th editions of *Standard Methods for the Examination of Water and Wastewater,* 1992, 1995, and 1998; the cited methods published in any of these three editions may be used.

[2] Standard Methods Online are available at *http://www.standardmethods.org.* The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only Online versions that may be used.

[3] *Annual Book of ASTM Standards,* Vol. 11.01, 2004 ; ASTM International; any year containing the cited version of the method may be used. Copies of this method may be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700 West Conshohocken, PA 19428–2959.

[4] EPA Method 327.0, Revision 1.1, "Determination of Chlorine Dioxide and Chlorite Ion in Drinking Water Using Lissamine Green B and Horseradish Peroxidase with Detection by Visible Spectrophotometry," USEPA, May 2005, EPA 815–R–05–008. Available online at *http://www.epa.gov/safewater/methods/sourcalt.html.*

* * * * *

PART 143—NATIONAL SECONDARY DRINKING WATER REGULATIONS

■ 17. The authority citation for part 143 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

■ 18. Section § 143.4 is amended by revising the table in paragraph (b) to read as follows:

§ 143.4 Monitoring.

* * * * *

(b) * * *

Contaminant	EPA	ASTM [3]	SM [4] 18th and 19th ed.	SM [4] 20th ed.	SM [7] Online	Other
1. Aluminum	200.7 [2]		3120 B	3120 B	3120 B–99.	
	200.8 [2]		3113 B		3113 B–99.	
	200.9 [2]		3111 D		3111 D–99.	
2. Chloride	300.0 [1], 300.1 [6]	D4327–97, 03	4110 B	4110 B	4110 B–00.	
			4500–Cl^- D	4500–Cl^- D	4500–Cl^- D–97.	
		D512–89 (Reapproved 1999) B.	4500–Cl^- B	4500–Cl^- B	4500–Cl^- B–97.	
						D6508, Rev. 2 [8]
3. Color			2120 B	2120 B	2120 B–01.	
4. Foaming Agents			5540 C	5540 C	5540 C–00.	
5. Iron	200.7 [2]		3120 B	3120 B	3120 B–99.	
	200.9 [2]		3111 B		3111 B–99.	
			3113 B		3113 B–99.	
6. Manganese	200.7 [2]		3120 B	3120 B	3120 B–99.	
	200.8 [2]		3111 B		3111 B–99.	
	200.9 [2]		3113 B		3113 B–99.	
7. Odor			2150 B	2150 B	2150 B–97.	
8. Silver	200.7 [2]		3120 B	3120 B	3120 B–99.	I–3720–85 [5]
	200.8 [2]		3111 B		3111 B–99.	
	200.9 [2]		3113 B		3113 B–99.	
9. Sulfate	300.0 [1], 300.1 [6]	D4327–97, 03	4110 B	4110 B	4110 B–00.	
	375.2 [1]		4500–SO_4^{2-} F	4500–SO_4^{2-} F.		
			4500–SO_4^{2-} C, D	4500–SO_4^{2-} C, D.		
		D516–90, 02	4500–SO_4^{2-} E	4500–SO_4^{2-} E.		
						D6508, Rev. 2 [8]
10. Total Dissolved Solids			2540 C	2540 C	2540 C–97.	
11. Zinc	200.7 [2]		3120 B	3120 B	3120 B–99.	
	200.8 [2]		3111 B		3111 B–99.	

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue, NW., Room 3334, Washington, DC (Telephone: 202–566–2426); 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.*

[1] "Methods for the Determination of Inorganic Substances in Environmental Samples," EPA/600/R–93–100, August 1993. Available at NTIS, PB94–120821.

[2] "Methods for the Determination of Metals in Environmental Samples—Supplement I," EPA/600/R–94–111, May 1994. Available at NTIS, PB 95–125472.

[3] *Annual Book of ASTM Standards,* 1994, 1996, 1999, or 2004, Vols. 11.01 and 11.02, ASTM International; any year containing the cited version of the method may be used. Copies may be obtained from the ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] *Standard Methods for the Examination of Water and Wastewater,* 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. The cited methods published in any of these three editions may be used, except that the versions of 3111 B, 3111 D, and 3113 B in the 20th edition may not be used.

[5] Method I–3720–85, *Techniques of Water Resources Investigation of the U.S. Geological Survey,* Book 5, Chapter A–1, 3rd ed., 1989. Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425.

[6] "Methods for the Determination of Organic and Inorganic Compounds in Drinking Water," Vol. 1, EPA 815-R–00–014, August 2000. Available at NTIS, PB2000–106981.

[7] Standard Methods Online are available at *http://www.standardmethods.org.* The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

[8] Method D6508, Rev. 2, "Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte," available from Waters Corp, 34 Maple St., Milford, MA, 01757, Telephone: 508/482–2131, Fax: 508/482–3625.

PART 430—THE PULP, PAPER, AND PAPERBOARD POINT SOURCE CATEGORY

■ 19. The authority citation for part 430 continues to read as follows:

Authority: Sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, as amended, (33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361), and Section 112 of the Clean Air Act, as amended (42 U.S.C. 7412).

■ 20. Section 430.02 is amended by adding paragraph (g) to read as follows:

§ 430.02 Monitoring requirements.

* * * * *

(g) Analyst may use NCASI Method CP–86.07, "Chlorinated Phenolics in Water by *In situ* Acetylation and GC/MS Determination" (January 2002) for determination of certain chlorinated phenols, chlorinated guaiacols, chlorinated catechols, chlorinated benzaldehydes (i.e., vanillins and syringaldehydes), and trichlorsyringol (analytes specified in the method) in bleach plant filtrate as an alternative to EPA Method 1653. NCASI Method CP–86.07 is available from the Publications Coordinator, NCASI, P.O. Box 13318, Research Triangle Park, NC 27709–3318. Telephone: 919–588–1987.

PART 455—PESTICIDE CHEMICALS

■ 21. The authority citation for Part 455 continues to read as follows:

Authority: Secs. 301, 304, 306, 307, and 501, Pub. L. 92–500, 86 Stat. 816, Pub. L. 95–217, 91 Stat. 156, and Pub. L. 100–4 (33 U.S.C. 1311, 1314, 1316, 1317, 1361).

■ 22. Section 455.50 is revised to read as follows:

§ 455.50 Identification of test procedures.

The pesticide active ingredients to which this section applies and for which effluent limitations guidelines and standards are specified in this Part are named, together with the Chemical Abstracts Service (CAS) number (provided to assist in identifying the pesticide active ingredient only) and analytical method(s) designation(s) in Table IG at 40 CFR 136.3(a). Except as provided in 40 CFR 136.5, the discharge parameter values required under the Clean Water Act must be determined by one of the analytical methods cited and described in Table IG at 40 CFR 136.3(a). Pesticide manufacturers may not use the analytical method cited in

Table IB, Table IC, or Table ID of 40 CFR 136.3(a) to make these determinations (except where the method cited in those tables is identical to the method specified in Table IG at 40 CFR 136.3(a)). The full texts of the analytical methods cited in Table IG at 40 CFR 136.3(a) are contained in the *Methods For The Determination of Nonconventional Pesticides In Municipal and Industrial Wastewater, Volume I,* EPA 821-R–93–010A (August 1993 Revision I) and *Volume II,* EPA 821-R–93–010B (August 1993) (the ''Compendium''). Each pesticide chemical manufacturer that is required to determine discharge parameter values under this Part using one of the analytical methods cited in Table IG at 40 CFR 136.3(a) must request in writing a copy of the Compendium from the permit authority or local control authority (as applicable) prior to determining such discharge parameter values, unless the manufacturer already has a copy.

■ 23. Part 455 is amended by removing and reserving Table 7 to Part 455.

PART 465—COIL COATING POINT SOURCE CATEGORY

■ 24. The authority citation for Part 465 continues to read as follows:

Authority: Secs. 301,304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977)(the ''Act''); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

■ 25. Section 465.03 is amended by revising paragraph (c) to read as follows:

§ 465.03 Monitoring and reporting requirements.

* * * * *

(c) The analytical method required for determination of petroleum hydrocarbons (non-polar material) is given under the listing for ''oil and grease'' at 40 CFR 136.3(a), Table IB and must be used after December 31, 2005.

* * * * *

[FR Doc. 07–1073 Filed 3–9–07; 8:45 am]

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Federal Register

Monday,
March 12, 2007

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Amendment 1; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 060901235–7027–02; I.D. 082406C]

RIN 0648–AQ87

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Amendment 1

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

ACTION: Final rule.

SUMMARY: NMFS is implementing approved measures contained in Amendment 1 to the Atlantic Herring Fishery Management Plan (FMP), developed by the New England Fishery Management Council (Council). Amendment 1 establishes a limited access program. Amendment 1 also includes the following measures: An open access incidental catch permit; a change in the management area boundaries; establishment of a purse seine/fixed gear-only area; establishment of a maximum sustainable yield (MSY) proxy; an approach to determining the distribution of area-specific Total Allowable Catches (TACs); a multi-year specifications process; a research quota set-aside for herring-related research; a set-aside for fixed gear fisheries; a change in the midwater trawl gear definition; and additional measures that could be implemented through the framework adjustment process. Also, NMFS informs thepublic of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for these collections.

DATES: Effective June 1, 2007, except for §§ 648.200–648.203, and §§ 648.206–648.207, which are effective April 11, 2007.

ADDRESSES: Copies of supporting documents used by the Council, including the Final Supplemental Environmental Impact Statement (FSEIS) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of the preamble of this final rule. Copies of the FRFA, Record of Decision (ROD), and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, and are also available via the internet at *http://www.nero.nmfs.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to David Rostker at OMB by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285, or to the Federal e-rulemaking portal *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, (978) 281–9259, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements the approved measures of Amendment 1, which was partially approved by NMFS on behalf of the Secretary of Commerce (Secretary) on December 6, 2006. A proposed rule for Amendment 1 was published in the **Federal Register** on September 27, 2006 (71 FR 56446), with comments accepted through November 13, 2006. The details of the development of Amendment 1 were contained in the preamble of the proposed rule and are not repeated here. In the proposed rule, NMFS requested comment on all proposed measures, but specifically highlighted three issues about which it had concern. The three highlighted issues were: (1) the proposed revision of existing provisions in § 648.13 relating to the transfer of fish at sea in order to enforce the possession restrictions proposed in Amendment 1; (2) whether it was necessary to maintain the reserve option as part of the specification process; and (3) whether a vessel that sank, was destroyed, or was sold, and then replaced, should be able to meet the permit requirement for a limited access incidental catch permit if it had been issued a Federal permit to fish for *Loligo* or *Illex* squid, mackerel, butterfish, and/or whiting (a limited access Northeast multispecies permit also serves as a whiting permit), during the 2005 fishing year as of November 10, 2005, and had landed at least 33,000 lb (15 mt) of herring in any calendar year between January 1, 1988, and December 31, 2003. A discussion of these issues, including NMFS consideration of public comments on the issues, follows:

1. Possession Limits for Transfers at Sea

NMFS did not receive any comments on this issue and, since it simply clarifies the applicability of the possession limits for permitted herring vessels, regardless of the disposition of the catch, this final rule includes regulatory language to ensure that such possession limits are maintained and enforced. NMFS did receive comment on other aspects of the proposed regulations governing transfer of fish at sea, and has made revisions to this final rule as a result. These revisions are discussed under changes from the proposed rule and in the response to comment 25 in this preamble.

2. Maintenance of the Reserve

NMFS recieved seven comments on this issue, including one from the Council, all in support of maintaining the reserve provision to ensure that the Council and NMFS have maximum flexibility to respond to changing circumstances in the fishery that arise during the course of the fishing year. In deference to these arguments, and, in particular, to the Council's wishes, this final rule maintains the reserve option as part of the specification process.

3. Vessels that Sank, were Destroyed, or Sold

The Council submitted a comment in support of the provision that would clarify that vessels that sank, were destroyed, or were sold, and then replaced, would be subject to the same permit history criteria as vessels that apply directly for a limited access incidental catch permit. Therefore, to meet the permit history criteria for a limited access incidental catch permit, a vessel that is replacing a vessel that sank, was destroyed, or sold, must have been issued a Federal permit to fish for Atlantic herring, *Loligo* or *Illex* squid, mackerel, butterfish, and/or whiting (a limited access Northeast multispecies permit also serves as a whiting permit), between November 10, 2003, and November 9, 2005.

For purposes of TAC monitoring, Amendment 1's revision to the management area boundaries required NMFS to consider how to attribute landings to the appropriate herring management area. This final rule changes the management boundaries for three of the areas (1B, 2, and 3), with portions of Area 1B and Area 2 redesignated into Area 3. The reporting requirements for herring vessels require vessel owners/operators to report their

landings via interactive voice reporting (IVR) and vessel trip reports (VTR) based on the area boundaries in effect at the time of their fishing trip. Therefore, the catch reports for some fishing trips conducted prior to April 11, 2007 would be attributed to Areas 1B or 2 when they should be attributed to Area 3. The Council did not consider this possibility in Amendment 1, but NMFS has determined that it will use the data available from the fishery (Vessel Monitoring System (VMS), IVR, and VTR) to reallocate, to the extent possible, the area-specific landings that took place prior to the implementation of Amendment 1 to the areas as implemented by this final rule.

Disapproved Measures

After reviewing Amendment 1, its supporting analyses, and public comments received on the amendment, NMFS, on behalf of the Secretary, disapproved one measure in Amendment 1, based on NMFS's determination that the measure was inconsistent with two of the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The disapproved measure concerned the harvest of herring by fixed gear fishermen in Downeast Maine (east of Cutler-the Downeast Maine Fixed Gear Fishery). Amendment 1 proposed to allow the harvest of herring by fixed gear fishermen in Downeast Maine to be exempt from the TACs that govern the fishery. The specifications process would have presumed that catch from this Downeast fishery and the New Brunswick weir fishery would not exceed 20,000 mt. During the fishing season, catch from the Downeast Maine fixed gear fishery would not have been counted against the TAC for Area 1A, and the fixed gear fishery would have been allowed to continue to operate after the Area 1A TAC was reached.

NMFS disapproved this measure because it was, prima facie, inconsistent with National Standard 1 of the Magnuson-Stevens Act. The measure would essentially allow a portion of the fishery to remain completely unregulated, without corresponding conservation benefits. If herring landings from the fixed-gear fishery in this area were to increase dramatically, NMFS would have no means of regulating that catch to ensure the integrity of the TACs established for the fishery. NMFS also found that the measure was inconsistent with National Standard 3, as it would fail to manage the stock throughout its range.

Approved Measures

NMFS approved the remainder of the measures in Amendment 1, although not all approved measures require regulatory text in this final rule. A summary of the approved measures follows. This final rule also includes some non-substantive revisions to the existing text of the herring regulations that were included in the proposed rule but that were not part of Amendment 1; these revisions remove obsolete language, clarify the intent of the Council, and generally improve the organization and clarity of the regulations. NMFS has made several additional changes to clarify the administrative requirements associated with the Amendment 1 measures. These are described under Changes from the Proposed Rule in this preamble.

1. Exemption from Vessel Permit Requirements

The following vessels may fish for, catch, possess, transport, or land Atlantic herring in or from the Exclusive Economic Zone without a Federal permit: A skiff or other similar craft used exclusively to deploy the net in a purse seine operation conducted by a vessel that is permitted to fish for Atlantic herring; and a vessel that possesses herring solely for its own use as bait, providing the vessel does not use or have on board purse seine, midwater trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on any trip on which herring is fished for, possessed, or landed, and does not transfer, sell, trade, or barter such herring.

2. Limited Access Vessel Permits

This final rule implements two new categories of limited access permits that authorize vessels to fish for herring without being limited by a possession limit: (1) An All Areas Limited Access Herring Permit, which authorizes vessels to fish in all herring management areas; and (2) an Areas 2 and 3 Limited Access Herring Permit, which authorizes vessels to fish only in herring management areas 2 and 3. A vessel is eligible for either an All Areas Limited Access Herring Permit or an Areas 2 and 3 Limited Access Herring Permit if it meets both the permit history criteria and the landings requirements specified in this final rule. Vessels that qualify for such permits are not restricted by a possession or trip limit for herring, though they are subject to the other regulations established through this final rule. If 95 percent of an area TAC is reached in a management area, the directed fishery for herring will be closed, and All Areas Limited Access Herring permit holders and Areas 2 and 3 Limited Access Herring permit holders will be limited to 2,000 lb (907.2 kg) of herring per trip, with a limit of one landing per calendar day when fishing in the area.

A vessel is eligible for either an All Areas Limited Access Herring Permit or an Areas 2 and 3 Limited Access Herring Permit it if meets the requisite history and landings criteria. First, the vessel must meet one of the two following permit history criteria: The vessel must have been issued a Federal herring permit (Category 1 or 2) that was valid as of November 10, 2005; or the vessel is replacing a vessel that was issued a Federal herring permit (Category 1 or 2) between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel at the time it sank or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer and the owner/seller documenting that the vessel owner/seller retained the herring permit history and all herring landings history. This written agreement must be consistent with the permit splitting provisions outlined in Section 4 of this preamble.

The vessel must also meet certain landings requirements, depending on the type of permit beings sought. The landings requirements to qualify for the All Areas Limited Access Herring Permit require the vessel and/or any vessel it replaced to have landed at least 500 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS (dealers of Atlantic herring were required to obtain a dealer permit and to comply with reporting requirements as of January 10, 2001). The landings requirements to qualify for an Areas 2 and 3 Limited Access Herring Permit require the vessel and/or any vessel it replaced to have landed at least 250 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS (dealers of Atlantic herring were required to obtain a dealer permit and to comply with reporting

requirements as of January 10, 2001). In those cases where a vessel has sold herring but there are no required dealer receipts, e.g., transfers of bait at sea and border transfers (BT), a vessel owner can submit other documentation that verifies such transactions and proves that the herring thus transferred should be added to the vessel's landings history.

A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has not been replaced, must see Section 4 of this preamble for information about the requirement to obtain a confirmation of permit history (CPH).

3. Limited Access Incidental Catch Herring Permit

This final rule implements a Limited Access Incidental Catch Herring Permit to accommodate vessels that have an incidental catch of herring while fishing in other small-mesh, high-volume fisheries for species including Atlantic mackerel, *Loligo* squid, and whiting. A vessel must meet both the permit history criteria and the eligibility requirements specified in this rule.

A vessel is eligible for and may be issued a limited access Incidental Catch Herring Permit if it meets the requisite permit history and landings requirements. First, the vessel must must have been issued a Federal permit to fish for Atlantic herring, *Loligo* or *Illex* squid, mackerel, butterfish, and/or whiting (a limited access Northeast multispecies permit also serves as a whiting permit), during the 2005 fishing year as of November 10, 2005; or the vessel is replacing a vessel that was issued a Federal permit to fish for Atlantic herring,*Loligo* or *Illex* squid, mackerel, butterfish, and/or whiting (a limited access Northeast multispecies permit also serves as a whiting permit) between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel at the time it sank or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer and the owner/seller documenting that the vessel owner/seller retained the herring permit history and all herring landings history. This written agreement must be consistent with the permit splitting provisions outlined in Section 4 of this preamble.

To qualify for a limited access incidental catch herring permit, the vessel and/or any vessel it replaced must also document that it landed at least 33,000 lb (15 mt) of herring in any calendar year between January 1, 1988, and December 31, 2003, as verified by dealer reports submitted to or documented through valid dealer receipts, if dealer reports were not required by NMFS (dealers of Atlantic herring were required to obtain a dealer permit and to comply with reporting requirements as of January 10, 2001). In those cases where a vessel has sold herring but there are no dealer receipts, e.g., transfers of bait at sea and BT, a vessel owner can submit other documentation that captures such transactions and proves that the herring thus transferred should be added to the vessel's landings history. A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has not been replaced, must see Section 4 of this preamble for information about the requirement to obtain a CPH.

Vessels with limited access incidental catch permits are restricted by a possession limit of 55,000 lb (25 mt) of herring and limited to one landing of herring per calendar day. If 95 percent of an area TAC is reached in a management area, the directed fishery for herring will be closed, and limited access incidental catch permit holders will be limited to 2,000 lb (907.2 kg) of herring per trip, with a limit of one landing per calendar day, when fishing in the area.

A vessel may be issued multiple herring permits. For instance, a vessel could qualify for the Areas 2 and 3 Limited Access Herring Permit, but not the All Areas Limited Access Herring Permit. Such a vessel could also qualify for a Limited Access Incidental Catch Permit. In this case, the vessel could not possess herring in excess of the Limited Access Incidental Catch Herring Permit possession limit of 55,000 lb (25 mt) if it fishes any part of a trip in Area 1, regardless of whether it catches herring from Areas 2 or 3. However, the vessel could catch and land herring in excess of 55,000 lb (25 mt) in or from Areas 2 and 3, provided it stowed its gear while transiting Area 1.

4. Limited Access Vessel Permit Provisions

This final rule establishes measures to govern future transactions related to limited access vessels, such as purchases, sales, or reconstruction. These measures apply to all limited access vessels.

Initial Eligibility

Initial eligibility for a herring limited access permit must be established during the first year after the permit is required. A vessel owner is required to submit an application for a herring limited access permit or CPH by May 31, 2008.

CPH

A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, can apply for and receive a CPH if the herring fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant has to show that the qualifying vessel meets the eligibility requirements for the limited access herring permit in question, and that all other permit restrictions are satisfied (e.g., permit splitting). Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time. A CPH has to be applied for by the due date in order for the applicant to preserve the limited access eligibility of the qualifying vessel. Vessel owners who are issued a CPH can obtain a vessel permit for a replacement vessel based upon the previous vessel's history utilizing the CPH, consistent with the vessel size upgrade restrictions.

The owner of a qualifying vessel that has sunk, been destroyed, or been transferred to another person without the Atlantic herring fishing history, but not yet replaced, must submit an application for a CPH by May 31, 2008.

Landings History

Unless NMFS data already demonstrate that a vessel made landings of herring that satisfy the eligibility criteria for a limited access permit, applicants must submit valid dealer receipts that verify landings. The owners of pair trawl vessels may divide the catch history between the two vessels in the pair through third party verification and supplemental information, such as VTR or dealer reporting. The two owners must apply for a limited access permit jointly and must submit proof that they have agreed to the division of their landings. In those cases where a vessel has sold herring but there are no required dealer receipts, e.g., transfers of bait at sea and BTs, a vessel owner can submit other documentation that captures such transactions and proves that the herring

thus transferred should be added to the vessel's landings history.

Extension of Qualification Period

A vessel owner who can prove that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, and landed the amount of fish required by the limited access program as of December 31, 2004, can apply for and obtain a limited access permit as long as the vessel meets the permit eligibility criteria. This measure provides such vessel owners with a 1-year extension of the qualification period for the landings portion of the eligibility criteria.

Permit Transfers

An Atlantic herring limited access permit and fishery history is presumed to transfer with a vessel at the time it is bought, sold, or otherwise transferred from one owner to another, unless it is retained through a written agreement signed by both parties in the vessel sale or transfer.

Permit Splitting

Limited access herring permits are governed by the permit splitting provision currently in effect for other limited access fisheries in the region. Therefore, a limited access permit may not be issued to a vessel if the vessel's permit or fishing history has been used to qualify another vessel for a limited access permit. This means all limited access permits, including herring limited access permits, must be transferred as a package when a vessel is replaced or sold. As specified in Amendment 1, the permit-splitting provision applies to the transfer/sale of herring fishing history prior to the implementation of this final rule. Thus, vessel owners who sold vessels with limited access permits and retained the herring history with the intention of qualifying a different vessel for the herring limited access program are not eligible for a limited access permit, unless the limited access permits on the sold vessel are permanently relinquished by the owner.

Qualification Restriction

Consistent with previous limited access programs, no more than one vessel may qualify, at any one time, for a limited access permit or CPH based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access permit or CPH, based on one vessel's fishing and permit history, the Administrator, Northeast Region, NMFS (Regional Administrator) will determine who is entitled to qualify for the permit or CPH.

Appeal of Permit Denial

There is an appeals process for applicants who are initially denied a limited access Atlantic herring permit. Such applicants can appeal in writing to the Regional Administrator within 30 days of the denial. Any such appeal may only be based on the grounds that the information used by the Regional Administrator to evaluate the application was incorrect.

The appeals process provides an opportunity for a hearing before a hearing officer designated by the Regional Administrator. The owner of a vessel denied a limited access herring permit may fish for herring, pending the outcome of an appeal, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator will issue such a letter for the pendency of any appeal. If the appeal is ultimately denied, the Regional Administrator will send a notice of final denial to the vessel owner, and the authorizing letter becomes invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the letter of denial.

Vessel Upgrades

A vessel can be upgraded in size, whether through refitting or replacement, and be eligible to retain or renew a limited access herring permit, only if the upgrade complies with the following limitations. The vessel's horsepower (HP) can be increased only once, whether through refitting or replacement. Such an increase cannot exceed 20 percent of the HP of the vessel's baseline specifications, as applicable. The vessel's length, gross registered tonnage (GRT), and net tonnage (NT) can be increased only once, whether through refitting or replacement. Any increase in any of these three specifications of vessel size cannot exceed 10 percent of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade can be done separately from an engine HP upgrade.

This final rule makes no changes to the existing specification of maximum length, size, and HP for vessels engaged in the Atlantic herring fishery (165 ft (50.2 m), 750 GRT (680.3 mt), and 3,000 HP), or existing regulations that exempt U.S. at-sea processing (USAP) vessels from these size limits.

Establishing Vessel Baselines

A limited access vessel's baseline refers to those specifications (length overall, GRT, NT, and HP) from which any future vessel size change is measured. The vessel baseline specifications for an Atlantic herring vessel issued a limited access permit are the specifications of the vessel that is initially issued a limited access permit, as of the date that the vessel owner initially applied for such a permit for that vessel. If a vessel owner is initially issued a CPH instead of a permit, the vessel that provided the CPH eligibility establishes the size baseline against which future vessel size limitations will be evaluated.

Vessel Replacements

The term vessel replacement refers to replacing an existing limited access vessel with another vessel. In addition to addressing increases in vessel size and HP, this final rule requires that the same entity must own both the limited access vessel (or fishing history) that is being replaced, and the replacement vessel.

Voluntary Relinquishment of Eligibility

A vessel owner may voluntarily exit a limited access fishery by permanently relinquishing a vessel's limited access fishing eligibility. In some circumstances, this may allow vessel owners to choose between different permits with different restrictions without being bound by the more restrictive requirement (e.g., lobster permit holders may choose to relinquish their other NE Region limited access permits to avoid being subject to the reporting requirements associated with those other permits). If a vessel's limited access permit history for the herring fishery is voluntarily relinquished to the Regional Administrator, no limited access permit for that fishery can ever be reissued or renewed based on that vessel's history.

Permit Renewals and CPH

Once a vessel has qualified for and been issued a limited access herring permit, a vessel owner must maintain the limited access permit status by renewing the permits on an annual basis or applying for issuance of a CPH. A CPH may be issued to a person who does not currently own a particular fishing vessel, but who has legally retained the fishing and limited access permit history of the vessel for the purpose of transferring it to a replacement vessel at a future date. The CPH provides a benefit to a vessel owner by securing limited access eligibility through a registration system

when the individual does not currently own a vessel.

A vessel's limited access permit history will be cancelled due to the failure to renew, in which case no limited access permit can ever be reissued or renewed based on that vessel's history or to any other vessel relying on that vessel's history.

All limited access permits must be issued on an annual basis by the last day of the permit year for which the permit is required, unless a CPH has been issued. Atlantic herring permits are issued annually for the period May 1–April 30; this is referred to as the permit year. A complete application for a limited access herring permit must be received no later than 30 days before the last day of each permit year: that is, no later than March 31.

5. Open Access Vessel Permit and Possession Limit

Any vessel is eligible to be issued an open access incidental catch permit authorizing the possession and landing of up to 6,600 lb (3 mt) of herring per trip, with a limit of one landing per calendar day. When the TAC in a management area is projected to be reached and the limited access fishery closes, the possession limit for these vessels will be reduced to 2,000 lb (907.2 kg) per trip, with a limit of one landing per calendar day, when fishing in the area. Open access vessels that land more than 2,000 lb (907.2 kg) of herring in any week are required to report their catches on a weekly basis through the IVR reporting program described in Section 6 of this preamble.

To transport herring caught by another fishing vessel, an Atlantic herring carrier vessel must be issued an Atlantic herring permit, not have any gear on board capable of catching or processing herring, and have on board a letter of authorization (LOA) from the Regional Administrator. Carrier vessels are not required to qualify for a limited access permit to possess/transport herring, but must be issued either an open access or a limited access herring permit. While operating as a carrier vessel under an LOA, a carrier vessel is not limited by the possession limits associated with the herring permit issued to the vessel because the vessel is functioning solely as a carrier, with no gear on board capable of catching herring.

6. Reporting Requirements

All limited access herring permit holders are required to report herring catches weekly through the IVR call-in system, and to file a negative report if there are no catches in a specific week. All open access herring vessels that land more than 2,000 lb (907.2 kg) of herring in any week must also report their landings through IVR. All vessels issued a limited access herring permit (with the exception of fixed gear (weirs and stop seines) fishermen) must also install and maintain operable VMS units, and comply with all VMS notification and reporting requirements. Such vessels may power down the VMS unit when in port, but must re-power the VMS unit and enter an appropriate trip designation prior to leaving port. All VTR requirements for permitted herring vessels in the existing regulations remain in effect.

7. Adjustments to Management Area Boundaries

Herring management measures, including TACs, are specified for four management areas (Areas 1A, 1B, 2, and 3). The area boundaries have been revised consistent with recommendations from the Transboundary Resource Assessment Committee (TRAC), a group comprised of both U.S. and Canadian scientists. The boundary between Areas 1B and 3 is revised through this final rule to assure that fish caught in Franklin Swell are attributed to the Georges Bank (GB) spawning component of the stock. The Area 2 and 3 boundary is moved west from 69°00′ W. long. to 70°00′ W. long. through this final rule to better relate catch to the TRAC conclusion that there are two spawning components of the stock: The Gulf of Maine (GOM) and GB/Nantucket Shoals components.

8. Maximum Sustainable Yield

In February 2003, during the development of Amendment 1, the TRAC met to try to come to consensus regarding the status of the stock and the most appropriate values for biological reference points. The two herring assessments presented at the TRAC meeting produced different results, and no overall consensus was reached regarding which assessment is more accurate. Consequently, no specific biological reference points were provided by the joint peer review group. In the face of this scientific uncertainty, the Council decided that it was appropriate to set a relatively conservative proxy for MSY in Amendment 1, until a stock assessment can be completed that specifies an analytical MSY value. Based on input from the Council's Scientific and Statistical Committee (SSC), the proxy reference points specified in the overfishing definition for Atlantic herring were as follows: MSY = 220,000 mt; B_{MSY} (B_{Target}) = 1,100,000 mt; and $B_{threshold}$ = 550,000 mt. The reference points in the FMP were: MSY = 317,000 mt; B_{MSY} (B_{Target}) = 1,100,000 mt; and $B_{threshold}$ = 550,000 mt (the $B_{threshold}$ established in the FMP is ½ B_{MSY}). The Amendment 1 document explained that the proposed proxy reference points would be revised if a new, peer-reviewed stock assessment recommends different reference points. In May 2006, the TRAC reconvened and completed another herring assessment. The TRAC recommended the following reference points: MSY = 194,000 mt, and B_{msy} = 629,000 mt. Based on this and the FMP's guidance, B_{Target} is 629,000 mt, and $B_{threshold}$ is 314,500 mt (½ B_{MSY}). These values are now the new reference points for the Atlantic herring fishery.

9. Specification of Management Measures Including TACs

The Amendment 1 management program establishes a 3-year specification process. If the Council determines that the specifications should be adjusted during the 3-year time period, it may recommend an adjustment through the specification process for one or both of the interim years. No action is required by the Council to maintain the same specifications for all 3 fishing years.

10. TAC Set-Asides to Support Herring-Related Research

Amendment 1 authorizes the Council, in consultation with the Atlantic States Marine Fisheries Commission (Commission), to recommend setting aside 0–3 percent of the TAC from any management area(s) as a research set aside (RSA) to support herring-related research. The RSA can be used to support herring-related research in any management area(s), consistent with the research priorities identified by the Council. Projects funded under an RSA allocation have to enhance understanding of the fishery resource and/or contribute to the body of information upon which management decisions are made.

The Council recommends the specific percentages for the RSA and the management area(s) to which it is applied during the fishery specification process. If there is no RSA allocated, the directed herring fishery will close in each management area when it is projected that 95 percent of the area TAC would be caught. The remaining 5 percent of the TAC will be set aside for catch under a 2,000–lb (907.2–kg) trip limit. If the RSA is specified for a management area, it comes out of the allocation for the directed fishery. For example, if there is a 3 percent set-aside of the Area 1A TAC to support research,

then the Area 1A directed fishery would close when 92 percent of the overall Area TAC was projected to be reached.

The RSA will be administered through a process similar to that specified by the Mid-Atlantic Fishery Management Council in several of its fishery management plans. That mechanism includes the following elements: Individual research projects may apply for the use of more than one herring RSA allocation; researchers may request to harvest the RSA separately from the research trip or as part of the research trip; and research compensation trips need not be conducted by the same vessel, but all trips must be conducted in the management area from which the RSA is allocated.

Multi-year projects can be funded, since the RSA process is intended to be consistent with the 3-year specification process. The RSA must be utilized in the same fishing year in which it is allocated (i.e., RSA and compensation trips cannot be rolled over into future years). However, the money generated from the RSA may be rolled over into, or used to fund research in future years, consistent with the multi-year proposal.

Specification of RSA amounts (percentages) for the upcoming fishing years will be incorporated into the Council's fishery specification package every 3 years, and submitted to NMFS with additional analysis required, as part of the specification package. For each proposal cycle, NMFS must publish a Request for Proposals (RFP) that specifies research priorities identified by the Council and application procedures for funding through the RSA. Since specifications will be set for 3 fishing years, the proposal cycle will also cover 3 fishing years, unless the Council identifies new/different research priorities during the interim years and decides to publish a second RFP.

Research proposals, whenever possible, will be reviewed and approved prior to the publication of final specifications for the upcoming fishing years. In the event that the approved proposals do not make use of any or all of the set-asides, NMFS is authorized to release the unutilized portion of the RSA back to its respective management area(s) when the final specifications are published. If there is unutilized RSA available, NMFS, at the request of the Council, could publish another RFP for either the second or third years of the three-year specifications. In such case, NMFS shall release the unutilized portion of the RSA back to its respective management area(s) for the first year of the specifications and any other year that yields unutilized RSA after an additional RFP is published. The Council also may decide not to publish another RFP, in which case NMFS shall release the unutilized portion of the RSA back to its respective management area(s) for all 3 fishing years covered by the specifications.

11. Purse Seine/Fixed Gear Only Area

This action prohibits the use of midwater trawling vessels from fishing for Atlantic herring in Area 1A from June 1 September 30 of each year. There are no restrictions on the use of midwater trawl gear in Area 1A from October 1 May 31.

12. Measures to Address Fixed Gear Fisheries

One measure in the proposed rule would have set aside 500 mt of the Area 1A TAC for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of Cutler, Maine. In its comments, the Council pointed out that it had not meant to establish this set aside at the 500 mt level, but rather to allow the set aside to be set at any value up to 500 mt. As a result of this comment, NMFS has modified the final rule to clarify that this set aside is up to 500 mt, and not invariably 500 mt. This set-aside is available for harvest using fixed gear west of Cutler in Area 1A until November 1 each year. If the set-aside is not utilized by the fixed gear fisheries west of Cutler in Area 1A by November 1, then it becomes part of the overall allocation for Area 1A. If 95 percent of the Area 1A TAC has already been reached by November 1 (and the directed fishery in Area 1A is therefore closed), the reallocation of the set-aside would not result in re-opening the directed fishery, but would be available for landings under the 2,000–lb (907.2–kg) possession limit.

This measure requires weekly monitoring of fixed gear catches in Area 1A. To ensure that this set-aside is effectively monitored and enforced, fixed gear (weirs and stop seines) fishermen in Area 1A are required to report their herring catches through the IVR reporting system. Because fixed gear fishermen fish exclusively in state waters and are not required to obtain a Federal limited access permit, this IVR reporting requirement has been implemented in state waters by the Commission in Amendment 2 to the Interstate FMP for Atlantic Herring.

13. Measures to Address Bycatch

Measures to address bycatch in the herring fishery were developed in conjunction with Amendment 1, but submitted separately as Framework 43 to the NE Multispecies FMP. Framework 43 was approved and implemented through a final rule that was effective August 15, 2006 (71 FR 46871). Framework 43's regulatory requirements apply to Category 1 herring vessels. Amendment 1 establishes new vessel permit designations. The proposed rule for Amendment 1 stated that the regulatory requirements in Framework 43 would be applicable to all vessels issued limited access permits. The Council comment noted that NMFS should revise the final regulation because it was inconsistent with Amendment 1, which specifies that the measures established by Framework 43 will apply only to vessels issued an All Areas Limited Access Herring Permit or the Areas 2 and 3 Limited Access Herring Permit, not limited access incidental catch permits. NMFS reviewed Amendment 1 and Framework 43 and has revised this final rule accordingly, because it is explicit in the Amendment and the Framework that the measures should apply only to All Areas Limited Access Herring and the Areas 2 and 3 Limited Access fishing permits. This means vessels issued limited access incidental catch permits are prohibited from possessing any NE multispecies.

14. Regulatory Definition of Midwater Trawl Gear

This action modifies the regulatory definition of midwater trawl gear to reflect the recommendations made by the Council's Enforcement Committee to improve the enforceability of the definition and clarify the public's understanding of how the gear should be fished. The restrictions included in the new definition better ensure that the gear cannot be fished on the ocean bottom.

15. Framework Measures

This action expands the framework adjustment process in the FMP by adding the following measures to the list of measures that could be implemented through a framework adjustment to the FMP in the future: In-season adjustments to TACs; measures to address bycatch and bycatch monitoring; and TAC set-aside amounts, provisions, and adjustments.

Comments and Responses

General Comments on Amendment 1

Comment 1: A total of 988 commenters expressed general support for Amendment 1. One commenter opposed the entire amendment.

Response: NMFS has approved the Amendment, with the exception of the

measure concerning the harvest of herring by fixed gear fishermen in Downeast Maine (east of Cutler-the Downeast Maine Fixed Gear Fishery).

Comments on the PS/FG Only Area

Comment 2: A total of 970 commenters supported the measure that would establish a seasonal (June-September) purse seine/fixed gear (PS/FG) only area. These commenters included U.S. Congressman Tom Allen; Bumble Bee/Stinson Seafoods; the Coalition for the Atlantic Herring Fishery's Orderly, Informed, and Responsible Long-Term Development (CHOIR); Conservation Law Foundation (CLF); Environment Maine; the Lobster Conservancy; the Maine Department of Marine Resource (MEDMR); the National Coalition for Marine Conservation; the National Environmental Trust; the Northeast Hook Fisherman's Association; Oceana; the Ocean Conservancy; the Stellwagen Bank Charter Boat Association; and 957 individuals.

These commenters provided the following reasons for supporting the measure: (1) Midwater trawlers have a negative impact on sustainability of the herring resource because they cause localized depletion of herring in the areas where they fish, while such localized depletion is not caused by other herring gears, such as purse seines and weirs; (2) herring are a keystone species in the GOM, and maintaining a healthy inshore herring stock is critically important to lobster fisherman who use herring for bait, and to a wide range of predators that rely on herring as forage, including groundfish, tuna, seabirds, striped bass, and whales; (3) the measure will minimize bycatch of marine mammals and groundfish, which are put at risk due to bycatch by midwater trawls; (4) the measure is an appropriate precautionary measure; and (5) the social and economic impacts of the PS/FG area are more than offset by the biological benefits that will accrue, and the trawlers that are kept out of this area will still have the option of redirecting their efforts to Areas 1B, 2, and 3, which would support one the FMP's goal of encouraging the development of the offshore herring fishery.

Fifty-three commenters argued that the PS/FG only area should be disapproved, including the American Pelagic Association, the Associated Fisheries of Maine (AFM), Cape Seafoods, Inc.; Cold Spring Fish &Supply Company; Garden State Seafood Association (GSSA); Lunds Fisheries, Inc.; Norpel; and 46 individuals. The reasons cited by these commenters for their opposition are that the PS/FG only area violates several of the Magnuson-Stevens Act national standards and other legal requirements, including: (1) National Standard 2 and the Administrative Procedure Act (APA) because the rationale for the proposal does not have an adequate scientific basis; (2) National Standard 4 and the APA because it is an unfair and inequitable allocation of fishing privileges and the Amendment 1 analyses do not demonstrate a rational connection between that allocation and the actual furtherance of optimum yield (OY) or any legitimate goal of the FMP; (3) National Standard 4 because it discriminates between residents of different states; (4) National Standard 7 because the measure fails to, where practicable, minimize costs by imposing costs of a new gear amounting to several hundred thousands of dollars; (5) National Standard 8 and Magnuson-Stevens Act section 303(b)(6), because the Council has not adequately analyzed or given due weight to the present participation of midwater trawls in the fishery, the historical fishing practices and dependence on the fishery, the economics involved, and the impact upon fishing communities adversely affected by this discriminatory provision; and (6) National Standard 9, which requires that conservation and management measures shall, to the extent practicable, minimize bycatch and bycatch mortality. Commenters also claimed that, although Amendment 1 argues that the measure will prevent overfishing, it presents no reasoned argument for that conclusion. Excluding midwater trawlers, the commenters continue, will not reduce the number of herring caught; rather, it will simply mean purse seiners will catch more, and midwater trawlers less. Finally, some commenters claimed that although Amendment 1 argues that it will protect discrete spawning components, it presents no facts or logical connection to support this and, furthermore, it presents no evidence of localized depletion, a term that is not even defined.

Response: The Magnuson-Stevens Act gives considerable latitude to the Councils to develop management measures if, in the judgment of the Council, they conserve and manage a fishery resource. While the comments in opposition to this measure note several legal and statutory requirements that the commenters believe would be violated by the proposed measure, NMFS does not agree with their assertions.

NMFS determined that the measure does not violate National Standard 2 or the APA. National Standard 2 does not limit the Council or NMFS to taking action only in those cases where scientific data support a measure, but rather requires the use of the best scientific information available concerning the issue under review. This action is justified under the APA because it is based on rational decision making and not arbitrary and capricious. With respect to the PS/FG, the Council did take into account the best available scientific information on localized depletion, and adequately weighed that information, along with other factors, in supporting this measure in the Amendment and its supporting analyses. NMFS agrees with the Council that, in the face of scientific uncertainty or in the absence of hard data, as is the case in this situation, the Council can choose to be precautionary and implement measures intended to address or avoid a resource problem. Given the importance of herring as a forage species and its role in the GOM ecosystem, NMFS concludes that it is appropriate to enact this measure now to maintain the health of this resource in the inshore area, as well as the resources that depend on herring as prey, and the businesses that are sustained by a healthy GOM ecosystem. Such weighing and balancing of factors clearly satisfies the APA's requirement that a federal action not be arbitrary and capricious.

This measure does not violate National Standard 4. While National Standard 4 does not allow NMFS to approve measures that were specifically designed to discriminate between the residents of different states, it does not limit NMFS's ability to approve measures that have a different impact on fishermen from different states. The proposed PS/FG measure is not designed to differentiate between fishers based on their state of residence. The measure was designed to regulate the use of a specific gear type in herring Management Area 1A. The fact that vessels fishing from ports in states that are closer to Area 1A may be more impacted than vessels in states that are more distant is an unavoidable geographic fact, not discrimination. In addition, impacted fishers may continue to fish within the area during the PS/FG only season if they use a gear other than midwater trawl gear.

Amendment 1 notes that the PS/FG only measure contributes, ''directly and indirectly,'' to several FMP objectives, including Objective #1 (prevent overfishing) and Objective #5 (full utilization of OY). A more specific linkage to these particular FMP objectives is not provided in the amendment. The measure contributes to

the overall management program, however, thus NMFS concludes it is appropriate to characterize the measure as indirectly supporting the objectives of preventing overfishing and achieving OY. NMFS notes that the achievement of OY does not depend solely on the attainment of the TAC in Area 1A. In fact, in most years, the Area 1A TAC has been fully attained. Achieving OY would require that the TACs allocated to Area 2 and Area 3 be attained, which is unrelated to the PS/FG only measure.

Amendment 1 also notes that the PS/FG only measure contributes, ''directly and indirectly,'' to FMP Objective #2 (prevent overfishing of discrete spawning components), and that the measure is intended to prevent the inshore stock component from becoming depleted or overfished. NMFS agrees with the commenters who note that there is no formal definition of the term ''localized depletion.'' However, such a definition is not required in order for the Council to design a measure to conserve and manage the stock in Area 1A. The Council has now established a seasonal gear restriction in the area to address concerns about the impact of midwater trawling on schools of herring. This gear restriction is an expansion of the area management program that has been in effect for the fishery for a number of years.

Some commenters similarly noted their view that the proposed provision would violate the Magnuson-Stevens Act provision at 303(b), which specifies conditions for the allocation of fishing privileges. However, this measure does not make an allocation of fishing privileges, because any fisher who is eligible for the required herring permit may fish under the specified gear restrictions.

This measure does not violate National Standard 7. The key phrase in this standard is ''where practicable.'' This standard does not require that conservation and management measures minimize costs whenever costs are involved. The PS/FG measure is projected to entail costs to those vessel owners who can no longer fish in the area during the seasonal restriction and who choose to either re-rig so that they can fish in the PS/FG or fish in other areas. These costs were fully considered by the Council and balanced against the potential benefits of the PS/FG area, and in the Council's estimation, with which NMFS concurs, those costs are justified. Furthermore, to the extent that fishermen excluded from the PS/FG have the option to either fish in other areas or re-rig to become purse seiners, the economic impacts of the PS/FG can be partially ameliorated as compared to being completely banned seasonally from this area.

National Standard 8 requires that fishing measures take into account a range of factors, including the importance of fishery resource to ensure the sustained participation of fishing communities and, to the extent practicable, minimize the economic impact on such communities. National Standard 8 does not dictate what measures shall be adopted once those factors are considered. Amendment 1 provides a huge amount of information on the potential impacts of the PS/FG on virtually every stakeholder, including the fishing communities that rely on herring. Those data were fully considered and evaluated by the Council in deciding to support this measure. Similar to the discussion of National Standard 7, above, one of the key phrases in Standard 8 is ''to the extent practicable.'' While various fishing communities are projected to have costs to bear as a result of the implementation of PS/FG, those costs were balanced and minimized in development of the measure to the extent that fishermen excluded from the PS/FG have the options to either fish in other areas or re-rig to become purse seiners, thereby ameliorating the economic impacts of being completely banned seasonally from this area. As noted previously, the requirements at Section 303 (b) of the Magnuson-Stevens Act are specific to the allocation of fishing privileges, not the gear restriction established by the PS/FG measure. Any fisher who is eligible for the required herring permit may fish under the specified gear restrictions.

This measure does not violate National Standard 9. While the Council notes in Amendment 1 that there may be some indirect benefits to recovering groundfish stocks in Area 1A based on data suggesting differences in bycatch rates, species composition of bycatch, and bycatch mortality between purse seines and midwater trawls, the measure is not specifically designed to address bycatch. The commenters did not explain why they believe that the indirect benefits cited would violate the requirement to address bycatch.

Comment 3: One commenter urged NMFS to develop a formal definition of a purse seine vessel. The commenter expressed concern that some midwater trawl vessels that might re-rig to use purse seine gear have holds that are much larger than traditional purse seine vessels. The commenter expressed concern that larger vessels could fish too hard in Area 1A, and requested a definition that would ''limit the ultra-efficiency'' of trawlers that re-rig.

Response: The restriction on the use of midwater trawl gear is not based on vessel size or capacity; it is a gear restriction. The Council specifically notes its intention that midwater trawl owners have the option of re-rigging to use the preferred purse seine gear in Area 1A when midwater trawl gear is prohibited. NMFS has no authority to establish a definition that would substantially modify the Council's intent.

Comments on Limited Access Program

Comment 4: Nine commenters, including CLF, the Ocean Conservancy and seven individuals, argued against approving the limited access program presented in Amendment 1 because it fails to address the issue of overcapacity. These commenters argued, among other things, that the Council should not have allowed vessels to qualify for limited access permits on the basis of landings made after the control date of September 16, 1999. They believe that the Council should reconsider the alternatives that relied on the 1999 control date, and are, therefore, presumably arguing for disapproval of the limited access program in Amendment 1. On the other hand, 22 commenters supported the limited access program for Area 1A in general, but did not support the eligibility criteria, arguing that they would significantly increase effort in this area. Bumble Bee/Stinson Seafoods commented in support of the implementation of the All Areas Limited Access Permit in Amendment 1. Six vessel owners commented in favor of the implementation of the limited access program for Areas 2 and 3.

Response: Control dates are set to alert the fishing community to the possibility, not the certainty, that vessels that enter the fishery after that date might be treated differently than vessels that were in the fishery prior to that date, in the event that a limited access program is implemented. However, a Council is under no obligation to use the control date in establishing criteria for a limited access program. If a Council decides to develop a limited access program, the program must comply with the requirements of the Magnuson-Stevens Act outlined in section 303(b)(6). These requirements include the need to take into account the present and historical participation. With regard to herring, the Council was aware that new vessels had entered the herring fishery since the September 1999 control date and were fishing for herring in various management areas. One of the goals and objectives of

Amendment 1 is to, ''provide, to the extent practicable, controlled opportunities for fishermen and vessels in other Mid-Atlantic and New England fisheries.'' Due to the nature of this fishery and recent developments in shoreside processing, the Council determined that active participants up through 2003 with significant landings should be accommodated in at least some management areas. NMFS concludes that the Council selected eligibility criteria consistent with the requirements of the Magnuson-Stevens Act.

In a similar vein, a Council is under no obligation to select the most restrictive eligibility criteria. The Council properly considered a range of factors in determining the eligibility criteria, and, in particular, the dates during which landings would be used to qualify for limited access permits, paying special attention to the need to balance historic and current participation. Although the Council could have chosen eligibility criteria that would have greatly reduced the number of qualifying vessels and hence the potential effort in Area 1A, the eligibility criteria that the Council chose are reasonable and defensible.

Comment 5: Forty-six commenters, including AFM; APA; Cape Seafoods, Inc.; Cold Spring Fish & Supply Company; GSSA; Lunds Fisheries, Inc.; Montauk Inlet Seafood, Inc.; Norpel, and 38 individuals argued that NMFS should disapprove the establishment of the limited access program for Areas 2 and 3. The reasons cited for this position include the following: (1) The TACs allocated to these areas have never been fully utilized, and landings have actually decreased in recent years, therefore establishing limited access in these areas would violate National Standard 1, which requires measures to, ''prevent overfishing while achieving on a continuing basis, the optimum yield from each fishery;'' (2) limiting access to these areas now will impede the achievement of OY; (3) the capacity analysis in Amendment 1 is flawed because it did not analyze recent and anticipated future growth in capacity or fishing effort in Areas 2 and 3, it over-estimated harvesting capacity, and it does not take into account net capacity growth that may have taken place in the past few years; (4) the amendment simply assumes rather than proves that, absent the imposition of limited access, there would be significant growth in capacity in Areas 2 and 3; (5) it will unfairly eliminate a large percentage of the fleet from access to significant amounts of herring; and (6) the possibility of overcapitalization, in the absence of any serious threat of overfishing or other near-term conservation impact, is not a sufficient basis for the imposition of a limited access system, with all its attendant adverse effects upon competition and free market activity.

Response: Many of the concerns noted by these commenters are the result of the fact that they inappropriately equate historic landings with fleet capacity. The fact that the open access herring fleet has not taken the TACs in Areas 2 and 3 is not a reflection of the capacity of the vessels. Indeed, during the Council debate about annual specifications, members of the herring industry strenuously argued that the existing fleet has the capacity to take the entire OY (including all the TACs for the various areas), thereby precluding any foreign fishing allocation. Many of the same industry members now argue that, because they have not in fact taken the TACs in Areas 2 and 3, those areas should remain open access in order to land OY. However, the capacity to take the TACs in Areas 2 and 3 already exists, as demonstrated in the capacity analysis for the No Action alternative. The reason that the fleet has not done so to date has more to do with the availability of fish and external market factors that it has to do with capacity. In Section 6.1 of Amendment 1, the Council adequately lays out its rationale for limited access and the Council notes that it seeks to avoid the problems experienced in other fisheries as a result of excess capacity. The Council also notes that it seeks to develop a limited access program to address the existing capacity problems in Area 1A and avoid such problems in other areas.

The Magnuson-Stevens Act requires the Council to consider past and present participation when establishing a limited access program, and the Amendment 1 eligibility criteria are predicted to result in a fleet that has the capacity to harvest expected TACs. The analysis of potential harvesting capacity in this Council document is based on the best available information and provides some perspective on what the potential catch of the limited access fleet may be under the Amendment 1 eligibility criteria. The range of potential catch under each of the limited access criteria provided in the analysis was not intended to be an absolute estimate or a direct measure of capacity, but rather a tool for the Council to use to evaluate the potential for the fleet to catch the total TAC for the fishery. It was used during the Council deliberations to compare the limited access alternatives under consideration. The range of potential catch estimates in the analysis represents a minimum estimate, as it only incorporates observed fishing effort for active vessels (2002–2004) that would qualify for a limited access directed fishery permit; qualifying vessels that did not participate in the herring fishery from 2002–2004, as well as limited access incidental catch permit holders and additional qualified vessels that may come forward during the review of Amendment 1 eligibility, are not included in the analysis, so the potential catch of the entire limited access fleet is expected to be higher than the range provided in this analysis. The capacity analysis for the proposed action concluded that the potential catch would range from 161,030 to 198,710 mt, exceeding the 2006 total TAC for the fishery of 150,000 mt. Keeping in mind that this is likely an underestimate of the capacity that will actually result from the implementation of this action, it is clear that the fleet of vessels found eligible for permits under Amendment 1 will have more than enough capacity to take the TAC, not only in Area 1A, but also in Areas 1B, 2, and 3. As to the issue of whether there would be significant growth in capacity in Areas 2 and 3, absent the imposition of limited access, that is not relevant. As already stated above, the capacity already exists in the fleet to take all the TACs and to achieve OY.

The limited access program contained in this action will not unfairly eliminate a large percentage of the fleet from access to significant amounts of herring. Although there is no doubt that certain herring boats will be limited in the amount of herring that they can catch or possibly excluded from the limited access fishery, the vast majority of the historically active and significant participants in the fishery should be able to qualify for one or more limited access permits, and continue to participate in the fishery. Indeed, the eligibility criteria chosen by the Council were specifically intended to enable a wide range of past and present participants in the fishery to qualify for one or more limited access permits. As the Amendment noted, the majority of vessels that are likely not to qualify under this action have not participated in the herring fishery in recent years, and in some cases, for many years. Some have switched to other fisheries like mackerel and squid. The limited access incidental catch permit will likely accommodate the catch of herring on these vessels and allow them to continue normal operations in other fisheries. This should help to mitigate the impacts of not qualifying for a directed fishery permit in Areas 2 and

3. As stated above, by taking action now, and implementing limited access in Areas 2 and 3, the Council hopes to avoid the problem of overcapacity.

NMFS believes that this limited access program complies with National Standards 1 and 4, as well as with the APA, because the decision to make Areas 2 and 3 limited access is clearly based on a reasoned evaluation of the data and the potential capacity of the fleet.

Comment 6: Twenty-eight commenters, including AFM; American Pelagic Association; Bumble Bee/Stinson Seafoods; Cape Seafoods, Inc.; Cold Spring Fish & Supply Company; GSSA; MEDMR; Montauk Inlet Seafood, Inc.; Lunds Fisheries, Inc.; Norpel; and 18 individuals suggested that NMFS should modify the limited access program for Areas 2 and 3 if it does not disapprove it. All of them suggested a longer time period for determining limited access eligibility, with specific suggestions to extend the start of the qualification period back to 1988, and/or forward to 2005 or the date that limited access is implemented. MEDMR advocated for an eligibility criteria for Areas 2 and 3 that would qualify all current fishery participants for the permit, though it did not suggest how such participants would be defined. Twenty-one commenters proposed a phased in ''controlled access'' program.

Response: The Magnuson-Stevens Act authorizes NMFS to approve or disapprove measures proposed by the Council in an FMP or an amendment; there is no authority to modify those measures in a substantive way after being submitted for approval. During the development of Amendment 1, the Council evaluated numerous proposals for limited access eligibility criteria and ultimately adopted those approved in the amendment. Amendment 1's rationale for the limited access program for Areas 2 and 3 is sufficiently justified and NMFS finds no grounds for disapproving the provision, which it finds to be consistent with the Magnson-Stevens Act and other applicable laws.

Comment 7: A number of commenters suggested modifications to the limited access incidental catch permit. These include 21 individuals who recommended a higher possession limit, and 17 who suggested that all vessels issued an Atlantic mackerel permit should be eligible for this herring permit. One commenter believes that the program violates National Standard 9 because it could require vessels targeting mackerel to discard herring if they catch more than the possession limit authorized under their herring permit.

Response: As noted above, NMFS can only approve or disapprove measures in Amendment 1; it cannot modify those measures. In Amendment 1, the Council sufficiently evaluated the likely levels of incidental herring catch in fisheries targeting other species. The possession limits specified in Amendment 1 are intended to provide reasonable levels of incidental catch without creating an incentive for targeting herring. Amendment 1 notes, in Section 5.2.2, that if there are future interactions, particularly in the squid-mackerel fisheries, the Council may take additional action to address those interactions. In light of the findings in Amendment 1 on this subject, NMFS finds no basis for disapproving the limited access incidental catch measures.

Comment 8: Three individuals commented that NMFS should make it possible for fishermen to be able to sell and purchase herring permits without jeopardizing the fishermen's other limited access permits.

Response: As noted previously, NMFS can only approve or disapprove measures in Amendment 1. It cannot modify those measures in a substantive way. NMFS notes, however, that it has never recognized the sale of open access or limited access permits. The regulations for limited access fisheries govern the transfer of limited access permits when a vessel is sold. Furthermore, the Council specifically addressed the issue of how the sale and retention of herring permits and histories would be handled under Amendment 1. See the response to Comment 9 for additional discussion of the provision governing such sales.

Comment 9: Twenty-two commenters including American Pelagic Association; Cape Seafoods, Inc.; Cold Spring Fish & Supply Company; GSSA; Lunds Fisheries, Inc.; Norpel; and 16 individuals argued that the permit-splitting provision in Amendment 1 should be disapproved. They believe that the Amendment 1 regulations should allow a vessel owner who sold a vessel with limited access permits, but who retained the Atlantic herring fishing history, to use the retained history to qualify the onwer's vessel for a limited access herring permit. They argue that the measure in Amendment 1 would retroactively prohibit business transactions that were legitimate at the time they were conducted, and that it is not consistent with the consistency amendment that was implemented in 1999 to standardize the limited access programs for the region's fisheries. They also argue that the measure violates the requirement of the APA for reasoned and non-arbitrary decisionmaking because there is no analysis of the impacts of the measure in the Amendment, and that it would violate the National Standard 4 requirement for the allocation of fisheries privileges to be made in a fair and equitable manner.

Several of the commenters who oppose the permit-splitting provision argue that it will increase, rather than decrease, the capacity of the herring fleet, and outline a specific scenario to support their view that the permit-splitting provision in Amendment 1 would create two herring limited access permits where there only should have been one. Six individuals supported the permit-splitting provision as proposed.

Response: NMFS concludes that Amendment 1 adequately considered and justified this measure and NMFS, therefore, finds no reason to disapprove the provision. At the Atlantic Herring Advisory Panel meeting on October 19, 2005, a number of questions were asked about the manner in which the herring limited access permitting provisions would be implemented. NMFS staff provided information to the Council about the vessel eligibility determinations made in previous limited access programs, and specifically noted that NMFS had been getting inquiries from industry members about buying and selling herring ''landings histories.'' It was pointed out to the Council that previous programs had not recognized this type of activity. For the next several months, the Council discussed various limited access permit issues and adopted provisions that were consistent with previous limited access programs.

Among the provisions adopted by the Council on May 3, 2006, was one referred to as the permit-splitting provision that specified that, ''no more than one vessel may qualify, at any one time, for a limited access permit based on that or another vessel's fishing and permit history.'' NMFS reviewed the language in response to inquiries from constituents, and asked the Council to clarify its intention concerning the measure. NMFS noted that, if implemented as written, vessel owners who had sold a vessel that had been issued one or more limited access permits, but retained only the herring fishing history, would not be able to use the herring history to qualify another vessel for a herring limited access permit. NMFS notified the owners of vessels issued herring permits that the discussion would take place the following week at the Council meeting on April 4, 2006. At that time, the Council clarified that it would maintain the measure as written.

While this clarification to the implementation of Amendment 1 happened in the final stages of the development process, it is not being applied retroactively to previously recognized actions. The actions the commenters took prior to the establishment of the herring limited access program were private transactions between individuals. The fact that regulations in effect at the time did not bar those transactions does not mean that the Council or NMFS recognized them as valid. The commenters' suggestion that the impacts of the measure on vessel owners could have been analyzed implies that they were recorded in a database that could be used in analysis. However, there is no way for the Council or NMFS to identify the existence of these private arrangements.

It is unclear how the commenters conclude that this provision violates National Standard 4. Certainly some vessel owners will be impacted, while others will not, but that, in and of itself, is not the same as an inequitable assignment of fishing privileges. It appears that some vessel owners who took speculative actions in anticipation of limited access going into effect for the herring fishery will find that their strategies did not work, but that does not constitute a violation of National Standard 4.

The commenters who have expressed concern that the permit-splitting provision could increase fleet capacity base their concern on a very specific set of circumstances. NMFS argues that there could be cases where two separate owners could qualify vessels for limited access permits based on fishing conducted using the same hull by each of the owners at different points in the eligibility periods. This would require the original owner to have retained the fishing history and any limited access permits, and to own a vessel that meets the permit requirement. This scenario would require the purchaser of the vessel to have independently accumulated sufficient herring landings to meet the eligibility criteria and to have been issued a herring permit at the required time. While this scenario could potentially occur, it is likely to be very limited in scope, and would not violate any requirement of the Magnuson-Stevens Act or other applicable laws.

Comment 10: One commenter argued that the Amendment discriminates against historic participants in the Downeast Maine herring fishery. The commenter states that herring were not available to the fishermen in this area during the selected qualification years of 1988 and 2003, for the limited access incidental permit. Therefore, the fishermen of that area will only be able to qualify for open access permits. The commenter argues that Downeast fishermen who invested in herring after the control date of 1999 face large losses because they were not able to find herring within the time constraints required to qualify for limited access permits.

Response: The Magnuson-Steven Act requires the Council to consider historic and recent participation in a fishery when it establishes a limited access program. The Council conferred some level of limited access eligibility on participants who made specified levels of landings over a 15-year period. By design, eligibility will not be conferred on vessels that made no herring landings. NMFS has approved the program because it complies with the Magnuson-Stevens Act and other applicable laws and has considered present and historic participation in the fishery.

Comments on Open Access Permit Program

Comment 11: Nineteen commenters, including Cape Seafoods, Inc.; Cold Spring Fish & Supply Company; GSSA; Lunds Fisheries, Inc.; Norpel; and 14 individuals, argued that the herring possession allowance for vessels issued the open access incidental catch permit established by Amendment 1 should be increased from 3 mt to either 5 mt or 25 mt. Many commenters argued that the increase would provide consistency pursuant to National Standards 5, 6, and 9 by ensuring access to the mackerel resource while reducing the potential for regulatory discards.

Response: NMFS can only approve or disapprove measures in Amendment 1; it cannot modify those measures. The Council specifically analyzed in Amendment 1 the level of incidental herring caught by vessels that land Atlantic mackerel, and addressed the issue by establishing the open access and limited access incidental catch permits. The basis for the Council's specification of a 3 mt possession limit, therefore, is well-documented and reasonable, and there is nothing in the Council's specification of a 3–mt possession limit for vessels issued open access incidental catch permits that violates the national standards cited by the commenters. NMFS finds no basis for disapproving the measure.

Comments on Other Measures

Comment 12: One commenter expressed concern that the suite of measures adopted in Amendment 1 represented a ''mix-and-match'' of the measures taken to public hearing by the Council. The commenter noted that the Draft Environmental Impact Statement (DEIS) stated that measures would not be mixed and matched, and that the Council violated this promise. The commenter claimed that the proposed action was not fully analyzed and the public did not have an opportunity to reflect on the impacts of that action.

Response: While the DEIS did discuss analyzing the various alternatives as packages, the Council was under no legal obligation to strictly maintain the alternatives without any modification. In fact, to do so could have been inconsistent with the Council's consideration of the comments received during the public hearings. All of the elements in Amendment 1 fall within the range of packaged alternatives analyzed in the Amendment, and the final impacts were presented to the public for review and comment in the formal submission of Amendment 1. NMFS found that Amendment 1 complies with the requirements of the Magnuson-Stevens Act and other laws.

Comment 13: Ten commenters, including CLF, Oceana, and eight individuals, opposed the 3-year specification setting process, arguing that only yearly specifications will allow the Council to effectively adjust to changing conditions in the fishery.

Response: The intent of this measure is to streamline the regulatory process, reduce the amount of work and resources required to set specifications, and enhance stability in the regulation of the fishery. Extending the specification process from 1 to 3 years could give businesses a longer-term planning horizon and create a more stable environment for business planning. Concerns about the importance of reviewing this fishery on an annual basis are addressed in Amendment 1 through the requirement for the Herring PDT to annually review the status of the stock relative to the overfishing definition and the provision that authorizes the Council to adjust the specifications during the interim years. Thus, the provision will permit the Council to adjust the specifications, if necessary, in response to changes in the condition of the stock or the fishery.

Comment 14: Seventeen commenters including GSSA, AFM, and 15 individuals, argued that the proposed definition of midwater trawl gear should be disapproved because it does not define the term ''chafing gear.'' They note that chafing gear is critical in order to haul gear up stern ramps without sustaining damage to the gear. These commenters recommended that the Council and NMFS convene a working

group to more fully develop the definition, and especially define chafing gear. The Council also submitted a comment requesting that NMFS clarify the definition in the final rule, but made no suggestion for clarification. CLF supported the proposed midwater trawl definition, but urged NMFS to strengthen this provision in the future to ensure that midwater trawl gear is not fished on the bottom.

Response: The Council's definition of midwater trawl gear says in part, that ''the gear may not include discs, bobbins or roller on its footrope or chafing gear as part of the net.'' Industry members raised the gear damage concern to the Council during the development of Amendment 1 but the Council ultimately adopted the definition. NMFS notes that restrictions on the use of chafing gear appear in the regulations for many fisheries in the NE region, including squid, mackerel, butterfish, NE multispecies, summer flounder, black sea bass, and scup, without further definition. NMFS is unaware of any resultant problem with respect to industry compliance or enforcement. NMFS has approved the definition, but notes that the commenters may wish to bring up the issue with the Council, and to offer further refinement of the definition in a future regulatory action.

Comment 15: MDEMR and two individuals opposed the disapproval of the Downeast Maine (east of Cutler-the Downeast Maine Fixed Gear Fishery) exemption from the TACs that govern the fishery. MEDMR disagreed with NMFS's assertion, as stated in the proposed rule for Amendment 1, that this measure would violate National Standard 1, and that NMFS would have no means of regulating the catch to ensure the integrity of the TAC. MEDMR pointed out that its regulations require all herring landings to be reported, and therefore believed the fishery would be regulated. MEDMR also disagreed with NMFS's determination, also stated in the proposed rule for Amendment 1, that this provision would be inconsistent with National Standard 3, the requirement to manage an individual stock unit throughout its range. MEDMR stated that there is increasing evidence that the fish in the area belong to the NW Nova Scotian stock and consequently the requirement to manage an individual stock unit throughout its range may not be applicable. Two herring fishermen commented that disapproving this provision was not fair to those fishermen who operate in the Downeast Maine Fixed Gear Fishery, and would have a dramatic and negative impact on them.

Response: Although MEDMR can monitor the landings of the Downeast Maine Fixed Gear Fishery, NMFS would not have the legal authority to regulate that catch. The provision, as written, means that the Downeast Maine Fixed Gear Fishery would be exempt from the TAC controls; therefore, NMFS would have no authority to close down that fishery and maintain the integrity of the TAC. The measure would essentially allow a portion of the fishery to remain completely unregulated by Federal authority without corresponding conservation benefits. In addition, while in the future the definition of the Atlantic herring stock may change, the best available science specifies that herring is a unit stock. As stated in the proposed rule for Amendment 1, NMFS found the measure to be inconsistent with National Standards 1 and 3 of the Magnuson-Stevens Act, and it was disapproved on December 6, 2006.

Comment 16: CLF and the Ocean Conservancy argued that caution should be used in applying the existing methodology to establishing MSY, because the methodology used in the TRAC process might prove risky in light of the retrospective pattern of the assessment and new and emerging information on ecological relationships, which might alter the way in which various factors are taken into account.

Response: The establishment of MSY is based on the best available science. The TRAC process is continually working to improve the methods it uses to estimate MSY, and will continue to take into account emerging information about the fishery and its interrelations within the ecosystem. Indeed, the most recent TRAC, which was completed after Amendment 1 was finalized, revised MSY downwards. Instead of the proxy value of 220,000 mt, the MSY for the herring stock is now 194,000 mt. NMFS notes that the retrospective pattern in the assessment can be taken into account when recommending Atlantic herring specifications.

Comment 17: Six individuals opposed the establishment of an RSA, arguing that the herring industry has provided financial and in-kind support for such research without the administrative burden and associated cost. Twenty-one commenters support the RSA to support herring research.

Response: NMFS acknowledges the industry's voluntary efforts to participate in and contribute to scientific research and hopes that these efforts continue in the future. There is no basis suggested for disapproving the measure that establishes the RSA. NMFS notes that, each time the Council recommends fishery specifications, it has the option of setting the RSA at zero. None of the TAC would necessarily be set-aside if there is concern about utilization of the resource in a particular area. Moreover, any portion of the RSA that is not allocated for research will be reallocated to the fishery at the beginning of the fishing year.

Comment 18: Six individuals opposed the 500–mt set aside for fixed gear fisherman in Area 1A, because there are no management measures in Federal or state FMPs that preclude this sector from full participation in the fishery, and because of the administrative burdens that such a provision would impose.

Response: The Council developed this measure to ensure access to the herring resource for the fixed gear fishery in Area 1A. Herring is only available to fixed gear fishermen using weirs and stop seines in the inshore GOM if the fish move inshore. Some fixed gear fishermen requested a specific allocation, arguing that the fishery in Area 1A would otherwise harvest the TAC before fish can reach the inshore areas. While there may be other factors related to the decline of the fixed gear fisheries, it is within the authority of the Council to make such an allocation. NMFS notes that its administrative burden will be relatively small. If the set-aside is not utilized by November 1, it would become part of the overall Area 1A allocation. Monitoring measures established through the Commission's Amendment 2 to the Interstate Fishery Management Plan (ISFMP) for Atlantic herring will require the State of Maine to provide the data necessary to monitor the fishery. There may be administrative burden associated with the State program, but that is outside of NMFS's authority.

Comment 19: The Council requested that NMFS clarify that the language regarding the 500–mt set aside should authorize ''up to 500 mt'' to be set aside, as opposed to requiring that 500 mt be set aside. The Council noted that the exclusion of the words ''up to'' in Amendment 1 was an oversight resulting in a very stringent management measure that provides no flexibility to the Council.

Response: NMFS has clarified the regulations, consistent with the Council's intent.

Comment 20: Bumble Bee/Stinson Seafoods supported the revision of the permitting requirements that would require at-sea processing vessels to obtain dealer permits rather than vessel permits.

Response: NMFS is implementing the provision through this final rule.

Comment 21: The Council and six individuals supported the retention of the TAC reserve option in the specifications.

Response: NMFS has left the option for the specifications to include TAC reserves.

Comment 22: The Council urged NMFS to revise the final regulations to clarify thatthe measures specified in Framework 43 regarding the retention of haddock and other regulated species will apply only to vessels issued limited access directed fishing permits, not limited access incidental catch permits.

Response: NMFS reviewed Amendment 1 and Framework 43, and has revised the final rule as requested by the Council because it is explicit in the Amendment and the Framework that the measures should apply only to limited access directed fishing permits the All Areas Limited Access Herring Permit, and the Areas 2 and 3 Limited Access Herring Permit. NMFS notes that this means vessels issued limited access incidental catch permits are prohibited from possessing any NE multispecies.

Comment 23: The Council argued that it did not intend for carrier vessels to be required to possess either a limited access or an open access herring permit. The Council supports the requirement for carrier vessels to obtain a letter of authorization and suggested that a separate permit be issued for carrier vessels, similar to the permit that authorizes carriers to receive up to the BT specification.

Response: The Council specified in Amendment 1 that the herring management measures existing prior to Amendment 1 would remain in effect unless specifically revised in Amendment 1. The provision that requires a carrier vessel to have a herring permit has been in effect since 2000. While Amendment 1 specified that carrier vessels would not be required to be issued a limited access permit, the Amendment did not contemplate the removal of the permit requirement entirely. Therefore, NMFS is maintaining the requirement for U.S. carrier vessels to be issued either an open-access or a limited access herring permit as a required aspect of program administration and as an enforcement tool. The permit is needed to identify the vessel owner, should there be any violation of regulatory requirements, and withholding a permit is one of the most effective enforcement tools. As mentioned in the preamble to this rule, even though carrier vessels will be required to have either an open access or a limited access permit, they will not be required to abide by the possession limits associated with those permits while operating as a carrier vessel. The Magnuson-Stevens Act, as amended by Public Law104–297 sec. 105(e), provides specific authority for NMFS to issue permits to up to 14 Canadian vessels to transport U.S.-caught herring to Canada solely for sardine processing. The amount that can be transferred is specified in the annual specifications as BT. However, the provision is unrelated to the authorization of U.S. carrier vessels.

Comment 24: One commenter suggested that herring carrier vessels should not be prohibited from possessing species other than Atlantic herring. The commenter noted that Framework 43 authorized herring vessels to possess NE multispecies up to specified limits. The commenter suggested that, because carriers receive herring pumped directly onboard from fishing vessels, carrier vessels must be authorized to possess NE multispecies up to the same specified limits.

Response: While this comment would more appropriately have been raised during the public comment period for Framework 43, NMFS recognizes that the Council developed Amendment 1 and Framework 43 jointly, so the issues are directly related in the mind of the public. NMFS finds that the commenter has raised a valid point about an inconsistency in the regulations that would present the industry with a compliance problem and NMFS with an enforcement problem. Thus, NMFS has clarified that the possession allowances applicable to herring fishing vessels are also applicable to herring carrier vessels that receive herring from these vessels.

Comment 25: One commenter requested modifications to the proposed regulations governing the transfer of fish at sea. The commenter suggested that several of the restrictions should be modified because they are inconsistent with fishery operations, particularly in the purse seine fishery. The commenter explained that purse seine operations may catch more herring than estimated when they encircle the fish they are targeting. The amount of herring captured may be more than either the vessel's market demands, or more than the vessel has the capacity to carry. As a result, to alleviate waste and discarding, it has been industry practice for purse seine vessels to share their catch with other fishing vessels, as well as carrier vessels. The proposed rule would restrict this activity in two ways. First, it would prohibit transfers of herring at sea unless the transfer is made to a vessel for personal use as bait, to an at-sea processing vessel, or to a vessel operating exclusively as a carrier vessel under a LOA. Second, the proposed regulations would prohibit a vessel with fishing gear on board from operating as a carrier vessel.

The commenter requests that NMFS revise the final rule to allow the transfer of fish among fishing vessels, provided each vessel involved in such a transfer has been issued a limited access herring permit. Vessels would be required to comply with the herring possession limits associated with their vessel permit. In addition, the commenter stated that NMFS should revise the final rule so that the vessel receiving such a transfer could utilize the fish in any manner, not just for personal use as bait. The commenter noted that the Council intended to limit transfers for bait use only when herring is transferred to a vessel that is not issued a herring permit. The commenter argued that it is illogical to limit the transfer of fish to U.S.-permitted vessels to bait use only, and notes that carrier vessels, in particular, deliver fish that is used for commercial purposes other than bait. The commenter noted that reporting requirements would apply to all such herring, so that the landings would be counted toward the area TACs.

In addition, the commenter requests that NMFS revise the final rule to allow any vessel issued a limited access herring permit to operate as a herring carrier vessel, without being subject to the LOA requirements. The commenter argues that NMFS proposed new measures that would restrict carrier vessels. The commenter believes that industry practice requires limited access vessels to be able to receive transfers at sea without the limitations specified by the LOA, particularly the requirement that the vessel operate exclusively as a herring carrier vessel while issued the LOA, and the requirement for the LOA to be issued for a minimum period of 7 days. The commenter thinks the LOA should be required only for vessels that are not issued a limited access herring permit since, in the commenter's view, the objective is to identify vessels allowed to possess herring and insure that all catch is reported.

Response: In the preamble to the proposed rule, NMFS specifically requested comments on the proposed regulations governing the transfer of fish at sea. NMFS noted that it was proposing a revision of the existing regulatory text because Amendment 1 was establishing several types of vessel permits, each of which authorized the possession of different amounts of herring. The revision was intended to maintain the integrity of the herring possession limits, and required a vessel

transferring herring to comply with the possession restrictions associated with its permit type. The commenter agrees with this aspect of the NMFS revision.

However, the other issues raised by the commenter resulted in a review of the proposed revision that revealed that NMFS omitted from the proposed rule a provision of the existing regulations that should have been maintained. The Council specified in Amendment 1 that the herring management measures existing prior to Amendment 1 would remain in effect unless specifically revised in Amendment 1. Because the transfer at sea provisions were not revised by the Council in Amendment 1, the proposed rule for the transfer of fish at sea should have maintained regulatory text that authorized vessels to transfer fish at sea without restriction on its future use, provided each vessel was issued a valid Atlantic herring permit. Restoring this improperly deleted text will authorize the type of activity identified by the commenter, in which several vessels take on board herring caught in a purse seine deployed by another vessel. It will also authorize the transfer to carrier vessels and U.S. at-sea processing vessels without restriction on the future use of the herring. As noted by the commenter, consistent with the establishment of the limited access program, the final rule specifies that no vessel may possess on board more herring at any time than authorized by the vessel permit it is issued. As noted by the commenter, it is critical that all herring landings be properly reported, so NMFS has also clarified that each vessel must report the herring it lands through the IVR and VTR.

As noted above, unless herring management measures were specifically revised by Amendment 1, the Council specified that existing provisions would be maintained. The existing regulations clearly define herring carrier vessels as vessels issued herring permits, that are prohibited from having gear on board capable of catching herring, and that are issued a LOA. The LOA has a minimum enrollment and specific vessel reporting instructions that are important for NMFS data collection. Therefore, NMFS believes that making any revision to this regulations governing herring carrier vessels would be inconsistent with Amendment 1. NMFS notes that the restoration of the improperly deleted text in the proposed rule may eliminate the need for such a revision. In fact, the carrier vessel LOA would provide an additional opportunity for a vessel issued a limited access herring permit that limits its possession of herring to work with a purse seine vessel for a period of time solely as a carrier vessel. Because such a vessel would have no gear on board, there would be no need to limit the amount of herring it could carry, because it could not have caught the herring.

Comment 26: One commenter requested a revision to the definition of ''processing,'' with respect to the Atlantic herring fishery. The existing definition includes the term ''salting'' as a method of herring processing. However, the commenter believes this would limit the ability of vessels without refrigerated seawater holds to operate as herring carriers, and suggests a revision to allow such vessels to use salt. The commenter notes that there is no ice available to vessels east of Portland, ME, so salt is the best option for such vessels.

Response: NMFS notes that this definition was established in the original FMP, and was not revised in Amendment 1. Therefore, it would not be appropriate to make this modification in this final rule. The commenter may raise the issue to the Council for possible future action.

Comment 27: The Council requested that NMFS clarify the inconsistencies between State and Federal regulations pertaining to the Downeast Maine Fixed Gear Fishery for herring, given that the Commission has already implemented this measure, while NMFS has disapproved it. The Council asked how NMFS will address the inconsistency and how fixed gear catches will be treated with respect to monitoring the Area 1A TAC.

Response: NMFS will rely on data provided by the states, as required by Amendment 2 to the ISFMP for Atlantic Herring, to monitor the landings of the fixed gear sector. These landings will be counted toward the Area 1A TAC.

Comment 28: The Council agrees with the suggestion, made by NMFS in the proposed rule, that vessels that sank, were destroyed, or sold, and then replaced, should be treated the same as vessels that apply directly for a limited access incidental catch permit when it comes to meeting the current permit requirement. Therefore, to meet the current permit requirement for a limited access incidental catch permit, a vessel that is replacing a vessel that sank, was destroyed, or sold must have been issued a Federal permit to fish for Atlantic herring, *Loligo* or *Illex* squid, mackerel, butterfish, and/or whiting (a limited access Northeast multispecies permit also serves as a whiting permit), between November 10, 2003, and November 9, 2005.

Response: This final rule includes this provision.

Changes from the Proposed Rule

NMFS has made several changes to the proposed rule as a result of public comment. Other changes are technical or administrative in nature and clarify or otherwise enhance the administration and/or enforcement of the fishery management program. These changes are listed below in the order that they appear in the classification section and the regulations.

In the section on the collection-of-information requirements for the Paperwork Reduction Act (PRA), the numbers for those requirements have been clarified.

In § 648.2, the definition of Atlantic herring carrier has been clarified to indicate which vessels it applies to.

In § 648.2, the definition of Fixed gear has been added, and, for the purposes of the Atlantic herring fishery it means weirs or stop seines.

In § 648.4, paragraph (a)(10)(ii) is revised to indicate that, even though carrier vessels are required to have a herring permit, they are exempt from the possession limits associated with such permits when operating as a carrier vessel. The paragraph is also revised to clarify that the LOA exempts such a vessel from the VMS and IVR vessel reporting requirements as specified in § 648.7, as well as subpart K. The paragraph is also revised to clarify that a carrier vessel may posses NE multispecies in catches transferred by vessels issued either an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, consistent with the applicable possession limits for such vessels.

In § 648.4, paragraph (a)(10)(iii) is revised to clarify that vessels that exceed the size or HP restrictions are eligible to be issued an at-sea processing permit specified under § 648.6(a)(2)(ii) as opposed to § 648.6(a)(2).

In § 648.4, paragraphs (a)(10)(iv)(B)(*2*)(*i*) and (a)(10)(iv)(B)(*3*)(*i*) are revised to clarify that the subject vessels must have landed, rather than landed and sold, the required amount of herring to qualify for either the All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit. These paragraphs are also revised to clarify that, in those cases where a vessel has sold herring but there are no required dealer receipts, e.g., transfers of bait at sea and BTs, the vessel owner can submit other documentation that captures such transactions and proves that the herring thus transferred should be added to their landings history.

In § 648.4, paragraph (a)(10)(iv)(C)(*1*)(*ii*) is revised to clarify

that a vessel can qualify for an Incidental Catch Limited Access Herring Permit, and CPH, if the vessel is replacing a vessel that was issued a Federal permit for NE multispecies, Atlantic mackerel, Atlantic herring, *Loligo* or *Illex* squid, or butterfish that was issued between November 10, 2003, and November 9, 2005, assuming the vessel meets all the other qualification criteria.

In § 648.4, paragraph (a)(10)(iv)(C)(*2*) is revised to clarify that the subject vessels must have landed, rather than landed and sold, the required amount of herring to qualify for the Incidental Catch Limited Access Herring Permit. This paragraph is also revised to clarify that, in those cases where a vessel has sold herring but there are no required dealer receipts, e.g., transfers of bait at sea and BTs, the vessel owner can submit other documentation that documents such transactions and proves that the herring thus transferred should be added to their landings history.

In § 648.4, paragraphs (a)(10)(iv)(B)(*2*) and (*3*), and in (a)(10)(iv)(C)(*2*) are revised to clarify that landings history must be verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. In the proposed rule, the term records was used instead of reports, when reports is the appropriate term and the one that is used in existing recordkeeping and reporting regulations. The phrase, ''if dealer reports were not required by NMFS,'' was added to clarify what kinds of records are acceptable for verifying landings to qualify for limited access permits.

In § 648.4, paragraph (a)(10)(iv)(D) is revised to clarify that the initial application for all limited access permits established under § 648.4(a)(10)(iv) must submitted by May 31, 2008. This paragraph is also revised to clarify that all limited access permits established under § 648.4(a)(10)(iv) must be renewed on an annual basis, by April 30, the last day of the year for which the permit is issued, unless a CPH has been issued as specified in paragraph § 648.4(a)(10)(iv)(L). Application for such permits must be received no later than March 31, which is 30 days before the last day of the permit year. Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years.

In § 648.4, paragraph (a)(10)(iv)(N) is amended to clarify what is meant by permit splitting. Specifically, permit-splitting means that the same fishing history cannot being used to qualify more than one vessel for a limited access permit, but a single hull can create more than one distinct fishing history, which could be used to qualify for a limited access permit.

In § 648.4, paragraph (a)(10)(iv)(O)(*3*) is amended to clarify that when the Regional Administrator sends a notice of final denial of a permit application to a vessel owner, the LOA becomes ''invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the letter of denial.''

In § 648.6, paragraph (a)(2) is revised to clarify that for transfers-at-sea of mackerel and herring, the at-sea processor receiving the mackerel or the herring is subject to the dealer reporting requirements at § 648.7 (a).

In § 648.7, paragraph (b)(2)(i)(D) is revised to clarify the reporting requirements for vessels transferring herring at sea.

In § 648.13, paragraph (f) is revised to clarify that the cross-reference for the at-sea herring processing permit is § 648.6(a)(2)(ii) as opposed to § 648.6(a)(2), and to clarify that all vessels transferring herring must be issued a LOA.

In § 648.13, language in paragraphs (f)(1)(ii)(B), (f)(2)(ii), and (f)(5) is revised to clarify that possession limits are specified for vessels during area closures as 2,000 lb (907.2 kg) of herring per trip or calendar day.

In § 648.13, language in paragraphs (f)(4) is revised to clarify under what conditions a vessel could no longer tranship herring to a Canadian transshipment vessel.

In § 648.13, paragraph (f)(6) is added to clarify that transfers of herring are allowed if both the transferring and receiving vessels have been issued valid Atlantic herring permits and/or other applicable authorization, such as a LOA from the Regional Administrator, to transfer or receive herring, and that the transferring vessels cannot transfer more herring and the receiving vessel cannot receive more herring than they are authorized to possess by virtue of their herring permit.

In § 648.14, paragraphs (a)(166)-(169) are revised to clarify that these prohibitions apply to vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, not to all limited access vessels.

In § 648.15, paragraph (d)(1) is revised to clarify that federally permitted herring dealers and processors, including at-sea processors, that cull or separate out from the herring catch all fish other than herring in the course of normal operations, must separate out and retain all haddock offloaded from vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit. The proposed language had inadvertently retained the reference to Category 1 herring vessels. In the same section, paragraph (e) is revised to clarify that only vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit are required to retain haddock.

In § 648.15, paragraph (e) is revised to clarify that vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may not discard any haddock that has been brought on the deck or pumped into the hold. This prohibition on discarding does not apply to limited access incidental catch vessels.

In § 648.80, paragraphs (d)(2)(ii), (d)(4)-(6), and (e)(3)-(6) are revised to clarify: (1) that vessels permitted to fish for herring can be issued LOAs for the midwater trawl exempted fishery and the purse seine exempted fishery at the same time; (2) that only vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit are required to notify the observer program 72 hr prior to taking a trip and notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hr prior to landing; and (3) that only vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit are required to retain haddock that has been brought on the deck or pumped into the hold.

In § 648.83, paragraph (b)(4); § 648.85, paragraph (d); and § 648.86, paragraphs (a)(3) and (k) are revised to clarify that the NE multispecies restrictions cited therein apply only to vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit.

In § 648.86, paragraph (k) is revised to clarify that the possession and landing limit for other regulated NE multispecies is 100 lb (45.3 kg) combined, and not for each species.

In § 648.200, paragraph (f)(1) is revised to specifically identify the coordinates of what was formerly referred to as ''the eastern shore of Monomoy island.''

In § 648.201, paragraph (g) is revised to clarify that the set-aside can be set at any value up to 500 mt.

Subpart K is revised to replace all references to ''research quota'' with the term ''research set-aside (RSA).''

In § 648.207, paragraphs (f) and (g) were switched and the reallocation process for RSAs was clarified.

Classification

The Administrator, Northeast Region, NMFS, determined that the amendment implemented by this rule is necessary for the conservation and management of the Atlantic herring fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Council prepared a FSEIS for this amendment. The FSEIS was filed with the Environmental Protection Agency on September 29, 2006 (71 FR 57504). A notice of availability was published on September 6, 2006 (71 FR 52521). In partially approving Amendment 1 on December 6, 2006, NMFS issued a ROD identifying the selected alternative. A copy of the ROD is available from NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A FRFA was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the analyses is available from NMFS (see **ADDRESSES**).

A description of the reasons for this action, the objectives of this action, and the legal basis for the final rule is found in Amendment 1 and the preamble to the proposed rule and this final rules.

Statement of Need for this Action

The purpose of this action is to improve the management of the Atlantic herring fishery by establishing limited access in the fishery; to implement management measures to address growing concerns about the localized depletion of the inshore GOM stock and the importance of herring as a forage species; and to incorporate new stock assessment information as appropriate.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

NMFS received 1,068 public comments on Amendment 1 and its proposed rule. None of the comments received were specific to the IRFA. However, several of the comments referred to the economic impacts on small entities (vessels) of the management measures presented in the proposed rule to implement Amendment 1. Those comments are noted below and can be read in the comments/response section of this preamble.

Comment 2 notes concerns raised by the public concerning the PS/FG only area. Among them were concerns about the costs to vessels of several hundred thousands of dollars if vessels replace their existing midwater trawl gear with purse seine gear, and concern that Amendment 1 did not sufficiently analyze the economics of the measure. The comment did not result in any changes to the proposed measure, for the reasons outlined in response to the comment.

Comments 5, 6, 7, and 9 all expressed concern about the negative impacts of the limited access program on the owners of vessels that did not qualify for a limited access permit for various reasons. Several commentors focused on the impacts resulting from the establishment of limited access for vessels that fish in Areas 2 and 3 and argued that such a program is not needed for management because the annual TACs set for those areas have not been attained. These commenters argued that there is no need to negatively impact any vessel owners as a result. Several commenters expressed concern that some mackerel boats would not qualify for a limited access incidental catch permit, thereby limiting their opportunity to target mackerel and avoid discarding of herring. Several commenters expressed concern about the provision that prohibits permit splitting because of their concern it would have negative impacts on individuals who had purchased or sold herring fishing histories in the past. None of these comments resulted in any changes to the proposed measure, for reasons outlined in the responses to the comments.

Comment 10 noted a concern expressed by an individual from Downeast Maine that the limited access eligibility criteria preclude fishermen from the area from qualifying for limited access because they have not caught herring in recent years. The commenter believes that they will face large financial losses as a result. The comment did not result in any changes to the proposed measure, for reasons outlined in the response to the comment.

Comment 25 raised concerns about the language drafted by NMFS in the proposed rule to govern the transfer of fish at sea. The commenter explained that, as proposed, the language would prevent the herring industry from operating in the manner that had previously been authorized under the FMP. NMFS reviewed the commenter's concerns and revised this final rule to address most of the concerns noted. The revisions are explained in detail in the response to the comment.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

During the 2004 fishing year, 86 vessels landed herring, 40 of which averaged more than 2,000 lb (907.2 kg) of herring per trip. The Small Business Administration's size standard for small commercial fishing entities is $4 million in gross sales. There are no large entities, as defined in section 601 of the Regulatory Flexibility Act (RFA), participating in this fishery. Therefore, there are no disproportionate economic impacts between large and small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action implements some new reporting and recordkeeping requirements and revises some existing requirements. The limited access program will require vessel owners to submit limited access vessel permit application materials in order to determine whether or not their vessel is eligible for a limited access permit. The owner of a vessel that is initially denied a limited access permit may appeal that denial, and an appeal will have to be filed in writing. The existing VMS requirements for the herring fishery are revised to reflect the establishment of new vessel permit types. Similarly, the existing IVR catch reporting requirements are revised to reflect the establishment of new vessel permit types. Finally, individuals seeking to fund research with RSA will have to prepare and submit application materials. Additional information regarding the projected reporting or recordkeeping costs associated with this action was made available for review in NMFS's PRA submission to OMB on August 31, 2006, and is summarized in the discussion of the Small Entity Compliance Guide below.

Other Compliance Requirements

There will be compliance costs associated with the PS/FG area for the owners of vessels that currently use midwater trawl gear. Some vessel owners may decide that it is essential to their fishing operation to continue to operate within Area 1A during the June-September period, and in such cases

these vessels must be re-rigged to use purse seine gear. The costs of re-rigging are estimated in Amendment 1 to range from $300,000 to $500,000, per vessel.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

The Amendment 1 measures that are most likely to directly impact fishery-related businesses and communities are the limited access program, the PS/FG area, the open access incidental catch permit, and the vessel size upgrade restrictions. In all of these instances, the measures adopted in this final rule minimize, to the extent possible, the economic impact on small entities, as compared to all the other, significant alternatives. However, in each case, there are non-selected alternatives that would have had lesser impacts than the adopted measures. The reasons that these alternatives were not substituted for this action by NMFS are discussed below.

Limited Access Program

The FSEIS estimates the numbers of vessels that would qualify for limited access permits under the different alternatives. There were six alternatives in addition to the proposed action and Alternative 1 (No Action). The alternatives distinguish between limited access directed fishery permits, which have no associated possession restrictions, and limited access incidental catch permits, which would have associated limits on the amount of herring that could be possessed. A combination of dealer and logbook data were used to estimate how many vessels would qualify under each of the proposed limited access alternatives. The FSEIS developed estimates for all the alternatives of the number of qualifying vessels, as well as the number of active vessels that would qualify. Active vessels were defined as those vessels that averaged more than 1 mt of herring per trip from 2002–2004. The analysis of active qualifiers was conducted presuming that these vessels would be most likely to participate in the fishery after the establishment of a limited access program. The FSEIS noted that the estimates of qualifying vessels are minimum estimates, as vessel owners may produce additional records demonstrating eligibility during the application process.

Under this action, 31 vessels (28 active) would qualify for limited access fishery permits to fish in all management areas, and 3 additional vessels (1 active) would qualify for limited access directed fishery permits to fish in Areas 2 and 3 only, resulting in 34 vessels qualified for directed fishery permits not subject to possession limits. Another 56 vessels would qualify for limited access incidental catch permits with a 25–mt possession limit, resulting in a total of 90 vessels qualifying for various types of limited access permits.

Under Alternative 2, 36 vessels (31 active) would qualify for limited access fishery permits to fish in all management areas, and 10 additional vessels (4 active) would qualify for limited access fishery permits to fish in Areas 2 and 3 only, resulting in 46 (35 active) vessels qualified for fishery permits not subject to possession limits. Another 37 vessels (1 active) would qualify for limited access incidental catch permits.

Under Alternative 3, 57 vessels (38 active) would qualify for limited access fishery permits to fish in all management areas. No additional vessels would qualify for the limited access directed fishery permit to fish in Areas 2 and 3 only. Another 3 vessels (none active) would qualify for the limited access incidental catch permit (possession limit of 55,000 lb or 25 mt).

Under Alternative 4, 38 vessels (31 active) would qualify for limited access fishery permits to fish in all management areas, and 7 additional vessels (2 active) would qualify for limited access fishery permits to fish in Areas 2 and 3 only (after the trigger was reached). Another 14 vessels (4 active) would qualify for limited access incidental catch permits.

Under Alternative 5, 29 vessels (25 active) would qualify for limited access fishery permits to fish in all management areas, and 13 (6 active) additional vessels would qualify for limited access directed fishery permits to fish in Areas 2 and 3 only. Another 38 vessels (11 active) would qualify for limited access incidental catch permits.

Under Alternative 6, 32 vessels (21 active) would qualify for limited access fishery permits to fish in all management areas, and 13 additional vessels (12 active) would qualify for limited access fishery permits to fish in Areas 2 and 3 only. Another 39 vessels (12 active) would qualify for limited access incidental catch permits (possession limit of 55,000 lb or 25 mt).

Under Alternative 7, 23 vessels (18 active) would qualify for limited access fishery permits to fish in all management areas, and 22 additional vessels (15 active) would qualify for limited access fishery permits to fish in Areas 2 and 3 only. Another 37 vessels (13 active) would qualify for limited access incidental catch permits (possession limit of 33,000 lb or 15 mt).

The FSEIS analyzed active qualifiers and used two measures to estimate how much herring those qualifiers might land in the future under the various management alternatives. The first measure multiplies a vessel's highest number of DAS per year observed from 2002 through 2004 by their average metric tons landed per DAS over the same time period. The sum of the products is reported to provide a first level estimation of what the group of vessels that qualify under a given alternative is likely to land. The second measure is similar to the first except that DAS are multiplied by the highest yearly average metric tons per day-at-sea observed over the 2002 to 2004 time period. The sum of these vessel-level products represents a second-level estimation of potential catch by alternative. This second measure provides an estimate of potential landings under the assumption that vessels produce at their highest average catch rates and at their highest level of effort observed in recent years. These two potential catch measures are used to evaluate future profits under the various alternatives.

One way to compare the economic impacts of this action and the non-selected alternatives is to see how all the alternatives might affect landings, because landings potentially relate to profits, depending on the TACs that are established. For 28 active vessels that qualify for all areas under this action, the potential catch of the limited access fleet ranges from 161,030 to 198,710 mt. The additional active vessel that qualifies for Area 2 and 3 increases the potential catch slightly, though the specific amount of the increase cannot be provided in this document due to data confidentiality restrictions.

This action ranks in the middle of the alternatives relative to the potential catch in Area 1A. Four alternatives (no action and Alternatives 2, 3, and 4) would result in higher potential catch, and three alternatives (Alternatives 5, 6, and 7) would result in lower potential catch from the area. When the catch from all of the management areas is evaluated, there are six alternatives (no action, and Alternatives 2, 3, 4, 6, and 7) that result in potential catch higher than this action. The highest potential

catch is associated with the no-action alternative, at 170,087 to 209,368 mt. Alternative 5 has a lower potential catch than the chosen alternative.

Thus, based on this capacity analysis, there are six alternatives that would have likely minimized the economic impact on small entities, compared to this action, because they would have allowed for higher potential catches, and higher catches would result in higher revenues for the fishery as a whole. Although the action implemented by this rule will not minimize such economic impacts, it was selected because it was deemed to do the best job of meeting the goals of the FMP and pertinent legal requirements. This action strikes a balance between past and present participation in the fishery, and the need to limit capacity in the fishery. The analysis of the future herring landings under the various limited access alternatives was done to make relative comparisons, and omitted the constraint on landings that would be posed by future TAC controls. As noted in the preamble, Amendment 1 establishes MSY at 194,000 mt so future landings could not exceed that level under any alternative selected.

In terms of number of vessels, this action qualifies the fewest vessels into the limited access fishery (34 vessels). This result differs for the all areas limited access permit versus the areas 2 and 3 limited access permit. Four alternatives would qualify more vessels than this action to fish in any of the management areas, while two would qualify fewer vessels. The fact that this action is the most restrictive in terms of the total number of vessels that qualify for these limited access fisheries is due to the nature of the Area 2 and 3 qualification criteria. The Area 2 and 3 criteria are the most restrictive of the alternatives considered due to the selection of 1993 as a start date for the qualification period (versus 1988). Only three additional vessels would qualify for limited access fishery permits in Areas 2 and 3.

The majority of vessels that would not qualify for a limited access permit under this action have not been active in the herring fishery in recent years, and in some cases, for many years. Some have switched to other fisheries, including those targeting Atlantic mackerel and squid. The limited access incidental catch permit is likely to accommodate the catch of herring on these vessels and allow them to continue normal operations in other fisheries. This should help to mitigate the impacts of not qualifying for a limited access fishery permit in Areas 2 and 3. This action is the least restrictive alternative for the limited access incidental catch permit that was considered in this amendment.

While there were alternatives evaluated in Amendment 1 that would have qualified more vessels than this action, the Magnuson-Stevens Act provides the Council with the latitude to design a limited access program in a variety of ways, provided it complies with specific requirements outlined in the law. NMFS has no authority to modify a limited access program that is found to comply with these requirements, and NMFS has determined that the program in Amendment 1 complies with the requirements.

Purse Seine/Fixed Gear Only

The impact of this measure was evaluated by considering how many of the vessels that would qualify for the limited access fishery permit to fish in all management areas utilize midwater trawl gear. The analysis showed that a total of 22 vessels used midwater trawl gear (6 used single trawls and 16 used pair trawls) and would be affected by the measure that would establish Area 1A from June through September as a PS/FG area. Amendment 1 noted that landings data show that 4 of the midwater trawl vessels and 13 of the pair trawl vessels actively fished in Area 1A during the June through September period. To compensate for potential losses from not being able to fish in the PS/FG area, the excluded vessels could fish in other management areas or be re-rigged to utilize purse seine gear in Area 1A during the time of the restriction. The costs of re-rigging are estimated in Amendment 1 to range from $300,000 to $500,000 per vessel.

Four of the alternatives, in addition to this action, included a measure to establish a PS/FG area. Under Alternatives 3, 4, and 6, vessels using single and paired midwater trawls would have been prohibited from fishing for Atlantic herring in Area 1A east of 69°W. long. from June 1 - September 30 of each fishing year. Under this action and Alternative 7, the PS/FG only area would be for all of Area 1A, from June 1 - September 30 of each fishing year.

In terms of numbers of vessels, Alternative 3 would result in the greatest number of vessels excluded from the respective gear restricted area. However, while this action and Alternative 7 impact fewer vessels, the impacts of the PS/FG measure are the highest in these alternatives because the gear restricted area is much larger for these alternatives (all of Area 1A versus 1A east of 69° W. long). This means that a greater share of the midwater trawl vessels' landings from Area 1A could be lost. This impact is especially important during the summer months, when demand for herring to be used as lobster bait is at its peak.

Of all the alternatives, the gear restriction in this action would likely result in the greatest economic loss when the impacts are considered independent of the other measures because more midwater trawl vessels qualify for limited access directed fishery permits in Area 1 under this action than under Alternative 7. Consequently, more vessels may incur losses due to the gear restricted area. However, when compared to Alternative 7 and considered in the context of the limited access program, the overall impacts of this measure are mitigated to some extent. There are midwater trawl vessels that qualify for limited access under this action that would be negatively impacted by the gear restriction. However, under Alternative 7 they would have been restricted entirely from Area 1A because they would not qualify under the limited access program, resulting in a comparatively greater negative impact. These vessels are less impacted by this action even though it appears that the impacts from the gear restricted area are greater. This is because they can fish in Area 1 from October to May when they would not have qualified at all for the directed fishery in Area 1 under other alternatives (Alternative 7, for example).

During 2002 through 2004, the affected midwater trawl vessels landed an average of 12 million lb of herring (5,472 mt, worth about $892,000), and the pair trawl vessels landed 47 million lb of herring (21,298 mt, worth about $3,472,000) per season (June through September) from Area 1A. These landings represent 68 percent and 60 percent of the total Area 1A landings by these single and paired midwater trawl vessels, respectively. The midwater trawl vessel landings ranged from 586,429 lb to 7.4 million lb (266 to 3,372 mt), and the pair trawl vessel landings ranged from 190,416 lb to 7.2 million lb (90 to 3,263 mt). To compensate for potential losses, midwater trawl vessels will have the choice to either seek alternative fishing grounds or fisheries and/or to re-rig to purse seine in Area 1A during the time of the restriction.

Although, relative to the PS/FG only area, all of the other alternatives would have minimized impacts on small entities, this action is being implemented rather than disapproved because NMFS has found the measure to comply with the requirements of the

Magnuson-Stevens Act and other applicable laws.

Open Access Incidental Catch Permit

Amendment 1 considered an alternative to the open access incidental catch permit that would have authorized such vessels to possess 11,000 lb (5 mt) of herring per trip. This alternative would have provided a small added economic benefit to those vessels that received such a permit by allowing a higher possession of herring than the 6,600 lb (3 mt) established by this action. The measure being enacted was selected as the best way to minimize bycatch and provide limited opportunities for vessels targeting other species to land small amounts of herring, without providing an incentive for vessels to target herring.

Vessel Upgrade Restrictions

This action restricts future size increases for limited access vessels. Such a vessel's HP can be increased only once, whether through refitting or replacement. This increase cannot exceed 20 percent of the HP of the vessel's baseline specifications, as applicable. The vessel's length, GRT, and NT can be increased only once, whether through refitting or replacement. Any increase in any of these three specifications of vessel size cannot exceed 10 percent of the vessel's baseline specifications, as applicable. These are the same limitations enacted previously for other limited access fisheries in the NE region. Amendment 1 included two alternatives to this action. The first, no action, would have allowed herring vessels to increase in size up to 165 ft (50.3 m) in length overall, 750 GRT (680.4 mt), and 3,000 HP. Alternative 3 would have allowed a vessel to increase its HP once, provided the increase would not have exceeded 50 percent of the HP of the vessel's baseline HP. Alternative 3 would also have allowed the vessel's length, GRT, and NT to have been increased once, provided none of the size attributes increased by more than 25 percent of the vessel's baseline specifications.

The proposed upgrade restrictions are more restrictive concerning the size of future vessels than the two alternatives mentioned above. Because the restriction affects future action, it will not impact all vessel owners. Some vessel owners may be impacted, particularly those that had immediate plans to upgrade from their initial limited access vessel. However, the restrictions are intended to maintain the capacity of the limited access fleet near its initial level, while providing a reasonable opportunity to replace limited access vessels.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits in the New England and Mid-Atlantic regions. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**).

This final rule contains one new collection-of-information requirement and 5 modified collection-of-information requirements subject to the PRA, all of which have been approved by the Office of Management and Budget (OMB) under control numbers 0648–0202, 0348–0040, 0348–0043, 0348–0044, 0348–0046. The one new collection-of-information requirement is incorporated into OMB #0648–0202, while the 5 modified collection-of-information requirements are included in OMB #s 0648–0202, 0348–0040, 0348–0043, 0348–0044, 0348–0046.

The public reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395.7285.

The new reporting requirements and the estimated time for a response are as follows:

1. Time required of vessel owners to: (a) prepare application materials, 80 hr (0.58 hr per response)(three year average); (b) prepare CPH application materials, 5 hr (0.5 hr per response); (c) appeal permit denials, 20 hr (2.0 hrs per response); and (d) apply for vessel replacement/upgrade, 60 hr (3.0 hrs per response) (OMB #0648–0202);

2. VMS requirement for vessels fishing under limited access permits OMB #0648–0202, 709 hr (6.50 hr reporting annually per respondent, installation having already occurred);

3. IVR reporting requirements for weir fishermen west of Cutler, ME fishing under the limited access permits, OMB #0648–0202, 8 hr (0.8 hr annually per respondent); and

4. Application materials for the RSA program OMB # 0348–0040, 0348–0043, 0348–0044, and 0348–0046, 80 hr (4 hr per response).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 1, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 15 CFR part 902, and 50 CFR part 648 are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding in the left column under 50 CFR, in numerical order, an entry for § 648.207, and in the right column, in corresponding position, the control numbers -0348–0043, 0348–0044, 0348–0040, and 0348–0046, to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648–)
* * * * *	
50 CFR	

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648–)
* * * * *	
648.207	–0348–0043, 0348–0044, 0348–0040, and 0348–0046.
* * * * *	

50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 3. The authority citation for part 648 continues to read as follows:

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

■ 4. In § 648.2, the definition of ''Category 1 herring vessel'' is removed, the definitions of ''Atlantic herring carrier'' and ''Midwater trawl'' are revised, and the definition of ''Fixed gear'' and ''Limited access herring vessel'' are added to read as follows:

§ 648.2 Definitions.

* * * * *

Atlantic herring carrier means a fishing vessel that may receive and transport herring caught by another fishing vessel, provided the vessel has been issued a herring permit, does not have any gear on board capable of catching or processing herring, and has on board a letter of authorization from the Regional Administrator to transport herring caught by another fishing vessel.

* * * * *

Fixed gear, for the purposes of the Atlantic herring fishery, means weirs or stop seines.

* * * * *

Limited access herring vessel means a vessel that has been issued a valid permit for any type of limited access herring vessel permit described in § 648.4.

* * * * *

Midwater trawl gear means trawl gear that is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time. The gear may not include discs, bobbins, or rollers on its footrope, or chafing gear as part of the net.

* * * * *

■ 5. In § 648.4, paragraphs (a)(10) and (c)(2)(vi) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(10) *Atlantic herring vessels*–(i) Except as provided herein, any vessel of the United States must have been issued and have on board a valid Atlantic herring permit to fish for, possess, or land Atlantic herring in or from the EEZ. This requirement does not apply to the following:

(A) A vessel that possesses herring solely for its use as bait, providing the vessel does not use or have on board purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on any trip in which herring is fished for, possessed, or landed, and does not transfer, sell, trade, or barter such herring;

(B) A skiff or other similar craft used exclusively to deploy the net in a purse seine operation during a fishing trip of a vessel that is duly permitted under this part; or

(C) At-sea processors that do not harvest fish, provided that at-sea processor vessels are issued the at-sea processor permit specified under § 648.6(a)(2).

(ii) *Atlantic herring carrier.* An Atlantic herring carrier must have been issued and have on board a herring permit and a letter of authorization to receive and transport Atlantic herring caught by another permitted fishing vessel. The letter of authorization exempts such a vessel from the VMS and IVR vessel reporting requirements as specified in § 648.7 and subpart K of this part, except as otherwise required by this part. An Atlantic herring carrier vessel must request and obtain a letter of authorization from the Regional Administrator, and must report all herring carried from each vessel on a given trip in its Fishing Vessel Trip Report. The Fishing Vessel Trip Report must include the vessel name. Carrier vessels under a letter of authorization may not conduct fishing activities except for purposes of transport or possess any fishing gear on board the vessel; must be used exclusively as an Atlantic herring carrier vessel; and must carry observers if required by NMFS. There is a minimum enrollment period of 7 calendar days. While operating under a valid LOA, such vessels are exempt from any herring possession limits associated with the herring vessel permit categories. Herring carrier vessels under an LOA may not possess, transfer, or land any species except for Atlantic herring, except that they may possess Northeast multispecies transferred by vessels issued either an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, consistent with the applicable possession limits for such vessels.

(iii) *Vessel size limitation.* A vessel of the United States is eligible for and may be issued an Atlantic herring permit to fish for, possess, or land Atlantic herring in or from the EEZ, except for any vessel that is ≥165 ft (50.3 m) in length overall (LOA), or > 750 GRT (680.4 mt), or the vessel's total main propulsion machinery is > 3,000 horsepower. Vessels that exceed the size or horsepower restrictions are eligible to be issued an at-sea processing permit specified under § 648.6(a)(2)(ii).

(iv) *Limited access herring permits.* (A) A vessel of the United States that fishes for, possesses, or lands more than 6,600 lb (3 mt) of herring, except vessels that fish exclusively in state waters for herring, must have been issued and carry on board one of the limited access herring permits described in paragraphs (a)(10)(iv)(A)(*1*)–(*3*) of this section, including both vessels engaged in pair trawl operations.

(*1*) *All Areas Limited Access Herring Permit.* A vessel may fish for, possess, and land unlimited amounts of herring from all herring areas, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*2*) *Areas 2 and 3 Limited Access Herring Permit.* A vessel may fish for, possess, and land unlimited amounts of herring from herring Areas 2 and 3, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*3*) *Limited Access Incidental Catch Herring Permit.* (*i*) A vessel that does not qualify for either of the permits specified in paragraphs (a)(10)(iv)(A)(*1*) and (*2*) of this section may fish for, possess, and land up to 55,000 lb (25 mt) of herring from any herring area, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*ii*) A vessel that does not qualify for an All Areas Limited Access Herring Permit specified in paragraph (a)(10)(iv)(A)(*1*) of this section, but qualifies for the Areas 2 and 3 Limited Access Herring Permit specified in paragraph (a)(10)(iv)(A)(*2*) of this section, may fish for, possess, and land up to 55,000 lb (25 mt) of herring from Area 1, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(B) *Eligibility for All Areas and Areas 2 and 3 Limited Access Herring Permits, and Confirmation of Permit History (CPH).* A vessel is eligible for and may be issued either an All Areas or Areas 2 and 3 Limited Access Herring Permit if it meets the permit history criteria in paragraph (a)(10)(iv)(B)(*1*) of this section and the relevant landing requirements in paragraphs (a)(10)(iv)(B)(*2*) and (*3*) of this section.

(*1*) *Permit history criteria for All Areas and Areas 2 and 3 Permits.* (*i*) The vessel must have been issued a Federal herring permit (Category 1 or 2) that was valid as of November 10, 2005; or

(*ii*) The vessel is replacing a vessel that was issued a Federal herring permit (Category 1 or 2) between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel being replaced at the time it sunk or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer of the vessel being replaced and the owner/seller of the vessel, documenting that the vessel owner/seller retained the herring permit and all herring landings history.

(*2*) *Landings criteria for the All Areas Limited Access Herring Permit*–(*i*) The vessel must have landed at least 500 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. In those cases where a vessel has sold herring but there are no required dealer receipts, e.g., transfers of bait at sea and border transfers, the vessel owner can submit other documentation that documents such transactions and proves that the herring thus transferred should be added to their landings history. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction, or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(B)(*2*)(*i*) of this section through December 31, 2004.

(*iii*) Landings criteria for vessels using landings from pair trawl operations. To qualify for a limited access permit using landings from pair trawl operations, the owners of the vessels engaged in that operation must agree on how to divide such landings between the two vessels and apply for the permit jointly, as verified by dealer reports submitted to NMFS or valid dealer receipts, if dealer reports were not required by NMFS.

(*3*) *Landings criteria for the Areas 2 and 3 Limited Access Herring Permit.* (*i*) The vessel must have landed at least 250 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. In those cases where a vessel has sold herring but there are no required dealer receipts, e.g., transfers of bait at sea and border transfers, the vessel owner can submit other documentation that documents such transactions and proves that the herring thus transferred should be added to their landings history. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(B)(*3*)(*i*) of this section through December 31, 2004.

(*iii*) *Landings criteria for vessels using landings from pair trawl operations.* See paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section.

(*4*) *CPH.* A person who does not currently own a fishing vessel, but owned a vessel that satisfies the permit eligibility requirements in paragraph (a)(10)(iv)(B) of this section that has sunk, been destroyed, or transferred to another person, but that has not been replaced, may apply for and receive a CPH that allows for a replacement vessel to obtain the relevant limited access herring permit if the fishing and permit history of such vessel has been retained lawfully by the applicant as specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and consistent with (a)(10)(iv)(N) of this section.

(C) *Eligibility for Incidental Catch Limited Access Herring Permit, and CPH.* A vessel is eligible for and may be issued an Incidental Limited Access Herring Permit if it meets the permit history criteria specified in paragraph (a)(10)(iv)(C)(*1*) of this section and the landings criteria in paragraph (a)(10)(iv)(C)(*2*) of this section.

(*1*) *Permit history criteria.* (*i*) The vessel must have been issued a Federal permit for Northeast multispecies, Atlantic mackerel, Atlantic herring, *Loligo* or *Illex* squid, or butterfish that was valid as of November 10, 2005; or

(*ii*) The vessel is replacing a vessel that was issued a Federal permit for Northeast multispecies, Atlantic mackerel, Atlantic herring, *Loligo* or *Illex* squid, or butterfish that was issued between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel being replaced at the time it sunk or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer of the vessel being replaced and the owner/seller of the vessel, documenting that the vessel owner/seller retained the herring permit and all herring landings history.

(*2*) *Landings criteria for Incidental Catch Limited Access Herring Permit.* (*i*) The vessel must have landed at least 15 mt of herring in any calendar year between January 1, 1988, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. In those cases where a vessel has sold herring but there are no required dealer receipts, e.g., transfers of bait at sea and border transfers, the vessel owner can submit other documentation that documents such transactions and proves that the herring thus transferred should be added to the vessel's landings history. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under*

construction, reconstruction or purchase contract. An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(C)(*2*)(*i*) of this section through December 31, 2004.

(*3*) *CPH*. A person who does not currently own a fishing vessel, but owned a vessel that satisfies the permit eligibility requirements in paragraph (a)(10)(iv)(C) of this section that has sunk, been destroyed, or transferred to another person, but that has not been replaced, may apply for and receive a CPH that allows for a replacement vessel to obtain the relevant limited access herring permit if the fishing and permit history of such vessel has been retained lawfully by the applicant as specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and consistent with (a)(10)(iv)(N) of this section.

(D) *Application/renewal restrictions*. (*1*) No one may apply for an initial limited access Atlantic herring permit or a CPH under paragraph (a)(10)(iv)(L) of this section after May 31, 2008, or after the abandonment or voluntary relinquishment of permit history as specified in paragraph (a)(10)(iv)(M) of this section.

(*2*) An applicant who submits written proof that an eligible vessel was sold, with the seller retaining the herring history through a written agreement signed by both parties to the sale or transfer, may not utilize such history if the vessel's history was used to qualify another vessel for another limited access permit.

(*3*) All limited access permits established under this section must be issued on an annual basis by April 30, the last day of the year for which the permit is issued, unless a CPH has been issued as specified in paragraph (a)(10)(iv)(L) of this section. Application for such permits must be received no later than March 31, which is 30 days before the last day of the permit year. Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years.

(E) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(F) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(G) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(H) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(I) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(J) *Vessel baseline specifications*. See paragraph (a)(1)(i)(H) of this section. If a herring CPH is initially issued, the vessel that provided the CPH eligibility establishes the size baseline against which future vessel size limitations shall be evaluated.

(K) *Limited access permit restrictions*. [Reserved]

(L) *Confirmation of Permit History*. See paragraph (a)(1)(i)(J) of this section.

(M) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(N) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section. Notwithstanding paragraph (a)(1)(i)(L), vessel owners applying for a limited access herring permit who sold vessels with limited access permits and retained the herring history before applying for the initial limited access herring permit may not use the herring history to qualify a vessel for the initial limited access herring permit, if the issuance of such permit would violate the restrictions on permit splitting. Furthermore, notwithstanding paragraph (a)(1)(i)(L), for the purposes of the Atlantic herring fishery, herrings landings history generated by separate owners of a single vessel at different times may be used the qualify more than one vessel, provided that each owner applying for a limited access permit, demonstrates that he/she created distinct fishing histories, and that such histories have been retained.

(O) *Appeal of denial of permit*–(*1*) *Eligibility*. Any applicant eligible to apply for a limited access herring permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal may only be based on the grounds that the information used by the Regional Administrator was based on incorrect data. The appeal must be in writing, and must state the specific grounds for the appeal.

(*2*) *Appeal review*. The Regional Administrator shall appoint a designee who shall make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator shall issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(*3*) *Status of vessels pending appeal*. A vessel denied a limited access herring permit may fish under the limited access herring permit, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator shall issue such a letter for the pendency of any appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the letter of denial.

(v) *Open access herring permit*. A vessel that has not been issued a limited access Atlantic herring permit may obtain an open access incidental Atlantic herring permit to possess up to 6,600 lb (3 mt) of herring per trip, and is limited to one landing per calendar day.

* * * * *

(c) * * *

(2) * * *

(vi) Prior to issuance of a limited access Atlantic herring permit, a VMS unit provided by a NMFS-approved vendor must be installed and NMFS must receive a notice from the vendor that the VMS is activated.

* * * * *

■ 6. In § 648.6, paragraph (a)(2) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) * * *

(2) *At-sea processors*–(i) *At-sea mackerel processors*. Notwithstanding the provisions of § 648.4(a)(5), any vessel of the United States must have been issued and carry on board a valid at-sea processor permit issued under this section to receive over the side, possess, and process Atlantic mackerel harvested in or from the EEZ by a lawfully permitted vessel of the United States.

(ii) *Atlantic herring at-sea processing permit*. A vessel of the United States, including a vessel that is > 165 ft (50.3 m) length overall, or > 750 GRT (680.4 mt), is eligible to obtain an Atlantic herring at-sea processing permit to receive and process Atlantic herring subject to the U.S. at-sea processing

(USAP) allocation published by the Regional Administrator pursuant to § 648.200. Such a vessel may not receive and process Atlantic herring caught in or from the EEZ unless the vessel has been issued and has on board an Atlantic herring at-sea processing permit.

(iii) *Reporting requirements.* An at-sea processor receiving Atlantic mackerel or Atlantic herring is subject to dealer reporting requirements specified in § 648.7(a).

* * * * *

■ 7. In § 648.7, paragraph (b)(2)(i) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(2) * * *

(i) *Atlantic herring owners or operators.* The owner or operator of a vessel issued a permit to fish for Atlantic herring must report catches (retained and discarded) of herring each week to an IVR system, as specified in paragraphs (b)(2)(i)(A) and (B) of this section. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, week in which species are caught, pounds retained, pounds discarded, management areas fished, and pounds of herring caught in each management area for the week. The IVR reporting week begins on Sunday at 0001 hrs (12:01 AM) local time and ends Saturday at 2400 hrs (12 midnight). Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight, Eastern Time, each Tuesday for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(A) The owner or operator of any vessel issued a limited access herring permit must submit an Atlantic herring catch report via the IVR system each week, regardless of how much herring is caught (including weeks when no herring is caught), unless exempted from this requirement by the Regional Administrator.

(B) An owner or operator of any vessel issued an open access permit for Atlantic herring that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(C) Atlantic herring IVR reports are not required from Atlantic herring carrier vessels.

(D) *Reporting requirements for vessels transferring herring at sea.* A vessel that transfers herring at sea must comply with these requirements in addition to those specified at § 648.13(f).

(*1*) A vessel that transfers herring at sea to a vessel that receives it for personal use at bait must report all transfers on the Fishing Vessel Trip Report.

(*2*) A vessel that transfers herring at sea to an authorized carrier vessel must report all transfers weekly via the IVR system and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the carrier vessel is defined as a trip for the purposes of reporting requirements and possession allowances.

(*3*) A vessel that transfers herring at sea to an at-sea processor must report all transfers weekly via the IVR system and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the at-sea processing vessel is defined as a trip for the purposes of the reporting requirements and possession allowances. For each trip, the vessel must submit a Fishing Vessel Trip Report and the at-sea processing vessel must submit the detailed dealer report specified in paragraph (a)(1) of this section.

(*4*) A transfer between two vessels issued valid Atlantic herring permits requires each vessel to submit a Fishing Vessel Trip Report, filled out as required by the LOA to transfer herring at sea, and a weekly IVR report for the amount of herring each vessel lands.

* * * * *

■ 8. In § 648.9, paragraph (c)(2)(i)(C) is revised to read as follows:

§ 648.9 VMS requirements.

(c) * * *

(2) * * *

(i) * * *

(C) The vessel has been issued a limited access herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such vessels must activate the VMS unit and enter the appropriate activity code prior to leaving port.

* * * * *

■ 9. In § 648.13, paragraph (f) is revised to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(f) *Atlantic herring.* With the exception of transfers made to an at-sea processing vessel issued the required permit under § 648.6(a)(2)(ii), any person or vessel, including any vessel issued an Atlantic herring permit, is prohibited from transferring, receiving, or attempting to transfer or receive any Atlantic herring taken from the EEZ, except as authorized in this paragraph (f), and in compliance with reporting requirements at § 648.7 (b)(2)(i)(D).

(1) *Personal use as bait.* (i) The operator of a vessel that is not issued an Atlantic herring permit may purchase and/or receive Atlantic herring at sea for personal use as bait, provided the vessel receiving the transfer does not have purse seine, midwater trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board;

(ii) A vessel issued an Atlantic herring permit may transfer herring at sea to another vessel for personal use as bait:

(A) Provided the transferring vessel is issued a letter of authorization to transfer fish. The operator of the transferring vessel must show the letter of authorization to a representative of the vessel receiving fish or any authorized officer upon request; and

(B) Provided that the transfer of herring at sea to another vessel for personal use as bait does not exceed the possession limit specified for the transferring vessel in § 648.204, except that no more than 2,000 lb (907.2 kg) of herring may be caught or transferred per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area closed to fishing as specified in § 648.201.

(2) *Atlantic herring carrier vessels.* (i) A vessel issued an Atlantic herring permit may operate as a herring carrier vessel and receive herring provided it is issued a carrier vessel letter of authorization and complies with the terms of that authorization, as specified in § 648.4(a)(10)(ii).

(ii) A vessel issued an Atlantic herring permit may transfer herring at sea to an Atlantic herring carrier up to the applicable possession limits specified in § 648.204, provided it is issued a letter of authorization for the transfer of herring and that no more than 2,000 lb (907.2 kg) of herring may be caught or transferred at sea per trip or per calendar day if the vessel is in, or the fish were harvested from, an area closed to directed fishing as specified in § 648.201.

(3) If a herring management area has been closed to fishing as specified in § 648.201, a vessel may not transfer Atlantic herring harvested from or in the area to an IWP or Joint Venture vessel.

(4) If the amount of herring transshipped to a Canadian transshipment vessel would cause the amount of the border transfer specified

pursuant to § 648.200 to be exceeded, a vessel may not transfer Atlantic herring to a Canadian transshipment vessel permitted in accordance with Public Law 104–297.

(5) *Transfer to at-sea processors.* A vessel issued an Atlantic herring permit may transfer herring to a vessel issued an at-sea processing permit specified in § 648.6(a)(2)(ii), up to the applicable possession limit specified in § 648.204, except that no more than 2,000 lb (907.2 kg) of herring may be caught or transferred at sea per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area closed to directed fishing as specified in § 648.201.

(6) *Transfers between herring vessels.* A vessel issued a valid Atlantic herring permit may transfer and receive herring at sea, provided such vessel has been issued a letter of authorization from the Regional Administrator to transfer or receive herring at sea. Such vessel may not transfer, receive, or possess at sea, or land per trip herring in excess of the applicable possession limits specified in § 648.204, except that no more than 2,000 lb (907.2 kg) of herring may be caught, transferred, received, or possessed at sea, or landed per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area closed to directed fishing as specified in § 648.201.

* * * * *

■ 10. In § 648.14, paragraph (bb)(8) is removed and reserved; paragraphs (a)(166)–(169), (bb) (7), (bb)(10)–(12), (bb)(14)–(18), (bb)(20), and (bb)(24)–(26) are revised; and paragraphs (bb)(19), and (bb)(21)–(23) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(166) Sell, purchase, receive, trade, barter, or transfer haddock or other regulated multispecies, or attempt to sell, purchase, receive, trade, barter, or transfer haddock or other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) for, or intended for, human consumption landed by a vessel that has an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit as defined in § 648.2.

(167) Fail to comply with requirements for herring processors/dealers that handle individual fish to separate out and retain all haddock offloaded from a vessel that has an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit limited access herring vessel, as defined in § 648.2, and to retain such catch for at least 12 hr, with the vessel that landed the haddock clearly identified by name.

(168) Sell, purchase, receive, trade, barter, or transfer, or attempt to sell, purchase, receive, trade, barter, or transfer to another person any haddock or other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) separated out from a herring catch offloaded from a vessel that has an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit as defined in § 648.2.

(169) While operating an at-sea herring processor, fail to comply with requirements for herring processors/dealers that handle individual fish to separate out and retain all haddock offloaded from a vessel that has an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, as defined in § 648.2, and to retain such catch for at least 12 hr after landing, with the vessel that offloaded the haddock clearly identified by name.

* * * * *

(bb) * * *

(7) Possess, transfer, receive, or sell, or attempt to transfer, receive, or sell > 2,000 lb (907.2 kg) of Atlantic herring per trip, or land, or attempt to land > 2,000 lb (907.2 kg) of Atlantic herring per day in or from a management area closed pursuant to § 648.201(a), if the vessel has been issued a valid Atlantic herring permit.

(8) [Reserved]

* * * * *

(10) Transit an area of the EEZ that is subject to a closure or other restraints on fishing to fishing for Atlantic herring pursuant to § 648.201(a) with > 2,000 lb (907.2 kg) of herring on board, unless all fishing gear is stowed as specified by § 648.23(b).

(11) Catch, take, or harvest Atlantic herring in or from the EEZ with a U.S. vessel that exceeds the size limits specified in § 648.4(a)(10)(iii).

(12) Process Atlantic herring caught in or from the EEZ in excess of the specification of USAP with a U.S. vessel that exceeds the size limits specified in § 648.4(a)(10)(iii).

* * * * *

(14) Catch, take, or harvest Atlantic herring in or from the EEZ for roe in excess of any allowed limit that may be established pursuant to § 648.206(b)(24).

(15) Catch, take, or harvest Atlantic herring in or from the EEZ, unless equipped with an operable VMS unit if the vessel is a limited access herring vessel as defined in § 648.2.

(16) Receive Atlantic herring in or from the EEZ solely for transport, unless issued a letter of authorization from the Regional Administrator.

(17) Fail to comply with any of the requirements of a letter of authorization from the Regional Administrator.

(18) If the vessel is a limited access herring vessel and is fishing for herring, fail to notify the NMFS Office of Law Enforcement of the time and date of landing via VMS at least 6 hr prior to landing or crossing the VMS demarcation line on its return trip to port.

(19) If the vessel is a limited access herring vessel and is fishing for herring in the GOM/GB Exemption Area specified in § 648.80(a)(17), fail to notify NMFS at least 72 hr prior to departing on a trip for the purposes of observer deployment.

(20) Possess, land, transfer, receive, sell, purchase, trade, or barter, or attempt to transfer, receive, purchase, trade, or barter, or sell more than 2,000 lb (907 kg) of Atlantic herring per trip taken from the GOM/GB Herring Exemption Area defined in § 648.86(a)(3)(ii)(A)(*1*) following the effective date of the determination that the haddock cap has been reached pursuant to § 648.86(a)(3), unless all of the herring possessed or landed by a vessel was caught outside of that area.

(21) If fishing with midwater trawl or a purse seine gear, fail to comply with the requirements of § 648.80(d) and (e).

(22) If a limited access herring vessel, discard haddock at sea that has been brought on deck or pumped into the hold.

(23) Transit the GOM/GB Herring Exemption Area when that area is limited to the 2,000–lb (907.2–kg) limit specified in § 648.86(a)(3)(ii)(A)(*1*) with more than 2,000 lb (907.2 kg) of herring, unless all the herring on board was caught outside of that area and all fishing gear is stowed and not available for immediate use as required by § 648.23(b).

(24) Fish for herring in Area 1A between June 1 and September 30 with any gear other than purse seines or fixed gear.

(25) Transit Area 1A between June 1 and September 30 with more than 2,000 lb (907.2 kg) of herring on board with mid-water trawl gear not properly stowed as per § 648.23(b).

(26) Possess or land more herring than is allowed for by the vessel's Atlantic herring permit.

* * * * *

■ 11. In § 648.15, paragraphs (d)(1) and (e) are revised to read as follows:

§ 648.15 Facilitation of enforcement.

* * * * *

(d) * * *

(1) Federally permitted herring dealers and processors, including at-sea processors, that cull or separate out from the herring catch all fish other than herring in the course of normal operations, must separate out and retain all haddock offloaded from vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit. Such haddock may not be sold, purchased, received, traded, bartered, or transferred, and must be retained, after they have been separated, for at least 12 hr for dealers and processors on land, and for 12 hr after landing by at-sea processors. The dealer or processor, including at-sea processors, must clearly indicate the vessel that landed the retained haddock or transferred the retained haddock to an at-sea processor. Law enforcement officials must be given access to inspect the haddock.

* * * * *

(e) *Retention of haddock by limited access herring vessels.* Vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may not discard any haddock that has been brought on the deck or pumped into the hold.

■ 12. In § 648.80, paragraphs (d)(2)(ii), (d)(4)–(6) and (e)(3)–(6) are revised to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(d) * * *

(2) * * *

(ii) The vessel is issued a letter of authorization for a minimum of 7 days. The vessel can be issued LOAs for the midwater trawl exempted fishery and the purse seine exempted fishery at the same time.

* * * * *

(4) The vessel does not fish for, possess or land NE multispecies, except that vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may possess and land haddock or other regulated species consistent with the incidental catch allowance and bycatch caps specified in § 648.86(a)(3). Such haddock or other regulated NE multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated NE multispecies that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. Vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may not discard haddock that has been brought on the deck or pumped into the hold;

(5) To fish for herring under this exemption, vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment; and

(6) All vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, which are on a declared herring trip must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the **Federal Register** consistent with the Administrative Procedure Act.

(e) * * *

(3) The vessel is issued a letter of authorization for a minimum of 7 days, and cancels it only as instructed by the Regional Administrator. The vessel can be issued LOAs for the midwater trawl exempted fishery and the purse seine exempted fishery at the same time; and

(4) The vessel does not fish for, possess, or land NE multispecies, except that vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, as defined in § 648.2, may possess and land haddock or other regulated species consistent with the incidental catch allowance and bycatch caps specified in § 648.86(a)(3). Such haddock or other regulated multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated species that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. Vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may not discard haddock that has been brought on the deck or pumped into the hold;

(5) To fish for herring under this exemption, vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment; and

(6) All vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the **Federal Register** consistent with the Administrative Procedure Act.

* * * * *

■ 13. In § 648.83, paragraph (b)(4) is revised to read as follows:

§ 648.83 Multispecies minimum fish sizes.

* * * * *

(b) * * *

(4) Vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may possess and land haddock and other regulated species that are smaller than the minimum size specified under § 648.83, consistent with the bycatch caps specified in §§ 648.86(a)(3) and 648.86(k). Such fish may not be sold for human consumption.

* * * * *

■ 14. In § 648.85, paragraph (d) is revised to read as follows:

§ 648.85 Special management programs.

* * * * *

(d) *Incidental catch allowance for some limited access herring vessels.* The incidental catch allowance for vessels that have an All Areas Limited Access

Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit is defined as 0.2 percent of the combined target TAC for Gulf of Maine haddock and Georges Bank haddock (U.S. landings only) specified according to § 648.90(a) for a particular multispecies fishing year.

■ 15. In § 648.86, paragraphs (a)(3), and (k) are revised to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(a) * * *

(3)(i) *Incidental catch allowance for some limited access herring vessels.* Vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may possess and land haddock on all trips that do not use a NE multispecies DAS, subject to the requirements specified in § 648.80(d) and (e).

(ii) *Haddock incidental catch cap.* (A)(*1*) When the Regional Administrator has determined that the incidental catch allowance in § 648.85(d) has been caught, all vessels issued an Atlantic herring permit or fishing in the Federal portion of the GOM/GB Herring Exemption Area, defined in this paragraph (a)(3)(ii)(A)(*1*), are prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907.2 kg) per trip in or from the GOM/GB Herring Exemption Area, unless all herring possessed and landed by the vessel were caught outside the GOM/GB Herring Exemption Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the Exemption Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) for all vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, regardless of where they were fishing. In making this determination, the Regional Administrator shall use haddock landings observed by NMFS-approved observers and law enforcement officials, and reports of haddock catch submitted by vessels and dealers pursuant to the reporting requirements of this part. The GOM/GB Herring Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GB/GOM HERRING EXEMPTION AREA

Point	N. lat.	W. long.
1	41° 33.05′	70° 00′
2	41° 20′	70° 00′
3	41° 20′	69° 50′
4	41° 10′	69° 50′
5	41° 10′	69° 30′
6	41° 00′	69° 30′
7	41° 00′	68° 50′
8	39° 50′	68° 50′
9	39° 50′	66 °40′
10	40 °30′	66° 40′
11	40 °30′	64 °44.34′
12	41 °50′	66 °51.94′
13	41 °50′	67 °40′
14	44 °00′	67 °40′
15	44 °00′	67 °50′
16	44 °10′	67 °50′
17	44 °27′	67 °59.18′
18	ME, NH, MA Coastlines	
19	41 °33.05′	70° 00′

(*2*) The haddock incidental catch cap specified is for the NE multispecies fishing year (May 1 April 30), which differs from the herring fishing year (January 1 December 31). If the haddock catch cap is attained by the limited access herring fishery, the 2,000–lb (907.2–kg) limit on herring possession and landings in the GOM/GB Herring Exemption Area will be in effect until the end of the NE multispecies fishing year. For example, the 2006 haddock catch cap would be specified for the period May 1, 2006 April 30, 2007, and the 2007 haddock catch cap would be specified for the period May 1, 2007 April 30, 2008. If the catch of haddock by limited access herring vessels reached the 2006 catch cap at any time prior to the end of the NE multispecies fishing year (April 30, 2007), the 2,000–lb (907.2–kg) limit on possession or landing herring in the GOM/GB Herring Exemption Area would extend through April 30, 2007, at which time the 2007 catch cap would go into effect.

(B) [Reserved]

* * * * *

(k) *Other regulated NE multispecies possession restrictions for limited access herring vessels.* All vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may possess and land up to 100 lb (45 kg), combined, of other regulated NE multispecies on all trips that do not use a multispecies DAS, subject to the requirements specified in § 648.80(d) and (e). Such fish may not be sold for human consumption.

■ 16. Subpart K is revised to read as follows:

Subpart K Management Measures for the Atlantic Herring Fishery

Sec.
648.200 Specifications.
648.201 Closures and TAC controls.
648.202 Season and area restrictions.
648.203 Gear restrictions.
648.204 Possession restrictions.
648.205 VMS requirements.
648.206 Framework provisions.
648.207 Herring Research Set-aside (RSA)

Subpart K–Management Measures for the Atlantic Herring Fishery

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least every 3 years, but no later than July of the year before new specifications are implemented, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for a period of 3 years for consideration by the New England Fishery Management Council's Atlantic Herring Oversight Committee: Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), reserve (if any), and the amount to be set aside for the RSA (from 0 to 3 percent of the TAC from any management area). The PDT and PRT shall also recommend the total allowable catch (TAC) for each management area and sub-area, including seasonal quotas as specified at § 648.201(f). Recommended specifications shall be presented to the New England Fishery Management Council (Council).

(1) The PDT shall meet with the Commission's PRT to review the status of the stock and the fishery and prepare a Stock Assessment and Fishery Evaluation (SAFE) report at least every 3 years. The Herring PDT will meet at least once during interim years to review the status of the stock relative to the overfishing definition if information is available to do so. When conducting a 3-year review and preparing a SAFE Report, the PDT/PRT will recommend to the Council/Commission any necessary adjustments to the specifications for the upcoming 3 years.

(2) If the Council determines, based on information provided by the PDT/PRT or other stock-related information, that the specifications should be adjusted during the 3-year time period, it can do so through the same process

outlined in this section during one or both of the interim years.

(b) *Guidelines*. As the basis for its recommendations under paragraph (a) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) OY must be equal to or less than the allowable biological catch (ABC), as adjusted by subtracting an estimate of the expected Canadian New Brunswick fixed gear and GB herring catch.

(2) OY must not exceed MSY, unless an OY that exceeds MSY in a specific year is consistent with a control rule that ensures the achievement of MSY and OY on a continuing basis.

(3) Factors to be considered in assigning an amount, if any, to the reserve shall include:

(i) Uncertainty and variability in the estimates of stock size and ABC;

(ii) Uncertainty in the estimates of Canadian harvest from the coastal stock complex;

(iii) The requirement to insure the availability of herring to provide controlled opportunities for vessels in other fisheries in the Mid-Atlantic and New England;

(iv) Excess U.S. harvesting capacity available to enter the herring fishery;

(v) Total world export potential by herring producer countries;

(vi) Total world import demand by herring consuming countries;

(vii) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers;

(viii) Increased/decreased revenues to U.S. harvesters (with/without joint ventures);

(ix) Increased/decreased revenues to U.S. processors and exporters; and

(x) Increased/decreased U.S. processing productivity.

(4) Adjustments to TALFF, if any, shall be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) The Atlantic Herring Oversight Committee shall review the recommendations of the PDT and shall consult with the Commission's Herring Section. Based on these recommendations and any public comment received, the Herring Oversight Committee shall recommend to the Council appropriate specifications for a 3-year period. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate 3-year specifications to NMFS. NMFS shall review the recommendations, consider any comments received from the Commission, and publish notification in the **Federal Register** proposing 3-year specifications. If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated and the revised specifications must satisfy the criteria set forth in paragraph (b) of this section.

(d) NMFS shall make a final determination concerning the specifications for Atlantic herring. Notification of the final specifications and responses to public comments shall be published in the **Federal Register**. If the final specification amounts differ from those recommended by the Council, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section. The previous year's specifications shall remain effective until they are revised through the specification process.

(e) *In-season adjustments*. (1) The specifications and TACs established pursuant to this section may be adjusted by NMFS, after consulting with the Council, during the fishing year by publishing notification in the **Federal Register** stating the reasons for such action and providing an opportunity for prior public comment. Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions.

(2) If a total allowable catch reserve (TAC reserve) is specified for an area, NMFS may make any or all of that TAC reserve available to fishers after consulting with the Council. NMFS shall propose any release of the TAC reserve in the **Federal Register** and provide an opportunity for public comment. After considering any comments received, any release of the TAC reserve shall be announced through notification in the **Federal Register**.

(f) *Management areas*. The specifications process establishes TACs and other management measures for the three management areas, which may have different management measures. Management Area 1 is subdivided into inshore and offshore sub-areas. The management areas are defined as follows:

(1) *Management Area 1 (Gulf of Maine)*: All U.S. waters of the Gulf of Maine (GOM) north of a line extending from a point at 70°00′ W. long. and 41°39′ N. to 42°53′14″ N. lat., 67° 44′35″ W. long., thence northerly along the Hague Line to the U.S.-Canadian border, to include state and Federal waters adjacent to the States of Maine, New Hampshire, and Massachusetts. Management Area 1 is divided into Area 1A (inshore) and Area 1B (offshore). The line dividing these areas is described by the following coordinates:

Point	N. lat.	W. long.
1	41°58′	70° 00′
2	42°38′	70° 00′
3	42°53′	69° 40′
4	43°12′	69° 00′
5	43°40′	68° 00′
6	43°58′	67° 22′(the U.S.–Canada Maritime Boundary)

(2) *Management Area 2 (South Coastal Area)*: All waters west of 70° 00′ W . long., south of 41°39′ N. lat., to include state and Federal waters adjacent to the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina.

(3) *Management Area 3 (Georges Bank)*: All U.S. waters east of 70°00′ W. long. and southeast of the line that runs from a point at 70°00′ W. long. and 41°39′ N. lat., northeasterly to the Hague Line at 42°53′14″ N. lat., 67°44′35″ W. long.

§ 648.201 Closures and TAC controls.

(a) If NMFS determines that catch will reach 95 percent of the annual TAC allocated to a management area before the end of the fishing year, or 95 percent of the Area 1A TAC allocated to the first seasonal period as set forth in paragraph (f) of this section, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 95 percent of the TAC, from fishing for, possessing, catching, transferring, or landing >2,000 lb (907.2 kg) of Atlantic herring per trip and/or >2,000 lb (907.2 kg) of Atlantic herring per day in such area pursuant to paragraph (e) of this section, except as provided in paragraphs (c) and (d) of this section. These limits shall be enforced based on a calendar day, without regard to the length of the trip.

(b) The percent of the TAC that triggers imposition of the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section may be adjusted

through the specification process described in § 648.200. Any lowering of the percent of the TAC that triggers the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section must be accomplished through the framework adjustment or amendment processes.

(c) A vessel may transit an area that is limited to the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section with > 2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by § 648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(d) A vessel may land in an area that is limited to the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section with > 2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000–lb (907.2–kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by § 648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(e) NMFS shall implement fishing restrictions as specified in paragraph (a) of this section by publication of a notification in the **Federal Register**, without further opportunity for public comment.

(f) The TAC for Management Area 1A is divided into two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. Seasonal TACs for Area 1A, including the specification of the seasonal periods, shall be set through the annual specification process described in § 648.200.

(g) Up to 500 mt of the Area 1A TAC shall be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 44° 36.2 N. Lat. and 67° 16.8 W. long (Cutler, Maine). This set-aside shall be available for harvest by fixed gear within the specified area until November 1 of each fishing year. Any portion of this allocation that has not been utilized by November 1 shall be restored to the TAC allocation for Area 1A.

§ 648.202 Season and area restrictions.

(a) Purse Seine/Fixed Gear Only Area. Vessels fishing for Atlantic herring may not use, deploy, or fish with midwater trawl gear in Area 1A from June 1 September 30 of each fishing year. A limited access herring vessel with midwater trawl gear on board may transit Area 1A from June 1–September 30, provided such midwater trawl gear is stowed pursuant to § 648.23(b). Vessels may use any authorized gear type to harvest herring in Area 1A from October 1 – May 31.

(b) [Reserved]

§ 648.203 Gear restrictions.

(a) Midwater trawl gear may only be used by a vessel issued a valid herring permit in the GOM/GB Exemption Area as defined in § 648.80(a)(17), and in the Nantucket Lightship Area as described in § 648.81(c)(1), provided it complies with the midwater trawl gear exemption requirements specified under the NE multispecies regulations at § 648.80(d), including issuance of a Letter of Authorization.

(b) Purse seine gear may only be used by a vessel issued a valid herring permit in the GOM/GB Exemption Area as defined in § 648.80(a)(17), provided it complies with the purse seine exemption requirements specified under the NE multispecies requirements at § 648.80(e), including issuance of a Letter of Authorization.

§ 648.204 Possession restrictions.

(a) A vessel must be issued a valid limited access herring permit to fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from or in the EEZ from any herring management area, provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area, as specified in § 648.201.

(1) A vessel issued an All Areas Limited Access Herring Permit is authorized to fish for, possess, or land Atlantic herring with no possession restriction from any of the herring management areas defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area, as specified in § 648.201.

(2) A vessel issued only an Areas 2 and 3 Limited Access Herring Permit is authorized to fish for, possess, or land Atlantic herring with no possession restriction only from Area 2 or Area 3 as defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area, as specified in § 648.201. Such a vessel may fish in Area 1 only if issued an open access herring permit or a Limited Access Incidental Catch Herring Permit, and only as authorized by the respective permit.

(3) A vessel issued a Limited Access Incidental Catch Herring Permit is authorized to fish for, possess, or land up to 55,000 lb (25 mt) of Atlantic herring in any calendar day, from any management area defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area.

(4) A vessel issued an open access herring permit may not fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from any herring management area per trip and/or per calendar day, provided that the area has not been closed due to the attainment of 95 percent of the TAC allocated to the area, as specified in § 648.201.

(5) A vessel issued a herring permit may possess herring roe provided that the carcasses of the herring from which it came are not discarded at sea.

(b) Both vessels involved in a pair trawl operation must be issued valid herring permits to fish for, possess, or land Atlantic herring harvested from any management area. Both vessels must be issued the herring permit appropriate for the amount of herring jointly possessed by both of the vessels participating in the pair trawl operation.

§ 648.205 VMS requirements.

The owner or operator of any limited access herring vessel with the exception of fixed gear fishermen must install and operate a VMS unit consistent with the requirements of § 648.9. The VMS unit must be installed on board, and must be operable before the vessel may begin fishing. Atlantic herring carrier vessels are not required to have VMS. At least 1 hr prior to leaving port, the owner or authorized representative of a herring vessel that is required to use VMS as specified in this section must notify the Regional Administrator by entering the appropriate VMS code that the vessel will be participating in the herring fishery. VMS codes and instructions are available from the Regional Administrator upon request.

§ 648.206 Framework provisions.

(a) *Framework adjustment process.* In response to the triennial review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Atlantic Herring FMP, or to address gear conflicts as defined under § 600.10 of this chapter.

(1) *Adjustment process.* After a management action has been initiated,

the Council shall develop and analyze appropriate management measures over the span of at least two Council meetings. The Council may delegate authority to the Herring Oversight Committee to conduct an initial review of the options being considered. The Oversight Committee shall review the options and relevant information, consider public comment, and make a recommendation to the Council.

(2) After the first framework meeting, the Council may refer the issue back to the Herring Oversight Committee for further consideration, make adjustments to the measures that were proposed, or approve of the measures and begin developing the necessary documents to support the framework adjustments. If the Council approves the proposed framework adjustments, the Council shall identify, at this meeting, a preferred alternative and/or identify the possible alternatives.

(3) A framework document shall be prepared that discusses and shows the impacts of the alternatives. It shall be available to the public prior to the second or final framework meeting.

(4) After developing management actions and receiving public testimony, the Council shall make a recommendation to NMFS. The Council's recommendation must include supporting rationale and, if changes to the management measures are recommended, an analysis of impacts and a recommendation to NMFS on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(5) If the Council's recommendation to NMFS includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information NMFS may:

(i) Concur with the Council's recommended management measures and determine that the recommended management measures should be published as a final rule in the **Federal Register** based on the factors specified in paragraphs (c)(4)(i)-(iv) of this section.

(ii) Concur with the Council's recommendation and determine that the recommended management measures should be first published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council's recommendation, the measures shall be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the Council shall be notified in writing of the reasons for the non-concurrence.

(b) Possible framework adjustment measures. Measures that may be changed or implemented through framework action include:

(1) Management area boundaries or additional management areas;

(2) Size, timing, or location of new or existing spawning area closures;

(3) Closed areas other than spawning closures;

(4) Restrictions in the amount of fishing time;

(5) A days-at-sea system;

(6) Adjustments to specifications;

(7) Adjustments to the Canadian catch deducted when determining specifications;

(8) Distribution of the TAC;

(9) Gear restrictions (such as mesh size, etc.) or requirements (such as bycatch-reduction devices, etc.);

(10) Vessel size or horsepower restrictions;

(11) Closed seasons;

(12) Minimum fish size;

(13) Trip limits;

(14) Seasonal, area, or industry sector quotas;

(15) Measures to describe and identify essential fish habitat (EFH), fishing gear management measures to protect EFH, and designation of habitat areas of particular concern within EFH;

(16) Measures to facilitate aquaculture, such as minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones, and any other measures included in the FMP;

(17) Changes to the overfishing definition;

(18) Vessel monitoring system requirements;

(19) Limits or restrictions on the harvest of herring for specific uses;

(20) Quota monitoring tools, such as vessel, operator, or dealer reporting requirements;

(21) Permit and vessel upgrading restrictions;

(22) Implementation of measures to reduce gear conflicts, such as mandatory monitoring of a radio channel by fishing vessels, gear location reporting by fixed gear fishermen, mandatory plotting of gear by mobile fishermen, standards of operation when conflict occurs, fixed gear marking or setting practices; gear restrictions for certain areas, vessel monitoring systems, restrictions on the maximum number of fishing vessels, and special permitting conditions;

(23) Limited entry or controlled access system;

(24) Specification of the amount of herring to be used for roe

(25) In-season adjustments to TACs;

(26) Measures to address bycatch and bycatch monitoring;

(27) Requirements for a herring processor survey;

(28) TAC set-aside amounts, provisions, adjustments; and

(29) Any other measure currently included in the FMP.

(c) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

§ 648.207 Herring Research Set-Aside (RSA).

(a) NMFS shall publish a Request for Proposals (RFP) in the **Federal Register**, consistent with procedures and requirements established by NMFS, to solicit proposals from industry for the upcoming 3 fishing years, based on research priorities identified by the Council.

(b) Proposals submitted in response to the RFP must include the following information, as well as any other specific information required within the RFP: A project summary that includes the project goals and objectives, the relationship of the proposed research to herring research priorities and/or management needs, project design, participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

(c) NMFS shall convene a review panel, including technical experts, to review proposals submitted in response to the RFP. Each panel member shall recommend which research proposals should be authorized to utilize RSA,

based on the selection criteria described in the RFP.

(d) NMFS shall consider each panel member's recommendation, provide final approval of the projects and the Regional Administrator may, when appropriate, exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

(e) The grant awards approved under the RFPs shall be for the upcoming 3 fishing years, unless the Council identifies new/different research priorities during the interim years and decides to publish a second RFP. Proposals to fund research that would start prior to, or that would end after the fishing year, are not eligible for consideration. The RSA must be utilized in the same fishing year in which it was distributed (i.e., RSA and compensation trips cannot be rolled over into future years). However, the money generated from the RSA may be rolled over into, or used to fund research in future years, consistent with the multi-year proposal.

(f) Whenever possible, research proposals shall be reviewed and approved prior to the publication of final quota specifications for the upcoming fishing years. In the event that the approved proposals do not make use of any or all of the set-asides, the unutilized portion of the set-aside shall be reallocated back to its respective management area(s) when the final specifications are published. If there is unutilized set-aside available, NMFS, at the request of the Council, could publish another RFP for either the second or third years of the 3-year specifications. In this case, NMFS shall release the unutilized portion of the RSA back to its respective management area(s) for the first year of the specifications and any other year that yields unutilized set-aside after an additional RFP is published. The Council also may decide not to publish another RFP, in which case NMFS may release the unutilized portion of the set-aside back to its respective management area(s) for all 3 fishing years covered by the specifications.

(g) If a proposal is approved, but a final award is not made by NMFS, or if NMFS determines that the allocated RSA cannot be utilized by a project, NMFS shall reallocate the unallocated or unused amount of the RSA to the respective TAC by publication of a notice in the **Federal Register** in compliance with the Administrative Procedure Act, provided that the RSA can be available for harvest before the end of the fishing year for which the RSA is specified.

(h) Any RSA reallocated under paragraphs (f) and (g) of this section may not be used solely as compensation for research.

(i) Researchers may apply for the use of more than one herring RAS allocation for individual research projects, and may request that the set-aside be collected separately from the research trip or as part of the research trip. The research compensation trips do not necessarily have to be conducted by the same vessel, but must be conducted in the management area from which the set-aside was derived.

(j) No more than 50 percent of the allocated set-aside may be taken before the research begins. If a research project is terminated for any reason prior to completion, any funds collected from the catch sold to pay for research expenses must be refunded to U.S. Treasury.

(k) NMFS shall provide authorization of the research activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional Administrator, which must be kept on board the vessel.

(l) Upon completion of herring research projects approved under this part, researchers must provide the Council and NMFS with a report of research findings, which must include: A detailed description of methods of data collection and analysis; a discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and a detailed final accounting of all funds used to conduct the herring research.

[FR Doc. E7–4163 Filed 3–9–07; 8:45 am]

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H.R. 49/P.L. 110–7

To designate the facility of the United States Postal Service located at 1300 North Frontage Road West in Vail, Colorado, as the "Gerald R. Ford, Jr. Post Office Building". (Mar. 7, 2007; 121 Stat. 62)

H.R. 335/P.L. 110–8

To designate the facility of the United States Postal Service located at 152 North 5th Street in Laramie, Wyoming, as the "Gale W. McGee Post Office". (Mar. 7, 2007; 121 Stat. 63)

H.R. 433/P.L. 110–9

To designate the facility of the United States Postal Service located at 1700 Main Street in Little Rock, Arkansas, as the "Scipio A. Jones Post Office Building". (Mar. 7, 2007; 121 Stat. 64)

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To designate the facility of the United States Postal Service located at 16150 Aviation Loop Drive in Brooksville, Florida, as the "Sergeant Lea Robert Mills Brooksville Aviation Branch Post Office". (Mar. 7, 2007; 121 Stat. 65)

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Henry Ybarra III Post Office Building". (Mar. 7, 2007; 121 Stat. 66)

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1940–1949	(869–062–00021–9)	50.00	[5] Jan. 1, 2007
1950–1999	(869–060–00022–4)	46.00	Jan. 1, 2006
2000–End	(869–060–00023–2)	50.00	Jan. 1, 2006
8	(869–060–00024–1)	63.00	Jan. 1, 2006
9 Parts:			
1–199	(869–060–00025–9)	61.00	Jan. 1, 2006
*200–End	(869–062–00026–0)	58.00	Jan. 1, 2007
10 Parts:			
1–50	(869–060–00027–5)	61.00	Jan. 1, 2006
51–199	(869–060–00028–3)	58.00	Jan. 1, 2006
200–499	(869–060–00029–1)	46.00	Jan. 1, 2006
500–End	(869–060–00030–5)	62.00	Jan. 1, 2006
***11**	(869–062–00031–6)	41.00	Jan. 1, 2007
12 Parts:			
1–199	(869–062–00032–4)	34.00	Jan. 1, 2007
200–219	(869–060–00033–0)	37.00	Jan. 1, 2006
220–299	(869–062–00034–1)	61.00	Jan. 1, 2007
300–499	(869–060–00035–6)	47.00	Jan. 1, 2006
500–599	(869–060–00036–4)	39.00	Jan. 1, 2006
600–899	(869–060–00037–2)	56.00	Jan. 1, 2006
900–End	(869–060–00038–1)	50.00	Jan. 1, 2006
13	(869–060–00039–9)	55.00	Jan. 1, 2006
14 Parts:			
1–59	(869–060–00040–2)	63.00	Jan. 1, 2006
60–139	(869–060–00041–1)	61.00	Jan. 1, 2006
140–199	(869–060–00042–9)	30.00	Jan. 1, 2006
200–1199	(869–060–00043–7)	50.00	Jan. 1, 2006
1200–End	(869–060–00044–5)	45.00	Jan. 1, 2006
15 Parts:			
0–299	(869–060–00045–3)	40.00	Jan. 1, 2006
300–799	(869–060–00046–1)	60.00	Jan. 1, 2006
800–End	(869–060–00047–0)	42.00	Jan. 1, 2006
16 Parts:			
0–999	(869–060–00048–8)	50.00	Jan. 1, 2006
1000–End	(869–060–00049–6)	60.00	Jan. 1, 2006
17 Parts:			
1–199	(869–060–00051–8)	50.00	Apr. 1, 2006
200–239	(869–060–00052–6)	60.00	Apr. 1, 2006
240–End	(869–060–00053–4)	62.00	Apr. 1, 2006
18 Parts:			
1–399	(869–060–00054–2)	62.00	Apr. 1, 2006
400–End	(869–060–00055–1)	26.00	[7] Apr. 1, 2006
19 Parts:			
1–140	(869–060–00056–9)	61.00	Apr. 1, 2006
141–199	(869–060–00057–7)	58.00	Apr. 1, 2006
200–End	(869–060–00058–5)	31.00	Apr. 1, 2006
20 Parts:			
1–399	(869–060–00059–3)	50.00	Apr. 1, 2006
400–499	(869–060–00060–7)	64.00	Apr. 1, 2006
500–End	(869–060–00061–5)	63.00	Apr. 1, 2006
21 Parts:			
1–99	(869–060–00062–3)	40.00	Apr. 1, 2006
100–169	(869–060–00063–1)	49.00	Apr. 1, 2006
170–199	(869–060–00064–0)	50.00	Apr. 1, 2006
200–299	(869–060–00065–8)	17.00	Apr. 1, 2006
300–499	(869–060–00066–6)	30.00	Apr. 1, 2006
500–599	(869–060–00067–4)	47.00	Apr. 1, 2006
600–799	(869–060–00068–2)	15.00	Apr. 1, 2006
800–1299	(869–060–00069–1)	60.00	Apr. 1, 2006
1300–End	(869–060–00070–4)	25.00	Apr. 1, 2006
22 Parts:			
1–299	(869–060–00071–2)	63.00	Apr. 1, 2006
300–End	(869–060–00072–1)	45.00	[8] Apr. 1, 2006
23	(869–060–00073–9)	45.00	Apr. 1, 2006
24 Parts:			
0–199	(869–060–00074–7)	60.00	Apr. 1, 2006
200–499	(869–060–00075–5)	50.00	Apr. 1, 2006
500–699	(869–060–00076–3)	30.00	Apr. 1, 2006
700–1699	(869–060–00077–1)	61.00	Apr. 1, 2006
1700–End	(869–060–00078–0)	30.00	Apr. 1, 2006
25	(869–060–00079–8)	64.00	Apr. 1, 2006
26 Parts:			
§§ 1.0–1–1.60	(869–060–00080–1)	49.00	Apr. 1, 2006
§§ 1.61–1.169	(869–060–00081–0)	63.00	Apr. 1, 2006
§§ 1.170–1.300	(869–060–00082–8)	60.00	Apr. 1, 2006
§§ 1.301–1.400	(869–060–00083–6)	47.00	Apr. 1, 2006
§§ 1.401–1.440	(869–060–00084–4)	56.00	Apr. 1, 2006
§§ 1.441–1.500	(869–060–00085–2)	58.00	Apr. 1, 2006
§§ 1.501–1.640	(869–060–00086–1)	49.00	Apr. 1, 2006
§§ 1.641–1.850	(869–060–00087–9)	61.00	Apr. 1, 2006
§§ 1.851–1.907	(869–060–00088–7)	61.00	Apr. 1, 2006
§§ 1.908–1.1000	(869–060–00089–5)	60.00	Apr. 1, 2006
§§ 1.1001–1.1400	(869–060–00090–9)	61.00	Apr. 1, 2006
§§ 1.1401–1.1550	(869–060–00091–2)	58.00	Apr. 1, 2006
§§ 1.1551–End	(869–060–00092–5)	50.00	Apr. 1, 2006
2–29	(869–060–00093–3)	60.00	Apr. 1, 2006
30–39	(869–060–00094–1)	41.00	Apr. 1, 2006
40–49	(869–060–00095–0)	28.00	Apr. 1, 2006
50–299	(869–060–00096–8)	42.00	Apr. 1, 2006

Title	Stock Number	Price	Revision Date
300–499	(869–060–00097–6)	61.00	Apr. 1, 2006
500–599	(869–060–00098–4)	12.00	[6] Apr. 1, 2006
600–End	(869–060–00099–2)	17.00	Apr. 1, 2006
27 Parts:			
1–399	(869–060–00100–0)	64.00	Apr. 1, 2006
400–End	(869–060–00101–8)	18.00	Apr. 1, 2006
28 Parts:			
0–42	(869–060–00102–6)	61.00	July 1, 2006
43–End	(869–060–00103–4)	60.00	July 1, 2006
29 Parts:			
0–99	(869–060–00104–2)	50.00	July 1, 2006
100–499	(869–060–00105–1)	23.00	July 1, 2006
500–899	(869–060–00106–9)	61.00	July 1, 2006
900–1899	(869–060–00107–7)	36.00	July 1, 2006
1900–1910 (§§ 1900 to 1910.999)	(869–060–00108–5)	61.00	July 1, 2006
1910 (§§ 1910.1000 to end)	(869–060–00109–3)	46.00	July 1, 2006
1911–1925	(869–060–00110–7)	30.00	July 1, 2006
1926	(869–060–00111–5)	50.00	July 1, 2006
1927–End	(869–060–00112–3)	62.00	July 1, 2006
30 Parts:			
1–199	(869–060–00113–1)	57.00	July 1, 2006
200–699	(869–060–00114–0)	50.00	July 1, 2006
700–End	(869–060–00115–8)	58.00	July 1, 2006
31 Parts:			
0–199	(869–060–00116–6)	41.00	July 1, 2006
200–499	(869–060–00117–4)	46.00	July 1, 2006
500–End	(869–060–00118–2)	62.00	July 1, 2006
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–060–00119–1)	61.00	July 1, 2006
191–399	(869–060–00120–4)	63.00	July 1, 2006
400–629	(869–060–00121–2)	50.00	July 1, 2006
630–699	(869–060–00122–1)	37.00	July 1, 2006
700–799	(869–060–00123–9)	46.00	July 1, 2006
800–End	(869–060–00124–7)	47.00	July 1, 2006
33 Parts:			
1–124	(869–060–00125–5)	57.00	July 1, 2006
125–199	(869–060–00126–3)	61.00	July 1, 2006
200–End	(869–060–00127–1)	57.00	July 1, 2006
34 Parts:			
1–299	(869–060–00128–0)	50.00	July 1, 2006
300–399	(869–060–00129–8)	40.00	July 1, 2006
400–End & 35	(869–060–00130–1)	61.00	[9] July 1, 2006
36 Parts:			
1–199	(869–060–00131–0)	37.00	July 1, 2006
200–299	(869–060–00132–8)	37.00	July 1, 2006
300–End	(869–060–00133–6)	61.00	July 1, 2006
37	(869–060–00134–4)	58.00	July 1, 2006
38 Parts:			
0–17	(869–060–00135–2)	60.00	July 1, 2006
18–End	(869–060–00136–1)	62.00	July 1, 2006
39	(869–060–00137–9)	42.00	July 1, 2006
40 Parts:			
1–49	(869–060–00138–7)	60.00	July 1, 2006
50–51	(869–060–00139–5)	45.00	July 1, 2006
52 (52.01–52.1018)	(869–060–00140–9)	60.00	July 1, 2006
52 (52.1019–End)	(869–060–00141–7)	61.00	July 1, 2006
53–59	(869–060–00142–5)	31.00	July 1, 2006
60 (60.1–End)	(869–060–00143–3)	58.00	July 1, 2006
60 (Apps)	(869–060–00144–7)	57.00	July 1, 2006
61–62	(869–060–00145–0)	45.00	July 1, 2006
63 (63.1–63.599)	(869–060–00146–8)	58.00	July 1, 2006
63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
63 (63.1200–63.1439)	(869–060–00148–4)	50.00	July 1, 2006
63 (63.1440–63.6175)	(869–060–00149–2)	32.00	July 1, 2006
63 (63.6580–63.8830)	(869–060–00150–6)	32.00	July 1, 2006
63 (63.8980–End)	(869–060–00151–4)	35.00	July 1, 2006
64–71	(869–060–00152–2)	29.00	July 1, 2006
72–80	(869–060–00153–1)	62.00	July 1, 2006
81–85	(869–060–00154–9)	60.00	July 1, 2006
86 (86.1–86.599–99)	(869–060–00155–7)	58.00	July 1, 2006
86 (86.600–1–End)	(869–060–00156–5)	50.00	July 1, 2006
87–99	(869–060–00157–3)	60.00	July 1, 2006
100–135	(869–060–00158–1)	45.00	July 1, 2006
136–149	(869–060–00159–0)	61.00	July 1, 2006
150–189	(869–060–00160–3)	50.00	July 1, 2006
190–259	(869–060–00161–1)	39.00	July 1, 2006
260–265	(869–060–00162–0)	50.00	July 1, 2006
266–299	(869–060–00163–8)	50.00	July 1, 2006
300–399	(869–060–00164–6)	42.00	July 1, 2006
400–424	(869–060–00165–4)	56.00	July 1, 2006
425–699	(869–060–00166–2)	61.00	July 1, 2006
700–789	(869–060–00167–1)	61.00	July 1, 2006
790–End	(869–060–00168–9)	61.00	July 1, 2006
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–060–00169–7)	24.00	July 1, 2006
101	(869–060–00170–1)	21.00	[9] July 1, 2006
102–200	(869–060–00171–9)	56.00	July 1, 2006
201–End	(869–060–00172–7)	24.00	July 1, 2006
42 Parts:			
1–399	(869–060–00173–5)	61.00	Oct. 1, 2006
400–413	(869–060–00174–3)	32.00	Oct. 1, 2006
414–429	(869–060–00175–1)	32.00	Oct. 1, 2006
430–End	(869–060–00176–0)	64.00	Oct. 1, 2006
43 Parts:			
1–999	(869–060–00177–8)	56.00	Oct. 1, 2006
1000–end	(869–060–00178–6)	62.00	Oct. 1, 2006
44	(869–060–00179–4)	50.00	Oct. 1, 2006
45 Parts:			
1–199	(869–060–00180–8)	60.00	Oct. 1, 2006
200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
500–1199	(869–060–00182–4)	56.00	Oct. 1, 2006
1200–End	(869–060–00183–2)	61.00	Oct. 1, 2006
46 Parts:			
1–40	(869–060–00184–1)	46.00	Oct. 1, 2006
41–69	(869–060–00185–9)	39.00	Oct. 1, 2006
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–060–00187–5)	44.00	Oct. 1, 2006
140–155	(869–060–00188–3)	25.00	Oct. 1, 2006
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
200–499	(869–060–00191–3)	40.00	Oct. 1, 2006
500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
47 Parts:			
0–19	(869–060–00193–0)	61.00	Oct. 1, 2006
20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
40–69	(869–060–00195–6)	40.00	Oct. 1, 2006
70–79	(869–060–00196–4)	61.00	Oct. 1, 2006
80–End	(869–060–00197–2)	61.00	Oct. 1, 2006
48 Chapters:			
1 (Parts 1–51)	(869–060–00198–1)	63.00	Oct. 1, 2006
1 (Parts 52–99)	(869–060–00199–9)	49.00	Oct. 1, 2006
2 (Parts 201–299)	(869–060–00200–6)	50.00	Oct. 1, 2006
3–6	(869–060–00201–4)	34.00	Oct. 1, 2006
7–14	(869–060–00202–2)	56.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
15–28	(869–060–00203–1)	47.00	Oct. 1, 2006
29–End	(869–060–00204–9)	47.00	Oct. 1, 2006
49 Parts:			
1–99	(869–060–00205–7)	60.00	Oct. 1, 2006
100–185	(869–060–00206–5)	63.00	Oct. 1, 2006
186–199	(869–060–00207–3)	23.00	Oct. 1, 2006
200–299	(869–060–00208–1)	32.00	Oct. 1, 2006
300–399	(869–060–00209–0)	32.00	Oct. 1, 2006
400–599	(869–060–00210–3)	64.00	Oct. 1, 2006
600–999	(869–060–00211–1)	19.00	Oct. 1, 2006
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
1200–End	(869–060–00213–8)	34.00	Oct. 1, 2006
50 Parts:			
1–16	(869–060–00214–6)	11.00	[10] Oct. 1, 2006
17.1–17.95(b)	(869–060–00215–4)	32.00	Oct. 1, 2006
17.95(c)–end	(869–060–00216–2)	32.00	Oct. 1, 2006
17.96–17.99(h)	(869–060–00217–1)	61.00	Oct. 1, 2006
17.99(i)–end and 17.100–end	(869–060–00218–9)	47.00	[10] Oct. 1, 2006
18–199	(869–060–00219–7)	50.00	Oct. 1, 2006
200–599	(869–060–00220–1)	45.00	Oct. 1, 2006
600–659	(869–060–00221–9)	31.00	Oct. 1, 2006
660–End	(869–060–00222–7)	31.00	Oct. 1, 2006
CFR Index and Findings Aids	(869–060–00050–0)	62.00	Jan. 1, 2006
Complete 2007 CFR set		1,389.00	2007
Microfiche CFR Edition:			
Subscription (mailed as issued)		332.00	2007
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Complete set (one-time mailing)		332.00	2006
Complete set (one-time mailing)		325.00	2005

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.