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Contents

Federal Register

Vol. 72, No. 246

Wednesday, December 26, 2007

Agriculture Department
See Forest Service
See Rural Utilities Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 72982

Alcohol, Tobacco, Firearms, and Explosives Bureau
RULES
International Traffic in Arms Regulations:
U.S. munitions import list and import restrictions, 72936–72938

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 73021–73024
Organization, functions, and authority delegations:
Division of Healthcare Quality Promotion, 73024–73026

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 73026–73028

Commerce Department
See Economic Analysis Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 72986–72987

Defense Department
See Navy Department
RULES
Federal Acquisition Regulation (FAR):
Contracts with religious entities, 73218–73219
Electronic Products Environmental Assessment Tool, 73215–73218
Introduction, 73214
Performance-based payments, 73219–73222
Small entity compliance guide, 73222–73223
NOTICES
Arms sales notification; transmittal letter, etc., 72999–73011

Drug Enforcement Administration
RULES
Controlled substances; importation and exportation:
Reexportation, 72921–72929

Economic Analysis Bureau
RULES
International services surveys:
BE-12; foreign direct investment in U.S.; benchmark survey, 72917–72920

Education Department
RULES
Postsecondary education:
Federal student aid programs; waivers and modifications, 72947–72948
PROPOSED RULES
Legal proceedings; testimony or records demands, 72976–72978
NOTICES
Grants and cooperative agreements; availability, etc.:
Developing Hispanic-Serving Institutions Program, 73011–73012
Safe and drug-free schools programs—
Alcohol and other drug prevention models on college campuses, 73012–73015

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Committees; establishment, renewal, termination, etc.:
Biological and Environmental Research Advisory Committee, 73015
Meetings:
Environmental Management Site-Specific Advisory Board—
Paducah, 73015–73016

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Clay ceramics manufacturing, glass manufacturing, and secondary nonferrous metals processing, 73180–73211
Air pollution control; new motor vehicles and engines:
Nonroad diesel engines; emission standards; technical amendments and Tier 3 technical relief provision
Partial withdrawal and revision, 72955–72958
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Iowa, 72953–72955
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
North Carolina, 72948–72953
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Aspergillus flavus AF36 on corn, 72963–72965
Etoxazole, 72958–72963
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Kansas, 72978–72981

Equal Employment Opportunity Commission
RULES
Age Discrimination in Employment Act:
Retiree health benefits, 72938–72945

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Hartzell Propeller Inc., 72915–72917

Airworthiness standards:
Normal, utility, acrobatic, and commuter category airplanes—
Emergency landing conditions; CFR correction, 72915
PROPOSED RULES
Airworthiness directives:
BAE Systems (Operations) Ltd., 72968–72969

Federal Communications Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 73019

Federal Election Commission
RULES
Corporate and labor organization activity:
Electioneering communications; transmittal to Congress, 72899–72915

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation combined filings, 73016–73018
Natural gas pipeline rate and refund report filings, 73018–73019

Federal Highway Administration
NOTICES
Federal agency actions on proposed highways; judicial review claims:
Asheboro, Randolph County, NC; U.S. 64 highway project, 73060–73061

Federal Motor Carrier Safety Administration
PROPOSED RULES
Motor carrier safety standards:
Entry-level commercial motor vehicle operators; minimum training requirements, 73226–73249
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 73061–73062

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 73019–73020

Federal Transit Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 73062–73063

Fish and Wildlife Service
RULES
Endangered and threatened species:
Critical habitat designations—
Bear Valley sandwort, etc., 73092–73178

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Sponsor name and address changes—
Nycomed US, Inc., 72920–72921
NOTICES
Agency information collection activities; proposals, submissions, and approvals; correction, 73028
Color additive petitions:
DSM Nutritional Products, Inc; correction, 73028
Meetings:
Community-acquired pneumonia clinical trial design; public workshop, 73028–73029
Public health benefit of adverse event collection; workshop and comment request, 73029–73030

Forest Service
NOTICES
Environmental statements; notice of intent:
Colorado; National Forest System lands; roadless area conservation, 72982–72985
Meetings:
Roadless Area Conservation National Advisory Committee, 72985

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Contracts with religious entities, 73218–73219
Electronic Products Environmental Assessment Tool, 73215–73218
Introduction, 73214
Performance-based payments, 73219–73222
Small entity compliance guide, 73222–73223

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Meetings:
American Health Information Community, 73020–73021

Homeland Security Department
See Transportation Security Administration
NOTICES
Meetings:
Homeland Security Advisory Council, 73038–73039

Housing and Urban Development Department
NOTICES
Regulatory waiver requests; quarterly listing, 73066–73090

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Indian Gaming Commission
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Controlled groups of corporations; additional tax calculation and apportionment, 72929–72936
PROPOSED RULES
Income taxes:
Controlled groups of corporations; additional tax calculation and apportionment; cross-reference, 72970

International Trade Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 72987–72988
Antidumping:
New pneumatic off-the-road tires from—
China, 72988

Solid urea from—
Russian Federation, 72988–72992

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Drug Enforcement Administration

Labor Department
See Occupational Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 73044

Land Management Bureau
NOTICES
Oil and gas leases:
Wyoming, 73041

Minerals Management Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 73041–73043

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Contracts with religious entities, 73218–73219
Electronic Products Environmental Assessment Tool, 73215–73218
Introduction, 73214
Performance-based payments, 73219–73222
Small entity compliance guide, 73222–73223

National Indian Gaming Commission
NOTICES
Indian Gaming Regulatory Act:
Fee rates, 73044–73045

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 73030–73031
Meetings:
National Heart, Lung, and Blood Institute, 73031–73032
National Institute of Allergy and Infectious Diseases, 73034–73037
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 73034
National Institute of Child Health and Human Development, 73034
National Institute of Dental and Craniofacial Research, 73037–73038
National Institute of Diabetes and Digestive and Kidney Diseases, 73032–73033 73036
National Institute of Mental Health, 73033–73034
Scientific Review Center, 73038

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies, 72965–72967
NOTICES
Environmental statements; notice of intent:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea, Aleutian Islands, and Gulf of Alaska groundfish, 72992–72994
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish, 72994–72996
Marine mammal permit applications, determinations, etc., 72996–72997
Meetings:
Mid-Atlantic Fishery Management Council, 72998
Pacific Fishery Management Council, 72998
South Atlantic Fishery Management Council, 72998–72999

National Park Service
NOTICES
Reports and guidance documents; availability, etc.:
World Heritage Committee for Yellowstone National Park, WY, ID, and MT; site progress report, 73043–73044

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS FREEDOM, 72945–72947
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Elemental Wireless, LLC, 73011

Nuclear Energy Office, Energy Department
NOTICES
Committees; establishment, renewal, termination, etc.:
Nuclear Energy Advisory Committee, 73045

Nuclear Regulatory Commission
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 73047–73048
Meetings; Sunshine Act, 73048
Applications, hearings, determinations, etc.:
Calvert Cliffs Nuclear Power Plant, Inc., 73045–73047
Detroit Edison Co., 73047

Occupational Safety and Health Administration
PROPOSED RULES
Occupational safety and health standards:
Respiratory protection—
Abbreviated Bitrex qualitative fit-testing protocol, 72971–72976

Patent and Trademark Office
NOTICES
Reports and guidance documents; availability, etc.:
Agency notices; publication format change and display in weekly electronic Official Gazette, 72999

Personnel Management Office
NOTICES
Excepted service; positions placed or revoked, 73048–73050

Presidential Documents
PROCLAMATIONS
Special observances:
National Mentoring Month (Proc. 8212), 72897–72898

Rural Utilities Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 72985–72986

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 73050
Meetings:
Improvements to Financial Reporting Advisory Committee, 73050–73051
Public Company Accounting Oversight Board:
Budget and annual accounting support fee (2008 CY), 73051–73052
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 73052–73053
NASDAQ Stock Market LLC, 73053–73055
New York Stock Exchange LLC, 73055–73056

Small Business Administration
NOTICES
Disaster loan areas:
Oregon, 73056
Washington, 73056–73057
Small business size standards:
Nonmanufacturer rule; waivers—
Irradiation apparatus manufacturing (x-ray equipment and supplies), 73057

State Department
NOTICES
Privacy Act; systems of records, 73057–73060

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Transit Administration

Transportation Security Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 73039–73040
Maritime and land transportation security:
Transportation Worker Identification Credential; enrollment—
Various States, 73040–73041

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Medical benefits:
Medical care or services; reasonable charges; 2008 calendar year update, 73063–73064

Separate Parts In This Issue

Part II
Housing and Urban Development Department, 73066–73090

Part III
Interior Department, Fish and Wildlife Service, 73092–73178

Part IV
Environmental Protection Agency, 73180–73211

Part V
Defense Department; General Services Administration; National Aeronautics and Space Administration, 73214–73223

Part VI
Transportation Department, Federal Motor Carrier Safety Administration, 73226–73249

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
8212 72897

11 CFR
104 72899
114 72899

14 CFR
23 72915
39 72915
Proposed Rules:
39 72968

15 CFR
806 72917

21 CFR
510 72920
1312 72921

26 CFR
1 72929
Proposed Rules:
1 72970

27 CFR
447 72936

29 CFR
1625 72938
1627 72938
Proposed Rules:
1910 72971

32 CFR
706 72945

34 CFR
668 72947
674 72947
682 72947
685 72947
Proposed Rules:
8 72976

40 CFR
52 72948
62 72953
63 73180
81 72948
89 72955
180 (2 documents) 72958, 72963
Proposed Rules:
62 72978

48 CFR
Ch. I (2 documents) 73214, 73222
11 73215
22 73218
23 73215
32 73219
39 73215
52 (3 documents) 73215, 73218, 73219

49 CFR
Proposed Rules:
380 73226
383 73226
384 73226

50 CFR
17 73092
648 72965

Federal Register
Vol. 72, No. 246
Wednesday, December 26, 2007

Presidential Documents

Title 3—

The President

Proclamation 8212 of December 19, 2007

National Mentoring Month, 2008

By the President of the United States of America

A Proclamation

Millions of Americans lend their time, talent, and energy to become mentors and make a difference in children's lives. During National Mentoring Month, we honor these caring individuals for their dedication to changing our country one heart and soul at a time.

By sharing their knowledge and experiences, mentors serve as examples for young people and help teach them the skills they need to succeed in life. They also provide stability, instill important values, and build confidence in those they assist. Mentors are soldiers in the armies of compassion, and they encourage children to set goals and achieve their dreams.

My Administration is committed to helping our Nation's children realize their full potential by expanding opportunities for Americans to mentor. To raise awareness of the challenges facing our youth and encourage adults to connect with young people through family, school, and community, First Lady Laura Bush is leading the Helping America's Youth initiative. Through the USA Freedom Corps, we are connecting individuals with volunteer opportunities, including mentors who work with young people in schools and community organizations. By encouraging Americans to mentor, we are doing our part to see that more of America's children grow into strong, confident, and successful adults.

I appreciate all those who reach out to young people and inspire future generations to pass on this rich tradition that makes our country strong. I urge all Americans to get involved in mentoring programs and to visit the USA Freedom Corps website at volunteer.gov to learn more about mentoring opportunities in their communities. Together, we can build a culture of service and foster a more compassionate society that recognizes the value and purpose in every single human life.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 2008 as National Mentoring Month. I call upon all Americans to recognize the importance of mentoring, to look for opportunities to serve as mentors in their communities, and to observe this month with appropriate activities and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of December, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 07–6202
Filed 12–21–07; 8:45 am]
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Rules and Regulations

Federal Register

Vol. 72, No. 246

Wednesday, December 26, 2007

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.

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

FEDERAL ELECTION COMMISSION

11 CFR Part 104, 114

[Notice 2007–26]

Electioneering Communications

AGENCY: Federal Election Commission.

ACTION: Final rule and transmittal of rule to Congress.

SUMMARY: The Federal Election Commission is revising its rules governing electioneering communications. These revisions implement the Supreme Court's decision in *FEC* v. *Wisconsin Right to Life, Inc.,* which held that the prohibition on the use of corporate and labor organization funds for electioneering communications is unconstitutional as applied to certain types of electioneering communications. Further information is provided in the supplementary information that follows.

DATES: *Effective Date:* December 26, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Ron B. Katwan, Assistant General Counsel, Mr. Anthony T. Buckley, or Ms. Margaret G. Perl, Attorneys, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is revising 11 CFR parts 104 and 114 to implement the recent U.S. Supreme Court decision in *FEC* v. *Wisconsin Right to Life, Inc.,* 127 S. Ct. 2652 (June 25, 2007).

I. Background

A. Statutory and Regulatory Provisions Governing Electioneering Communications

The Bipartisan Campaign Reform Act of 2002 (''BCRA'') [1] amended the Federal Election Campaign Act of 1971, as amended (the ''Act'' or ''FECA''),[2] by adding a new category of political communications, ''electioneering communications,'' to those already governed by the Act. *See* 2 U.S.C. 434(f)(3). Electioneering communications (''ECs'') are broadcast, cable or satellite communications that refer to a clearly identified candidate for Federal office, are publicly distributed within sixty days before a general election or thirty days before a primary election, and are targeted to the relevant electorate. *See* 2 U.S.C. 434(f)(3)(A)(i). Individuals and entities that make ECs are subject to certain reporting obligations. *See* 2 U.S.C. 434(f)(1) and (2). Corporations and labor organizations are prohibited from using general treasury funds to finance ECs, directly or indirectly. *See* 2 U.S.C. 441b(b)(2). Finally, all ECs must include a disclaimer including the name of the individual or entity who paid for the EC and a statement as to whether or not the EC was authorized by a candidate. *See* 2 U.S.C. 441d(a).

The Act exempts certain communications from the definition of ''electioneering communication'' found in 2 U.S.C. 434(f)(3)(B)(i) to (iii), and specifically authorizes the Commission to promulgate regulations exempting other communications as long as the exempted communications do not promote, support, attack or oppose (''PASO'') a candidate. *See* 2 U.S.C. 434(f)(3)(B)(iv), *citing* 2 U.S.C. 431(20)(A)(iii).

The Commission promulgated regulations to implement BCRA's EC provisions. *Final Rules and Explanation and Justification for Regulations on Electioneering Communications,* 67 FR 65190 (Oct. 23, 2002) (''*EC E&J*'').[3] *See also* 11 CFR 100.29 (defining ''electioneering communication''); 104.20 (implementing EC reporting requirements); 110.11(a) (requiring disclaimers in all ECs); 114.2 (prohibiting corporations and labor organizations from making ECs); 114.10 (allowing qualified non-profit corporations (''QNCs'') to make ECs); 114.14 (restricting indirect corporate and labor organization funding of ECs). Commission regulations exempt five types of communications from the definition of ''electioneering communication.'' *See* 11 CFR 100.29(c).[4]

B. U.S. Supreme Court Precedent Regarding Electioneering Communications

In *McConnell* v. *FEC,* 540 U.S. 93 (2003) (''*McConnell*''), the U.S. Supreme Court upheld all of BCRA's EC provisions against various constitutional challenges. *Id.* at 194, 201–02, 207–08. Specifically, the Supreme Court held that the prohibition on the use of general treasury funds by corporations and labor organizations to pay for ECs in 2 U.S.C. 441b(b)(2) was not facially overbroad. Id. at 204–06. In *Wisconsin Right to Life, Inc.* v. *FEC,* 546 U.S. 410 (2006) (''*WRTL I*''), the U.S. Supreme Court explained that *McConnell's* upholding of section 441b(b)(2) against a facial constitutional challenge did not preclude further as-applied challenges to the corporate and labor organization funding prohibitions. *See WRTL I,* 546 U.S. at 411–12.

Subsequently, in *FEC* v. *Wisconsin Right to Life, Inc.,* 127 S. Ct. 2652 (2007) (''*WRTL II*''), the Supreme Court reviewed an as-applied challenge brought by a non-profit corporation seeking to use its own general treasury funds, which included donations it had received from other corporations, to pay for broadcast advertisements referring to Senator Feingold and Senator Kohl during the EC period before the 2004 general election, in which Senator Feingold, but not Senator Kohl, was on the ballot. The plaintiff argued that these communications were genuine issue advertisements run as part of a grassroots lobbying campaign on the issue of Senate filibusters of judicial nominations. *WRTL II,* 127 S. Ct. at 2660–61. The Supreme Court held that section 441b(b)(2) was unconstitutional as applied to the plaintiff's advertisements because the

[1] Pub. L. 107–155, 116 Stat. 81 (2002).

[2] 2 U.S.C. 431 *et seq.*

[3] The Commission revised its rule defining ''electioneering communication'' in 2005, in response to *Shays* v. *FEC,* 337 F. Supp. 2d 28 (D.D.C. 2004), *aff'd,* 414 F.3d 76 (D.C. Cir. 2005), *reh'g en banc denied,* No. 04–5352 (D.C. Cir. Oct. 21, 2005). *See Final Rules and Explanation and Justification for Regulations on Electioneering Communications,* 70 FR 75713 (Dec. 21, 2005).

[4] The exemptions in 11 CFR 100.29(c)(1) (non-broadcast communications), 100.29(c)(2) (news stories, commentaries or editorials), 100.29(c)(3) (expenditures and independent expenditures) and 100.29(c)(4) (candidate debates or forums) are based on the express language of the Act. *See* 2 U.S.C. 434(f)(3)(B)(i) to (iii). Section 100.29(c)(5) exempts communications paid for by State or local candidates that do not PASO any Federal candidate.

advertisements were not the ''functional equivalent of express advocacy.'' *Id.* at 2670, 2673. A communication is the ''functional equivalent of express advocacy'' only if it ''is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.'' *Id.* at 2667. Thus, *WRTL II* limited the reach of the EC funding prohibitions to communications that were the ''functional equivalent of express advocacy'' as determined under this newly articulated test.

C. The Commission's Rulemaking After WRTL II

The Commission published a Notice of Proposed Rulemaking in August 2007 seeking public comment on alternative proposed rules implementing the WRTL II decision. *See Notice of Proposed Rulemaking on Electioneering Communications,* 72 FR 50261, 50262 (August 31, 2007) (''*NPRM*''). The Commission sought public comment generally regarding the effect of the *WRTL II* decision on the Commission's rules governing corporate and labor organization funding of ECs, the definition of ''electioneering communication,'' and the rules governing reporting of ECs, as well as comment on the specific requirements of the proposed rules. The Commission also requested public comment regarding specific examples of communications that should be covered by the proposed rules and those that should not be. *Id.* at 50267–69. Finally, the Commission sought public comment regarding the impact, if any, of the *WRTL II* decision on other parts of the Commission's regulations, such as the definition of ''express advocacy'' in 11 CFR 100.22. *Id.* at 50263. The comment period ended on October 1, 2007. The Commission received twenty-seven written comments on the proposed rules. The Commission held a public hearing to discuss the proposed rules on October 17 and 18, 2007 at which fifteen witnesses testified. All written comments and hearing transcripts are available at *http://www.fec.gov/law/law_rulemakings.shtml* under the heading ''Electioneering Communications (2007).'' For purposes of this document, the terms ''comment'' and ''commenter'' apply to both written comments and oral testimony at the public hearing.

After consideration of the comments, the Commission has decided to implement the *WRTL II* decision by promulgating an exemption from the corporate and labor organization funding prohibitions in part 114 of the Commission's rules. Under the final rule, ECs that qualify for the *WRTL II* exemption may be funded with corporate and/or labor organization funds, including general treasury funds, but are subject to EC reporting and disclaimer requirements. The EC reporting requirements in 11 CFR 104.20 are also being revised to accommodate both reporting by corporations and labor organizations for ECs permissible under the new exemption, and reporting the use of corporate and labor organization donations by individuals and unincorporated entities to pay for ECs permissible under the new exemption. The Commission has decided to leave open possible revisions to the definition of ''express advocacy'' in 11 CFR 100.22 and to address the issue at a later date.

II. Effective Date and Transmittal of Final Rules to Congress

The final rule is effective immediately upon publication under 5 U.S.C. 553(d)(1) and (d)(3). Typically, rules must be published not less than thirty days before their effective dates under the Administrative Procedure Act (''APA''). *See* 5 U.S.C. 553(d). However, a rule that ''grants or recognizes an exemption or relieves a restriction'' is exempted from this requirement under 5 U.S.C. 553(d)(1). This final rule grants an exemption and relieves the funding restrictions for certain communications that meet the definition of ''electioneering communications.'' Therefore, this final rule meets this exception to the APA, is not required to be published thirty days prior to its effective date, and will therefore be effective immediately upon publication. In addition, 5 U.S.C. 553(d)(3) states that an agency may make a rule effective immediately ''for good cause found and published with the rule.'' The U.S. Supreme Court's decision in *WRTL II* was issued on June 25, 2007, less than six months before the first EC periods began (thirty days before various state Presidential caucuses and primaries in January 2008). The Commission has worked diligently to promulgate the final rule in time to provide guidance to organizations as to the permissible funding and required reporting for communications broadcast within the EC periods, which began in early December 2007 for certain states. The final rule implementing the *WRTL II* decision should apply to all EC periods for the 2008 election cycle and it would be contrary to the public interest to delay the effective date of the final rule until some time after the first EC periods start. Therefore, the Commission has ''good cause'' under section 553(d)(3) to make the final rule effective immediately.

Under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate before they take effect. The final rule that follows was transmitted to Congress on December 17, 2007.

III. Explanation and Justification

A. Scope of the WRTL II Electioneering Communications Exemption

The NPRM included two alternative proposals implementing the *WRTL II* decision in the rules governing ECs. Alternative 1 incorporated the new exemption into the rules prohibiting the use of corporate and labor organization funds for ECs in 11 CFR part 114. *See NPRM* at 50262. This alternative required corporations and labor organizations to comply with the reporting and disclaimer requirements for all ECs that qualify for the exemption. Alternative 2 incorporated the new exemption into the definition of ''electioneering communication'' in 11 CFR 100.29. This alternative removed all reporting and disclaimer requirements for these communications, whether run by corporations and labor organizations, or individuals and unincorporated entities not subject to the funding prohibitions in part 114. *See NPRM* at 50262–63.

The commenters were divided in their support for each alternative. Commenters supporting Alternative 1 pointed out that the plaintiffs in *WRTL II* did not challenge the EC reporting and disclaimer requirements, the Court did not address the issue of whether the EC reporting requirements were constitutional as applied to genuine issue advertisements, and the EC reporting requirements had been upheld against a facial challenge in *McConnell.* These commenters also contended that disclosure requirements are held to a less rigorous constitutional standard than funding prohibitions, and that a broader exemption would violate the Commission's statutory authority. In contrast, commenters supporting Alternative 2 argued that *WRTL II* held that the communications at issue were protected from any regulation (including disclosure), that the constitutionality of disclosure requirements is linked to the constitutionality of the funding restrictions on the communication, and that the costs of compliance with reporting obligations would chill speech by small nonprofit organizations. Some commenters stated their policy preference would be to adopt Alternative 2 and remove reporting

requirements for communications qualifying for the *WRTL II* exemption, but argued that the Commission's authority was confined to creating an exemption from the funding restrictions on ECs unless the EC reporting and disclaimer provisions are successfully challenged in court.

After consideration of the comments, the Commission has decided to adopt a revised version of Alternative 1 and create an exemption solely from the prohibition on the use of corporate and labor organization funds to finance ECs. Accordingly, the revisions to 11 CFR 114.2 and new section 114.15 do not create (1) an exemption from the overall definition of ''electioneering communication'' in section 100.29, (2) an exemption from the EC reporting requirements in section 104.20, or (3) an exemption from the EC disclaimer requirements in section 110.11. Corporations and labor organizations are permitted to use general treasury funds for ECs that are permissible under section 114.15, but are also required to file EC disclosure reports once they spend more than $10,000 in a calendar year on such communications. *See* revised 11 CFR 104.20.

The plaintiff in *WRTL II* challenged only BCRA's corporate and labor organization funding restrictions in section 441b(b)(2) and did not contest either the separate statutory definition of ''electioneering communication'' in section 434(f)(3), the separate reporting requirement in section 434(f)(1), or the separate disclaimer requirement in section 441d. *See WRTL II,* 127 S. Ct. at 2658–59; *see also* Verified Complaint for Declaratory and Injunctive Relief, ¶ 36 (July 28, 2004) in *Wisconsin Right to Life, Inc.* v. *FEC* (No. 04–1260), available at *http://fecds005.fec.gov/law/litigation_related.shtml#wrtl_dc* (''WRTL does not challenge the reporting and disclaimer requirements for electioneering communications, only the prohibition on using its corporate funds for its grass-roots lobbying advertisements.''). Nor did any of the four separate opinions issued by the Justices in *WRTL II* discuss the EC reporting or disclaimer requirements. Accordingly, the Commission agrees with the commenters who argued that *WRTL II*'s holding that the Act's EC funding restrictions are unconstitutional as applied to certain advertisements does not extend to the EC reporting or disclaimer requirements.

Because *WRTL II* did not address the issue, *McConnell* continues to be the controlling constitutional holding regarding the EC reporting and disclaimer requirements. *McConnell* held that the overall definition of ''electioneering communication'' in section 434(f)(3) is facially valid. *McConnell,* 540 U.S. at 193–94. Moreover, eight Justices in McConnell voted to uphold the EC reporting requirements (including three Justices who separately voted to strike down the EC funding prohibitions). *Id.,* 540 U.S. at 196 (Stevens, J.) and 321 (Kennedy, J.). The EC disclaimer requirements were similarly upheld as constitutional by a vote of 8–1. *McConnell,* 540 U.S. at 230 (Rehnquist, C.J., joined by all Justices except Thomas, J.). Thus, because *McConnell* has upheld the definition of ECs, as well as the reporting and disclaimer requirements, as facially valid, and because *WRTL II* did not address these provisions, the Commission has no mandate to revise the underlying definition of ''electioneering communication'' or remove the reporting and disclaimer requirements. *WRTL II* requires that the Commission implement an as-applied exemption to the EC funding requirements and nothing more. By adopting a revised version of Alternative 1, the Commission is acting in accordance with *WRTL II.*

The Commission disagrees with the comments that contended that Alternative 2 is more consistent with the Congressional intent because they believed BCRA did not contemplate reporting by corporations and labor organizations. While it is true that under BCRA, corporations and labor organizations were prohibited from funding any ECs, the statute requires every ''person'' (which by definition includes corporations and labor organizations) funding ECs over the reporting threshold to report. 2 U.S.C. 431(11). Moreover, incorporating the *WRTL II* exemption into the regulatory definition would remove certain ECs that are currently subject to reporting and disclaimer requirements when run by individuals, QNCs, or unincorporated entities from public disclosure entirely. While Congress provided for certain possible effects of judicial review of the definition of ''electioneering communication'' (*see* 2 U.S.C. 434(f)(3)(A)(ii)), Congress did not expressly address the consequences for the reporting provisions in the event of a successful as applied challenge to the funding restrictions. Thus, the Commission cannot conclude that Congress has spoken directly to this issue.

Finally, while understanding that some nonprofit organizations and their donors have privacy interests and that some donors request to remain anonymous, the Commission disagrees with the commenters who argue the only constitutional way to protect those interests is to adopt Alternative 2, thereby allowing all ECs that qualify for the *WRTL II* exemption to be run without any disclaimers or reporting. First, under revised section 104.20 described below, the reporting requirements for corporations and labor organizations funding ECs that qualify for the *WRTL II* exemption are narrowly tailored to address many of the commenters' concerns regarding individual donor privacy. *See* Section D below. Second, as some commenters noted, there are other ways of protecting donor privacy. When upholding the EC reporting requirements, *McConnell* recognized that these privacy interests are adequately protected on a case-by-case basis for certain organizations that espouse positions such that their donors or members might be subject to reprisal or harassment. *See McConnell,* 540 U.S. at 198–99 (citing *Brown* v. *Socialist Workers '74 Campaign Comm. (Ohio),* 459 U.S. 87, 98–99 (1982)). Organizations with significant and serious threats of reprisal or harassment may seek as-applied exemptions to the disclosure requirements under *Socialist Workers* through advisory opinions and court filings. *See, e.g.,* Advisory Opinion 2003–02 (Socialist Workers Party). Therefore, the Commission believes that the carefully designed reporting requirements detailed below do not create unreasonable burdens on the privacy rights of donors to nonprofit organizations.

The Commission notes that the final rule does not affect the coordinated communications rules in section 109.21, because ECs that are permissible under section 114.15 would still meet the ''electioneering communication'' content standard in 11 CFR 109.21(c)(1).[5] Thus, an EC that may be paid for with corporation or labor organization funds under the new exemption in section 114.15 may nevertheless be a prohibited corporate or labor organization in-kind contribution to a candidate or political party if that EC is coordinated with a candidate or party under the coordinated communications rules. In

[5] The coordinated communication rules set forth a three-prong test: A payment prong, a content prong and a conduct prong. *See* 11 CFR 109.21(a). If a communication meets one of the standards under the content or conduct prong, it is deemed to have met that prong. Any communication that meets all three prongs is considered an in kind contribution to the candidate or political party with which the coordination occurs. *See* 11 CFR 109.21(b). Portions of the coordination regulations at 11 CFR 109.21 were held invalid in *Shays* v. *FEC,* 508 F. Supp.2d 10 (2007). However, the Commission is appealing the ruling and the current regulations remain in full force and effect pending the outcome of the proceeding.

addition, the revisions to section 114.14 clarify that individuals and unincorporated entities may receive and spend corporate or labor organization funds for ECs that are permissible under new section 114.15. However, individuals and unincorporated entities are still subject to the general prohibition on using such funds to pay for any EC that is not permissible under section 114.15.

B. Revised 11 CFR 114.2—General Prohibition on Corporations and Labor Organizations Making Electioneering Communications

Section 114.2(b)(2)(iii) implements the funding restrictions of 2 U.S.C. 441b(b)(2) by prohibiting corporations and labor organizations from ''[m]aking payments for an electioneering communication to those outside the restricted class.'' However, as explained in the NPRM, placing a detailed exemption based on the *WRTL II* decision within section 114.2(b) could be confusing and difficult for the reader to locate. *See id.* Therefore, in the NPRM, the Commission proposed to place the exemption in new section 114.15. None of the commenters opposed the placement of the exemption in new section 114.15.

The final rule follows the approach proposed in the NPRM by setting forth the *WRTL II* exemption in new section 114.15, and amending section 114.2(b) to include a cross-reference to this new section. Revised section 114.2(b) states that corporations and labor organizations are prohibited from making ECs ''unless permissible under 11 CFR 114.10 or 114.15.'' *See* revised 11 CFR 114.2(b)(3) (adding the new *WRTL II* exemption reference to the existing reference to the QNC exemption in section 114.10).[6] The language of the final rule is slightly changed from the proposed rule to conform the cross-reference in section 114.2(b)(3) to similar revisions in other sections of part 114. *See, e.g.*, revised 11 CFR 104.20(c)(7) and 114.14(a)(1) discussed below.

C. New 11 CFR 114.15—Permissible Use of Corporate and Labor Organization Funds for Certain Electioneering Communications

The exemption proposed in the NPRM was substantively the same under both Alternative 1 and 2. *See NPRM* at 50264. Under Alternative 1, proposed section 114.15(a) set forth the general standard for determining whether the use of corporate and labor organization funds for an EC is permissible under *WRTL II*. Proposed section 114.15(b) included safe harbor provisions for two common types of ECs: Grassroots lobbying communications and commercial and business advertisements. The NPRM explained that the safe harbors were intended to provide additional guidance as to which ECs would qualify for the general exemption and that an EC that did not qualify for the safe harbor could still come within the general exemption. *See id.* Finally, proposed section 114.15(c) addressed reporting obligations for corporations and labor organizations that choose to use general treasury funds to pay for ECs permissible under section 114.15. *See id.*

Some commenters favored the proposed rule's approach of including both a general exemption and one or more safe harbors. A few commenters suggested that the final rule should include not only safe harbors, but also ''capture nets or red flags'' that would indicate when an EC would generally be considered to be the functional equivalent of express advocacy and therefore not qualify for the general exemption. Other commenters were concerned that the safe harbors would become the *de facto* rule and groups would feel chilled from making ECs that do not qualify for one of the safe harbors without additional guidance in the general rule. Some commenters thought that the safe harbor provisions were too narrow to be useful. Some commenters also suggested that the Commission include a list of those factors that the Commission would consider in determining whether an EC qualifies for the exemption.

After consideration of the comments, the Commission has decided to modify the NPRM's proposed approach by adopting a rule that both incorporates a safe harbor for certain types of EC and sets forth a multi-step analysis for determining whether ECs that do not qualify for the safe harbor nevertheless qualify for the general exemption. First, the final rule includes a revised articulation of the general exemption in new section 114.15(a). Second, the Commission is broadening the safe harbor to provide more detailed guidance as to which ECs qualify for the exemption under the safe harbor. *See* 11 CFR 114.15(b). Third, the final rule contains a provision explaining the Commission's rules of interpretation for determining if an EC that does not qualify for the safe harbor in section 114.15(b) is nonetheless permissible under the general exemption in section 114.15(a). *See* 11 CFR 114.15(c). The final rule also includes three additional paragraphs. First, new paragraph (d) explains what contextual information the Commission may consider in its analysis of ECs under the general exemption and safe harbor. Second, new paragraph (e) indicates that a list of examples of ECs analyzed under the general exemption and safe harbor will be placed on the Commission's Web site. Lastly, new paragraph (f) states that corporations and labor organizations funding ECs that are permissible under section 114.15(a) are subject to certain reporting requirements under 11 CFR 104.20.

1. 11 CFR 114.15(a)—Articulation of the WRTL II Exemption

In the NPRM, proposed section 114.15(a) provided that corporations and labor organizations may make an EC (as defined in 11 CFR 100.29) without violating the prohibition in section 114.2(b)(3), ''if the communication is susceptible of a reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate.'' *See NPRM* at 50264. Many commenters agreed with this proposed implementation of the *WRTL II* test as a general exemption. However, some commenters urged the Commission to use the exact words used in the *WRTL II* decision and phrase the general exemption so that corporations or labor organizations may make an EC ''unless the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate.'' These commenters argued that the NPRM's formulation of the standard shifted the burden of proving whether an EC qualifies for the exemption from the Commission to the speaker making the EC.

While the Commission disagrees with those commenters who argued that the effect of the NPRM's language was to shift the burden of proof, it appears that the formulation proposed in the NPRM could be misunderstood. Therefore, in the final rule, paragraph (a) tracks the *WRTL II* decision's language: ''Corporations or labor organizations may make an electioneering communication, as defined in 11 CFR 100.29, to those outside the restricted class unless the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate.'' *See* 11 CFR 114.15(a).

[6] To increase clarity and readability, the final rule also revises the title of section 114.2 to include ECs explicitly, and to renumber paragraph (b)(2)(iii) as paragraph (b)(3) with conforming changes as necessary in the text of that paragraph.

2. 11 CFR 114.15(b)—Safe Harbor Provision

As proposed in the NPRM, the final rule supplements the general exemption in section 114.15(a) with a safe harbor provision in section 114.15(b). Satisfying the safe harbor provision demonstrates that the EC is susceptible of a reasonable interpretation other than as an appeal to vote for or against a Federal candidate. Accordingly, an EC that qualifies for the safe harbor would be deemed to be permissible under section 114.15(a) and may be paid for with corporate or labor organization funds. However, an EC that does not qualify for the safe harbor may still come within the general exemption under the analysis described below in section 114.15(c).

The NPRM's proposed safe harbor provisions for grassroots lobbying communications and commercial and business advertisements each contained four prongs, all of which would have had to be met for an EC to qualify for the proposed safe harbor. The first two prongs of both proposed safe harbors would have focused on the content of the communication, while the last two prongs of both safe harbors would have focused on the presence of ''indicia of express advocacy'' as described in the *WRTL II* decision. *See NPRM* at 50265, 50269.

In order to simplify the final rule, the Commission has adopted one safe harbor provision with three prongs. An EC qualifies for the safe harbor if it (1) does not mention ''any election, candidacy, political party, opposing candidate, or voting by the general public;'' (2) does not take a position on the candidate's ''character, qualifications, or fitness for office;'' and (3) either ''focuses on a legislative, executive or judicial matter or issue'' or ''proposes a commercial transaction.'' *See* 11 CFR 114.15(b)(1)–(3). An EC will qualify for the safe harbor only if it satisfies all three prongs. The safe harbor provision in the final rule applies both to ECs that would have been considered ''grassroots lobbying communications'' and to ECs that would have been considered ''commercial and business advertisements'' under the rule proposed in the NPRM.

a. 11 CFR 114.15(b)(1) and (2)—Mentioning an Election or Candidacy and Taking a Position on Character or Qualifications

The Supreme Court determined that WRTL's advertisements were not the ''functional equivalent of express advocacy'' because the communications' content was ''consistent with that of a genuine issue ad'' and the communications lacked ''indicia of express advocacy.'' *WRTL II*, 127 S. Ct. at 2667. The Court found that WRTL's communications lacked ''indicia of express advocacy'' because they did not mention ''an election, candidacy, political party, or challenger,'' and the communications did not ''take a position on a candidate's character, qualifications, or fitness for office.'' *Id.* The first two prongs of the safe harbor in the final rule incorporate the factors the Court used to determine whether a communication lacks ''indicia of express advocacy.'' In order to satisfy the safe harbor's first prong, the EC must not ''mention any election, candidacy, political party, opposing candidate, or voting by the general public.'' *See* 11 CFR 114.15(b)(1). To satisfy the safe harbor's second prong, the EC must not ''take a position on any candidate or officeholder's character, qualifications, or fitness for office.'' *See* 11 CFR 114.15(b)(2).

The NPRM included these same provisions as the last two prongs of the proposed safe harbors for grassroots lobbying communications and commercial and business advertisements. *See NPRM* at 50266–67, 50270. Some commenters believed that these provisions adequately limited the scope of the proposed rule. A few commenters urged the Commission to refrain from adding anything to the list of references in the *WRTL II* decision, such as the reference to ''voting by the general public'' proposed in the NPRM. However, the final rule retains this addition, which applies to ECs that include tag lines that suggest voting by the general public in elections, such as ''Vote. It's important to your future,'' but does not apply to other references to voting such as ''ask Congressman Smith to support the Voting Rights Bill.''

The NPRM sought public comment on whether certain examples constitute ''mentioning'' elections, candidacy, political parties, or opposing candidates, or take a position on a candidate's character, qualifications or fitness for office sufficient to transform an EC into the functional equivalent of express advocacy or to remove them from the proposed new safe harbors. *See NPRM* at 50266–67. Some commenters noted that many of the examples were actually references to officeholder status or to an officeholder's conduct of his or her official duties and should not be construed as mentioning a ''candidacy'' or taking a position on ''character.'' Other commenters believed that everything in the proposed list of references that would constitute indicia of express advocacy should be allowed in an EC so long as the EC focuses on issue advocacy. Some commenters argued that issue advocacy groups should be free to run ECs that comment on officeholders' character and fitness for office in order to hold those officeholders accountable. Other commenters argued that condemning the record or past actions of a candidate or officeholder should automatically disqualify an EC from the exemption.

The following is a non-exclusive list of examples that will be considered to ''mention'' an election, candidacy, political party, opposing candidate or voting by the general public under section 114.15(b)(1), thereby causing an EC to fail to satisfy the first prong of the safe harbor. The Commission notes that because these examples only apply to the safe harbor provisions and to one factor in the rules of interpretation for the general exemption, use of these words or phrases will not necessarily disqualify any EC from the general exemption in section 114.15(a).

- Specific references to an election date such as ''Support gun rights this November 5'' or references to election-related themes, such as pictures of a ballot or voting booth.
- General references to voting such as ''Remember to vote to protect the environment.''
- Specific references to the named candidate's office or candidacy, such as ''Bob Jones is running for Senate.''
- References to political parties by official names, such as ''Democrats,'' or by nicknames or proxy descriptions such as ''GOP.''
- Comparative references to incumbent and opposing candidate, such as ''Bob Smith supports our troops; Bill Jones cut veteran's benefits by 20%.''
- Implied references to incumbents such as ''It's time to take out the trash, select real change with Bob Smith'' or ''This November, we can do better.''

The Commission agrees with the many commenters who argued that a reference to the past voting record of the officeholder or candidate on a particular issue does not by itself constitute taking a position on a candidate's or officeholder's character, qualifications, or fitness for office. Therefore, in determining whether an EC takes a position on the candidate's or officeholder's ''character, qualifications, or fitness for office'' under section 114.15(b)(2) the Commission will examine the entirety of the content of the EC. The Commission is providing examples of ECs below (*see* section 114.15(e)) that illustrate this analysis.

b. 11 CFR 114.15(b)(3)—Lobbying Communications or Commercial Advertisements

The third prong of the final rule's safe harbor combines the first two prongs of the NPRM's proposed grassroots lobbying communications safe harbor and the commercial and business advertisements safe harbor. In order to satisfy the third prong, an EC must meet either section 114.15(b)(3)(i) describing certain lobbying communications *or* section 114.15(b)(3)(ii) describing certain commercial advertisements.

In addition to finding an absence of ''indicia of express advocacy,'' the *WRTL II* decision concluded that WRTL's communications contained content ''consistent with that of a genuine issue ad'' because they ''focus on a legislative issue, take a position on the issue, exhort the public to adopt the position, and urge the public to contact public officials with respect to the matter.'' *See WRTL*, 127 S. Ct. at 2667. Based on the Court's analysis, the NPRM's proposed safe harbor for grassroots lobbying communications covered any EC that ''exclusively discusses a pending legislative or executive matter or issue'' and ''urges an officeholder to take a particular position or action with respect to the matter or issue, or urges the public to adopt a particular position and to contact the officeholder with respect to the matter or issue.'' *See NPRM* at 50265–66.

Many commenters argued that the first prong of the safe harbor would be too narrow in several respects, including: (1) It required that the EC discuss the issue ''exclusively;'' (2) it required that the issue be ''pending;'' and (3) it was limited to ECs discussing ''legislative or executive'' issues. Some commenters also argued that the second prong of the safe harbor would be too narrow because it would be limited to officeholders and would not cover ECs that urged the public to contact the candidate simply to ascertain the candidate's position on a particular issue. Other commenters supported the proposed safe harbor's prongs as written and urged the Commission to limit the scope of the safe harbor. These commenters noted that a safe harbor should be narrower than the general exemption.

In response to some of these comments, the final rule incorporates certain modifications in the third prong of the safe harbor. Section 114.15(b)(3)(i) covers any EC that ''focuses on a legislative, executive or judicial matter or issue'' and either ''urges a candidate to take a particular position or action with respect to the matter or issue'' or ''urges the public to adopt a particular position and to contact the candidate with respect to the matter or issue.'' *See* 11 CFR 114.15(b)(3)(i)(A)–(B). This formulation adopts the *WRTL II* decision's language that describes issue advertisements as ECs that ''focus'' on an issue rather than the NPRM's more narrow language that limits the safe harbor to ECs that ''exclusively discuss'' the issue. Thus, under this prong, an EC may qualify for the safe harbor even if it mentions other issues in addition to focusing on matters or issues listed in the safe harbor. In addition, the Commission agrees with the commenters that the safe harbor should cover not only legislative and executive issues as proposed in the NPRM, but also judicial matters. Furthermore, the final rule does not, as did the proposed rule, limit the subject matter of the EC to ''pending'' issues or matters. Instead, the new rule covers ECs that focus on any legislative, executive or judicial issue regardless of whether it is pending before one or more branches of government. This revision allows organizations to address, for example, issues that they believe should be placed on the legislative, executive, or judicial agenda in the future.

Finally, the Commission agrees with those commenters who pointed out that issue advocacy groups may urge a candidate who is not a sitting officeholder to take a certain position on a legislative, executive, or judicial issue, not because they want to advocate the candidate's election or defeat, but because they want the candidate to commit to taking action on a certain issue if the candidate is elected. Therefore, unlike the rule proposed in the NPRM, the final rule includes not only references to sitting officeholders but also references to any Federal candidates. However, in order to qualify for the safe harbor, the EC must either urge the candidates themselves to take a position, or urge the public to take a position and contact the candidates. General appeals to the public to ''educate themselves'' or to contact an organization to learn more about the issue will not satisfy this prong of the safe harbor. Appeals to the public to donate to the organization to help spread the word about the issue will not alone satisfy this prong of the safe harbor. However, such appeals to learn more or contribute will not disqualify from the safe harbor a communication which also includes exhortations to candidates or to the public to contact candidates. In addition, an appeal to learn about issues or to raise awareness (such as asking for donations to ''help spread the word'') may qualify as a ''call to action or other appeal'' under 11 CFR 114.15(c)(2)(iii) (*see below*).

The second part of the safe harbor's third prong in section 114.15(b)(3)(ii) is also based upon the safe harbor for commercial and business advertisements proposed in the NPRM, but includes slightly revised language. The NPRM proposed a safe harbor for any EC that ''exclusively advertises a Federal candidate's or officeholder's business or professional practice or any other product or service'' and that ''is made in the ordinary course of business of the entity paying for the communication.'' *See NPRM* at 50270. Many commenters supported the creation of a commercial and business advertisements safe harbor as consistent with the *WRTL II* decision. However, some commenters supporting the safe harbor argued that the proposed provision was too narrow to be useful to the business community. Specifically, a few commenters argued that the Commission should remove the ''ordinary course of business'' prong in the proposed rule. Another commenter criticized the proposed safe harbor as too ambiguous and difficult for advertisers to apply when deciding whether a particular EC may be run.

Other commenters urged the Commission not to adopt any additional safe harbors besides one for grassroots lobbying communications as specifically addressed in the *WRTL II* decision. However, the language of the Supreme Court's general test for determining whether an EC is exempt from the EC funding restrictions is not limited just to grassroots lobbying advertisements but covers any EC that is susceptible of a reasonable interpretation other than as an appeal to vote. As explained in the NPRM, many ECs could reasonably be interpreted as having a non-electoral, business or commercial purpose. Therefore, the Commission believes that explaining how the *WRTL II* exemption applies to commercial and business advertisements is helpful to provide adequate guidance to those seeking to comply with the EC provisions.

Accordingly, the last part of the safe harbor's third prong applies to an EC that ''proposes a commercial transaction, such as purchase of a book, video or other product or service, or such as attendance (for a fee) at a film exhibition or other event.'' *See* 11 CFR 114.15(b)(3)(ii). The final rule substitutes ''proposes a commercial transaction'' for the ''in the ordinary course of business'' requirement proposed in the NPRM. As several

commenters pointed out, determining whether an EC is made in the ordinary course of business would require the Commission to look beyond the four corners of the EC and probe into the outside business affairs of the speaker. By contrast, the new ''proposes a commercial transaction'' language appropriately focuses the Commission's inquiry on the objective meaning of the content of the EC.

This prong of the safe harbor will be satisfied regardless of whether the product or service is provided by a business owned or operated by, or employing, the candidate referred to in the EC.[7] Both ECs advertising a Federal candidate's appearance to promote a business or other commercial product or service, and ECs in which the Federal candidate is referred to as the subject of a book, video, or movie will be eligible for the safe harbor. The final rule clarifies that an advertisement urging the public to attend a film exhibition or other commercial event for a fee is also eligible for the safe harbor. By contrast, advertisements for non-commercial events, such as for charities or political events, do not meet this prong and do not qualify for the safe harbor, although they may qualify for the general exemption.

The Commission is providing examples of ECs that illustrate the analysis of this third prong of the safe harbor provision below (*see* section 114.15(e)).

3. 11 CFR 114.15(c)—Rules of Interpretation for Electioneering Communications That Do Not Qualify for the Safe Harbor

The Commission has added new section 114.15(c) to explain how the Commission will analyze ECs that do not qualify for the safe harbor, given that the safe harbor does not include every EC that is permissible under section 114.15(a). Specifically, paragraph (c) of the final rule states that if an EC does not qualify for the safe harbor in section 114.15(b), the Commission will consider: ''whether the communication includes any indicia of express advocacy and whether the communication has an interpretation other than as an appeal to vote for or against a clearly identified Federal candidate in order to determine whether, on balance, the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate.'' As with the three prongs of the safe harbor, this analysis is drawn from the *WRTL II* decision's analysis of ''indicia of express advocacy'' and the content of WRTL's communications.

Sections 114.15(c)(1) and (c)(2) describe in more detail the two factors that the Commission will consider in determining whether an EC qualifies for the general exemption in section 114.15(a). The Commission will consider both factors in all cases and will balance the findings under both parts of the test to determine whether an EC has no reasonable interpretation other than as an appeal to vote and is therefore not permissible under section 114.15(a).

For example, even if the Commission found that an EC includes no ''indicia of express advocacy,'' it could still determine that the EC does not have content that would support a determination the EC has an interpretation other than as an appeal to vote, and conclude overall that the EC is not permissible under section 114.15(a) because, on balance, the EC has no reasonable interpretation other than as an appeal to vote. Conversely, even if the Commission found that an EC does include ''indicia of express advocacy,'' it could determine that the EC nevertheless has content that would support a determination that a EC has an interpretation other than a call to electoral action, and conclude overall that the EC is permissible under section 114.15(a) because, on balance, that interpretation is reasonable despite the presence of indicia of express advocacy. The Commission could also find no indicia of express advocacy in an EC, decide that there is content in the EC to support an interpretation of the EC as something other than a call to electoral action, but conclude overall that the EC is not permissible under section 114.15(a) because, on balance, that interpretation is not reasonable.

a. 11 CFR 114.15(c)(1)—Indicia of Express Advocacy

Section 114.15(c)(1) states that under the first factor of this analysis, an EC ''includes indicia of express advocacy'' if it ''mentions any election, candidacy, political party, opposing candidate, or voting by the general public'' or ''takes a position on any candidate's or officeholder's character, qualifications, or fitness for office.'' *See* 11 CFR 114.15(c)(1)(i)–(ii). This list is taken from the *WRTL II* decision, and is a combination of the two lists contained in the first two prongs of the safe harbor in section 114.15(b).

The Commission agrees with the many commenters who argued that mentioning an election or opposing candidate, referring to a candidate's qualifications, or commenting on a sitting officeholder's character should not by itself disqualify an EC from the general exemption in section 114.15(a). Thus, although an EC that includes any one of the references on the list is automatically disqualified from the safe harbor, such an EC may still qualify for the general exemption under the analysis in section 114.15(c).

b. 11 CFR 114.15(c)(2)—Content of Communications

The second factor in paragraph (c)(2) states: ''Content that would support a determination that a communication has an interpretation other than as an appeal to vote for or against a clearly identified Federal candidate includes'' three types of content. *See* 11 CFR 114.15(c)(2). This list of the three types of content is non-exhaustive and the Commission may also consider other types of content to determine whether an EC has some other interpretation besides urging electoral action.

The first type of content that supports a determination that an EC has an interpretation other than as an appeal to vote is content that ''focuses on a public policy issue and either urges a candidate to take a position on the issue or urges the public to contact the candidate about the issue.'' *See* 11 CFR 114.15(c)(2)(i). This provision is broader than the issue advocacy provision of the safe harbor in section 114.15(b) in two ways. First, it considers whether the EC focuses on a ''public policy issue'' rather than, as required by the safe harbor, a ''legislative, executive, or judicial matter.'' Thus, an EC's content may support a determination that it has an interpretation other than as an appeal to vote if it discusses any matter of public importance even if the matter is not a ''legislative, executive, or judicial matter,'' but is instead, for example, a State action or an international event. Second, this provision considers whether an EC urges viewers to contact the candidate about the issue, rather than, as required by the safe harbor, urge viewers ''to adopt a particular position'' and contact the candidate about the issue.

Paragraph (c)(2)(ii) sets out the second type of content that supports a determination that an EC has an interpretation other than as an appeal to vote. This consists of content that ''proposes a commercial transaction, such as purchase of a book, video or other product or service, or such as attendance (for a fee) at a film exhibition

[7] The Commission notes that these communications may nevertheless be subject to the Commission's coordination regulations. 11 CFR 109.21

or other event.'' This provision is identical to the commercial transaction provision of the safe harbor in section 114.15(b)(3)(ii). However, the Commission might have to analyze an EC that satisfies the commercial transaction provision of the safe harbor under the rules of interpretation in section 114.15(c), because the EC included references to candidacies or elections that preclude qualification for the safe harbor. For example, a commercial advertisement for a book with the title ''50 Reasons Not to Vote for Congressman Smith'' would not satisfy the first prong of the safe harbor in section 114.15(b)(1). Therefore, the Commission would analyze such an advertisement under section 114.15(c)(2)(ii).

Section 114.15(c)(2)(iii) is a more general provision intended to apply to other types of ECs not covered by the public policy issue and commercial transaction provisions. The final rule states that an EC has content supporting a determination of an interpretation other than as an appeal to vote if it ''includes a call to action or other appeal that interpreted in conjunction with the rest of the communication as urging action other than voting for or against or contributing to a clearly identified Federal candidate or political party.'' *See* 11 CFR 114.15(c)(2)(iii). The Commission will look at the entire content of the EC to determine whether an EC includes such a ''call to action.''

This third provision was added, in part, to respond to commenters who urged the Commission to create a safe harbor provision for other categories of ECs, such as public service announcements. *See NPRM* at 50270–71. These commenters argued that public service announcements and charity advertisements can easily be interpreted as something other than an appeal to vote even though they simply provide information to the public without any specific ''call to action.'' For example, an EC that urges the public to sign up for a preventative screening for a particular type of cancer and includes a Federal candidate endorsing the organization's work on cancer research, would likely be deemed to have content that supports a determination that the EC has an interpretation other than as an appeal to vote.[8] Another common example is an EC that urges viewers to ''find out more'' or visit a Web site for ''more information.'' In analyzing this type of EC, the Commission will look to the actual content of the EC itself to determine whether the ''find out more'' call to action can be interpreted as something other than a call to vote for or against a Federal candidate. Other possible ''calls to action'' under this provision are requests to donate money to a particular charitable organization or disaster relief fund. However, the final rule excludes from this provision requests to make contributions to any clearly identified Federal candidate or political party. Finally, as discussed above, the Commission will analyze ECs promoting charity events under this provision.

c. 11 CFR 114.15(c)(3)—Interpreting the Communication

Several commenters argued that in analyzing whether an EC qualifies for the WRTL exemption, the Commission should be guided by the principle, articulated by the Supreme Court in *WRTL II*, that ''[w]here the First Amendment is implicated, the tie goes to the speaker.'' *See WRTL II*, 127 S. Ct. at 2669. New section 114.15(c)(3) incorporates the principle that ''the tie goes to the speaker'' by providing that ''in interpreting a communication under paragraph (a), any doubt will be resolved in favor of permitting the communication.'' *See* 11 CFR 114.15(c)(3). The Commission intends to follow this principle in determining whether, on balance, the EC is susceptible of a reasonable interpretation other than as an appeal to vote and therefore is permissible under section 114.15(a).

4. 11 CFR 114.15(d)—Information Permissibly Considered

As the NPRM explained, the exemption in section 114.15(a) is objective, focusing on the substance of the EC rather than ''amorphous considerations of intent and effect.'' *WRTL II*, 127 S. Ct. at 2666. In determining whether a particular EC is susceptible of a reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate, the Commission may consider ''basic background information that may be necessary to put an ad in context.'' Id. at 2669.[9] According to the *WRTL II* decision, this information could include whether a communication ''describes a legislative issue that is either currently the subject of legislative scrutiny or likely to be the subject of such scrutiny in the near future.'' *Id.* (internal citation omitted). *See also NPRM* at 50264. However, the Court cautioned that inquiry into such relevant background should not require burdensome or broad inquiries with extensive discovery. *See WRTL II*, 127 S. Ct. at 2669.

Many commenters urged the Commission to clarify in the rule the extent to which the Commission would consider contextual information outside the actual text and visuals of the EC itself when applying the *WRTL II* exemption. The final rule in new section 114.15 includes a new paragraph (d), which limits the contextual information the Commission will consider when analyzing ECs under the *WRTL II* exemption. Some commenters urged the Commission to include in the rule text a list of the types of information that the Commission would consider in evaluating ECs, such as legislative calendars and news stories, and a list of the types of contextual information that the Commission would not consider in its analysis, such as timing of the EC, prior communications or outside activities of the speaker, and the EC's actual effect on elections. Instead of attempting to create exhaustive lists that would fit every circumstance, the final rule sets forth general principles that will guide the Commission's consideration of ''external facts'' beyond the four corners of the EC.

Specifically, section 114.15(d) states that when evaluating an EC under the general exemption or the safe harbor, the Commission may consider only the EC itself and ''basic background information that may be necessary to put the communication in context and which can be established with minimal, if any, discovery.'' *See* 11 CFR 114.15(d). The rule provides the following examples of such basic background information: Whether a named individual is a candidate or whether an EC describes a public policy issue. The Commission will also consider similar background facts about the public policy issue, commercial product or service, or other topics discussed in the EC, so long as these facts may be established with minimal discovery.

5. 11 CFR 114.15(e)—Examples of Communications

In the NPRM, the Commission included a number of examples of communications that would, and would not, qualify for the proposed grassroots

[8] The Commission notes that these communications may nevertheless be subject to the Commission's coordination regulations. 11 CFR 109.21.

[9] The Commission must also consider certain basic facts such as the timing and targeting of the communication in order to determine whether a communication satisfies the basic definition of EC under BCRA and section 100.29(a) (*i.e.*, whether the communication was broadcast within the last thirty or sixty days before a Federal election within the district of the referenced Federal candidate).

lobbying communications safe harbor. *See NPRM* at 50267–69. The Commission sought public comment on whether the final rule should include such examples in the E&J or the rule text itself. *See NPRM* at 50267. The Commission also asked whether there were additional examples of communications that should be included in the list. The commenters that discussed the question of where examples of communications should be published all favored inclusion of those examples in the E&J instead of the rule text.

After consideration of the comments, the Commission has decided to include examples of communications in the E&J instead of the rule. In addition, section 114.15(e) includes a statement to direct readers of the regulation to the Commission's web site on which the Commission will place the examples discussed in this E&J. The Commission intends to update this web page to include examples from court cases, advisory opinions and enforcement matters that apply the *WRTL II* exemption in the future.

The following examples are illustrative only and are not intended to create a requirement for any particular words or phrases to be included before an EC will be permissible under the *WRTL II* exemption. These examples are drawn from past court cases and Commission advisory opinions and enforcement matters.

a. Examples of Communications that Qualify for the Safe Harbor in 11 CFR 114.15(b)

Example 1

LOAN OFFICER: Welcome Mr. and Mrs. Shulman. We've reviewed your loan application, along with your credit report, the appraisal on the house, the inspections, and well * * *

COUPLE: Yes, yes * * * we're listening.

OFFICER: Well, it all reminds me of a time I went fishing with my father. We were on the Wolf River Waupaca * * *

VOICE-OVER: Sometimes it's just not fair to delay an important decision.

But in Washington, it's happening. A group of Senators is using the filibuster delay tactic to block federal judicial nominees from a simple ''yes'' or ''no'' vote. So qualified candidates aren't getting a chance to serve.

It's politics at work, causing gridlock and backing up some of our courts to a state of emergency.

Contact Senators Feingold and Kohl and tell them to oppose the filibuster.

Visit: BeFair.org

Paid for by Wisconsin Right to Life (befair.org), which is responsible for the content of this advertising and not authorized by any candidate or candidate's committee.[10]

All commenters that discussed the examples agreed with the NPRM's assessment that this example would qualify for the proposed grassroots lobbying communications safe harbor. *See NPRM* at 50267. This example also qualifies for the final rule's safe harbor. First, the communication does not mention any election, candidacy, political party, opposing candidate, or voting by the general public (section 114.15(b)(1)). Second, the communication does not take a position on the character, qualifications, or fitness for office of either Senator Feingold or Senator Kohl (section 114.15(b)(2)), or any other candidate. Third, this communication satisfies section 114.15(b)(3)(i) because it focuses on the legislative matter of Senate filibuster votes on judicial nominees, and urges the public to oppose the filibuster and to contact Senators Feingold and Kohl to take a position with respect to the filibuster issue. Therefore, this example qualifies for the safe harbor and is permissible under section 114.15(a).

Example 2

Our country stands at the crossroads—at the intersection of how marriage will be defined for future generations. Marriage between a man and a woman has been challenged across this country and could be declared unconstitutional at any time by rogue judges. We must safeguard the traditional definition of marriage by putting it beyond the reach of all judges—by writing it into the U.S. Constitution. Unfortunately, your senators voted against the Marriage Protection Amendment two years ago. Please call Sens. Snowe and Collins immediately and urge them to support the Marriage Protection Amendment when it comes to a vote in early June. Call the Capitol switchboard at 202–224–3121 and ask for your senators. Again, that's 202–224–3121. Thank you for making your voice heard.

Paid for by the Christian Civic League of Maine, which is responsible for the content of this advertising and not authorized by any candidate or candidate's committee.[11]

All commenters that discussed the examples agreed with the NPRM's statement that this example would qualify for the proposed grassroots lobbying communications safe harbor. *See NPRM* at 50268. This example also qualifies for the final rule's safe harbor. First, the communication does not mention any election, candidacy, political party, opposing candidate, or voting by the general public under the first prong in section 114.15(b)(1). The communication also satisfies the second prong in section 114.15(b)(2) because it criticizes the Senators' past voting records only as part of a broader discussion of particular legislation, not as an attack on their personal character, qualifications, or fitness for office. Finally, this example satisfies the third prong of the safe harbor in section 114.15(b)(3)(i) because it focuses on the legislative issue of the legal definition of marriage, and urges the public to support a constitutional amendment, and to contact Senators Snowe and Collins to urge them to support the upcoming vote on the Marriage Protection Amendment. Therefore, this example satisfies all three prongs of the safe harbor and is an EC permissible under section 114.15(a).

Example 3

[VOICE OVER SPEAKING WHILE SHOWING VARIOUS FOOTAGE OF DEALERSHIP]: Cadillac. Style. luxury. Visit Joe Smith Cadillac in Waukesha. Where we uphold the Cadillac legacy of style, luxury and performance everyday. At Joe Smith Cadillac, you'll find a huge selection of Cadillacs and receive award-winning service every time you bring your Cadillac in. Whether you're in the market for a classic sedan or SUV, you can be sure Joe Smith Cadillac has it. And while shopping for your Cadillac, a single detail won't be missed. We know the importance of taking care of our customers. That's why you'll always find incredible service specials to help to maintain your Cadillac. When it comes to care for your Cadillac, you shouldn't settle for anything less than the best.

We're Wisconsin's all-time sales leader and we want to be your Cadillac dealership.

[VOICE OVER SPEAKING WHILE VIDEO OF INSIDE DEALERSHIP ZOOMS IN ON FRAMED PICTURE ON WALL OF JOE SMITH]: Stop into Joe Smith Cadillac, on Highway 18 in Waukesha, and see what Cadillac style really is all about.[12]

The NPRM provided this communication as an example that would qualify for the proposed commercial and business advertisements safe harbor. The few commenters who addressed this example agreed that it would qualify for

[10] ''Loan,'' *Wisconsin Right to Life, Inc.* v. *FEC,* 466 F. Supp. 2d 195, 198 n.4 (D.D.C. 2006). The Supreme Court held that this advertisement was not the ''functional equivalent of express advocacy. *WRTL II,* .127 S. Ct at 2670.

[11] ''Crossroads,'' Verified Complaint for Declaratory and Injunctive Relief, Exhibit A (Apr. 3, 2006), *Civic Christian League of Maine* v. *FEC,* 443 F. Supp. 2d 81 (D.D.C. 2006) (No. 06–0614), *available at http://www.fec.gov/law/litigation/christian_civic_league_complaint.pdf.* The Commission filed a joint motion asking the Court to hold this advertisement meets the *WRTL II* exemption. *See* ''Joint Motion'' (July, 13, 2007), *Civic Christian League of Maine* v. *FEC,* (No. 06–0614).

[12] This example is drawn from one of the advertisements in Advisory Opinion (''AO'') 2004–31 (Darrow), Attachment A at 3 (Sept. 10, 2004), in which the Commission found that under the particular facts of this advisory opinion, the advertisements did not meet the definition of ''electioneering communication'' because the use of the name ''Russ Darrow'' referred to a business or another individual (in this case, the candidate's son) who was not a Federal candidate.

the proposed safe harbor. Assuming that Joe Smith is a Federal candidate, this example also qualifies for the final rule's safe harbor. First, the communication does not mention any election, candidacy, political party, opposing candidate, or voting by the general public (section 114.15(b)(1)). Second, this communication does not take a position on the character, qualifications, or fitness for office of the candidate, Joe Smith (section 114.15(b)(2)). Third, the communication ''proposes a commercial transaction'' by advertising the car dealership owned by candidate Joe Smith and inviting viewers to purchase cars at that business (section 114.15(b)(3)(ii)). The external facts that Joe Smith is a candidate and that he owns this business are permissible background facts that the Commission may consider in its analysis of this communication pursuant to section 114.15(d). These facts may be established with minimal, if any, discovery. Thus, this example qualifies for the safe harbor and is permissible under section 114.15(a).[13]

b. Examples of Communications that Do Not Qualify for the Safe Harbor in 11 CFR 114.15(b), but are Permissible Under 11 CFR 114.15(a)

Example 1:

It's our land; our water. America's environment must be protected. But in just 18 months, Congressman Ganske has voted 12 out of 12 times to weaken environmental protections. Congressman Ganske even voted to let corporations continue releasing cancer-causing pollutants into our air. Congressman Ganske voted for the big corporations who lobbied these bills and gave him thousands of dollars in contributions. Call Congressman Ganske. Tell him to protect America's environment. For our families. For our future.[14]

The NPRM asked for public comment as to whether this example should qualify for the proposed grassroots lobbying safe harbor or the general exemption. *See NPRM* at 50268. Most commenters generally agreed that this example does not qualify for the proposed safe harbor because it does not discuss a pending legislative issue (proposed first prong) and criticizes Representative Ganske's character and fitness for office (proposed fourth prong).[15] However, the commenters disagreed as to whether this example nonetheless qualifies for the general exemption proposed in the NPRM. Some commenters argued that because the communication focuses on the issue of air pollution and related legislative matters, it can reasonably be interpreted as seeking support for certain environmental issues. These commenters thought that the example should qualify for the general exemption as a ''genuine issue advertisement,'' even though it criticizes the Representative Ganske's past position on environmental issues. Other commenters contended that there was no reasonable interpretation of this communication other than as an appeal to vote against Representative Ganske because it includes a personal attack on Representative Ganske's character.

The Commission has determined that this example does not qualify for the safe harbor in section 114.15(b), but is permissible under the general exemption in section 114.15(a). The example satisfies the first prong of the safe harbor because it does not mention any election, candidacy, political party, opposing candidate, or voting by the general public (section 114.15(b)(1)). Under the second prong, the communication's criticism of Representative Ganske's past voting record in the context of a broader discussion of the issue of environmental protection does not constitute taking a position on Representative Ganske's character, qualifications, or fitness for office (section 114.15(b)(2)). However, the communication's statement that Representative Ganske voted for particular environmental bills supported by corporations who gave contributions to Representative Ganske is an attack on his character and fitness for office because, without reference to any external facts, the statement suggests that his past votes are a sign of corruption. Therefore, the example fails the second prong in section 114.15(b)(2) and does not qualify for the safe harbor.

The example must then be analyzed under the general exemption in section 114.15(a), using the two-factor approach described in section 114.15(c). As discussed above, this communication takes a position on Representative Ganske's character and fitness for office. Therefore, the communication includes ''indicia of express advocacy'' under the second provision in the first factor (section 114.15(c)(1)(ii)). Under section 114.15(c)(2)(i), the communication includes content that would support a determination that the communication has an interpretation other than as an appeal to vote against Representative Ganske because its content focuses on the public policy matter of environmental regulation of air pollutants and urges the public to call Representative Ganske about the issue and tell him to take action on the issue in the future. Finally, the Commission must balance both the presence of indicia of express advocacy under the first factor and the finding of content supporting another interpretation under the second factor to determine whether the communication is susceptible of no reasonable interpretation other than as an appeal to vote against Representative Ganske. Keeping in mind that any doubt is to be resolved in favor of finding the communication permissible under section 114.15(c)(3), the Commission determines that this communication is permissible under section 114.15(a) because it is susceptible of a reasonable interpretation other than as an appeal to vote for or against a Federal candidate, despite the presence of indicia of express advocacy.

Example 2:

Announcer: Hello, I'm Sally Smith. Most of us think of heart disease as a problem that mostly affects men. But today, heart disease is one of the leading causes of death among American women. It doesn't have to stay that way. Lower cholesterol, daily exercise, and regular visits to your doctor can help you fight back. So have heart, America, and together we can reduce the risk of heart disease.

Voice Over: This message brought to you by DISH Network.[16]

This example was not included in the NPRM for public comment. Assuming that Sally Smith is a Federal candidate, the Commission concludes that this example does not qualify for the safe harbor in section 114.15(b), but is permissible under the general exemption in section 114.15(a). The example satisfies the first two prongs of the safe harbor because it does not mention any election, candidacy, political party, opposing candidate, or voting by the general public (section 114.15(b)(1)) and it does not take a position on Sally Smith's character, qualifications, or fitness for office (section 114.15(b)(2)). However, the

[13] The Commission notes that these communications may nevertheless be subject to the Commission's coordination regulations. 11 CFR 109.21.

[14] *See McConnell* v. FEC, 251 F. Supp. 2d 176, 876 (D.D.C. 2003) (Leon, J.), *available at http://www.fec.gov/pages/bcra/mem_opinion_leon.pdf.*

[15] At least one commenter argued that this example should meet the proposed safe harbor because it does not include any critique of the candidate's character, qualifications or fitness for office. This commenter argued that the information about contributions from corporations merely provides background information to the viewer about the past positions of the candidate on environmental issues, not an attempt to impugn character.

[16] This example is drawn from the sample advertisement in AO 2006–10 (EchoStar), Exhibit A (June 30, 2006). Under the particular facts of that advisory opinion, these advertisements were not analyzed as ECs because the requestor stated these advertisements would not be broadcast during the EC time period.

communication does not satisfy the third prong of the safe harbor because it does not focus on a ''legislative, executive or judicial matter'' (section 114.15(b)(3)(i)) or ''propose[] a commercial transaction'' (section 114.15(b)(3)(ii)). Thus, this example does not qualify for the safe harbor.

Nonetheless, this communication is permissible under the two-factor analysis for the general exemption in section 114.15(a). First, the communication does not include indicia of express advocacy because it does not mention any election, candidacy, political party, opposing candidate, or voting by the general public (section 114.15(c)(1)(i)), or take a position on Sally Smith's character, qualifications, or fitness for office, (section 114.15(c)(1)(ii)). Nor does the example include any other content that would constitute indicia of express advocacy. Second, this example contains content that would support a determination that the communication has an interpretation other than as an appeal to vote for or against Sally Smith under the third provision in section 114.15(c)(2)(iii). The communication's ''call to action'' is an appeal to viewers to lower their cholesterol, participate in daily exercise, and visit their doctors regularly. The rest of the communication is focused on heart disease and the risk of heart disease for women. In conjunction with the rest of the communication, the call to action can be interpreted as urging action separate from electoral activity. Balancing both factors, this communication is permissible under section 114.15(a) because it is susceptible of a reasonable interpretation other than as an appeal to vote for or against a Federal candidate.

c. Examples of Communications that are Not Permissible under 11 CFR 114.15(a)

Example 1:

Who is Bill Yellowtail? He preaches family values but took a swing at his wife. And Yellowtail's response? He only slapped her. But ''her nose was not broken.'' He talks law and order * * * but is himself a convicted felon. And though he talks about protecting children, Yellowtail failed to make his own child support payments—then voted against child support enforcement. Call Bill Yellowtail. Tell him to support family values.[17]

All commenters that discussed the examples agreed with the NPRM's statement that this example would not qualify for the proposed grassroots lobbying communications safe harbor. *See NPRM* at 50268. The commenters were also in agreement that this example has ''no reasonable interpretation other than as an appeal to vote for or against a specific candidate'' and should not qualify for the general exemption. Some commenters noted that the Supreme Court in *McConnell* held that this advertisement was the functional equivalent of express advocacy and that it should serve as a model for the types of character attacks that will not be permissible under the final rule.

The Commission has determined that this example does not qualify for the safe harbor and is not permissible under the final rule's general exemption. Although the example meets the first prong of the safe harbor because it does not mention any election, candidacy, political party, opposing candidate, or voting by the general public (section 114.15(b)(1), this communication attacks Bill Yellowtail's character by referring to alleged actions he took against his spouse, as well as his supposed delinquent child-support payments, and his past felony conviction. Such statements clearly constitute taking a position on the candidate's character, qualifications, or fitness for office under the second prong (section 114.15(b)(2)). Therefore, the example does not qualify for the safe harbor.

Nor is the example permissible under the two-factor analysis for the general exemption in section 114.15(a). Under the first factor, the communication includes indicia of express advocacy because it attacks the candidate's character (section 114.15(c)(1)(ii)). This example also does not have any of the types of content supporting a determination that the communication has an interpretation other than as an appeal to vote against Bill Yellowtail. First, although a past vote ''against child support enforcement'' is mentioned, the communication does not focus on any public policy issue under section 114.15(c)(2)(i). Instead, the communication focuses on the candidate's own personal and legal history. The communication does not propose any commercial transaction under section 114.15(c)(2)(ii). Finally, the communication appears to include a ''call to action'': ''Call Bill Yellowtail. Tell him to support family values.'' However, when examined in conjunction with the rest of the communication that focuses on personal character attacks against Bill Yellowtail, this vague appeal does not provide an interpretation other than urging the public to vote against the candidate.

Balancing both the presence of indicia of express advocacy and the lack of content supporting another interpretation, this communication is not permissible under section 114.15(a) because it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a Federal candidate.

Example 2:

What's important to America's families? [middle-aged man, interview style]: ''My pension is very important because it will provide a significant amount of my income when I retire.'' And where do the candidates stand? Congressman Charlie Bass voted to make it easier for corporations to convert employee pension funds to other uses. Arnie Arnesen supports the ''Golden Trust Fund'' legislation that would preserve pension funds for retirees. When it comes to your pension, there is a difference. Call or visit our Web site to find out more.[18]

The NPRM requested public comment as to whether this example should qualify for the proposed grassroots lobbying safe harbor or the general exemption. *See NPRM* at 50269. The commenters generally agreed that this example did not qualify for the proposed safe harbor because it mentioned the Representative Bass candidacy and his opposing candidate in the election, Arnie Arnesen (proposed third prong). However, the commenters disagreed as to whether this example qualified for the proposed general exemption. Some commenters argued that this communication was an issue advertisement focusing on pension protection and merely contrasted the candidates' different positions on that issue. These commenters argued that the example can be reasonably interpreted as providing information about the pensions issue and the candidates' positions on that issue. In contrast, most commenters thought that this example is the ''functional equivalent of express advocacy'' and does not qualify for the general exemption. These commenters noted that the discussion of candidacies in the communication made it unreasonable to interpret the communication in any way other than as urging the viewer to vote for one candidate over the other.

The Commission has determined that this example does not qualify for the safe harbor and is not permissible under the final rule's general exemption. The example fails the first prong of the safe harbor in section 114.15(b)(1) because it specifically discusses ''the candidates,'' including Representative Bass and his

[17] ''Bill Yellowtail,'' *McConnell* v. *FEC*, 540 U.S. 93, 193 n.78 (2003). The Court noted that this advertisement was ''clearly intended to influence the election.'' *Id.*

[18] Adapted from *McConnell* v. *FEC*, 251 F. Supp. 2d 176, 918 (D.D.C. 2003) (Leon, J.), *available at http://www.fec.gov/pages/bcra/mem_opinion_leon.pdf.*

opponent, Arnie Arnesen. The fact that Arnie Arnesen is running against Representative Bass is the type of external background fact that the Commission may consider in its analysis under section 114.15(d) because it requires minimal, if any, discovery. Therefore, the communication does not qualify for the safe harbor.

The Commission then applies the two-factor analysis in section 114.15(c) to determine if the communication is permissible under the general example in section 114.15(a). Under the first factor, the communication includes indicia of express advocacy because, as discussed above, it mentions a candidacy and an opposing candidate (section 114.15(c)(1)(i)). Moreover, this example does not have any of the types of content listed in the second factor that support an interpretation other than as an appeal to vote against Representative Bass. Although the communication discusses the public policy issue of pension funds generally, and the ''Golden Trust Fund'' legislation specifically, it does not urge the candidate(s) to take a particular position on that issue or urge the public to contact the candidate(s) about that issue (section 114.15(c)(2)(i)). Instead, the communication urges the public to ''Call or visit our Web site to find out more.'' This type of call to action is analyzed under the third provision in section 114.15(c)(2)(iii).[19] The Commission may not consider the content of the external Web site referenced in the communication, but must examine the communication's appeal to the public to ''find out more'' in conjunction with the rest of the communication. *See* 11 CFR 114.15(d). The communication characterizes Representative Bass's position on the issue negatively and Arnie Arnesen's position on the issue positively. Moreover, it describes these two positions as ''where the *candidates* stand'' (emphasis added) rather than as where an *officeholder* stands. Thus, in conjunction with the rest of the communication, the call to action here does not constitute content that supports an interpretation other than as an appeal to vote. Considering both factors, this communication is not permissible under section 114.15(a) because it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a Federal candidate.

6. 11 CFR 114.15(f)—Corporate and Labor Organization Reporting Requirement

New section 114.15(f) states that corporations and labor organizations that make electioneering communications permissible under section 114.15(a) aggregating in excess of $10,000 in a calendar year must file statements according to the EC reporting requirements in 11 CFR 104.20. The final rule adopts the NPRM's proposed language, which was not discussed by any of the commenters. Details regarding the reporting obligations for these entities are discussed below.[20]

D. Revisions to the Reporting Requirements for Electioneering Communications

The Act and current Commission regulations require any person that has made ECs aggregating in excess of $10,000 in a calendar year to file a disclosure statement. *See* 2 U.S.C. 434(f)(1); 11 CFR 104.20(b). Generally, these statements must disclose the identities of the persons making the EC, the cost of the EC, the clearly identified candidate appearing in the EC and the election in which he or she is a candidate, and the disclosure date. *See* 2 U.S.C. 434(f)(2)(A)–(D); 11 CFR 104.20(c)(1)–(6). Persons making ECs must also disclose the names and addresses of each person who donated an amount aggregating $1,000 or more during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. *See* 2 U.S.C. 434(f)(2)(F); 11 CFR 104.20(c)(8). However, the Act and Commission regulations provide the option that persons making ECs may create a segregated bank account for funding ECs in order to limit reporting to the donors to that account. *See* 2 U.S.C. 434(f)(2)(E); 11 CFR 104.20(c)(7). The segregated bank account may only include funds contributed by individuals who are U.S. citizens or nationals, or permanent residents. Id. If a person does not create a segregated bank account and funds ECs from its general account, that person must disclose all donors of over $1,000 to the entity during the current and preceding calendar year. *See* 2 U.S.C. 434(f)(2)(F); 11 CFR 104.20(c)(8). Moreover, persons that do not use a segregated bank account must be able to demonstrate through a reasonable accounting method that no corporate or labor organization's funds were used to pay any portion of an EC. *See* 11 CFR 114.14(d)(1).

Alternative 1, proposed in the NPRM, would have required corporations and labor organizations making ECs that are permissible under proposed section 114.15 to comply with the same reporting requirements as other entities making ECs. Thus, under Alternative 1, corporations and labor organizations would have been required to disclose the names and addresses of each person, including corporations and labor organizations, who donated an amount aggregating $1,000 or more during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. In addition, the proposed regulations would have allowed any person making an EC permissible under section 114.15, including corporations and labor organizations, to establish a segregated bank account to accept funds for that purpose.

All commenters who addressed disclosure of ECs stated that corporations and labor organizations should not be required to report the sources of funds that made up their general treasury funds. However, commenters disagreed on what specific EC reporting requirements should apply to corporations and labor organizations.

Some commenters proposed that disclosure by corporations and labor organizations should be limited to funds that are either designated for ECs or received in response to solicitations that specifically request donations for making ECs. Another commenter suggested that the current reporting rules for individuals, unincorporated entities, and qualified nonprofit corporations making ECs also be applied to corporations making ECs. This commenter's proposal would allow a corporation or labor organization to establish an account pursuant to 11 CFR 114.14(d)(2)(i) and report the identities of only those persons who contributed to that account. Without such an account, however, a corporation or labor organization would have to report the identities of everyone who donated $1,000 or more to that corporation or labor organization. If a corporation or labor organization receives no donations, and it paid for an EC out of

[19] The communication does not have content supporting another interpretation under the second provision in section 114.15(c)(2)(ii) because it does not propose any commercial transaction.

[20] In addition to complying with the reporting obligations under section 104.20, all ECs that are permissible under section 114.15 must contain a disclaimer. *See* 2 U.S.C. 441d and 11 CFR 110.11(a)(4). The disclaimer must include the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, as well as a statement that the communication is not authorized by any candidate or candidate's committee. *See* 11 CFR 110.11(b)(3). The disclaimer must be clear and conspicuous and must include both audio and written statements identifying the person responsible for the communication. *See* 11 CFR 110.11(c)(1) and (c)(4)(i)–(iii).

its general treasury funds, it would only have to report that fact.

One commenter argued that the concepts of ''donor'' and ''donate'' should exclude membership dues, investment income, or other commercial or business income. This commenter also suggested that use of general treasury money by a labor organization, *i.e.* funds derived from union dues, should not require a labor organization to report individual union members as donors, and that labor organizations should only have to report the source of funds as general treasury funds. The same commenter further asserted that segregated bank accounts are not a meaningful alternative for labor organizations, and argued that disclosing the sources of their general treasury funds would impose a heavy burden on labor organizations.

Finally, one commenter argued that disclosure by nonprofit corporations should be limited to those amounts listed on line 1 of the corporation's IRS Form 990, which includes ''[c]ontributions, gifts, grants, and similar amounts received'' by an organization exempt from income tax, because nonprofit corporations have a wide variety of sources of income, and unlimited disclosure would create a heavy burden for them. This commenter also argued that more extensive reporting requirements would far exceed all other reporting requirements that currently apply to nonprofit organizations, such as reporting to the Internal Revenue Service. This commenter also suggested that corporations and labor organizations should be required to report only grants and donations that are designated to support ECs.

As discussed in detail below, after consideration of the comments, the Commission has decided to depart from the rules proposed in the NPRM and instead to require corporations and labor organizations to disclose only the identities of those persons who made a donation aggregating $1,000 or more specifically for the purpose of furthering ECs made by that corporation or labor organization pursuant to 11 CFR 114.15. The Commission emphasizes that all the other reporting requirements that apply to any person making ECs, which are set forth at 2 U.S.C. 434(f)(2)(A)–(E) and 11 CFR 104.20(c)(1)–(6), apply also to corporations and labor organizations making ECs permissible under section 114.15. Thus, like all persons making ECs that cost, in aggregate, more than $10,000, corporations and labor organizations must also disclose their identities as the persons making the ECs, the costs of the ECs, the clearly identified candidates appearing in the communications and the elections in which the candidates are participating, and the disclosure dates.

1. Revised 104.20(c)(8) and New 11 CFR 104.20(c)(9)—Reporting the Use of Corporate and Labor Organization Funds To Pay for Permissible Electioneering Communications

A corporation's general treasury funds are often largely comprised of funds received from investors such as shareholders who have acquired stock in the corporation and customers who have purchased the corporation's products or services, or in the case of a non-profit corporation, donations from persons who support the corporation's mission. These investors, customers, and donors do not necessarily support the corporation's electioneering communications. Likewise, the general treasury funds of labor organizations and incorporated membership organizations are composed of member dues obtained from individuals and other members who may not necessarily support the organization's electioneering communications.

Furthermore, witnesses at the Commission's hearing testified that the effort necessary to identify those persons who provided funds totaling $1,000 or more to a corporation or labor organization would be very costly and require an inordinate amount of effort. Indeed, one witness noted that labor organizations would have to disclose more persons to the Commission under the ECs rules than they would disclose to the Department of Labor under the Labor Management Report and Disclosure Act.

For these reasons, the Commission has determined that the policy underlying the disclosure provisions of BCRA is properly met by requiring corporations and labor organizations to disclose and report only those persons who made donations for the purpose of funding ECs. Thus, new section 104.20(c)(9) does not require corporations and labor organizations making electioneering communications permissible under 11 CFR 114.15 to report the identities of everyone who provides them with funds for any reason.[21] Instead, new section 104.20(c)(9) requires a labor organization or a corporation to disclose the identities only of those persons who made a donation aggregating $1,000 or more specifically for the purpose of furthering ECs pursuant to 11 CFR 114.15, during the reporting period. This period begins on the first day of the preceding calendar year and runs through the disclosure date. Donations made for the purpose of furthering an EC include funds received in response to solicitations specifically requesting funds to pay for ECs as well as funds specifically designated for ECs by the donor.[22]

In the Commission's judgment, requiring disclosure of funds received only from those persons who donated specifically for the purpose of furthering ECs appropriately provides the public with information about those persons who actually support the message conveyed by the ECs without imposing on corporations and labor organizations the significant burden of disclosing the identities of the vast numbers of customers, investors, or members, who have provided funds for purposes entirely unrelated to the making of ECs.

The Commission is also making a conforming amendment to 11 CFR 104.20(c)(8), which sets forth reporting requirements for ECs that were not paid for exclusively from a segregated bank account, by inserting the phrase ''and were not made by a corporation or labor organization pursuant to 11 CFR 114.15,'' after the phrase ''described in paragraph (c)(7) of this section.'' This modification clarifies that the pre-existing reporting requirements that apply to individuals, QNCs, and unincorporated organizations making ECs do not apply to corporations and organizations making ECs permissible under new section 114.15.

2. Revised 11 CFR 104.20(c)(7) and 114.14(d)(2)—Using Segregated Bank Accounts for Electioneering Communications

Previously, section 104.20(c)(7) only addressed segregated bank accounts containing funds solely from individuals who are ''United States citizens, United States nationals, or who are lawfully admitted for permanent residence under 8 U.S.C. 1101(a)(20).'' Following the approach proposed in the NPRM, the Commission has decided to divide section 104.20(c)(7) into paragraphs (c)(7)(i) and (c)(7)(ii). New paragraph (c)(7)(i) is substantially the same as former paragraph (c)(7) and sets forth the reporting requirements that apply to a segregated bank account used by individuals, unincorporated

[21] A QNC making an electioneering communication pursuant to 11 CFR 114.10, rather than pursuant to 11 CFR 114.15, would be required to report under 11 CFR 104.20(c)(7) or (8).

[22] The ''for the purpose of furthering'' standard in 11 CFR 104.20(c)(9) is drawn from the reporting requirements that apply to independent expenditures made by persons other than political committees. *See* 2 U.S.C. 434(c)(2)(C), 11 CFR 109.10(e)(1)(vi).

associations, and QNCs to pay for any ECs that do not come under new section 114.15. Corporations and labor organizations continue to be prohibited from donating to such an account.

In contrast, new paragraph (c)(7)(ii) sets forth the reporting requirements for a segregated bank account to be used to pay for ECs that are permissible under 11 CFR 114.15. Because this second type of account is used exclusively to pay for ECs permissible under new section 114.15, paragraph (c)(7)(ii) provides that such an account may contain corporate and labor organization funds. The reporting requirements that apply to a person setting up a segregated bank account to pay for ECs that are permissible under section 114.15 are the same as they are under previous paragraph (c)(7) and new paragraph (c)(7)(i), that is, such a person must report the identity of every person who donates an amount aggregating $1,000 or more to the person making the disbursement during the preceding calendar year.

Additionally, as proposed in the NPRM, the Commission is making conforming changes to 11 CFR 114.14(d)(2), which applies to the use of segregated bank accounts by persons that receive funds from corporations or labor organizations. Specifically, consistent with the changes to section 104.20(c)(7), the Commission is dividing section 114.14(d)(2) into two paragraphs. Paragraph (d)(2)(i) allows any person, other than corporations and labor organizations, wishing to make ECs permissible under 11 CFR 114.15 to establish a segregated bank account for that exclusive purpose. Such an account would report only donations made to the account for the purpose of making ECs, pursuant to 11 CFR 104.20(c)(7)(ii). Consistent with new section 104.20(c)(7)(ii), an account set up under section 114.14(d)(2)(i) may contain corporate and labor organization funds. The Commission notes that QNCs, like all corporations, are excluded from setting up a segregated account under paragraph (d)(2)(i) because they are, by definition, prohibited from accepting any corporate or labor organization funds.

Revised paragraph (d)(2)(ii) is substantially the same as former paragraph (d)(2) and continues to allow persons other than corporations (except for QNCs) and labor organizations to establish a segregated bank account to be used exclusively to pay for ECs that do not come under the new exception in section 114.15.

The Commission believes that if organizations that are not corporations or labor organizations intend to use corporate or labor organization funds to make some ECs that comply with the new *WRTL II* exemption, and intend to make other ECs that do not, or might not, come within the exemption, they would be well-advised to establish two separate bank accounts to ensure that corporate and labor organization funds are only accepted and used to fund exempt ECs. Please note, however, that separate bank accounts are not mandatory because organizations need only show that they used a reasonable accounting method to separate corporate and labor organization funds under 11 CFR 114.14(d)(1).

E. Conforming Revisions to Other Commission Regulations

1. Revisions to 11 CFR 114.4—Communications Beyond the Restricted Class

Paragraph 114.4(c) sets out the types of communications that corporations and labor organizations may make either to the general public or to all employees and members. Such communications include registration and voting communications, official registration and voting information, voting records, and voting guides. The Commission is adding new paragraph (c)(8) to state that any corporation or labor organization may make ECs to the general public that fall within the new exemption in section 11 CFR 114.15. Paragraph (c)(8) also makes clear that QNCs may make ECs regardless of whether they are permissible under 11 CFR 114.15. In addition, the Commission is making a conforming change to section 114.4(c)(1), which lists the paragraphs that describe communications that corporations and labor organizations may make to the general public, by adding a reference to paragraph (c)(8).

2. Revisions to 11 CFR 114.14—Further Restrictions on the Use of Corporate and Labor Organization Funds for Electioneering Communications

Former section 114.14 prohibited corporations and labor organizations from providing general treasury funds to pay for any ECs whatsoever. The Commission's revisions to this section limit this prohibition to ECs that do not come within the new *WRTL II* exemption in section 114.15, consistent with the proposed changes to the general prohibition on the use of corporate and labor organization funds in section 114.2.

Former paragraphs (a)(1) and (a)(2) of this section contained a general ban on corporations and labor organizations providing funds to any other person for the purpose of financing an EC. Likewise, former paragraphs (b)(1) and (b)(2) of this section prohibited persons that accept funds from corporations and labor organizations from using those funds to pay for ECs, or from providing those same funds to any other person for the purpose of paying for an EC. Former paragraph (d)(1) of this section requires any person that receives funds from corporations and labor organizations, and that makes ECs, to demonstrate by a reasonable accounting method that no corporate or labor organization funds were used to pay for the EC.

Paragraphs (a)(1), (b)(1) and (2), and (d)(1) are being modified by adding the phrase ''that is not permissible under 11 CFR 114.15'' after the word ''communication'' in each paragraph. Paragraph (a)(2) is being modified by adding the word ''such'' after the phrase ''pay for.'' These changes implement *WRTL II* by limiting the prohibition on the use of corporate and labor organization funds to those ECs that are the functional equivalent of express advocacy, and therefore are not permissible under new 11 CFR 114.15. Paragraph (d)(1) is being further revised by adding the phrase ''other than corporations and labor organizations'' after the word ''Persons.'' The Commission is making this change to avoid any suggestion that corporations or labor organizations may make ECs that do not come within the new exception articulated in *WRTL II.*

IV. The Definition of Express Advocacy in 11 CFR 100.22

The NPRM sought public comment on whether *WRTL II* also provided guidance as to the scope of other provisions in the Act, such as the definition of ''express advocacy'' in 11 CFR 100.22. *See NPRM* at 50263. Specifically, the NPRM asked whether *WRTL II* required the Commission to revise or repeal any portion of the two-part definition in section 100.22. The commenters were divided as to what, if any, guidance *WRTL II* decision provided the Commission with respect to the proper scope of the ''express advocacy'' definition in section 100.22. The Commission has decided to leave open the issue of the impact, if any, of *WRTL II* on the definition of ''express advocacy'' and to address the question at a later time.

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

The Commission certifies that the attached final rule does not have a significant economic impact on a substantial number of small entities. The basis for this certification is that

any small entities affected should not feel a significant economic impact from the final rule. Overall, the final rule relieves a funding restriction that the prior rules placed on corporations and labor organizations and therefore has a positive economic impact for any affected small entities. The final rule allows small entities to engage in activity they were previously prohibited from funding with corporation or labor organization funding. Moreover, this activity (making and funding ECs) is entirely voluntary, and any reporting obligations are only triggered based on entities choosing to engage in this activity above a threshold of $10,000 per calendar year. The reporting obligations are also limited to donations made for the purpose of furthering electioneering communications and should not have a significant economic impact on any reporting entity.

In addition, there may be few ''small entities'' that are affected by this final rule. The Commission's revisions affect for-profit corporations, labor organizations, individuals and some non-profit organizations. Individuals and labor organizations are not ''small entities'' under 5 U.S.C. 601(6). Most, if not all, for-profit corporations that are affected by the final rule are not ''small businesses'' under 5 U.S.C. 601(3). Large national and state-wide non-profit organizations that might produce electioneering communications are not ''small organizations'' under 5 U.S.C. 601(4) because they are not independently owned and operated and they are dominant in their field.

List of Subjects

11 CFR Part 104

Campaign funds, political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 114

Business and industry, Elections, Labor.

■ For the reasons set out in the preamble, the Federal Election Commission is amending Subchapter A of Chapter 1 of Title 11 of the *Code of Federal Regulations* as follows:

PART 104—REPORTS BY POLITICAL COMMITEES AND OTHER PERSONS (2 U.S.C. 434)

■ 1. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, 441a, and 36 U.S.C. 510.

■ 2. In § 104.20, paragraphs (c)(7) and (c)(8) are revised and paragraph (c)(9) is added to read as follows:

§ 104.20 Reporting electioneering communications (2 U.S.C. 434(f)).

* * * * *

(c) * * *

(7)(i) If the disbursements were paid exclusively from a segregated bank account established to pay for electioneering communications not permissible under 11 CFR 114.15, consisting of funds provided solely by individuals who are United States citizens, United States nationals, or who are lawfully admitted for permanent residence under 8 U.S.C. 1101(a)(20), the name and address of each donor who donated an amount aggregating $1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year; or

(ii) If the disbursements were paid exclusively from a segregated bank account established to pay for electioneering communications permissible under 11 CFR 114.15, the name and address of each donor who donated an amount aggregating $1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year.

(8) If the disbursements were not paid exclusively from a segregated bank account described in paragraph (c)(7) of this section and were not made by a corporation or labor organization pursuant to 11 CFR 114.15, the name and address of each donor who donated an amount aggregating $1,000 or more to the person making the disbursement, aggregating since the first day of the preceding calendar year.

(9) If the disbursements were made by a corporation or labor organization pursuant to 11 CFR 114.15, the name and address of each person who made a donation aggregating $1,000 or more to the corporation or labor organization, aggregating since the first day of the preceding calendar year, which was made for the purpose of furthering electioneering communications.

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

■ 3. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432, 434, 437d(a)(8), 438(a)(8), 441b.

■ 4. In § 114.2, the section heading and paragraph (b)(2) are revised and paragraph (b)(3) is added to read as follows:

§ 114.2 Prohibitions on contributions, expenditures and electioneering communications.

* * * * *

(b) * * *

(2) Except as provided at 11 CFR 114.10, corporations and labor organizations are prohibited from:

(i) Making expenditures as defined in 11 CFR part 100, subpart D; or

(ii) Making expenditures with respect to a Federal election (as defined in 11 CFR 114.1(a)), for communications to those outside the restricted class that expressly advocate the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party.

(3) Corporations and labor organizations are prohibited from making payments for an electioneering communication to those outside the restricted class unless permissible under 11 CFR 114.10 or 114.15. However, this paragraph (b)(3) shall not apply to State party committees and State candidate committees that incorporate under 26 U.S.C. 527(e)(1), provided that:

(i) The committee is not a political committee as defined in 11 CFR 100.5;

(ii) The committee incorporated for liability purposes only;

(iii) The committee does not use any funds donated by corporations or labor organizations to make electioneering communications; and

(iv) The committee complies with the reporting requirements for electioneering communications at 11 CFR part 104.

* * * * *

■ 5. In § 114.4, paragraph (c)(1) is amended by adding the phrase ''and (c)(8)'' after ''(c)(5),'' and paragraph (c)(8) is added to read as follows:

§ 114.4 Disbursements for communications beyond the restricted class in connection with a Federal election.

* * * * *

(c) * * *

(8) *Electioneering communications.* Any corporation or labor organization may make electioneering communications to the general public that are permissible under 11 CFR 114.15. Qualified nonprofit corporations, as defined in 11 CFR 114.10(c), may make electioneering communications in accordance with 11 CFR 114.10(d).

* * * * *

■ 6. In § 114.14, paragraphs (a), (b) and (d) are revised to read as follows:

§ 114.14 Further restrictions on the use of corporate and labor organization funds for electioneering communications.

(a)(1) Corporations and labor organizations shall not give, disburse,

donate or otherwise provide funds, the purpose of which is to pay for an electioneering communication that is not permissible under 11 CFR 114.15, to any other person.

(2) A corporation or labor organization shall be deemed to have given, disbursed, donated, or otherwise provided funds under paragraph (a)(1) of this section if the corporation or labor organization knows, has reason to know, or willfully blinds itself to the fact, that the person to whom the funds are given, disbursed, donated, or otherwise provided, intended to use them to pay for such an electioneering communication.

(b) Persons who accept funds given, disbursed, donated or otherwise provided by a corporation or labor organization shall not:

(1) Use those funds to pay for any electioneering communication that is not permissible under 11 CFR 114.15; or

(2) Provide any portion of those funds to any person, for the purpose of defraying any of the costs of an electioneering communication that is not permissible under 11 CFR 114.15.

* * * * *

(d)(1) Persons other than corporations and labor organizations who receive funds from a corporation or a labor organization that do not meet the exceptions of paragraph (c) of this section, must be able to demonstrate through a reasonable accounting method that no such funds were used to pay any portion of any electioneering communication that is not permissible under 11 CFR 114.15.

(2)(i) Any person other than a corporation or labor organization who wishes to pay for electioneering communications permissible under 11 CFR 114.15 may, but is not required to, establish a segregated bank account into which it deposits only funds donated or otherwise provided for the purpose of paying for such electioneering communications as described in 11 CFR part 104. Persons who use funds exclusively from such a segregated bank account to pay for any electioneering communication permissible under 11 CFR 114.15 shall be required to only report the names and addresses of those persons who donated or otherwise provided an amount aggregating $1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year.

(ii) Any person, other than corporations that are not qualified nonprofit corporations and labor organizations, who wishes to pay for electioneering communications not permissible under 11 CFR 114.15 may, but is not required to, establish a segregated bank account into which it deposits only funds donated or otherwise provided by individuals as described in 11 CFR part 104. Persons who use funds exclusively from such a segregated bank account to pay for any electioneering communication shall satisfy paragraph (d)(1) of this section. Persons who use funds exclusively from such a segregated bank account to pay for any electioneering communication shall be required to only report the names and addresses of those persons who donated or otherwise provided an amount aggregating $1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year.

■ 7. Section 114.15 is added to read as follows:

§ 114.15 Permissible use of corporate and labor organization funds for certain electioneering communications.

(a) *Permissible electioneering communications.* Corporations and labor organizations may make an electioneering communication, as defined in 11 CFR 100.29, to those outside the restricted class unless the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate.

(b) *Safe harbor.* An electioneering communication is permissible under paragraph (a) of this section if it:

(1) Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public;

(2) Does not take a position on any candidate's or officeholder's character, qualifications, or fitness for office; and

(3) Either:

(i) Focuses on a legislative, executive or judicial matter or issue; and

(A) Urges a candidate to take a particular position or action with respect to the matter or issue, or

(B) Urges the public to adopt a particular position and to contact the candidate with respect to the matter or issue; or

(ii) Proposes a commercial transaction, such as purchase of a book, video, or other product or service, or such as attendance (for a fee) at a film exhibition or other event.

(c) *Rules of interpretation.* If an electioneering communication does not qualify for the safe harbor in paragraph (b) of this section, the Commission will consider whether the communication includes any indicia of express advocacy and whether the communication has an interpretation other than as an appeal to vote for or against a clearly identified Federal candidate in order to determine whether, on balance, the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate.

(1) A communication includes indicia of express advocacy if it:

(i) Mentions any election, candidacy, political party, opposing candidate, or voting by the general public; or

(ii) Takes a position on any candidate's or officeholder's character, qualifications, or fitness for office.

(2) Content that would support a determination that a communication has an interpretation other than as an appeal to vote for or against a clearly identified Federal candidate includes content that:

(i) Focuses on a public policy issue and either urges a candidate to take a position on the issue or urges the public to contact the candidate about the issue; or

(ii) Proposes a commercial transaction, such as purchase of a book, video or other product or service, or such as attendance (for a fee) at a film exhibition or other event; or

(iii) Includes a call to action or other appeal that interpreted in conjunction with the rest of the communication urges an action other than voting for or against or contributing to a clearly identified Federal candidate or political party.

(3) In interpreting a communication under paragraph (a) of this section, any doubt will be resolved in favor of permitting the communication.

(d) *Information permissibly considered.* In evaluating an electioneering communication under this section, the Commission may consider only the communication itself and basic background information that may be necessary to put the communication in context and which can be established with minimal, if any, discovery. Such information may include, for example, whether a named individual is a candidate for office or whether a communication describes a public policy issue.

(e) *Examples of communications.* A list of examples derived from prior Commission or judicial actions of communications that have been determined to be permissible and of communications that have been determined not to be permissible under paragraph (a) of this section is available on the Commission's Web site, *http://www.fec.gov.*

(f) *Reporting requirement.* Corporations and labor organizations that make electioneering

communications under paragraph (a) of this section aggregating in excess of $10,000 in a calendar year shall file statements as required by 11 CFR 104.20.

Dated: December 17, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

[FR Doc. E7–24797 Filed 12–21–07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

Airworthiness Standards: Normal, Utility, Acrobatic, and Commuter Category Airplanes

CFR Correction

In Title 14 of the Code of Federal Regulations, Parts 1 to 59, revised as of January 1, 2007, on page 227, in § 23.561, remove the five paragraphs beginning with the second paragraph (d)(1)(i) through paragraph (d)(1)(v).

[FR Doc. 07–55522 Filed 12–21–07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28876; Directorate Identifier 2000–NE–08–AD; Amendment 39–15311; AD 2007–26–09]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Compact Series Propellers

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for all Hartzell Propeller Inc. models ( ) HC–( )( )Y( )–( )( )( ) compact series, constant speed or feathering propellers with Hartzell manufactured ''Y'' shank aluminum blades. That AD currently requires initial blade inspections, with no repetitive inspections; rework of all ''Y'' shank aluminum blades including cold rolling of the blade shank retention radius, blade replacement and modification of pitch change mechanisms for certain propeller models; and changing the airplane operating limitations with specific models of propellers installed. This AD requires the same actions but clarifies certain areas of the compliance, and updates a certain service bulletin (SB) reference to the most recent SB. This AD results from operators requesting clarification of certain portions of AD 2002–09–08. We are issuing this AD to prevent failure of the propeller blade from fatigue cracks in the blade shank radius, which can result in damage to the airplane and loss of airplane control.

DATES: This AD becomes effective January 30, 2008. The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations as of June 13, 2002 (67 FR 31113, May 9, 2002). The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 30, 2008.

ADDRESSES: You can get the service information identified in this AD from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Tim Smyth, Senior Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; e-mail: *timothy.smyth@faa.gov*; telephone (847) 294–8110; fax (847) 294–7132.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2002–09–08, Amendment 39–12741 (67 FR 31113, May 9, 2002) with a proposed AD. The proposed AD applies to Hartzell Propeller Inc. models ( )HC–( )( )Y( )–( )( )( ) compact series, constant speed or feathering propellers with Hartzell manufactured ''Y'' shank aluminum blades. We published the proposed AD in the **Federal Register** on August 14, 2006 (71 FR 46413). That action proposed to require the same actions as AD 2002–09–08, but would clarify certain areas of the compliance and would update a certain SB reference to the most recent SB.

Examining the AD Docket

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

Comments

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

Incorporate Service Documents by Reference and Publish Them in the Document Management System

The Modification and Replacement Parts Association requests that all service documents deemed essential to the accomplishment of the AD be incorporated by reference into the regulatory instrument, and published in the Docket Management System. We partially agree. We have incorporated pertinent service material into the regulatory section of this AD. However, at this time, the FAA does not post service material on the Federal Docket Management System. We are in the process of reviewing issues surrounding the posting of service bulletins on the Federal Docket Management System as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised.

Format Changes

We changed the propeller blade shank cold rolling information from being a note, to paragraphs. We also added paragraphs to the alternative methods of compliance, to make the information more readable.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously.

Costs of Compliance

We estimate that this AD will affect 35,750 propellers installed on airplanes of U.S. registry. We expect this AD will cost about $700 per propeller. Total cost to U.S. operators for this AD would be about $25.025 million. However, we also expect that all of the affected propellers should have already been inspected to comply with the existing AD's requirements to inspect, and

rework or replace the aluminum blades. Therefore, we expect that this AD will have no additional cost.

Docket Number Change

We are transferring the docket for this AD to the Federal Docket Management System as part of our on-going docket management consolidation efforts. The new Docket No. is FAA–2007–28876. The old Docket No. became the Directorate Identifier, which is 2000–NE–08–AD.

Authority for This Rulemaking

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

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

Regulatory Findings

We 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 39–12741 (67 FR 31113, May 9, 2002), and by adding a new airworthiness directive, Amendment 39–15311, to read as follows:

2007–26–09 Hartzell Propeller Inc.: Amendment 39–15311. Docket No. FAA–2007–28876; Directorate Identifier 2000–NE–08–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 30, 2008.

Affected ADs

(b) This AD supersedes AD 2002–09–08, Amendment 39–12741.

Applicability

(c) This AD applies to all Hartzell Propeller Inc. models ( )HC–( )( )Y( )–( )( )( ) compact series constant speed or feathering propellers with Hartzell manufactured ''Y'' shank aluminum blades. These propellers are used on, but not limited to, the following airplanes:

Manufacturer	Airplane Model
Aermacchi S.pA. (formerly Siai–Marchetti)	S–208
Aero Commander	200B and 200D
Aerostar	600
Beech	24, 35, 36, 45, 55, 56TC, 58, 60, and 95
Bellanca	14 and 17 series
Cessna	182 and 188
Embraer	EMB–200A
Maule	M5
Mooney	M20 and M22
Pilatus Britten Norman, or Britten Norman	BN–2, BN–2A, and BN–2A–6
Piper	PA–23, PA–24, PA–28, PA–30, PA–31, PA–32, PA–34, PA–36, and PA–39
Pitts	S–1T and S–2A
Rockwell	112, 114, 200, 500, and 685 series

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

Unsafe Condition

(e) This AD results from operators requesting clarification of certain portions of AD 2002–09–08. We are issuing this AD to prevent failure of the propeller blade from fatigue cracks in the aluminum blade shank radius, which can result in damage to the airplane and loss of airplane control.

Compliance

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

(g) If the propeller maintenance records show compliance with AD 77–12–06R2, then compliance was previously done and no further action is required.

(h) Propellers are considered in compliance with the one-time inspection and rework requirements only, of this AD if:

(1) All blades are serial number D47534 and above, or

(2) All blades are identified with the letters ''PR'' or ''R'' which are ink-stamped on the camber side, or the letters ''RD'' which are metal-stamped on the blade butt.

Models ( )HC–( )( )Y( ) Compact Series ''Y'' Shank Propellers

(i) If propeller models ( )HC–( )( )Y( ) have not been inspected and reworked in accordance with AD 77–12–06R2, then before further flight, do a one-time action to remove, inspect, rework, or replace blades if

necessary using Hartzell Service Bulletin (SB) No. 118A, dated February 15, 1977.

Propeller Blade Shank Cold Rolling

(j) One requirement in Hartzell SB No. 118A is the cold rolling of the propeller blade shank.

(1) Cold rolling is a critical requirement in the prevention of cracks in the blade. Propeller repair shops must obtain and maintain proper certification to perform the cold rolling procedure.

(2) For a current list of propeller overhaul facilities approved to perform the blade shank cold rolling procedure, contact Hartzell Product Support, telephone (937) 778–4200.

(3) Not all propeller repair facilities have the equipment to properly perform a cold roll of the blade shanks.

(4) In addition, any rework in the blade shank area will also necessitate the cold rolling of the blade shank area, apart from the one-time cold rolling requirement of this AD.

Instrument Panel Modifications

(k) If airplanes with propeller models ( )HC–C2YK–( )( )( )/( )( )7666A–( ), installed on (undampered) 200 or more horsepower Lycoming IO–360 series engines, have not been modified using AD 77–12–06R2, then modify the airplane instrument panel according to the following subparagraphs before further flight. Airplanes include, but are not limited to, Mooney M20E and M20F (normal category), Piper PA–28R–200 (normal category), and Pitts S–1T and S–2A (acrobatic category).

(1) For normal category airplanes, before further flight, remove the present vibration placard and affix a new placard near the engine tachometer that states:

''Avoid continuous operation:
Between 2,000 and 2,350 rpm.''

(2) For utility and acrobatic category airplanes, before further flight, remove the present vibration placard and affix a new placard near the engine tachometer that states:

''Avoid continuous operation:
Between 2,000 and 2,350 rpm.
Above 2,600 rpm in acrobatic flight.''

(3) For normal category airplanes, re-mark the engine tachometer face or bezel with a red arc for the restricted engine speed range, between 2,000 and 2,350 rpm.

(4) For acrobatic and utility airplanes, re-mark the engine tachometer face or bezel with a red arc for each restricted engine speed range, i.e., between 2,000 and 2,350 rpm and between 2,600 and 2,700 rpm (red line).

Models ( )HC–C2YK–( )( )( )/( )( ) 8475( )–( ) or ( )( )8477( )–( ) Propellers

(l) If propeller models ( )HC–C2YK–( )( ) ( )/( )( )8475( )–( ) or ( )( )8477( )–( ) have not been inspected and reworked in accordance with AD 74–15–02, then do the following maintenance before further flight.

(1) Remove propeller from airplane.

(2) Modify pitch change mechanism, and replace blades with equivalent model blades prefixed with letter ''F'' using Hartzell Service Letter No. 69, dated November 30, 1971 and Hartzell SB No. 101D, dated December 19, 1974.

(3) Inspect and repair or replace, if necessary, using Hartzell SB No. 118A, dated February 15, 1977.

Alternative Methods of Compliance

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

(n) Alternative methods of compliance for Hartzell SB No. 118A, dated February 15, 1977, are: Hartzell SB No. 118B, November 28, 1977; SB No. 118C, May 13, 1983; SB No. 118D, March 25, 1991; SB No. HC–SB–61–118E, December 14, 2001; SB No. HC–SB–61–118 revision F, dated August 15, 2002, and Hartzell Manual 133C.

(o) An alternative method of compliance to Hartzell SB No. 101D, dated December 19, 1974, is Hartzell Manual 133C.

(p) No adjustment in the compliance time is allowed.

Related Information

(q) Contact Tim Smyth, Senior Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; e-mail: *timothy.smyth@faa.gov*; telephone (847) 294–7132; fax (847) 294–7834, for more information about this AD.

Material Incorporated by Reference

(r) You must use the service information specified in Table 1 of this AD to perform the actions required by this AD. The Director of the Federal Register previously approved the incorporation by reference of the documents listed in Table 1 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 on June 13, 2002. Contact Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391, for a copy of this service information. You may review service information copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

TABLE 1.—INCORPORATION BY REFERENCE

Hartzell service information	Page	Revision	Date
SB No. 101D	All	D	December 19, 1974.
SB No. 118A	All	A	February 15, 1977.
SL No. 69	All	1	November 30, 1971.

Issued in Burlington, Massachusetts, on December 17, 2007.

Peter A. White,

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

[FR Doc. E7–24855 Filed 12–21–07; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 070301044–7814–02]

RIN 0691–AA64

Direct Investment Surveys: BE–12, 2007 Benchmark Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations concerning the reporting requirements for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States. The BE–12 survey is conducted once every 5 years and covers virtually the entire universe of foreign direct investment in the United States in terms of value. The benchmark survey will be conducted for 2007. BEA is changing the reporting requirements on the BE–12 Benchmark survey to: Increase the exemption level for reporting on the BE–12(LF) (Long Form) from $125 million to $175 million; increase the exemption level for reporting on the BE–12(SF) (Short Form) from $10 million to $40 million; and increase the exemption level for reporting on the BE–12 Bank Form from

$10 million to $15 million. In addition, BEA is amending Form BE–12(X) by: Re-naming it the Form BE–12 Claim for Not Filing and deleting several questions, which will be moved to a new Form BE–12 Mini. The Claim for Not Filing will be completed only by persons that are not subject to the reporting requirements of the BE–12 survey but have been contacted by BEA concerning their reporting status. The BE–12 Mini is an abbreviated form for reporting U.S. affiliates with total assets, sales or gross operating revenues, and net income (loss) less than or equal to $40 million.

DATES: This final rule will be effective January 25, 2008.

FOR FURTHER INFORMATION CONTACT: David H. Galler, Chief, Direct Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9835 or e-mail (*david.galler@bea.gov*).

SUPPLEMENTARY INFORMATION: In the September 21, 2007, **Federal Register**, 72 FR 53970–53973, BEA published a notice of proposed rulemaking setting forth revised reporting requirements for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States. No comments on the proposed rule were received. Thus, the proposed rule is adopted without change. This final rule amends 15 CFR 806.17 to set forth the reporting requirements for the BE–12, 2007 Benchmark Survey of Foreign Direct Investment in the United States, and 15 CFR 806.18 to list the OMB control number for this survey.

Description of Changes

The BE–12 benchmark survey is a mandatory survey and is conducted once every five years by BEA under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' BEA will send the survey to potential respondents in March 2008; responses will be due by May 31, 2008. This final rule (1) increases the exemption level for reporting on the BE–12(LF) (Long Form) from $125 million to $175 million; (2) increases the exemption level for reporting on the BE–12(SF) (Short Form) from $10 million to $40 million; and (3) increases the exemption level for reporting on the BE–12 Bank form from $10 million to $15 million. In addition, it amends Form BE–12(X) by: (1) Re-naming it the Form BE–12 Claim for Not Filing; and (2) deleting several questions, which have been moved to a new Form BE–12 Mini. The Claim for Not Filing will be completed only by persons that are not subject to the reporting requirements of the BE–12 survey but have been contacted by BEA concerning their reporting status. The BE–12 Mini is a new abbreviated form for reporting U.S. affiliates with total assets, sales or gross operating revenues, and net income (loss) less than or equal to $40 million. U.S. affiliates with assets, sales, and net income (loss) less than or equal to $15 million are required to report only selected items on the BE–12 Mini.

In addition to these changes in the reporting criteria, this final rule adds questions to the BE–12(LF) (Long Form), BE–12(SF) (Short Form), and BE–12 Bank form to: (1) Collect detail on the broad occupational structure of employment; (2) identify companies that engage in cross-border services transactions; and (3) identify the financial reporting standards used to compile and report the survey. For the BE–12(LF) (Long Form), this rule adds questions to collect additional detail on the composition of external finances, trade, and research and development. For the BE–12(SF) (Short Form), this rule adds questions to collect sales of goods, sales of services, and investment income for majority-owned U.S. affiliates, including sales of services to U.S. persons and to foreign persons. For the BE–12 Bank form, this rule adds questions to make it easer to integrate data collected for banks with data collected for nonbank U.S affiliates. The items to be collected on this form include those needed to calculate value added as well as expenditures for property, plant, and equipment; sales of goods; and sales of services to the foreign parent group(s), to foreign affiliates owned by the U.S. affiliate, and to other foreign persons.

To offset the burden imposed by these additional questions, this final rule amends the BE–12 survey to discontinue collecting information on U.S. trade in goods by product, which had been collected on previous versions of the BE–12(LF) (Long Form), and to reduce the amount of detail collected for minority-owned U.S. affiliates on the BE–12(SF) (Short Form) and BE–12 Bank form. In addition, questions on services transactions between U.S. affiliates and their foreign parent group(s) are dropped from the BE–12 survey because collection of this information has been shifted to BEA's surveys of cross-border transactions in services and intangible assets (the BE–120, BE–125, and BE–185).

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, conducts the BE–12 survey under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' Section 4(b) of the Act provides that with respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter. In conducting surveys pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible—

(1) Identify the location, nature, and magnitude of, and changes in the total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

(2) Obtain (A) information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade, including trade in both goods and services, between a parent and each of its affiliates and between each parent or affiliate and any other person;

(3) Collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

(4) Obtain information on tax payments by parents and affiliates by country; and

(5) Determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons.

In Section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibility for performing functions under the Act concerning direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The benchmark surveys are BEA's censuses, intended to cover the universe of foreign direct investment in the United States in terms of value, and are BEA's most comprehensive surveys of such investment in terms of subject matter. Foreign direct investment in the

United States is defined as the ownership or control, directly or indirectly, by one foreign person (foreign parent) of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of U.S. affiliates, and on positions and transactions between U.S. affiliates and their foreign parent groups (which are defined to include all foreign parents and foreign affiliates of foreign parents). These data are needed to measure the size and economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy. Such data are generally found in enterprise-level accounting records of respondent companies. These data are used to derive current universe estimates of direct investment from sample data collected in other BEA surveys in nonbenchmark years. In particular, they would serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and national income and product accounts, and for annual estimates of the foreign direct investment position in the United States and of the operations of the U.S. affiliates of foreign companies.

The survey consists of a number of report forms and a claim for not filing. The amount and type of data required to be reported will vary according to the size of the U.S. affiliate, whether it is a bank or a nonbank, and whether or not it is majority-owned by foreign direct investors. The report forms to be used in the survey consist of the following:

1. Form BE–12(LF) (Long Form)—Report for a majority-owned nonbank U.S. affiliate (a majority-owned U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent) with total assets, sales or gross operating revenues, or net income greater than $175 million (positive or negative);

2. Form BE–12(SF) (Short Form)—Report for (1) a majority-owned nonbank U.S. affiliate with total assets, sales or gross operating revenues, or net income greater than $40 million (positive or negative), but not greater than $175 million (positive or negative), and (2) a minority-owned nonbank U.S. affiliate (owned 50 percent or less) with total assets, sales or gross operating revenues, or net income greater than $40 million (positive or negative);

3. Form BE–12 Bank—Report for a U.S. affiliate that is a bank; and

4. Form BE–12 Mini—Report for a nonbank U.S. affiliate with total assets, sales or gross operating revenues, and net income (positive or negative) less than or equal to $40 million.

The Form BE–12 Claim for Not Filing will be provided for response by persons that are not subject to the reporting requirements of the BE–12 survey but have been contacted by BEA concerning their reporting status.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

The collection-of-information in this final rule has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

Not withstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB control number. The OMB number for the BE–12 is 0608–0042; the collection will display this control number.

The BE–12 survey is expected to result in the filing of reports from approximately 18,550 respondents. The respondent burden for this collection of information is estimated to vary from 20 minutes to 715 hours per response, with an average of 11.3 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden for the survey is estimated at 209,650 hours (18,550 times 11.3 hours average burden).

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; Fax: 202–606–5311; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0042, Attention PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov,* or by Fax at 202–395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will 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 the economic impact of the rule. As a result, no final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 806

International transactions, Economic statistics, Foreign investment in the United States, Penalties, Reporting and record keeping requirements.

Dated: December 6, 2007.

Rosemary D. Marcuss,

Acting Director, Bureau of Economic Analysis.

■ For the reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

■ 1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp., p. 173) and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

■ 2. Sections 806.17 and 806.18 are revised to read as follows:

§ 806.17 Rules and regulations for BE–12, 2007 Benchmark Survey of Foreign Direct Investment in the United States.

A BE–12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 2007. All legal authorities, provisions, definitions, and requirements contained in § 806.1 through § 806.13 and § 806.15(a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE–12 survey are given in this section.

(a) Response required. A response is required from persons subject to the reporting requirements of the BE–12, 2007 Benchmark Survey of Foreign Direct Investment in the United States, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA

about reporting in this survey, either by sending them a report form or by written inquiry, must respond pursuant to § 806.4. This may be accomplished by:

(1) Filing the properly completed BE–12 report—Form BE–12(LF), Form BE–12(SF), Form BE–12 Mini, or Form BE–12 Bank, by May 31, 2008, as required;

(2) Completing and returning the Form BE–12 Claim for Not Filing by May 31, 2008; or

(3) Certifying in writing, by May 31, 2008, to the fact that the person is not a U.S. affiliate of a foreign person and not subject to the reporting requirements of the BE–12 survey.

(b) Who must report. A BE–12 report is required for each U.S. affiliate, that is, for each U.S. business enterprise in which a foreign person (foreign parent) owned or controlled, directly or indirectly, 10 percent or more of the voting securities in an incorporated U.S. business enterprise, or an equivalent interest in an unincorporated U.S. business enterprise, at the end of the business enterprise's fiscal year that ended in calendar year 2007. A BE–12 report is required even if the foreign person's ownership interest in the U.S. business enterprise was established or acquired during the 2007 reporting year. Beneficial, not record, ownership is the basis of the reporting criteria.

(c) Forms to be filed. (1)—Form BE–12(LF) (Long Form) must be completed by a U.S. affiliate that was majority-owned by one or more foreign parents (for purposes of this survey, a ''majority-owned'' U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent), if:

(i) It is not a bank and is not owned directly or indirectly by a U.S. bank holding company or financial holding company, and

(ii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the following three items for the U.S. affiliate (not just the foreign parent's share), was greater than $175 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2007:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes; or

(C) Net income after provision for U.S. income taxes.

(2) Form BE–12(SF) (Short Form) must be completed by a U.S. affiliate if:

(i) It is not a bank and is not owned directly or indirectly by a U.S. bank holding company or financial holding company, and

(ii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1)(ii) of this section for a majority-owned U.S. affiliate (not just the foreign parent's share), was greater than $40 million (positive or negative) but none of these items was greater than $175 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2007.

(iii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1)(ii) of this section for a minority-owned U.S. affiliate (not just the foreign parent's share), was greater than $40 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2007. (A ''minority-owned'' U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less.)

(3) Form BE–12 Mini must be completed by a U.S. affiliate if:

(i) It is not a bank, and is not owned directly or indirectly by a U.S. bank holding company or financial holding company, and

(ii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, none of the three items listed in paragraph (c)(1)(ii) of this section for a U.S. affiliate (not just the foreign parent's share), was greater than $40 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2007.

(4) Form BE–12 Bank must be completed by a U.S. affiliate if:

(i) The U.S. affiliate is a bank. For purposes of the BE–12 survey, a ''bank'' is a business entity engaged in deposit banking or closely related functions, including commercial banks, Edge Act corporations engaged in international or foreign banking, U.S. branches and agencies of foreign banks whether or not they accept domestic deposits, savings and loans, savings banks, bank holding companies and financial holding companies under the Gramm-Leach-Bliley Act, including all subsidiaries or units of a bank holding company or financial holding company, and

(ii) On a fully consolidated basis any one of the three items listed in paragraph (c)(1)(ii) of this section for a U.S. affiliate (not just the foreign parent's share), was greater than $15 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2007.

(5) Form BE–12 Claim for Not Filing will be provided for response by persons that are not subject to the reporting requirements of the BE–12 survey but have been contacted by BEA concerning their reporting status.

(d) Aggregation of real estate investments. All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately on the same type of report that would have been required if the real estate holdings were aggregated.

(e) Due date. A fully completed and certified Form BE–12(LF), BE–12(SF), BE–12 Mini, BE–12 Bank, or Form BE–12 Claim for Not Filing is due to be filed with BEA not later than May 31, 2008.

§ 806.18 OMB control numbers assigned to the Paperwork Reduction Act.

(a) *Purpose.* This section complies with the requirements of section 3507 (f) of the Paperwork Reduction Act (PRA) which requires agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

15 CFR section where identified and described	Current OMB control No.
806.1 through 806.17	0608–0020 0024 0032 0004 0035 0030 0009 0023 0034 0042 0053

[FR Doc. E7–24972 Filed 12–21–07; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the

animal drug regulations to reflect a change of sponsor's name from Altana, Inc., to Nycomed US, Inc.

DATES: This rule is effective December 26, 2007.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Altana, Inc., 60 Baylis Rd., Melville, NY 11747, has informed FDA that it has changed its name to Nycomed US, Inc. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect these changes.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600 in the table in paragraph (c)(1), remove the entry for ''Altana, Inc.'' and alphabetically add a new entry for ''Nycomed US, Inc.''; and in the table in paragraph (c)(2), revise the entry for ''025463'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Nycomed US, Inc., 60 Baylis Rd., Melville, NY 11747.	025463
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
025463	Nycomed US, Inc., 60 Baylis Rd., Melville, NY 11747
* * * * *	

Dated: December 12, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–24974 Filed 12–21–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1312

[Docket No. DEA–276F]

RIN 1117–AB00

Reexportation of Controlled Substances

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

ACTION: Final rule.

SUMMARY: The Controlled Substances Export Reform Act of 2005 amended the Controlled Substances Import and Export Act to provide authority for the Drug Enforcement Administration (DEA) to authorize the export of controlled substances from the United States to another country for subsequent export from that country to a second country, if certain conditions and safeguards are satisfied. DEA is amending its regulations to implement the new legislation.

DATES: *Effective Date:* This rule is effective January 25, 2008.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Background

The Controlled Substances Export Reform Act of 2005 (Pub. L. 109–57) was enacted on August 2, 2005. The Act amends the Controlled Substances Import and Export Act (CSIEA) to provide authority for the Attorney General (and DEA, by delegation) [1] to authorize the export of controlled substances in schedules I and II, and narcotic controlled substances in schedules III and IV, from the United States to another country for subsequent export from that country to a second country, if certain conditions and safeguards are satisfied.

Previously under the CSIEA (prior to the 2005 legislation), there were no circumstances in which it was permissible to export a controlled substance in schedules I and II, or a narcotic controlled substance in schedules III and IV, for the purpose of reexport to another country. Such controlled substances could lawfully be exported only to the immediate country where they would be consumed.

The Controlled Substances Export Reform Act requires the following:

> Notwithstanding [21 U.S.C. 953] subsections (a)(4) and (c)(3), the Attorney General may authorize any controlled substance that is in schedule I or II, or is a narcotic drug in schedule III or IV, to be exported from the United States to a country for subsequent export from that country to another country, if each of the following conditions is met:
>
> (1) Both the country to which the controlled substance is exported from the United States (referred to in this subsection as the 'first country') and the country to which the controlled substance is exported from the first country (referred to in this subsection as the 'second country') are parties to the Single Convention on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances, 1971.
>
> (2) The first country and the second country have each instituted and maintain, in conformity with such Conventions, a system of controls of imports of controlled substances which the Attorney General deems adequate.
>
> (3) With respect to the first country, the controlled substance is consigned to a holder of such permits or licenses as may be required under the laws of such country, and a permit or license to import the controlled substance has been issued by the country.
>
> (4) With respect to the second country, substantial evidence is furnished to the Attorney General by the person who will export the controlled substance from the United States that—
>
> (A) The controlled substance is to be consigned to a holder of such permits or licenses as may be required under the laws of such country, and a permit or license to import the controlled substance is to be issued by the country; and
>
> (B) The controlled substance is to be applied exclusively to medical, scientific, or other legitimate uses within the country.
>
> (5) The controlled substance will not be exported from the second country.
>
> (6) Within 30 days after the controlled substance is exported from the first country to the second country, the person who exported the controlled substance from the United States delivers to the Attorney General documentation certifying that such export from the first country has occurred.

[1] 28 CFR 0.100(b).

(7) A permit to export the controlled substance from the United States has been issued by the Attorney General.

21 U.S.C. 953(f).

DEA Proposed Implementation of the Controlled Substances Export Reform Act of 2005

To address the provisions of the Controlled Substances Export Reform Act of 2005, DEA published a Notice of Proposed Rulemaking (NPRM) (71 FR 61436, October 18, 2006). This rulemaking proposed amending DEA regulations to implement this new legislation. Most of the proposed amendments to the regulations either reiterated the new statutory provisions added by the 2005 Act or specified the procedural details for complying with the new statutory provisions. In three respects, however, the proposed rule contained substantive requirements not contained in the statute. The first additional proposed requirement was that the exporter notify DEA when the shipment for reexport has left the United States. The second additional proposed requirement was that the reexport from the first country to the second country take place within 90 days after the shipment leaves the United States. The third additional proposed requirement was that bulk materials undergo further manufacturing in the first country prior to being shipped to the second country. This was the same requirement contained in existing DEA regulations for reexports of nonnarcotic controlled substances in schedules III and IV and schedule V controlled substances (21 CFR 1312.27(b)(5)).

Comments Received

DEA received nine comments on the Notice of Proposed Rulemaking. Commenters included one pharmaceutical research and manufacturing association, seven manufacturers (including one represented by a law firm), and one member of the public. Most of the commenters generally supported the rulemaking, but had a variety of comments regarding certain aspects of the proposed rule. DEA has made certain modifications to the proposed rule in view of the comments. The comments, and DEA's responses, are discussed below.

Authority of DEA to issue substantive requirements not contained in the statute: One commenter asserted that DEA is without authority under the Controlled Substances Export Reform Act of 2005 ''to create new criteria'' and thus that this final rule should be limited to those substantive requirements mandated by Congress under the 2005 Act. In support of this contention, this commenter asserted that ''Congress was extraordinary [sic] specific in the Act on the conditions and criteria under which schedule I and II controlled substances may be exported for reexport.''

DEA Response: Under the CSIEA, Congress granted the Attorney General express authority to ''promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under [the CSIEA].'' (21 U.S.C. 871(b) (incorporated into the CSIEA by 21 U.S.C. 965)). This authority has been delegated to the DEA Administrator (28 CFR 0.100(b)). Thus, DEA has such rulemaking authority with respect to all provisions of the CSIEA, including amendments thereto, such as those made by the Controlled Substances Export Reform Act of 2005. Indeed, if DEA were without such general rulemaking authority, the agency would have no ability to issue any regulations implementing the Controlled Substances Export Reform Act of 2005, as the 2005 legislation itself contains no express delegation of regulatory authority. Accordingly, this final rule is being issued pursuant to DEA's general authority granted by Congress to promulgate regulations necessary and appropriate for the efficient enforcement of the CSIEA.

That Congress included in the 2005 legislation very specific criteria under which certain controlled substances may be reexported in no way precludes or limits DEA's general rulemaking authority under the CSIEA. This is illustrated by, among other things, reviewing the longstanding import and export provisions of the CSIEA (21 U.S.C. 952 and 953), which also contain great specificity. Notwithstanding this specificity in the statutes, DEA has promulgated a variety of regulations (21 CFR part 1312) that impose restrictions beyond those mandated by Congress.

Time for reexportation: In its NPRM, DEA proposed requiring that the reexport from the first country to the second country take place within 90 days after the shipment leaves the United States. Eight commenters disagreed with this proposed requirement, citing a variety of concerns.

Commenters who disagreed with the 90-day timeframe asserted that, in some cases, it can take longer than 90 days to complete the additional manufacturing and testing in the first country and to obtain the permit from the second country. Further, these commenters asserted that other controls required by the Controlled Substances Export Reform Act are sufficient to ensure proper reexportation of controlled substances.

One commenter asked that DEA, when evaluating time considerations, bear in mind the system of estimates imposed under the treaties and implement the reexport allowance in a manner that will ''prevent an accumulation of raw materials and distortion of estimates.''

DEA Response: DEA has considered the commenters' concerns and their explanations for those concerns. In addressing these comments, it is useful to begin with a reiteration of some important general principles. First, it should be noted that the United States has always been a world leader in promoting international and domestic control of narcotics and other controlled substances. As our nation is the world's largest producer of pharmaceutical controlled substances, the controls implemented by the United States play a crucial role in preventing diversion worldwide. Moreover, taking steps to prevent the United States from being a source of worldwide diversion directly benefits our country since a portion of the controlled substances diverted into illicit channels abroad can end up being sent back to the United States through illicit channels.

Another key principle is that, as one of the commenters suggested, reducing the accumulation of stocks of controlled substances tends to decrease the opportunity for, and likelihood of, diversion. It has long been recognized that the longer large supplies of controlled substances remain idly stockpiled, the greater the possibility of diversion. Consistent with these considerations, it should be noted that Congress, in enacting the 2005 legislation allowing for reexports, contemplated that ''[a]ll subsequent transfers of controlled substances would still be subject to strict oversight by the DEA and will require a permit from the Attorney General to prevent any potential abuse.'' 151 Cong. Rec. H6671 (July 27, 2005).

Given these principles, DEA strongly believes that, from an international drug control perspective, it is essential that the export from the first country to the second country occur in a finite period of time. The reexport allowance was not intended, and should not be construed, to allow the United States to become a source of stockpiling of controlled substances abroad for indefinite time periods. Moreover, without some limitation on the time controlled substances may remain in the first

country, a scenario could arise in which DEA has issued a permit authorizing a reexport, yet be without sufficient documentation to determine whether the shipment (i) has remained for many months in the first country without being reexported, (ii) has been improperly reexported to a different second country than that indicated on the reexport application, or (iii) was properly reexported to the second country but the reexporter failed to notify DEA within 30 days as required by the statute. As DEA noted in the NPRM, it can be inferred that one purpose of Congress' inclusion of the requirement that the United States exporter notify DEA within 30 days of the exportation from the first country to the second country is to provide a means for DEA to maintain an awareness of the status of shipments leaving the United States for reexport and thereby enhance the agency's ability to monitor and prevent diversion of such shipments. Requiring that there be a finite time within which the exportation from the first country to the second country must occur eliminates the possibility that DEA would be unable to ascertain the status of an approved reexport for an indefinite period of time.

Nonetheless, based on the comments received, DEA has decided to amend the regulation to double the time limit originally proposed. Under this Final Rule, the exportation from the first country to the second country may take place up to 180 days after the controlled substance was exported from the United States.

Use of National Drug Codes: Proposed § 1312.22(a) would require that applicants for export permits include the National Drug Code (NDC) number. One commenter suggested that the NDC number should only be required if the drug or product exported is listed with the U.S. Food and Drug Administration (FDA), because, this commenter asserted, some research compounds, reference standards, and samples are not required by the FDA to have an NDC number. Another commenter expressed its opinion that, based on FDA regulations, NDC numbers are not assigned to products for export, and countries outside the United States do not require NDC numbers, so the requirement to provide an NDC number on the DEA reexport permit application should be removed.

DEA Response: Requirements relating to NDC numbers are set forth in regulations issued by FDA. The NDC number consists of three parts: The labeler code, the product code, and the package code. Currently, FDA assigns the labeler code, and the product and package codes are assigned by the regulated industry within certain FDA parameters. On August 29, 2006, FDA published a Notice of Proposed Rulemaking [''Requirements for Foreign and Domestic Establishment Registration and Listing for Human Drugs, Including Drugs that are Regulated Under a Biologics License Application, and Animal Drugs'' (Docket No. 2005N–0403, RIN 0910–AA49) (71 FR 51276)] proposing, among other things, requirements regarding NDC numbers.

In view of the comments, DEA is modifying the proposed rule to indicate that persons applying for a reexport permit must supply to DEA the NDC number of a drug in accordance with FDA regulations. DEA anticipates that the overwhelming majority of controlled substances that will be reexported under this Final Rule will have NDC numbers. However, the Final Rule has been modified so that, if no NDC number is required under FDA regulations for a drug being exported from the United States, the applicant for reexport will not be required to supply an NDC number.

System of controls of imports: Consistent with the 2005 legislation, proposed § 1312.22(c)(1) and (c)(2) would require the countries to which the controlled substance is exported to be parties to certain international conventions and to maintain, in conformity with such conventions, a system of controls that DEA deems adequate. In the text accompanying the proposed rule, DEA stated that DEA must be able to make the foregoing determinations based on the information contained in the permit application (DEA Form 161R). With respect to these aspects of the proposed rule, one commenter stated: ''[I]t will be extremely difficult for U.S. exporters to determine in advance of applying for an export permit (to reexport) which countries the DEA has determined maintain a system of controls that the agency 'deems adequate.' '' Another commenter requested ''that the permit application not require the applicant to certify that the country maintains a system of control of imports consistent with the requirements of the treaties.'' However, a third commenter stated that ''the export permit applicant should be able to state that to the best of their knowledge and belief, the country of ultimate consumption maintains a system of control of imports consistent with the requirements of the treaties.''

DEA Response: The requirements to which these comments pertain were specifically included in the Controlled Substances Export Reform Act, as codified in 21 U.S.C. 953(f)(1) and (2). These statutory requirements are repeated essentially verbatim in the text of the Proposed and Final rule (§ 1312.22(c)(1) and (c)(2)). However, in view of the comments, DEA wishes to clarify the following points. First, it was not DEA's intent to require the reexport permit applicant to certify that the first and second countries maintain systems of control which DEA deems adequate. Rather, as the statute indicates, *DEA* must make the determination—as a prerequisite to issuing the permit—that both the first and second countries are parties to the Single Convention and Psychotropic Convention and maintain, in conformity with such conventions, a system of controls of imports of controlled substances which DEA deems adequate. The applicant will be required to certify, on the DEA Form 161R, to the best of his/her belief, that ''the first and second countries have each instituted and maintain a system for the control of these substances.'' This is the same certification that traditional exporters have always been required to make under the DEA Form 161.

Responsible official: Proposed § 1312.22(c)(7) would require the documentation to DEA to be signed by ''the responsible company official.'' One commenter pointed out that large companies might have several persons who meet these requirements and recommended that the provision be changed to ''a responsible official.''

DEA Response: DEA agrees that there are circumstances in which companies might have more than one official authorized or permitted to sign documents providing the required information of DEA. Therefore, DEA is amending 21 CFR 1312.22(c)(7) and 1312.22(d)(6) to permit a responsible company official to sign the documents in question.

Further manufacture of bulk materials: Proposed § 1312.22(d)(1) would prohibit bulk substances from being reexported in the same form as they were exported from the United States, *i.e.*, the material must undergo further manufacturing processes. Two commenters requested definitions or clarifications of the terms ''further manufacturing'' and ''bulk materials.'' One commenter suggested that further manufacturing should include processing, packaging, or relabeling and that bulk materials should include bulk product, such as tablets, capsules, solutions, suspensions, etc. That commenter also requested clarification in the Final Rule that bulk dosage forms

may be reexported for labeling and packaging in the second country.

DEA Response: The Controlled Substances Act (CSA) defines ''manufacture'' as: ''the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container'' (21 U.S.C. 802(15)). DEA believes that this definition established by Congress is broad enough to encompass all controlled substance manufacturing activities. The requirement in the Final Rule that further manufacturing of bulk material take place in the first country will be satisfied by any bona fide manufacturing activity that fits within the broad CSA definition of ''manufacture.'' As mentioned in the NPRM, this further manufacturing requirement is the same requirement that exists in the current regulations for the reexportation of nonnarcotic controlled substances in schedules III and IV, and of controlled substances in schedule V. Those regulations have been in place for many years, and are well-understood by the regulated industry. DEA believes that the intent of this regulation, and the definition of remanufacture, is clear; there is nothing in the export regulations to supersede or otherwise interpret the definition of ''manufacture'' and DEA does not believe that further clarification is warranted here.

Similarly, DEA believes that the concept of bulk substances is well-understood within the regulated industry and does not require further clarification. Congress used the term ''bulk manufacture'' in the CSIEA without defining that term, see 21 U.S.C. 958(i), and DEA has never attempted to define this term by regulation. DEA does not believe that the issuance of this rule necessitates such a definition. One example of how the term ''bulk manufacture'' has long been used by registrants without difficulty is that all persons who seek to become registered to manufacture schedule I and II controlled substances are required to specify on their applications for registration (DEA Form 225) whether they are seeking to engage in ''bulk'' manufacturing or some other type of manufacturing, such as dosage form manufacturing.

Reports of reexport to the second country: Proposed § 1312.22(d)(4) and (d)(5) would require the United States exporter to identify the second countries and quantities at the time of shipment. One commenter asserted that shifts in demand may occur after the product has been exported to the first country, so a list of second countries and potential quantities should be a permissible option. Another commenter believed that DEA should recognize that because of manufacturing processes in the first country, the amounts of reexports to the second country may vary from the original estimates. Thus, this commenter asserted that the Final Rule should allow the United States exporter to amend the 30-day export reports to keep DEA informed of changes.

DEA Response: While DEA recognizes that international demand for controlled substances may shift over time, the statute plainly contemplates that both the first and second country must be identified to DEA before the shipment leaves the United States in order for the agency to make the assessments required by the statute. Among other things, for DEA to meet its statutory and international treaty obligations, DEA cannot issue a permit for the exportation, or reexportation, of any controlled substance to any country when DEA has information to show that the estimates or assessments submitted with respect to that country for the current period, under the Single Convention on Narcotic Drugs, 1961, or the Convention on Psychotropic Substances, 1971, have been, or, considering the quantity proposed to be imported, will be exceeded. Thus, the permit issued by DEA authorizing the reexport must specify both the first and second countries and may not be modified to change the second country after the shipment leaves the United States.

Regarding variances in reexports to second countries due to manufacturing in the first country, it should be noted that the statute requires the applicant for reexport to provide DEA with substantial evidence, prior to the shipment leaving the United States, that a permit to import the controlled substance is to be issued by the second country and that the proposed amount of controlled substance to be reexported to the second country is needed for a medical, scientific, or other legitimate use in that country. Also, as indicated above and in the NPRM, the quantity of controlled substances must be such that the importing country will not exceed its estimates or assessments provided to the International Narcotics Control Board (INCB) of the United Nations. Thus, before any shipment leaves the United States for reexport, considerable planning and preparation should go into determining the quantity of controlled substances that is ultimately destined for the second country. Accordingly, there should be minimal variance between the quantity set forth in the export permit and that which is actually shipped to the second country. (DEA recognizes that there may be some slight wastage of controlled substances in manufacturing processes in the first country.)

Section 1312.22(c)(7) requires the United States exporter, within 30 days of exportation from the first country to the second country, to report to DEA on company letterhead the actual quantity shipped. Those who submit such reports will be reporting on quantifiable transactions that have already occurred and have a responsibility to provide accurate information in doing so. Therefore, amendments to this report should not be necessary.

Time to report reexportation: One commenter requested that DEA extend beyond 30 days the time required for the United States exporter to provide notification of reexports from the first country to the second country, because of the need to obtain information from other parties.

DEA Response: This requirement was set by Congress (21 U.S.C. 953(f)(6)) and DEA is without authority to modify it by regulation.

Return of the product to the United States: Proposed § 1312.22(d)(8) would provide for the reexporter to seek authorization from DEA to return a shipment to the United States if such shipment has been refused by the second country. One commenter urged DEA to allow the reexporter to seek the same return authorization where the shipment has been refused by the first country. This same commenter further asked that, if the shipment is refused by the second country, the reexporter be permitted to return the shipment to the first country. Two other commenters requested clarification as to whether the United States itself can serve as the second country.

DEA Response: As DEA discussed in the proposed rule, there are circumstances in which a shipment has been exported from the United States, but is refused by the consignee in the second country, or is otherwise unacceptable or undeliverable. In these circumstances, the exporter may seek permission from DEA, in appropriate circumstances, to return the shipment to the registered exporter in the United States. The language DEA proposed regarding this provision parallels the same language as is currently in place for reexportation of nonnarcotic controlled substances in schedules III

and IV, and controlled substances in schedule V. Under this provision, DEA will assess each situation on a case-by-case basis in determining whether it is appropriate to authorize the return of the shipment to the United States. DEA is adopting the first suggestion of the commenter to modify the rule to state expressly that if either the first or second country refuses the shipment, the reexporter may seek authorization from DEA to return the shipment to the United States. It should be noted, however, that DEA's experiences with reexportation of nonnarcotic controlled substances in schedules III and IV, and controlled substances in schedule V, indicate that such returns are expected to be very infrequent.

However, DEA cannot adopt the commenter's second suggestion—that DEA allow shipments which have been rejected by the second country to be returned to the first country. To do so would be the equivalent of allowing an export to the first country without having obtained proper approval before the shipment left the United States. Traditional exports of narcotic drugs in schedule I, II, III, or IV, and nonnarcotic controlled substances in schedule I or II are governed by 21 U.S.C. 953(a) and (c). Among the requirements of these provisions are: That DEA determine, before the shipment leaves the United States, that substantial evidence has been furnished that the controlled substance is to be applied exclusively to medical, scientific, or other legitimate uses within the country of import; that there is an actual need for the controlled substance for medical, scientific, or other legitimate uses within the country; and that DEA has issued a permit to export the controlled substance for consumption in the country of import. In order for DEA to make these determinations, the applicant for the export permit must supply certain information and make certain certifications on DEA Form 161. None of the foregoing requirements would be satisfied if DEA allowed a shipment that it authorized for reexport to be returned from the second country to the first country. In addition, allowing such returns from the second country to the first country could potentially disrupt the system of estimates and assessments and statistical returns maintained by the INCB, which is crucial to international drug control.

Regarding whether the United States may serve as the second country, to allow controlled substances to be re-imported into the United States by interpreting the term ''second country'' to include the United States would be contrary to the intent of Congress in enacting the legislation. As stated in House Report 109–115, part 1, at 2 (2005): ''The purpose of this legislation is to amend Section 1003 of the Controlled Substances Import and Export Act [21 U.S.C. 953] by allowing a controlled substance that has been exported from the United States to be subsequently exported to a *third* country under certain conditions and pending a permit from the Attorney General.'' (Emphasis added.) Similarly, part 2 of the same House Report stated (at 2) that the legislation ''will allow pharmaceutical companies to export controlled substances to distribution centers for export to one *additional* country.'' (Emphasis added.) Along the same lines, in remarks made on the House floor upon moving to pass the Senate version of the bill (S. 1395), Congressman Deal stated:

> Under [then current law, as set forth in] the Controlled Substances Import and Export Act, a company is not allowed to export controlled substances to one country and then send it to a *third* country. Companies that export controlled substances must make a large number of long-distance, small shipments to individual countries, incurring large shipping costs. Due to this restriction, American manufacturers are less competitive than their foreign competitors, which results in high-paying U.S. jobs being sent overseas.

151 Cong. Rec. H6671 (July 27, 2005) (emphasis added).

Thus, the scenario that Congress sought to address through the legislation entails the exportation of controlled substance drug products manufactured (initially) in the United States for ultimate consumption abroad (i.e., in a ''third country'').

In addition, even if Congress had expressed no intent as to whether the ''second country'' referred to in 21 U.S.C. 953(f) could be the United States (which was not the case), re-importation into the United States would be impermissible unless the re-importer were able to demonstrate that it met the requirements of 21 U.S.C. 952(a)(2). Section 952(a)(2) governs importation of ''any controlled substance in schedule I or II or any narcotic drug in schedule III, IV, or V,'' which encompasses all the controlled substances subject to 21 U.S.C. 953(f), the Controlled Substances Export Reform Act. The requirements of § 952(a)(2) are highly restrictive and unlikely to be demonstrated where the applicant seeks to export a controlled substance from the United States for re-importation into the United States.

Estimated times per response for filing DEA Form 161 and 161R: As discussed in the preamble to the NPRM, DEA Form 161 is currently used to report the exportation of controlled substances in schedules I and II and narcotic controlled substances in schedules III and IV. DEA proposed the establishment of new Form 161R for the reporting of reexportations. The discussion of the Paperwork Reduction Act in the preamble to the proposed rule included a table of the estimated number of respondents and the amount of time estimated for an average respondent to respond regarding the completion of these forms. One commenter believed that the time estimates for completion of the required forms were too low because they apparently did not consider the time required to obtain the information needed to complete the forms. The commenter did not provide its own estimates regarding the time needed to complete the forms.

DEA Response: DEA estimates that it takes 30 minutes for a respondent to complete DEA Form 161 for exportation of controlled substances. DEA estimates that it takes a respondent 45 minutes to complete DEA Form 161R for reexportation of controlled substances. DEA recognizes that a variety of factors contribute to the time required to complete these forms including, but not limited to, the number and variety of controlled substances being exported or reexported, the number of countries to which controlled substances are exported or reexported, and the respondent's familiarity with the form. DEA notes that these estimates are average estimates; it may take some persons more time to complete these forms and it may take some less time. Therefore, as the time burdens are estimates of the time an average respondent takes to respond, and based on the varying factors associated with each exportation or reexportation of controlled substances, DEA believes that these estimates are accurate, on average, and is not adjusting the time burdens associated with this collection.

Other Considerations

Treaty Considerations

As discussed in the NPRM, the first two subsections of the Controlled Substances Export Reform Act of 2005 pertain to the Single Convention on Narcotic Drugs, 1961 (Single Convention), and the Convention on Psychotropic Substances, 1971 (Psychotropic Convention). Under these provisions, a reexport may take place only if both the first and second country are parties to both treaties and only if the Attorney General (DEA by delegation) determines that both the first country and the second country maintain an adequate system of controls in conformity with the treaties.

Thus, Congress expressly intended that reexports take place in accordance with the treaties. The control measures imposed under the Controlled Substances Export Reform Act of 2005, along with the regulations being finalized here, are intended to work in tandem with the international control regimes under the treaties. The ultimate goal of the 2005 Act and this Final Rule is to permit exportation of controlled substances in schedules I and II and narcotic controlled substances in schedules III and IV from the United States to a first country for subsequent exportation to one or more second countries while preventing international diversion resulting from reexports. Whenever considering safeguards against diversion of international shipments, one must bear in mind the backdrop of the treaties. Toward this end, the following treaty principles are noted.

Under the Single Convention, each country that is a party to the treaty is required to furnish the International Narcotics Control Board (INCB) with annual estimates of, among other things, the quantities of narcotic drugs on hand, the anticipated amounts that will be consumed by the party for legitimate purposes, and the anticipated production quantities. The Single Convention also requires parties to furnish the INCB with statistical returns for the prior year, indicating the amounts of drugs produced, utilized, consumed, imported, exported, seized, disposed of, and in stock. The Psychotropic Convention requires the parties to provide the INCB with statistical reports and assessments containing similar information with respect to psychotropic substances. Through the collection of this information, the INCB provides exporting countries with information on the legitimate requirements of the importing countries and can take steps to reduce the likelihood of international diversion. For example, the INCB may notify parties if the quantity of drugs exported to a particular country exceeded the estimates for that country. Parties that receive such notification from the INCB are prohibited from authorizing further exports of the drug concerned to that country.

Issuance of Permits

Under the 2005 Act, before a controlled substance can be exported for subsequent reexport, the exporter must obtain from DEA a permit that authorizes the export for this purpose. Consistent with the 2005 Act, DEA may issue such a permit only if each of the conditions specified in the Act is met. Each of these conditions is restated in this Final Rule. Although most of these conditions are self-explanatory, some additional explanation is warranted.

DEA will be issuing a new application form, DEA Form 161R, for a permit to export controlled substances for subsequent reexport in accordance with the 2005 Act. The statute requires the reexporter (as a condition of obtaining an export permit from DEA) to specify both the first and the second countries, and to provide substantial evidence that, with respect to the second country, the controlled substance is to be consigned to a holder of such permits or licenses as may be required under the laws of such country, and a permit or license to import the controlled substance is to be issued by the country. In its NPRM, DEA discussed what would constitute ''substantial evidence'' for purposes of subsection (4) of the 2005 Act. Specifically, if on the completed DEA Form 161R, the applicant has identified an appropriately licensed or permitted consignee in the second country and certified that the second country is a party to the Conventions and maintains a system of controls of imports consistent with the requirements of the treaties, and so affirmed in the affidavit section of the application, DEA will consider this substantial evidence that a permit or license to import the controlled substance will be issued by the second country.

Failure to comply with the CSIEA and its implementing regulations, including those set forth in this rulemaking, may result in the imposition of penalties and/or administrative remedies as provided in the CSIEA. As with all statutory and regulatory provisions that DEA administers, the agency will evaluate any transgressions involving this Final Rule on a case-by-case basis, taking into account the totality of the circumstances, in determining the appropriate course of action.

Reexportation to More Than One Second Country

DEA believes it is consistent with the text, structure, and purpose of the 2005 Act to allow a shipment of controlled substances to be exported from the United States to a ''first country'' for reexport to more than one ''second country'' (but not further export from any second country to a third country), provided the exporter notifies DEA of this intent in the application for export permit, and provided further that the statute is fully complied with in all other respects. DEA received one comment discussing this issue. The commenter supported DEA's position, agreeing that such an interpretation was contemplated in the Controlled Substances Export Reform Act. Therefore, this provision is being finalized without change. This Final Rule expressly provides for reexport to more than one second country, and the new Form 161R is structured accordingly.

Refused Shipments

As discussed previously, there are circumstances in which a shipment has been exported from the United States, but is refused by the consignee in the second country, or is otherwise unacceptable or undeliverable. In these circumstances, the exporter may seek permission from DEA, in appropriate circumstances, to return the shipment to the registered exporter in the United States. DEA proposed applying the same procedures to address this circumstance as already exist for the reexportation of nonnarcotic controlled substances in schedule III and IV, and controlled substances in schedule V (21 CFR 1312.27(b)(5)(iv)). DEA did not receive any comments seeking revision of this proposed language. Therefore, it is adopted as proposed.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This rulemaking permits schedule I and II controlled substances, and narcotic controlled substances in schedules III and IV, to be exported from the United States to the first country for subsequent reexport to second countries for consumption. Previously such reexportation was not permitted within DEA law and regulations.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 § 1(b). It has been determined that this is a significant regulatory action. Therefore, this action has been reviewed by the Office of Management and Budget.

Executive Order 12988

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

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 $120,000,000 or more (adjusted for inflation) 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.

Paperwork Reduction Act of 1995

The Department of Justice, Drug Enforcement Administration, is revising the information collection entitled ''Application for Permit to Export Controlled Substances'', by adding a new DEA Form 161R to be used by persons applying for a permit to reexport controlled substances in schedules I and II, and narcotic controlled substances in schedules III and IV. DEA has submitted the new DEA Form 161R and the information collection request to the Office of Management and Budget for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995.

Overview of this information collection

(1) *Type of Information Collection:* Revision of an existing collection.

(2) *Title of the Form/Collection:* Application for Permit to Export Controlled Substances.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA Form 161, Application for Permit to Export Controlled Substances; DEA Form 161R, Application for Permit to Export Controlled Substances for Subsequent Reexport.

Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: Title 21 CFR 1312.21 and 1312.22 require persons who export controlled substances in schedules I and II and who reexport controlled substances in schedules I and II and narcotic controlled substances in schedules III and IV to obtain a permit from DEA. Information is used to issue export permits, exercise control over exportation of controlled substances, and compile data for submission to the United Nations to comply with treaty requirements.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 90 respondents will respond, with submissions as follows:

	Number of responses	Average time per response	Total (hours)
DEA Form 161 (exportation only)	2,200	30 minutes (0.5 hours)	1,100
DEA Form 161R (reexportation)	400	45 minutes (0.75 hours)	300
Certification of exportation from United States to first country.	400	15 minutes (0.25 hours)	100
Certification of reexportation from first country to second country*.	1,200	15 minutes (0.25 hours)	300
Total	4,200		1,800

* Assumes three separate reexports to second countries

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total public burden (in hours) for this collection is estimated to be 1,800 hours.

Congressional Review Act

This rule is not a major rule as defined by § 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.

List of Subjects in 21 CFR Part 1312:

Administrative practice and procedure, Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

■ For the reasons set out above, 21 CFR part 1312 is amended as follows:

PART 1312—[AMENDED]

■ 1. The authority citation for part 1312 continues to read as follows:

Authority: 21 U.S.C. 952, 953, 954, 957, 958.

■ 2. Section 1312.22 is amended by revising paragraph (a) and adding paragraphs (c) through (e) to read as follows:

§ 1312.22 Application for export permit.

(a) An application for a permit to export controlled substances shall be made on DEA Form 161, and an application for a permit to reexport controlled substances shall be made on DEA Form 161R. Forms may be obtained from, and shall be filed with, the Drug Enforcement Administration, Import/Export Unit, Washington, DC 20537. Each application shall show the exporter's name, address, and registration number; a detailed description of each controlled substance desired to be exported including the drug name, dosage form, National Drug Code (NDC) number (in accordance with Food and Drug Administration regulations), the Administration Controlled Substance Code Number as set forth in Part 1308 of this chapter, the number and size of packages or containers, the name and quantity of the controlled substance contained in any finished dosage units, and the quantity of any controlled substance (expressed in anhydrous acid, base, or alkaloid) given in kilograms or parts thereof. The application shall include the name, address, and business of the consignee, foreign port of entry, the port of exportation, the approximate date of exportation, the name of the exporting carrier or vessel (if known, or if unknown it should be stated whether shipment will be made by express,

freight, or otherwise, exports of controlled substances by mail being prohibited), the date and number, if any, of the supporting foreign import license or permit accompanying the application, and the authority by whom such foreign license or permit was issued. The application shall also contain an affidavit that the packages are labeled in conformance with obligations of the United States under international treaties, conventions, or protocols in effect on May 1, 1971. The affidavit shall further state that to the best of affiant's knowledge and belief, the controlled substances therein are to be applied exclusively to medical or scientific uses within the country to which exported, will not be reexported therefrom and that there is an actual need for the controlled substance for medical or scientific uses within such country, unless the application is submitted for reexport in accordance with paragraphs (c) and (d) of this section. In the case of exportation of crude cocaine, the affidavit may state that to the best of affiant's knowledge and belief, the controlled substances will be processed within the country to which exported, either for medical or scientific use within that country or for reexportation in accordance with the laws of that country to another for medical or scientific use within that country. The application shall be signed and dated by the exporter and shall contain the address from which the substances will be shipped for exportation.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, the Administration may authorize any controlled substance listed in Schedule I or II, or any narcotic drug listed in Schedule III or IV, to be exported from the United States to a country for subsequent export from that country to another country, if each of the following conditions is met, in accordance with § 1003(f) of the Act (21 U.S.C. 953(f)):

(1) Both the country to which the controlled substance is exported from the United States (referred to in this section as the ''first country'') and the country to which the controlled substance is exported from the first country (referred to in this section as the ''second country'') are parties to the Single Convention on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances, 1971;

(2) The first country and the second country have each instituted and maintain, in conformity with such Conventions, a system of controls of imports of controlled substances which the Administration deems adequate;

(3) With respect to the first country, the controlled substance is consigned to a holder of such permits or licenses as may be required under the laws of such country, and a permit or license to import the controlled substance has been issued by the country;

(4) With respect to the second country, substantial evidence is furnished to the Administration by the applicant for the export permit that—

(i) The controlled substance is to be consigned to a holder of such permits or licenses as may be required under the laws of such country, and a permit or license to import the controlled substance is to be issued by the country; and

(ii) The controlled substance is to be applied exclusively to medical, scientific, or other legitimate uses within the country;

(5) The controlled substance will not be exported from the second country;

(6) The person who exported the controlled substance from the United States has complied with paragraph (d) of this section and a permit to export the controlled substance from the United States has been issued by the Administration; and

(7) Within 30 days after the controlled substance is exported from the first country to the second country, the person who exported the controlled substance from the United States must deliver to the Administration documentation certifying that such export from the first country has occurred. If the permit issued by the Administration authorized the reexport of a controlled substance from the first country to more than one second country, notification of each individual reexport shall be provided. This documentation shall be submitted on company letterhead, signed by a responsible company official, and shall include all of the following information:

(i) Name of second country;

(ii) Actual quantity shipped;

(iii) Actual date shipped; and

(iv) DEA export permit number for the original export.

(d) Where a person is seeking to export a controlled substance for reexport in accordance with paragraph (c) of this section, the following requirements shall apply in addition to (and not in lieu of) the requirements of paragraphs (a) and (b) of this section:

(1) Bulk substances will not be reexported in the same form as exported from the United States, *i.e.*, the material must undergo further manufacturing process. This further manufactured material may only be reexported to a second country.

(2) Finished dosage units, if reexported, must be in a commercial package, properly sealed and labeled for legitimate medical use in the second country.

(3) Any proposed reexportation must be made known to the Administration at the time the initial DEA Form 161R is submitted. In addition, the following information must also be provided where indicated on the form:

(i) Whether the drug or preparation will be reexported in bulk or finished dosage units;

(ii) The product name, dosage strength, commercial package size, and quantity;

(iii) The name of consignee, complete address, and expected shipment date, as well as the name and address of the ultimate consignee in the second country.

(4) The application (DEA Form 161R) must also contain an affidavit that the consignee in the second country is authorized under the laws and regulations of the second country to receive the controlled substances. The affidavit must also contain the following statement, in addition to the statements required under paragraph (a) of this section:

(i) That the packages are labeled in conformance with the obligations of the United States under the Single Convention on Narcotic Drugs, 1961, the Convention on Psychotropic Substances, 1971, and any amendments to such treaties;

(ii) That the controlled substances are to be applied exclusively to medical or scientific uses within the second country;

(iii) That the controlled substances will not be further reexported from the second country, and

(iv) That there is an actual need for the controlled substances for medical or scientific uses within the second country.

(5) If the applicant proposes that the shipment of controlled substances will be separated into parts after it arrives in the first country and then reexported to more than one second country, the applicant shall so indicate on the DEA Form 161R, providing all the information required in this section for each second country.

(6) Within 30 days after the controlled substance is exported from the United States, the person who exported the controlled substance shall deliver to the Administration documentation on the DEA Form 161R initially completed for the transaction certifying that such export occurred. This documentation

shall be signed by a responsible company official and shall include all of the following information:

(i) Actual quantity shipped;

(ii) Actual date shipped; and

(iii) DEA export permit number.

(7) The controlled substance will be reexported from the first country to the second country (or second countries) no later than 180 days after the controlled substance was exported from the United States.

(8) Shipments that have been exported from the United States and are refused by the consignee in either the first or second country, or are otherwise unacceptable or undeliverable, may be returned to the registered exporter in the United States upon authorization of the Administration. In these circumstances, the exporter in the United States shall file a written request for the return of the controlled substances to the United States with a brief summary of the facts that warrant the return, along with a completed DEA Form 357, Application for Import Permit, with the Drug Enforcement Administration, Import/Export Unit, Washington, DC 20537. The Administration will evaluate the request after considering all the facts as well as the exporter's registration status with the Administration. If the exporter provides sufficient documentation, the Administration will issue an import permit for the return of these drugs, and the exporter can then obtain an export permit from the country of original importation. The substance may be returned to the United States only after affirmative authorization is issued in writing by the Administration.

(e) In considering whether to grant an application for a permit under paragraphs (c) and (d) of this section, the Administration shall consider whether the applicant has previously obtained such a permit and, if so, whether the applicant complied fully with the requirements of this section with respect to that previous permit.

■ 3. Section 1312.23 is amended by revising paragraphs (a) and (f) to read as follows:

§ 1312.23 Issuance of export permit.

(a) The Administrator may authorize exportation of any controlled substance listed in Schedule I or II or any narcotic controlled substance listed in Schedule III or IV if he finds that such exportation is permitted by subsections 1003(a), (b), (c), (d), or (f) of the Act (21 U.S.C. 953(a), (b), (c), (d), or (f).

* * * * *

(f) No export permit shall be issued for the exportation, or reexportation, of any controlled substance to any country when the Administration has information to show that the estimates or assessments submitted with respect to that country for the current period, under the Single Convention on Narcotic Drugs, 1961, or the Convention on Psychotropic Substances, 1971, have been, or, considering the quantity proposed to be imported, will be exceeded. If it shall appear through subsequent advice received from the International Narcotics Control Board of the United Nations that the estimates or assessments of the country of destination have been adjusted to permit further importation of the controlled substance, an export permit may then be issued if otherwise permissible.

Dated: December 5, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9369]

RIN 1545–BG40

Calculating and Apportioning the Section 11(b)(1) Additional Tax under Section 1561 for Controlled Groups.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document removes the final regulation for § 1.1561–2, amends §§ 1.1561–2T and 1.1563–1T, and adds § 1.1502–47T. These temporary regulations affect component members of a controlled group of corporations and consolidated groups filing life-nonlife Federal income tax returns. These temporary regulations provide guidance for calculating and apportioning between component members any amount of additional tax and any reduction in the amount exempted from the alternative minimum tax. These temporary regulations also update and clarify the allocation of tax-benefit items in the case in which a component member has a short taxable year not including a December 31st date. Finally, these temporary regulations provide explanations of two concepts: a group's testing date and a member's testing period for use in determining which members of the group and which taxable years of those members are subject to the controlled group rules. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These temporary regulations are effective on *December 26, 2007.*

Applicability Dates: For the dates of applicability, see §§ 1.1502–47T(t)(1), 1.1561–2T(f)(1) and 1.1563–1T(e)(1). The applicability of these temporary regulations will expire on December 21, 2010.

FOR FURTHER INFORMATION CONTACT: Grid Glyer, (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A. Summary of Limitations on Controlled Groups of Corporations Regarding Lower Tax Brackets and Alternative Minimum Tax Exemption Amounts

Section 1561(a) of the Internal Revenue Code (Code) provides that the *component members* of a *controlled group of corporations* (as those terms are defined in section 1563) are limited for their taxable years which include the same December 31st date to an amount of each of the tax-benefit items listed therein to which a corporation that is not a component member of a controlled group is entitled. Two of those items are the section 11(b)(1) tax-bracket amounts and the section 55(d)(2) exemption from the alternative minimum tax (the ''exemption amount''). See section 1561(a)(1) and (a)(3). Each of these two Code provisions requires reductions in calculating the amounts of each of these two tax-benefit items after the taxpayer has passed certain thresholds. The ''additional taxes'' under section 11(b)(1) serve to reduce a corporation's use of the lower tax brackets after certain specified threshold levels of income are reached. Section 55(d)(3) requires reductions to the amount exempted from the alternative minimum tax.

B. The Additional Taxes Imposed by Section 11(b)(1) and the Alternative Minimum Tax Exemption Amount

In general, section 11(b)(1) provides for a graduated income tax rate structure for taxing the income of a corporation. The income tax rates imposed on a corporation's income increase with each higher bracketed range of taxable income. The following chart shows the various tax rates imposed on a

corporation and the ranges of taxable income that are subject to each of these tax rates:

Rate of tax	Range of taxable income subject to a rate of tax
15%	$50,000 (first $50,000 of corporation's taxable income).
25%	$25,000 ($75,000 – $50,000).
34%	$9,925,000 ($10,000,000 – $75,000).
35%	> $10,000,000.

Section 11(b)(1) also imposes additional tax on the corporation's taxable income where its income exceeds two designated income thresholds. This additional tax is designed to reduce the tax benefit that a corporation derives from having some of its income taxed at a lower rate.

For example, if a corporation's taxable income exceeds $100,000 (but is not greater than $15 million), the total amount of the additional tax is the lesser of (1) the amount of 5 percent of the excess over $100,000 or (2) $11,750. This $11,750 amount represents the maximum tax benefit available to a corporation from having all of the first $75,000 of its taxable income taxed at the 15 and 25 percent tax rates rather than at a 34 percent tax rate. Similarly, if a corporation's taxable income exceeds $15 million, there is a further additional tax equal to the lesser of (1) the amount of 3 percent of the excess over $15 million, or (2) $100,000. This $100,000 amount represents the maximum tax benefit available to a corporation from having all of the first $10 million of its taxable income taxed at the 34 percent tax rate rather than at a 35 percent tax rate.

Section 55(d)(3) provides that a taxpayer's exemption amount shall be phased out (but not below zero) as the taxpayer's alternative minimum taxable income increases.

C. The Controlled Group Rules

Under section 1561(a), the component members of a controlled group, with regard to taxable years containing a particular December 31st ''testing date,'' are collectively limited to using one full amount of certain tax-benefit items. As noted above, one of the tax benefits so limited is the benefit of the lower tax brackets. Another is the $40,000 amount for exemption from the alternative minimum tax. Section 1561(a) generally provides that the lower tax brackets and the $40,000 exemption from alternative minimum tax are divided equally among the component members of the controlled group unless the group adopts an apportionment plan that provides for an unequal allocation.

Section 1563(a) defines the four types of controlled groups. The two most common are parent-subsidiary (defined in section 1563(a)(1)) and brother-sister (defined in section 1563(a)(2)).

Under section 1563(b), a corporation is a component member of a controlled group for a given taxable year if it was a member of such group on the December 31st date of its taxable year for at least one-half the number of days of its taxable year that precedes that December 31st date. In addition, pursuant to section 1563(b)(3), a corporation is treated as a component member of a controlled group if it was a member of such group during a calendar year, although not on December 31st, but was a member of such group for at least one-half the number of days of its taxable year that precede that December 31st date (referred to as an ''additional member''). Conversely, pursuant to section 1563(b)(2), a corporation which is a member of a controlled group of corporations on December 31st of any taxable year is treated as an excluded member of the controlled group (with regard to that December 31st testing date), if such corporation is a member of such group for less than one-half the number of days in its taxable year which precede such December 31st. The December 31st date of a specified calendar year will be referred to as the group's testing date. The December 31st testing date is used for determining which taxable years of which members will be subject to the limitation rules imposed by, for example, section 1561(a). Furthermore, the total number of days of a member's taxable year that precede a specified December 31st testing date will be referred to as that member's ''testing period.''

Section 1561(a) provides that in computing the amount of additional tax imposed by section 11(b)(1), and the phase-out of the exemption amount under section 55(d)(3), the component members shall, as a first step, combine their taxable incomes. Most controlled groups will easily be able to compute the total of their members' taxable incomes and determine whether this sum exceeds the applicable income thresholds. Therefore, it is unnecessary to provide any regulatory guidance with regard to such determination. However, the IRS and the Treasury Department recognize that various situations exist where a component member may encounter difficulties with obtaining the information needed to calculate its entitlement to the benefit of a lower bracket or its obligation to pay additional taxes. For the benefit of taxpayers that confront such problems, several such situations are discussed below and illustrated in the examples of the regulation, although they are not addressed in the text of these temporary regulations.

Section 1561(a) provides that the taxable income of all of the component members of a controlled group of corporations for the taxable years which are subjected to the same December 31st testing date shall be taken into account, that is, added together, for the purpose of determining whether any member owes the additional tax imposed by section 11(b)(1) as well as for determining what portion of that additional tax is to be allocated to each member. As in the case of the additional tax, section 1561(a) provides that the alternative minimum taxable income of all of the component members of a controlled group of corporations for the taxable years that include the same December 31st date shall be taken into account, that is, added together, for the purpose of determining the reduction (under section 55(d)(3)) to the exemption amount as set forth in section 55(d)(2). Section 1561(a) further provides that the additional taxes, as well as the reduction to the exemption amount, shall each be apportioned among those members in the same manner that the corresponding tax-benefit item is apportioned. However, the current regulations do not provide any guidance on how to calculate and apportion these reductions to these two tax-benefit items.

Explanation of Provisions

A. Allocation of the Benefit Recapture Items

Given that the additional taxes must be apportioned among the component members in the same manner as the tax-bracket amounts, these temporary regulations provide two methods for apportioning the amount of those additional taxes among the component members: the ''proportionate method'' and the first-in-first-out (''FIFO'') method. Under the proportionate method, the additional tax is allocated to any component member to whom a tax-bracket amount was apportioned in the same proportion as the portion of the tax benefit from that tax bracket which was allocated to that member bears to the total tax-benefit amount provided to all members from the use of that tax bracket. These tax benefits are attributable to the tax savings to the members of the group resulting from having ranges of income (tax-bracket amounts) being taxed at lower rates,

instead of the higher tax rates to which income of the group is subject. The text of the regulations sets out the steps for applying this method. Under the FIFO method, the first dollars of the additional tax are to be allocated proportionately to each member to whom a tax-bracket amount was apportioned, starting with the lowest tax bracket and continuing on successively to each next higher tax bracket until the entire amount of the additional tax has been fully apportioned among the members. For example, under the FIFO method of apportionment, the first $9,500 of additional tax liability of a controlled group would be apportioned entirely to the member(s) that were apportioned the 15 percent tax bracket. Unless the component members of a controlled group elect to use the FIFO method, they are required to use the proportionate method in apportioning the additional taxes among the component members.

These temporary regulations also provide guidance in calculating and apportioning the reduction to the exemption amount. Specifically, they provide that any reduction to the exemption amount shall be apportioned to the component members in the same manner as the exemption amount.

B. Apportioning Certain Tax-Benefit Items Where a Component Member Has a Short Taxable Year Not Including a December 31st Date

Section 1561(b) provides that where a corporation has a short taxable year which does not include a December 31st date, but is a component member of a controlled group of corporations for such year (a ''short-year member''), then, for purposes of subtitle A of the Code, the tax-benefit items described in section 1561(b) (the ''section 1561(b) tax-benefit items'') of such corporation for such year shall be the amount specified in section 1561(a) for that item, divided by the number of corporations which are component members of such group on the last day of that member's short taxable year. Thus, a short-year member is not permitted to be apportioned a different amount.

Section 1561(b) further provides that the rules of section 1563(b) shall be applied as if the last day of the short-year member's short taxable year were substituted for December 31st. Thus, the determination of whether a short-year member qualifies as a member of the group is determined by looking to its testing period, which begins on the first day of its taxable year and ends on the day before the last day of such short taxable year. See the discussion of testing date and testing period in the following section of this preamble. Section 1.1561–2(e) interprets this provision.

These temporary regulations update and clarify the rules of current § 1.1561–2(e). It is not intended that any such updating and clarification constitute a substantive change.

C. Definitions of a Group's Testing Date and a Member's Testing Period

Section 1.1563–1T(b) defines component members and excluded members of controlled groups. These definitions depend upon whether a corporation was a member of a group on the December 31st of its taxable year (its ''testing date'') and was a member for at least one-half the number of days of its taxable year beginning on the first day of its taxable year and ending on December 30th of its taxable year (its ''testing period'').

These temporary regulations amend § 1.1563–1T(b) to provide explanations of the concepts: Testing date and testing period.

A testing date is defined as the date that a controlled group is required to use in determining which of its members and which of their taxable years will be subject to the controlled group rules. Generally, a group's testing date is the December 31st date included within all the members' taxable years, whether such corporations are on a calendar or fiscal taxable year. However, if a component member of a controlled group has a short taxable year that does not include a December 31st date, then the last day of its short taxable year serves as the member's testing date.

A testing period is defined as the period of time that a member of a controlled group uses to determine its status as either a component member or an excluded member. The testing period begins on the first day of a member's taxable year and ends on the day before its testing date. Thus, in the case of a member on a fiscal taxable year, the portion of its taxable year beginning after December 31st and ending on the last day of its taxable year is not taken into account in determining its status as a component member or an excluded member.

D. Information Sharing Among Controlled Group Members

The IRS and the Treasury Department wish to note certain circumstances in which corporations may experience complications in applying the controlled group rules generally or with respect to tax brackets and the alternative minimum tax exemption amount in particular. As noted above, no new rules are provided with respect to these situations, although they are illustrated in several examples in these temporary regulations. Because the controlled group rules apply to multiple corporations each filing its own return, the corporations must have access to sufficient information regarding the other members or potential members to comply with the rules. Taxpayers are alerted to their responsibilities to obtain this information. In certain situations, such information may have to be obtained from corporations that are no longer owned by related parties and taxpayers will need to make arrangements to ensure that they will have access to information that will enable them to meet their compliance obligations. Ideally, the corporations and their shareholders will take these issues into account when contemplating transfers of interests in the corporations to provide access to adequate information sharing afterwards.

For example, if a corporation in a group changes hands during or shortly after the end of a taxable year, the formerly related corporations in the selling group will need information from the sold corporation about its income levels under the regular and alternative minimum tax systems, and the sold corporation will need information about the formerly related selling group members.

In addition, if a corporation changes hands during a calendar year in a transaction that does not close the corporation's taxable year, events later in the year after the corporation is no longer related could affect the corporation's status as a member of the controlled group. For example, if the corporation changes hands early in the calendar year, the selling group might assume that the bulk of the testing period will fall after the sale and the corporation will not be a member for the year. However, if the corporation is liquidated by its new owners during the calendar year, the testing period for the year will be truncated and the corporation may be included for the taxable year in the selling controlled group because it was there for more than one-half of the now shorter testing period. The selling group will need to know that the sold corporation will now be treated as included in its group and the relevant data about its income for the taxable year.

Furthermore, events after the close of the taxable year, such as amended returns, audit adjustments or loss carrybacks, could affect the entitlement of other group members to tax benefits such as the lower brackets or the alternative minimum tax exemption

amount, as well as other issues that might affect whether the group members will be under the regular or alternative minimum tax. In this case, again, the various members of the controlled group in the earlier year will need to have adequate information sharing to comply with their responsibilities.

E. Consolidated Return Amendment

Section 1.1502–47 provides rules for a life-nonlife consolidated group to calculate its consolidated taxable income. Paragraph (s) of § 1.1502–47 previously required a consolidated group to clearly indicate ''by notation'' on the face of its return that it is a life-nonlife consolidated return. This requirement presented an impediment to e-filing. Accordingly, as part of TD 9304, the IRS and the Treasury Department amended § 1.1502–47(s) and published § 1.1502–47T(s) to remove this impediment by deleting the requirement that it indicate this ''by notation.'' However, § 1.1502–47T(s) was inadvertently removed from the Code of Federal Regulations by TD 9342 when other portions of § 1.1502–47T were published as final regulations. These temporary regulations republish § 1.1502–47T(s).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Grid Glyer, Office of Associate Chief Counsel (Corporate). The other author of and principal reviewer for this regulation is Steven J. Hankin, Office of Associate Chief Counsel (Corporate). Other personnel from the IRS and the Treasury Department, however, participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.1502–47T also issued under 26 U.S.C. 1502. * * *

■ **Par. 2.** Section 1.1502–47T is added to read as follows:

§ 1.1502–47T Consolidated returns by life-nonlife groups (temporary).

(a) through (r) (Reserved). For further guidance, see § 1.1502–47(a) through (r).

(s) *Filing requirements.* Nonlife consolidated taxable income or loss under paragraph (h) of § 1.1502–47 shall be determined on a separate Form 1120 ''U.S. Corporation Income Tax Return'' or 1120–PC, ''U.S. Property and Casualty Insurance Company Income Tax Return'', and consolidated partial Life Insurance Company Taxable Income [defined in § 1.1502–47(d)(3)] under paragraph (j) of § 1.1502–47 shall be determined on a separate Form 1120–L ''U.S. Life Insurance Company Income Tax Return''. The consolidated return shall be made on a separate Form 1120, 1120–PC, or 1120–L filed by the common parent (if the group includes a life company), which shows the set-offs under paragraphs (g), (m), and (n) of § 1.1502–47 and clearly indicates on the face of the return that it is a life-nonlife consolidated return (if the group includes a life company). See also § 1.1502–75(j), relating to statements and schedules for subsidiaries.

(t) *Effective date*—(1) *Applicability date.* Paragraph (s) of this section applies to any consolidated Federal income tax return due (without extensions) after *December 26, 2007*. However, a consolidated group may apply paragraph (s) of this section to any consolidated Federal income tax return filed on or after *December 26, 2007*.

(2) *Expiration date.* The applicability of paragraph (s) of this section will expire on December 21, 2010.

■ **Par. 3.** Section 1.1561–0T is added to read as follows:

§ 1.1561–0T Table of contents (temporary).

This section lists the table of contents for §§ 1.1561–1T through 1.1561–3T.

§ 1.1561–1T General rules regarding certain tax benefits available to the component members of a controlled group of corporations (temporary).
(a) In general.
(b) Special rules.
(c) Tax avoidance.
(d) Effective date.
(1) Applicability date.
(2) Expiration date.
§ 1.1561–2T Special rules for allocating reductions to certain Section 1561(a) tax-benefit items (temporary).
(a) Additional tax.
(1) Calculation.
(2) Apportionment.
(i) General rule.
(ii) Apportionment methods.
(A) Proportionate method.
(B) FIFO method.
(3) Examples.
(b) Reduction to the amount exempted from the alternative minimum tax.
(1) Calculation.
(2) Apportionment.
(3) Example.
(c) Accumulated earnings credit.
(d) Reserved.
(e) Short taxable year not including a December 31st date.
(1) General rule.
(2) Additional rules.
(3) Examples.
(f) Effective date.
(1) Applicability dates.
(i) Paragraphs (a) and (b) of this section.
(ii) Paragraph (c) of this section.
(iii) Paragraph (e) of this section.
(2) Expiration dates.
§ 1.1561–3T Allocation of the section 1561(a) tax items (temporary).
(a) Filing of form.
(1) In general.
(2) Exception for component members that are members of consolidated group.
(b) No apportionment plan in effect.
(c) Apportionment plan in effect.
(1) Adoption of plan.
(2) Limitation on adopting a plan.
(i) Sufficient statute of limitations period.
(ii) Insufficient statute of limitations period.
(3) Termination of plan.
(d) Effective date.
(1) Applicability date.
(2) Expiration date.

§ 1.1561–2 [Removed]

■ **Par. 4.** Section 1.1561–2 is removed.

■ **Par. 5.** Section 1.1561–2T is amended by revising the heading, adding paragraphs (a) and (b), and revising paragraphs (e) and (f) to read as follows:

§ 1.1561–2T Special rules for allocating reductions to certain section 1561(a) tax-benefit items (temporary).

(a) *Additional tax*— (1) *Calculation.* For the purpose of determining the amount, if any, of the additional tax imposed by section 11(b)(1), the taxable incomes of all of the component members of a controlled group of corporations for the taxable years that include the same December 31st date shall be combined for determining

whether either of the income thresholds for imposing an additional tax have been attained.

(2) *Apportionment*— (i) *General rule.* Any additional tax determined under paragraph (a)(1) of this section shall be apportioned among such members in the same manner as the corresponding tax bracket of section 11(b)(1) is apportioned. For rules to apportion the section 11(b)(1) tax brackets among the component members of a controlled group, see § 1.1561–3T(b) or (c).

(ii) *Apportionment methods.* Unless the component members of a controlled group elect to use the first-in-first-out (FIFO) method described in paragraph (a)(2)(ii)(B) of this section, such members are required to apportion the amount of the additional tax using the proportionate method described in paragraph (a)(2)(ii)(A) of this section. These component members can elect the FIFO method by specifically adopting such method in their apportionment plan.

(A) *Proportionate method.* Under the proportionate method, the additional tax is allocated to each component member in the same proportion as the portion of the tax-benefit amount that inured to a member from utilizing lower tax brackets bears to the amount of the group's total tax-benefit amount inuring to the group from utilizing those lower tax brackets. The tax-benefit amount that inures to a corporation from using a particular tax bracket is the tax savings that such corporation realizes from having a portion of its taxable income taxed at the lower rate attributed to that tax bracket instead of the high tax rates to which it would otherwise be subject. The steps for applying the proportionate method of allocation are as follows:

(*1*) *Step 1.* The regular tax (not including the additional tax) owed by a component member under a particular tax bracket is divided by the total tax owed by all component members under that tax bracket;

(*2*) *Step 2.* The percentage calculated under *Step 1* is multiplied by the total tax-benefit amount inuring to all the members of the group from their use of this tax bracket. This computed amount equals the portion of the group's tax-benefit amount that inured to such member from using its portion of this tax bracket;

(*3*) *Step 3.* The amount determined under *Step 2* is divided by the total tax-benefit amount, inuring to all the component members of the group from using all the tax brackets to which any component member's income was subject;

(*4*) *Step 4.* The percentage calculated under *Step 3* is multiplied by the amount of the group's additional tax. The amount determined under this *Step 4* equals the amount of the additional tax apportioned to such member for that tax bracket; and

(*5*) *Step 5.* If a component member is liable for regular tax (not including the additional tax) under more than one tax bracket, that member must calculate the amount of the additional tax apportioned to it with respect to each tax bracket. Accordingly, steps 1 through 4 must be applied for each tax bracket applicable to that member. The sum of all the apportioned amounts of additional tax from each tax bracket for which the member is subject is the total amount of the additional tax apportioned to that member.

(B) *FIFO method.* Under the FIFO method, the first dollars of the additional tax are to be allocated proportionately to the members starting with the lowest tax bracket (that is, the first tax bracket), up to the amount of the tax benefit inuring to those members from using that tax bracket. Any remaining amount of additional tax is then allocated proportionately among the component members who use the next higher tax bracket, and so on, until the entire amount of the additional tax has been fully apportioned among the members. For example, the first $9,500 of the additional tax liability of a controlled group is apportioned entirely to the member(s) that availed themselves of the benefit of the 15 percent tax bracket.

(3) *Examples.* The provisions of this paragraph (a) may be illustrated by the following examples:

Example 1. (i) *Facts.* A controlled group of corporations consists of three members: X, Y and Z. X owns all the stock of Y and Z. Each corporation files its separate return on a calendar year basis. For calendar year 2007, the component members of the controlled group have an apportionment plan in effect. The members apportioned 80% of the 15 percent tax-bracket amount ($40,000) to X and the remaining 10% ($10,000) to Y. The members apportioned 100% of the 25 percent tax-bracket amount ($25,000) to Y. However, these members have not adopted the FIFO method for apportioning the additional taxes. Therefore, they must follow the proportionate method. For 2007, X had taxable income (TI) of $40,000, Y had TI of $60,000 and Z had TI of $100,000. Thus the total TI of the group is $200,000.

(ii) *Calculating the tax from the tax brackets and the tax benefit derived from such tax.* (A) *Regular tax of group subjected to a 15 percent tax rate.* (*1*) *Calculating the group's tax which resulted from applying a 15 percent tax rate.* The amount of tax under the 15 percent tax bracket is $7,500 (15% × $50,000).

(*2*) *The tax-benefit amount inuring to the group from using the 15 percent tax bracket.* A tax benefit inures to those members of the group who avail themselves of the 15 percent tax bracket. That tax benefit results from having the first $50,000 of its income taxed at the 15 percent tax rate, instead of at the 34 percent tax rate. Thus, the tax-benefit amount inuring to this group from using the 15 percent tax bracket is $9,500 ($17,000 (34% × $50,000) minus $7,500 (15% × $50,000)).

(B) *Regular tax of group subjected to a 25 percent tax rate.* (*1*) *Calculating the group's tax which resulted from applying a 25 percent tax rate.* The amount of tax under the 25 percent tax bracket is $6,250 (25% × $25,000 ($75,000 − $50,000)).

(*2*) *The tax-benefit amount inuring to the group from using the 25 percent tax bracket.* A tax benefit inures to those members of the group who avail themselves of the 25 percent tax bracket. That tax benefit results from having $25,000 of its income taxed at the 25 percent tax rate, instead of at the 34 percent tax rate. Thus, the tax-benefit amount inuring to this group from using the 25 percent tax bracket is $2,250 ($8,500 (34% × $25,000) minus $6,250 (25% × $25,000)).

(C) *Regular tax of group subjected to a 34 percent tax rate.* (*1*) *Calculating the group's tax which resulted from applying a 34 percent tax rate.* The amount of tax under the 34 percent tax bracket is $42,500 (34% × $125,000 ($200,000 (total TI) − $75,000) (amount taxed at lower rates)).

(*2*) *The tax-benefit amount inuring to the group from using the 34 percent tax bracket.* The group's total TI of $200,000 is less than the $15,000,000 income threshold for imposing any 3 percent additional tax on the group. Therefore, there is no tax benefit inuring to the members of this group for using the 34 percent tax bracket.

(D) *The computation of the additional tax.* Since the combined TI of the group exceeds $100,000, a 5 percent additional tax is imposed on the group. That 5 percent additional tax is the lesser amount of 5 percent of the group's taxable income exceeding $100,000 or $11,750. Five percent of that excess amount of taxable income is $5,000 (5% × $100,000 ($200,000 − $100,000)). Since $5,000 is less than $11,750, the group's 5 percent additional tax is $5,000.

(iii) *Apportioning the amount of additional tax to each applicable tax bracket.* (A) *The apportioned tax under each bracket.* The amount of tax owed by each member under each tax bracket pursuant to the apportionment plan is as follows:

Name of component member	Amount of tax owed under the 15% tax bracket	Amount of tax owed under the 25% tax bracket	Amount of tax owed under the 34% tax bracket
X	$6,000	0	0
Y	$1,500	$6,250	$8,500
Z	0	0	$34,000

(B) *Apportioning the 5 percent additional tax among the component members of the controlled group.* Since the group did not elect to adopt the FIFO method of apportionment, it is required to apportion the $5,000 of its 5 percent additional tax pursuant to the proportionate method in the following manner:

(*1*) *Amount of the additional tax apportioned to X.* Pursuant to the plan, X was liable for $6,000 of the group's $7,500 regular tax (80%) owed under the 15 percent tax bracket (and X is not liable for any regular tax under any higher tax bracket). See *Step 1* of paragraph (a)(2)(ii)(A) of this section. X's portion of the group's tax benefit which it derived from using the 15 percent tax rate is $7,600 (0.8 × $9,500). See *Step 2.* The tax benefit inuring to the entire group from using the 15 percent and 25 percent tax brackets is $11,750 ($9,500 (from the 15 percent tax bracket) + $2,250 (from the 25 percent tax bracket)). So, X's percentage portion of the group's total tax benefit is $7,600/$11,750 (64.68%). See *Step 3.* Thus, X's allocated portion of the 5 percent additional tax from using the 15 percent tax bracket is $3,234 (0.6468 × $5,000). See *Step 4.*

(*2*) *Amount of the additional tax apportioned to Y.* (*i*) *Regular tax apportioned to Y from using the 15 percent tax bracket.* Pursuant to the plan, Y was liable for the remaining $1,500 of the group's $7,500 regular tax (20%) owed under the 15 percent tax bracket. See *Step 1.* Y's portion of the group's tax benefit which it derived from using the 15 percent tax rate is $1,900 ($9,500 − $7,600, or 0.2 × $9,500). See *Step 2.* So, Y's percentage portion of the group's total tax benefit is $1,900/$11,750 (16.17%). See *Step 3.* Thus, Y's allocated portion of the 5 percent additional tax from using the 15 percent tax bracket is $809 (0.1617 × $5,000). See *Step 4.*

(*ii*) *Regular tax apportioned to Y from using the 25 percent tax bracket.* Pursuant to the plan, Y was liable for 100% of the group's regular tax owed under the 25 percent tax bracket, an amount of $6,250. See *Step 1.* Y is, therefore, entitled to 100% of the group's tax benefit which it derived from using this tax bracket, an amount of $2,250. See *Step 2.* So, Y's percentage portion of the group's total tax benefit is $2,250/$11,750 (19.15%). See *Step 3.* Thus, Y's allocated portion of the 5 percent additional tax from using the 25 percent tax bracket is $957 (0.1915 × $5,000). See *Step 4.* Y's total allocated portion of the additional tax is $1,766 ($809 + $957). See *Step 5.*

Example 2. (i) *Facts.* The facts are the same as in *Example 1*, except that on August 31, 2007, X of the X–Y–Z controlled group sold all of the stock of Z to M of the M–N controlled group, a pair of corporations unrelated to the X–Y group. Pursuant to the terms of the sales agreement, the members of the M–N group properly notified the members of the X–Y group on a timely basis that Z's taxable income for its 2007 taxable year, as based on the group's December 31st testing date, was $100,000.

(ii) *Controlled group analysis.* On December 31, 2007, X and Y are members of the selling controlled group and M, N, and Z are members of the buying controlled group. However, pursuant to section 1563(b)(3), Z is treated as an additional member of the X–Y group on December 31, 2007, since it was a member for at least one-half the number of days (243 out of 364) during the period beginning on January 1 and ending on December 30, 2007. Conversely, pursuant to section 1563(b)(2)(A), Z is treated as an excluded member of the M–N controlled group. Therefore, on December 31, 2007, X, Y, and Z qualify as component members of the selling group, and only M and N qualify as component members of the buying group.

(iii) *Additional tax analysis.* With regard to X and Y's 2007 taxable years, X and Y together owed $5,000 of additional tax, as calculated in *Example 1.* X's allocated portion of the additional tax is $3,234, as calculated in the manner set forth in *Example 1.* Y's allocated portion of the additional tax is $1,766, also as calculated in the manner set forth in *Example 1.*

Example 3. (i) *Facts.* The facts are the same as in *Example 2*, except that in 2012, pursuant to an IRS audit, Z's 2007 taxable income was redetermined. It was adjusted by an income increase of $10,000. Pursuant to the terms of the sales agreement, the members of the M–N group timely notified the members of the X–Y group of Z's income adjustment.

(ii) *Additional tax analysis.* For 2007 the X–Y–Z group owed a revised additional tax in the amount of $5,500, allocated as follows: $3,557.40 to X and $1,942.60 to Y. X and Y each filed an amended 2007 tax return to report their portions of the $500 increase to the group's additional tax. Pursuant to their apportionment plan for allocating their regular tax, and as a result of defaulting to the proportionate method for allocating the group's additional tax, X reported $323.40 as its share of the group's increase to its additional tax and Y reported $176.60 as its share of the group's increase to its additional tax.

Example 4. The facts are the same as in *Example 1,* except that the members elected in their apportionment plan to adopt the FIFO method for apportioning the additional tax. Under the FIFO method, the 5 percent additional tax amount of $5,000 will be apportioned entirely to those members who would benefit from using the 15 percent tax bracket, by reason that $5,000 of the group's additional tax is less than $9,500, which is the full tax-benefit amount inuring to a controlled group from having a 15 percent tax rate applied to the full income bracket subject to that rate. Since X derived 80 percent of the group's tax benefit by its use of the 15 percent tax bracket, its share of the group's 5 percent additional tax is $4,000 (80% × $5,000), and Y's share of the group's 5 percent additional tax is, therefore, $1,000, which is the remaining amount of the group's 5 percent additional tax, attributable to the 15 percent tax bracket.

(b) *Reduction to the amount exempted from the alternative minimum tax*— (1) *Calculation.* The alternative minimum taxable incomes for all the taxable years of the component members of a controlled group of corporations subjected to the same December 31st testing date shall be taken into account in calculating the reduction set forth in section 55(d)(3) to the amount exempted from the alternative minimum tax exemption (the exemption amount).

(2) *Apportionment.* Any reduction to the exemption amount shall be apportioned to the component members of a controlled group in the same manner that the amount of the exemption (provided in section 55(d)(2)) to the alternative minimum tax was allocated under section 1561(a). For rules to apportion the section 55(d)(2) exemption amount among the component members of a controlled group, see § 1.1561–3T(b) or (c).

(3) *Example.* (i) *Facts.* A controlled group of corporations consists of three members: X, Y, and Z. X owns all of the stock of Y and Z. Each corporation files its separate return on a calendar year basis. For calendar year 2007, the component members of this controlled group have an apportionment plan in effect. The group has chosen to apportion the entire section 55(d)(2) exemption amount of $40,000 to Z. For 2007, X had alternative minimum taxable income (AMTI) of $40,000, Y had AMTI of $60,000 and Z had AMTI of $100,000. Thus the total AMTI of the group is $200,000.

(ii) *Calculating the reduction to the exemption amount.* Section 55(d)(3)(A) provides that the section 55(d)(2) exemption amount shall be reduced by an amount equal to 25 percent of the amount by which the AMTI of a corporation exceeds $150,000. For the purpose of computing the group's AMTI, the AMTI of each of the component members, for their taxable years that have the same December 31st testing date, shall be taken into account. In accordance with these provisions, the $40,000 exemption amount is

reduced by $12,500 (25% × $50,000 ($200,000 − $150,000)). Pursuant to the group's allocation plan, the entire $12,500 reduction to the exemption amount is allocated to Z. Thus, after such allocation, Z's $40,000 exemption amount is reduced to $27,500 ($40,000 − $12,500).

* * * * *

(e) *Short taxable years not including a December 31st date*— (1) *General rule.* If a corporation has a short taxable year not including a December 31st testing date and, after applying the rules of section 1561(b) and paragraph (e)(2)(i) of this section, it qualifies as a component member of the group with respect to its short taxable year (short-year member), then, for purposes of subtitle A of the Internal Revenue Code, the amount of any tax-benefit item described in section 1561(b) allocated to that component member's short taxable year shall be the amount specified in section 1561(a) for that item, divided by the number of corporations which are component members of that group on the last day of that component member's short taxable year. The component members of such group may not apportion, by their apportionment plan, an amount of such tax-benefit item to any short-year member that differs from an amount based on equal apportionment.

(2) *Additional rules.* For purposes of paragraph (e)(1) of this section—

(i) Section 1563(b) shall be applied as if the last day of the taxable year of a short-year member were substituted for December 31, and

(ii) The term *short taxable year* does not include any portion of a taxable year of a corporation for which its income is required to be included in a consolidated return under § 1.1502–76.

(3) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples:

Example 1. Formation of a new member of a controlled group. (i) *Facts.* On January 2, 2007, corporation X transfers cash to newly formed corporation Y (which begins business on that date) and receives all of the stock of Y in return. X also owns all of the stock of corporation Z on each day of 2006 and 2007. X, Y, and Z have an apportionment plan in effect, apportioning the 15 percent tax-bracket amount as follows: 40% ($20,000) to each of X and Y and 20% ($10,000) to Z. X, Y, and Z each file a separate return with respect to the group's December 31st 2007 testing date. X is on a calendar taxable year and Z is on a fiscal taxable year ending on March 31. Y adopts a fiscal year ending on June 30 and timely files a tax return for its short taxable year beginning on January 2, 2007, and ending on June 30, 2007.

(ii) *Y's short taxable year.* On June 30, 2007, Y is a component member of a parent-subsidiary controlled group of corporations composed of X, Y and Z. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to Y's short taxable year ending on June 30, 2007. Rather, Y is entitled to exactly ⅓ of such bracket amount, or $16,667.

(iii) *The members' subsequent taxable years.* On December 31, 2007, X, Y and Z are component members of a parent-subsidiary controlled group of corporations. For their taxable years that include December 31, 2007 (X's calendar year ending December 31, 2007, Z's fiscal year ending March 31, 2008 and Y's fiscal year ending June 30, 2008), X, Y and Z apportion among themselves the full amount of all of the applicable tax brackets pursuant to their apportionment plan. For example, 40% of the 15 percent tax-bracket amount, or $20,000, was apportioned to each of X and Y, and the remaining 10%, or $10,000, was apportioned to Z.

Example 2. Allocation of tax bracket to a liquidated member of a controlled group having a short taxable year. (i) *Facts.* On January 1, 2007, corporation P owns all of the stock of corporations S_1, S_2 and S_3 (the P group). Each of these four component members of the P group, with respect to the group's December 31, 2007 testing date, files its separate return on a calendar year basis. These members have an apportionment plan in effect (the P group plan) under which S_1 and S_2 are each entitled to 40% of the 15 percent tax-bracket amount ($20,000), and P and S_3 are each entitled to 10% of the 15 percent tax-bracket amount ($5,000). On May 31, 2007, S_1 liquidates and therefore files a return for the short taxable year beginning on January 1, 2007, and ending on May 31, 2007. On July 31, 2007, S_2 liquidates and therefore files a return for the short taxable year beginning on January 1, 2007 and ending on July 31, 2007. P and S_3 each file a return for their 2007 calendar taxable years.

(ii) *Apportionment of the 15 percent tax bracket to S_1 for its short taxable year.* On May 31, 2007, S_1 is a component member of the P group composed of P, S_1, S_2 and S_3. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to S_1's short taxable year ending on June 30, 2007. Rather, S_1 is entitled to exactly ¼ of such bracket amount, or $12,500.

(iii) *Apportionment of the 15 percent tax bracket to S_2 for its short taxable year.* On July 31, 2007, S_2 is a component member of the P group composed of P, S_2 and S_3. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to S_2's short taxable year ending on June 30, 2007. Rather, S_2 is entitled to exactly ⅓ of such bracket amount, or $16,667.

(iv) *Apportionment of the 15 percent tax bracket to P and S_3 for each of their calendar taxable years.* On December 31, 2007, P and S_3 are component members of the P group. Accordingly, for P and S_3's 2007 calendar taxable year, they are each apportioned $25,000 of the 15 percent tax bracket, pursuant to the applicable P group plan.

Example 3. Liquidation of member after its transfer to another controlled group. (i) *Facts.* The facts are the same as in *Example 2,* except that P, on April 30, 2007, sold all of the stock of S_2 to the M-N controlled group. At the time of the sale, M and N are both unrelated to any members of the P group. As in *Example 2,* S_2 liquidates on July 31, 2007, and therefore files a tax return for its short taxable year beginning on January 1, 2007, and ending on July 31, 2007. Pursuant to the sales agreement, the N-M group timely notified P that S_2 had liquidated.

(ii) *Controlled group analysis.* On April 30, 2007, the date of the sale of S_2, the P group reasonably expected that S_2 would be treated as an excluded member with respect to its December 31, 2007 testing date. On that April 30th date, S_2 had been a member of the P group for less than one-half the number of days of what it expected would be a full 2007 calendar taxable year preceding December 31, 2007 (120 days (January 1–April 30) out of 364 days (January 1–December 30)). Yet, as a result of S_2's subsequent liquidation by the M-N group prior to December 31, 2007, S_2 became a component member of the P group with respect to the P group's December 31, 2007 testing date. With respect to that December 31st testing date, S_2 thus was a member of the P group for more than one-half of the number of days of its taxable year ending on July 31, 2007, which days proceeded December 31st 2007 (120 days (January 1–April 30 of 2007) out of 211 days (January 1–July 30 of 2007)). The allocation of the 15 percent tax-bracket amount to the P group members is determined in the same manner as in *Example 2* and, therefore, the bracket amounts allocated to P, S_1, S_2 and S_3 are the same as determined in *Example 2.* The allocation of the bracket amounts would be the same if, at the time P sold all of the S_2 stock, the parties had made a section 338(h)(10) election.

Example 4. Short taxable year including a December 31st date. Corporation X owns all of the stock of corporations Y and Z. X, Y and Z each file separate returns. X and Y are on a calendar taxable year and Z is on a fiscal taxable year beginning October 1 and ending September 30. On January 2, 2007, Z liquidates. Because Z's final taxable year (beginning on October 1, 2006 and ending on January 2, 2007) includes a December 31st date, that is, December 31, 2006, it is not subject to the short taxable year rule of section 1561(b) and paragraph (e) of this section. Accordingly, Z is a component member of the X-Y-Z group, for the group's December 31, 2006 testing date. Thus, the rules of this paragraph (e) do not limit the amount of any of the tax-benefit items of section 1561(a) available to Z or to this controlled group.

(f) *Effective date*—(1) *Applicability dates*—(i) *Paragraphs (a) and (b) of this section.* Paragraphs (a) and (b) of this section apply to any taxable year beginning after December 31, 2007. However, taxpayers may apply paragraphs (a) and (b) of this section to any Federal income tax return filed on or after December 26, 2007, provided that all of the component members of a controlled group of corporations apply such paragraphs (a) and (b).

(ii) *Paragraph (c) of this section.* Paragraph (c) of this section applies to any taxable year beginning on or after December 22, 2006. However, taxpayers may apply paragraph (c) of this section to any Federal income tax return filed on or after December 22, 2006, provided

that all of the component members of a controlled group of corporations apply such paragraph (c).

(iii) *Paragraph (e) of this section.* Paragraph (e) of this section applies to any taxable year beginning on or after *December 26, 2007.* However, taxpayers may apply paragraph (e) of this section to any Federal income tax return filed on or after December 26, 2007.

(2) *Expiration dates.* The applicability of paragraph (c) of this section will expire on December 21, 2009. The applicability of paragraphs (a), (b) and (e) of this section will expire on *December 21, 2010.*

■ **Par. 6.** Section 1.1563–1T is amended by revising the heading and paragraphs (b)(1), (b)(2)(i), (b)(2)(ii) introductory text, (b)(3), and (e) to read as follows:

§ 1.1563–1T Definition of controlled group of corporations and component members and related concepts (temporary).

* * * * *

(b) *Component members*—(1) *In general*—(i) *Definition.* For purposes of sections 1561 through 1563, a corporation is with respect to its taxable year a component member of a controlled group of corporations for the group's testing date if such corporation—

(A) Is a member of such controlled group on such testing date and is not treated as an excluded member under paragraph (b)(2) of this section; or

(B) Is not a member of such controlled group on such testing date but is treated as an additional member under paragraph (b)(3) of this section.

(ii) *Member of a controlled group of corporations.* For purposes of sections 1561 through 1563, a member of a controlled group is a corporation connected with other member(s) of a controlled group under the stock ownership rules and the stock qualification rules set forth in section 1563. Under the above rules, for a corporation to qualify as a component member of the group with respect to a group's December 31st testing date (or the short-year testing date for a short-year member), that corporation does not have to be a member of that group on that group's testing date. In addition, a corporation that is a member of a controlled group on the group's testing date does not necessarily qualify as a component member of that group with respect to that testing date.

(iii) *Additional concepts used in applying the controlled group rules*—

(A) *Testing date* is the date used for determining the status of controlled group members as either component members or excluded members. That testing date is then also used to determine which taxable years of those component members are to be subjected to the controlled group rules. Generally, a member's testing date is the December 31st date included within that member's taxable year, whether such member is on a calendar or fiscal taxable year. However, if a component member of a controlled group has a short taxable year that does not include a December 31st date, then the last day of that short taxable year becomes that member's testing date; and

(B) *Testing period* is the time period used for determining the status of controlled group members as either component members or excluded members. The testing period begins on the first day of a member's taxable year and ends on the day before its testing date (Generally, the testing date is December 31st, but for a component member having a short taxable year not ending on December 31st, the testing date for the short taxable year of that member (and only that member) becomes the last day of that member's short taxable year). Thus, for a member on a fiscal taxable year, the portion of its taxable year beginning after December 31st and ending on the last day of its taxable year is not taken into account for determining its status as a component member or an excluded member.

(2) *Excluded members*—(i) A corporation, which is a member of a controlled group of corporations on the group's testing date, a date included within that member's taxable year, but who was a member of such group for less than one-half of the number of days of its testing period, shall be treated as an excluded member of such group for that group's testing date.

(ii) A corporation which is a member of a controlled group of corporations on a testing date shall be treated as an excluded member of such group on such date if, for its taxable year including such date, such corporation is—

* * * * *

(3) *Additional members.* A corporation shall be treated as an additional member of a controlled group of corporations, that is, an additional component member, on the group's testing date if it—

(i) Is not a member of such group on such date;

(ii) Is not described, with respect to such taxable year, in paragraph (b)(2)(ii)(A), (B), (C), (D), or (E) of this section; and

(iii) Was a member of such group for one-half (or more) of the number of days in its testing period.

* * * * *

(e) *Effective date*—(1) *Applicability date.* Paragraph (b) of this section applies to any taxable year beginning on or after *December 26, 2007.* However, taxpayers may apply paragraph (b) of this section to any Federal income tax return filed on or after *December 26, 2007.* Paragraphs (a) and (b) (as contained in 26 CFR part 1 in effect on April 1, 2007), and paragraphs (c)(1), (c)(2)(iv) and (d) of this section apply to taxable years beginning on or after December 22, 2006. However, taxpayers may apply the paragraphs described in the preceding sentence to any Federal income tax return filed on or after December 22, 2006. Paragraphs (c)(2)(i) through (iii) of this section apply to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of paragraph (b) of this section will expire on December 21, 2010. The applicability of paragraphs (a) and (b) (as contained in 26 CFR part 1 in effect on April 1, 2007), and paragraphs (c)(1), (c)(2)(iv) and (d) of this section will expire on December 21, 2009. The applicability of paragraphs (c)(2)(i) through (iii) of this section will expire on May 26, 2009.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: December 17, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–24874 Filed 12–21–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 447

[Docket No. ATF–9F; AG Order No. 2922—2007]

RIN 1140–AA29

U.S. Munitions Import List and Import Restrictions Applicable to Certain Countries (2005R–5P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule conforms the regulations in 27 CFR Part 447 to the revised International Traffic in Arms

Regulations by amending the list of countries from which the importation of defense articles into the United States is proscribed by adding Afghanistan and removing South Africa and some of the states composing the former Soviet Union (Armenia, Azerbaijan and Tajikistan). The rule also removes the arms embargo against the countries of Serbia and Montenegro. It also clarifies an outdated reference in the regulations to Zaire, currently known as the ''Democratic Republic of the Congo,'' and makes a miscellaneous technical amendment to the regulations.

DATES: This rule is effective December 26, 2007.

FOR FURTHER INFORMATION CONTACT: Lawrence G. White; Firearms and Explosives Imports Branch; Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Department of Justice; 99 New York Avenue, NE., Washington, DC 20226; (202) 648–7113.

SUPPLEMENTARY INFORMATION:

Background

The Arms Export Control Act of 1976 (''AECA''), 22 U.S.C. 2778, gives the President of the United States the authority to control the import and export of defense articles and defense services. The Bureau of Alcohol, Tobacco, Firearms, and Explosives (''ATF'') is responsible for administering the import provisions of the AECA. Importation regulations issued under this law are in 27 CFR Part 447.

Executive Order (''E.O.'') 11958 of January 18, 1977 (42 FR 4311, Jan. 24, 1977), as amended by E.O. 13284 of January 23, 2003 (68 FR 4075, Jan. 28, 2003), delegated authority to control exports of defense articles and defense services to the Secretary of State. The Executive Order also delegated to the Attorney General the authority to control the import of such articles and services. However, as stated in 27 CFR 447.55, ATF is guided by the views of the Secretaries of State and Defense on matters affecting world peace and the external security and foreign policy of the United States. After consulting the Department of State, ATF is revising the provisions of 27 CFR Part 447 to conform to the International Traffic in Arms Regulations (22 CFR Parts 120–130).

On March 17, 2005, the Department of State informed ATF that on August 27, 1994, the Department of State rescinded the sanctions on trade in defense articles and services from South Africa and technical data relating to defense articles from South Africa as set forth in Category XXII of the U.S. Munitions Import List, 27 CFR 447.21. In an open letter, dated July 11, 2005, ATF advised federally licensed firearms importers and registered importers of this change and that it planned to revise § 447.21. Accordingly, this rule amends § 447.21 by removing Category XXII and the reference to Category XXII in the definition of ''Defense articles'' in § 447.11.

On March 28, 2003, the Department of State advised ATF of the publication of a final rule on March 29, 2002 (67 FR 15101), formally removing Armenia and Azerbaijan from the list of proscribed destinations for the exports and imports of defense articles and defense services. ATF is therefore amending 27 CFR Part 447 to conform to this change.

The Department of State also advised ATF of the publication of a final rule on January 9, 2002 (67 FR 1074), formally removing Tajikistan, Serbia and Montenegro (formerly known as the Federal Republic of Yugoslavia) from the arms embargo with the United States. Accordingly, the list of proscribed countries in part 447 is being amended to reflect this change in foreign policy.

On November 20, 2005, the Department of State advised ATF of the publication of a final rule on June 27, 1996 (61 FR 33313), formally adding Afghanistan to the list of proscribed countries for the exports and imports of defense articles and defense services. ATF is therefore amending 27 CFR Part 447 to conform to this change.

Miscellaneous Amendments

The Department is also taking this opportunity to clarify an outdated reference contained in § 447.52(a). ''Zaire'' is currently listed as a country to which the United States maintains an arms embargo and this listing is amended to read ''the Democratic Republic of the Congo.''

The Department also is making a technical amendment to § 447.52 to indicate the current phone number for ATF's Firearms and Explosives Imports Branch.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

Because the amendments to 27 CFR Part 447 involve a foreign affairs function of the United States, Executive Order 12866 does not apply.

B. Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

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

D. Administrative Procedure Act

As reflected in 27 CFR 447.54, amendments made to 27 CFR Part 447 are excluded from the rulemaking provisions of 5 U.S.C. 553 because this part involves a foreign affairs function of the United States. Accordingly, it is not necessary to issue this rule using the notice and public procedure set forth in 5 U.S.C. 553(b), and the requirement of a delayed effective date in 5 U.S.C. 553(d) does not apply.

E. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to this rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a ''major rule,'' as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million 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.

G. 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 $100 million or more in any one year, and it 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.

H. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this rule because there are no reporting or recordkeeping requirements.

Drafting Information

The author of this document is Elizabeth Gillis; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects in 27 CFR Part 447

Administrative practice and procedure, Arms control, Arms and munitions, Authority delegation, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, Seizures and forfeitures.

Authority and Issuance

■ Accordingly, for the reasons discussed in the preamble, 27 CFR Part 447 is amended as follows:

PART 447—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

■ 1. The authority citation for 27 CFR Part 447 continues to read as follows:

Authority: 22 U.S.C. 2778.

§ 447.11 [Amended]

■ 2. Section 447.11 is amended by removing the last sentence in the definition of the term ''Defense articles''.

§ 447.21 [Amended]

■ 3. Section 447.21 is amended by removing Category XXII (South Africa) in its entirety from the U.S. Munitions Import List.

■ 4. Section 447.52 is amended by revising the second and third sentences in paragraph (a), and by removing ''(202) 927–8320'' in the ''Note'' at the end of paragraph (a) and adding in its place ''(304) 616–4550'', to read as follows:

§ 447.52 Import restrictions applicable to certain countries.

(a) * * * This policy applies to Afghanistan, Belarus (one of the states composing the former Soviet Union), Cuba, Iran, Iraq, Libya, Mongolia, North Korea, Sudan, Syria, and Vietnam. This policy applies to countries or areas with respect to which the United States maintains an arms embargo (e.g., Burma, China, the Democratic Republic of the Congo, Haiti, Liberia, Rwanda, Somalia, Sudan, and UNITA (Angola)).

* * * * *

Dated: December 17, 2007.

Michael B. Mukasey,

Attorney General.

[FR Doc. E7–24910 Filed 12–21–07; 8:45 am]

BILLING CODE 4410–FY–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1625 and 1627

RIN 3046–AA72

Age Discrimination in Employment Act; Retiree Health Benefits

AGENCY: U.S. Equal Employment Opportunity Commission

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is publishing this final rule so that employers may create, adopt, and maintain a wide range of retiree health plan designs, such as Medicare bridge plans and Medicare wrap-around plans, without violating the Age Discrimination in Employment Act of 1967 (ADEA). To address concerns that the ADEA may be construed to create an incentive for employers to eliminate or reduce retiree health benefits, EEOC is creating a narrow exemption from the prohibitions of the ADEA for the practice of coordinating employer-sponsored retiree health benefits with eligibility for Medicare or a comparable State health benefits program.[1] The rule does not otherwise affect an employer's ability to offer health or other employment benefits to retirees, consistent with the law.

DATES: Effective December 26, 2007.

FOR FURTHER INFORMATION CONTACT: Raymond Peeler, Senior Attorney Advisor, at (202) 663–4537 (voice) or Dianna B. Johnston, Assistant Legal Counsel, at (202) 663–4637 (voice) or (202) 663–7026 (TTY) (These are not toll free numbers). This final rule is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this document in an alternative format should be made to the Publications Information Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: Employer-sponsored retiree health benefits provide a much-needed source of health coverage for older Americans at a time when their health care needs are greatest. Without employer-sponsored retiree health benefits, many retirees are forced to go without health benefits between the time they retire and the time they become eligible for Medicare. Older retirees also rely on employer-sponsored retiree health benefits to cover medical costs that are not covered by Medicare.

Employers are not legally obligated to provide retiree health benefits, and many do not. Moreover, over the past several years, the number of employers who offer such benefits has begun to decline. According to an independent study by the United States General Accounting Office (GAO), about one-third of large employers and less than 10% of small employers offered their retirees health benefits in 2000, compared to about 70% of employers in the 1980s.[2] Of those employers that do offer coverage, many ''have reduced the terms of coverage by tightening eligibility requirements, increasing the share of premiums retirees pay for health benefits, or increasing copayments and deductibles—thus contributing to a gradual erosion of benefits.'' [3]

Rising health care costs, larger numbers of workers nearing retirement age, and mandated changes in the way employers must account for the long-term costs of providing retiree health coverage have been substantial factors contributing to the erosion of this valuable employment benefit. However, the Equal Employment Opportunity Commission (Commission or EEOC) believes that concern about the potential application of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.* (ADEA or Act) to employer-sponsored retiree health benefits also has adversely affected the availability of this benefit. A wide range of stakeholders, including labor organizations, benefits consultants, state and local governments, and private employers, agree that ADEA concerns have created an additional incentive to reduce or eliminate employer-sponsored retiree health benefits.

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[1] The EEOC recognizes that eligibility for Medicare and comparable state health benefits is not necessarily limited to retirees. As explained below, this rule only concerns application of the Age Discrimination in Employment Act to employer-sponsored retiree health benefits for individuals who also happen to be eligible to participate in Medicare or a comparable state health benefit. Individuals who are eligible for and/or receive Medicare or comparable state health benefits, but who are not retired, are not affected by this rule.

[2] U.S. GENERAL ACCOUNTING OFFICE, ''Retiree Health Benefits: Employer-Sponsored Benefits May Be Vulnerable to Further Erosion,'' GAO Doc. No. GAO–01–374 (May 2001).

[3] *Id.,* at 6.

In August 2000, the United States Court of Appeals for the Third Circuit became the first federal court of appeals to examine the relationship between the ADEA and employer-provided retiree health benefits. The Third Circuit held that an employer violated the ADEA if it reduced or eliminated retiree health benefits when retirees became eligible for Medicare, unless the employer could show either that the benefits available to Medicare-eligible retirees were equivalent to the benefits provided to retirees not yet eligible for Medicare or that it was expending the same costs for both groups of retirees.[4] The Commission subsequently adopted this ruling as its national enforcement policy.[5] Before the Third Circuit's decision, many employers had relied on legislative history to the Older Workers Benefit Protection Act of 1990, Public Law No. 101–433, 104 Stat. 978 (1990) (OWBPA), that states that the practice of eliminating, reducing, or altering employer-sponsored retiree health benefits with Medicare eligibility is lawful under the ADEA.[6]

After the Commission implemented the Third Circuit's rule, labor organizations, benefits experts, state and municipal governments, and employers informed us that our actions were further eroding employer-sponsored retiree health benefits by creating an additional incentive for employers to reduce, or eliminate altogether, health benefits for retirees. Under the Commission policy in effect prior to August 2001 (see nn. 2 & 3), employers that chose to provide retiree health benefits had to prove either (1) that the benefits available to Medicare-eligible retirees were the same as the benefits provided to retirees not yet eligible for Medicare or (2) that they were expending the same costs for both groups of retirees. Making such a showing requires complex comparisons of multiple objective and subjective variables, including types of plans, levels and types of coverage, deductibles, geographical areas covered, and level of provider choice offered by each plan. Employers could avoid the problem by simply eliminating retiree health benefits entirely, since no law requires that employers provide retiree health benefits. Alternatively, employers could reduce the coverage they provided to those retirees who were not yet eligible for Medicare, leaving these retirees with fewer benefits. Unions, in particular, argued that the Commission's prior policy made it increasingly difficult to negotiate for the future provision of employer-sponsored retiree health benefits. The prior policy also had a particularly harsh impact on public school employees, who often retire early and rely on employer-provided retiree health benefits until they become eligible for Medicare.

These comments prompted the Commission to study the relationship between the ADEA and employer-sponsored retiree health benefits. On July 14, 2003, EEOC published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** to address these concerns.[7] In its NPRM, the Commission proposed to create a narrow exemption from the prohibitions of the ADEA for the practice of coordinating retiree health benefits with eligibility for Medicare or a comparable State health benefits program. The Commission now responds to public comments submitted in response to its NPRM and issues a final rule, adopting the NPRM exemption as modified.

The final rule permits employers and labor organizations to offer retirees a wide range of health plan designs that incorporate Medicare or comparable State health benefit programs without violating the ADEA. For example, in order to ensure that all retirees have access to some health care coverage, the ADEA will not prohibit employers and unions from providing retiree health coverage only to those retirees who are not yet eligible for Medicare. They also may supplement a retiree's Medicare coverage without having to demonstrate that the coverage is identical to that of non-Medicare eligible retirees. Thus, for example, employers providing prescription drug benefits to Medicare-eligible retirees under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108–173, 117 Stat. 2066 (2003), need not be concerned about whether the drug benefits provided to Medicare-eligible retirees differ from those provided to retirees not yet eligible for Medicare.

The final rule concerns only the ADEA. It does not affect any non-ADEA obligation that employers may have to provide health benefits under Medicare or any other law. For example, this rule does not affect employers' obligation to use Medicare as a secondary payer, when required by Medicare law.

In promulgating this rule, the Commission recognizes that the issues surrounding health care coverage, especially for retirees, are complex and that retiree health benefits are highly valued by older Americans. Although employers are under no legal obligation to offer retiree health benefits, some employers choose to do so and thereby provide retired workers with access to affordable health coverage at a time when private health insurance coverage might be otherwise cost prohibitive. Because the Commission has determined that its prior policy created an incentive for employers to reduce or eliminate retiree health benefits, the agency has concluded the public interest is best served by an ADEA policy that permits employers greater flexibility to offer these valuable benefits. The final rule is not intended to encourage employers to eliminate any retiree health benefits they may currently provide.

Overview of Public Comments

The Commission received forty-four organizational comments in response to the NPRM. Twenty-seven commenters expressed support for the proposed exemption, including sixteen organizations that requested no revisions to the proposed rule. The Commission also received approximately 30,000 letters from individual citizens. Most of these individual comments were a form letter expressing concern that if the practice of coordinating retiree health benefits with eligibility for Medicare or comparable State health benefits programs is exempted from ADEA coverage, employers might reduce or even

[4] *Erie County Retirees Ass'n v. County of Erie,* 220 F.3d 193 (3d Cir. 2000). The Commission submitted an *amicus curiae* brief in *Erie County,* asserting, based on the plain language of the ADEA, that (1) retirees are covered by the ADEA and (2) employer reliance on Medicare eligibility in making distinctions in employee benefits violated the ADEA, unless the employer satisfied one of the Act's specified defenses or exemptions.

[5] In its October 2000 Compliance Manual Chapter on ''Employee Benefits,'' the Commission explicitly adopted the position taken by the Third Circuit in *Erie County* as its national enforcement policy. When the Commission announced in August 2001 that it wished to further study the relationship between the ADEA and employer-sponsored retiree health plans, the Commission unanimously voted to rescind those portions of its Compliance Manual that discussed the *Erie County* decision.

[6] Final Substitute: Statement of Managers, 136 Cong. Rec. S25353 (Sept. 24, 1990); 136 Cong. Rec. H27062 (Oct. 2, 1990). In addition, the Conference Report for the recently enacted Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108–173, 117 Stat. 2066 (2003) also provides that ''the conferees reviewed the ADEA and its legislative history and believe the legislative history clearly articulates the intent of Congress that employers should not be prevented from providing voluntary benefits to retirees only until they become eligible to participate in the Medicare program.'' H.R. Conf. Rep. No. 108–391, at 365 (2003).

[7] The preamble to the Commission's NPRM provides detailed information about the Commission's study, including a comprehensive analysis of why the Commission believes that concern about the application of the ADEA to retiree health benefits is contributing to the erosion of this important benefit. *See* 68 FR 41542–41549 (July 14, 2003), available at *http://edocket.access.gpo.gov/2003/03–17738.htm.*

eliminate the health benefits of Medicare-eligible retirees.

Scope of the Exemption

Two organizational commenters questioned whether the language in Section 1625.32(b) clearly defined the scope of the proposed exemption. One of these two commenters requested that the Commission clearly state that, under the rule, an employer-sponsored health plan that alters, reduces, or eliminates health care benefits based upon the receipt of health benefits under Medicare or a comparable State health benefits program is entirely exempt from coverage under the ADEA, even if a challenged practice is unrelated to the plan's interaction with Medicare (or comparable State health benefits program). The Commission declines to adopt this suggestion because it is wholly inconsistent with the intended scope of the rule. The rule only exempts the narrow practice of coordinating employer-sponsored retiree health benefits with eligibility for Medicare or a comparable State health benefits program. A comparable state health benefits program refers to plans that were created to provide primary health benefits for state and local government employees who were not covered by Medicare and that, like Medicare, base eligibility on age.

ADEA coverage of any other aspect of an employer-sponsored retiree health plan, or of any other employer act, practice, or benefit of employment, including employer-sponsored health plans for current employees, is not affected by the rule. Additionally, as discussed below, the Commission will apply the exemption to the practice of coordinating employer-sponsored retiree health benefits with eligibility for Medicare or a comparable State health benefits program regardless of whether an individual participant actually receives such benefits.

Another organization argued that the phrase ''eligible for'' in Section 1625.32(b) was vague because it was unclear whether the rule requires that an individual retiree actually enroll in, rather than merely be eligible for, Medicare or a comparable State health benefits program before the exemption would apply. The effect and intent of the proposed rule was that the exemption would apply whether or not a particular retiree actually enrolls in Medicare or a comparable State health benefits program, as long as the retiree was eligible for such benefits. While we believe the phrase ''eligible for'' is plain on its face, we have added the phrase ''whether or not the participant actually enrolls in the other benefit program'' to Section 1625.32(b) to further clarify our intent.

This same commenter also questioned whether ''Medicaid offsets'' would be covered by the exemption, but did not further explain the type of employer-sponsored plan contemplated. Medicaid is the joint Federal-state program which provides primarily medical care to low-income Americans pursuant to Title XIX of the Social Security Act, 42 U.S.C. 1396 *et seq.* Section 1396a(a)(25)(G) of that Title requires that each State Medicaid plan prohibit any health insurer, including an employer-sponsored group health plan, ''from taking into account that [an] individual is eligible for or is provided medical assistance'' under a State Medicaid plan when making enrollment or benefit payment decisions. In light of this specific prohibition under the Medicaid law, the Commission declines to apply its exemption to employer-sponsored group health plans that coordinate benefits with an individual's eligibility for or receipt of Medicaid.

Coverage of Non-Health Retiree Benefits

While expressing overall support for the proposed rule, two organizations requested that the Commission provide a definition of the term ''retiree health benefits'' in Section 1625.32(a) of the rule. Both commenters also requested that the Commission make clear that no inference is intended as to how the ADEA might apply to non-health retiree benefits, such as life insurance or disability programs.

Section 1625.32(c) of the rule provides that the exemption shall be narrowly construed. The only practice exempted by the rule is the coordination of employer-sponsored retiree health benefits with eligibility for Medicare or a comparable State health benefits program. No other aspects of ADEA coverage or benefits other than retiree health benefits are affected by the exemption. In order to further clarify the scope of the exemption, the Commission has added an additional statement to the rule explaining that the exemption only applies to retiree health benefits and not other non-health retiree benefits. The Commission also revised question and answer five in the Appendix to better reflect the scope of the exemption.

In light of these revisions, the Commission concludes that adding a definition of retiree health benefits is unnecessary. Section 1625.32 and the accompanying Appendix set forth the types of employer-sponsored health benefits that may be permissibly coordinated with eligibility for Medicare or a comparable State health benefits program pursuant to the exemption. Under Paragraph (b) of Section 1625.32, the exemption applies to any employee benefit plan that provides health benefits for retired workers that are coordinated with eligibility for Medicare or a comparable State health benefits program. The Appendix further makes clear that the exemption applies to employer-sponsored health benefits that are provided to a retired worker's spouse or dependents. The Commission does not believe that further clarification of the types of employer-sponsored retiree health benefits covered by the rule is needed.

Coverage of Retirees

Several commenters, although generally supportive of the proposed rule, expressed concern about the statement in the Appendix that the ADEA continues to apply to retirees to the same extent that it did prior to the issuance of the exemption. These commenters argued that the ADEA, as amended by OWBPA, only protects older workers, not retirees. It is the Commission's position, however, that all of the anti-discrimination statutes also protect former employees when they are subjected to discrimination arising from the former employment relationship.[8]

Coverage of Existing Employer-Sponsored Retiree Health Benefit Plans

Several commenters requested that EEOC clarify how the rule would apply to existing employer-sponsored retiree health benefit plans. Until the Third Circuit's ruling in *Erie County,* many employers designed coordinating retiree health benefit plans in reliance on statements in the legislative history to OWBPA that the practice of eliminating, reducing, or altering employer-sponsored retiree health benefits with Medicare eligibility is lawful under the ADEA. It is the Commission's intent to allow employers to continue the practice of coordinating retiree health benefits with Medicare eligibility with as little disruption as possible. The Commission does not believe that additional changes to the rule are required in order to achieve this result. The Appendix to the rule states that the Commission will apply the exemption to all retiree health benefits that coordinate with Medicare (or a

[8] *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 346 (1997) (former employees covered under Title VII); *Passer* v. *American Chem. Soc'y,* 935 F.2d 322, 330 (D.C. Cir. 1991) (former employees covered under ADEA); *Ford* v. *Schering-Plough Corp.*, 145 F.3d 601, 607 (3d Cir. 1998) (former employees covered under ADA), *cert. denied,* 525 U.S. 1093 (1999).

comparable State health benefits plan), whether or not those benefits are provided for in an existing or newly created employee benefit plan.

The Commission's Exemption Authority

The Commission received seventeen comments from advocacy organizations and other groups representing retirees that did not support the Commission's proposal. These commenters questioned the Commission's authority to issue an exemption for the practice of coordinating employer-sponsored retiree health benefits with Medicare eligibility. Many of these commenters also argued that an exemption is inconsistent with the primary purposes of the ADEA. Three of these organizational commenters also asserted that the Commission did not sufficiently support the need for an exemption to the Act. In addition, the Commission received approximately 30,000 letters from individual citizens (the majority of which were a form letter) expressing concern that employers might reduce or even eliminate the health benefits of Medicare-eligible retirees in response to the EEOC's proposal.

Section 9 of the ADEA provides that EEOC ''may establish such reasonable exemptions to and from any or all provisions of [the Act] as it may find necessary and proper in the public interest.'' Implicit in this authority is the recognition that the application of the ADEA could, in certain circumstances, foster unintended consequences that are not consistent with the purposes of the law and are not in the public interest. Such circumstances are rare. However, after carefully studying the issue and reviewing the public comments received in response to the NPRM, the Commission concludes that the practice of coordinating employer-sponsored retiree health benefits with Medicare eligibility presents a circumstance that warrants Commission exercise of its authority under Section 9.

The Commission does not agree that EEOC lacks the authority to enact such a rule. Section 9 confers broad discretion on the Commission to issue rules and regulations interpreting the ADEA and to establish reasonable exemptions from any or all prohibitions of the Act.[9] Nor is the Commission persuaded that the rule is inconsistent with the primary purposes of the ADEA. Given the continuing decline in the availability of employer-provided retiree health benefits, and the disincentive to provide such benefits created by the Third Circuit's ruling and the Commission's prior policy, this final rule reasonably addresses a problem confronting older Americans. The Commission is persuaded that, in order to comply with the Commission's prior policy, many employers would reduce the overall level of health benefits they offer to retirees or cease providing such benefits altogether, leaving many retirees without access to affordable health coverage. Indeed, the Commission has been presented with evidence that some public school districts already have reduced the health benefits they provide to retirees in response to the Commission's prior policy. Clearly, this result is inconsistent with the Act's primary purpose of protecting older workers.

Finally, the Commission believes it has provided the strong and affirmative showing required to justify an exemption from the Act. The Commission conducted a comprehensive study of the relationship between the ADEA and retiree health benefits before it published its NPRM. As part of that study, the Commission met with a wide range of interested parties, including employers, employee and retiree groups, labor unions, human resource consultants, benefits consultants, actuaries, and state and local government representatives. Labor unions, benefits experts, and public and private sector employers all agreed that the Commission's prior policy would have a deleterious effect on the provision of employer-sponsored retiree health benefits, especially given the numerous other factors negatively impacting the availability of such benefits.

Public comments filed in response to the Commission's NPRM only buttress this conclusion. Several organizations representing public school districts and employees noted that many school districts responded to the Commission's prior policy by reducing the overall level of retiree health coverage they were providing or by eliminating the benefit altogether. Moreover, this is what ultimately happened in *Erie County.* After the county made changes to its retiree health benefit plans to comply with the court's ruling, the net effect was a decrease in health benefits for retirees generally; older retirees received no better health benefits, while younger retirees were required to pay more for health benefits that offered fewer choices.

Various other proposals considered by the Commission did not adequately protect and preserve the important employer practice of providing health coverage for retirees. Many of the alternative proposals considered would have required complex calculations regarding the costs of retiree health care.[10] Given the number of variables involved in these calculations, including numerous subjective factors that are difficult to quantify, the Commission concludes that none of the alternatives considered would adequately address the incentive created by the Commission's prior policy to eliminate employer-sponsored retiree health coverage. It is the Commission's view that the ADEA should not present a barrier for employers and labor unions to provide the broadest possible health coverage for retirees. Accordingly, after reviewing all data, views, and arguments presented, EEOC is persuaded that a narrow exemption from the prohibitions of the ADEA for the practice of coordinating employer-sponsored retiree health benefits with Medicare eligibility is necessary and proper in the public interest.

Litigation Regarding the Exemption

AARP filed suit to enjoin publication and implementation of the exemption on Feb. 4, 2005, alleging, *inter alia,* that the exemption violated the ADEA and the Administrative Procedure Act. AARP argued that the rule was age discriminatory because it would allow employers to reduce the benefits of older retirees.[11]

The EEOC agreed not to publish the exemption rule until the district court ruled on AARP's challenges. Although the court initially ruled in favor of AARP on March 30, 2005, it subsequently reversed itself and entered summary judgment in favor of the EEOC on September 27, 2005, finding that the Commission did not exceed its authority in issuing this exemption, that the exemption was not arbitrary or capricious, and that the *Erie County* case did not render the exemption invalid. However, the court did continue its injunction prohibiting publication of the exemption until the Third Circuit could resolve AARP's promised appeal.

The Third Circuit resolved AARP's appeal on June 4, 2007, holding that the EEOC properly exercised its exemption power under Section 9 of the ADEA,

[9] *See, e.g., American Association of Retired Persons* v. *Equal Employment Opportunity Commission,* 823 F.2d 600, 604–605 (D.C. Cir. 1987) (EEOC has ''unusually broad discretion'' under Section 9).

[10] For a more detailed discussion of the alternatives considered by the EEOC, please refer to the ''Executive Order 12866'' portion of this preamble. *See also* 68 FR 41542–41549 (July 14, 2003) (Discussing the alternatives in the Retiree Health Notice of Proposed Rulemaking).

[11] Brief in Support of Complaint at 24–25, *AARP* v. *EEOC,* 383 F. Supp. 2d 705 (E.D. Pa. 2005) (No. 05–CV–509).

thereby affirming the district court's decision and lifting the injunction that prohibited publication of the final rule.[12] The court, noting the Commission's evidence that (1) health care costs continue to rise, (2) employers are not required to provide any retiree health care benefits, and (3) some employers chose to avoid ADEA discrimination by reducing retiree health benefits, specifically rejected AARP's argument that the EEOC exceeded its authority under the ADEA as follows:

> We recognize with some dismay that the proposed exemption may allow employers to reduce health benefits to retirees over the age of sixty-five while maintaining greater benefits for younger retirees. Under the circumstances, however, the EEOC has shown that [its] narrow exemption from the ADEA is a reasonable, necessary, and proper exercise of its section 9 authority, as over time it will likely benefit all retirees.[13]

AARP asked the Third Circuit to rehear the case *en banc*, but that request was denied on August 21, 2007. AARP then petitioned the Supreme Court for a stay of the Third Circuit's mandate pending AARP's writ of certiorari, but that request was denied on September 19, 2007. AARP filed its writ of certiorari asking the Supreme Court to review the Third Circuit's decision on November 20, 2007.

Additional Revisions to the Rule

The Commission made a minor editorial change to Section 1625.32(a)(3) by changing the word ''are'' to ''is.'' The change is not intended to alter the definition of a comparable State health benefit plan for purposes of the exemption. The Commission also simplified the language in question and answer three in the Appendix.

Executive Order 12866

This final rule has been drafted and reviewed in accordance with Executive Order 12866, Section 1(b), Principles of Regulation. This rule is considered a significant regulatory action, but not economically significant, under section 3(f)(4) of that Order and therefore was reviewed by the Office of Management and Budget (OMB). As discussed below, the rule exempts certain practices from the prohibitions of the ADEA in order to ensure that employers may offer retirees a wide range of health plan designs that coordinate with Medicare without violating the Act.

Labor organizations, employees, and employers favor coordinating retiree health plans with Medicare benefits as a way to provide affordable health coverage for older Americans.[14] The final rule benefits employers by allowing them to continue to coordinate retiree health benefits with Medicare. It will decrease, not increase, costs to covered employers by reducing the risks of liability for noncompliance with the statute.[15] Further, this rule also will benefit retirees by eliminating the incentive for employers to reduce or eliminate retiree health coverage in order to comply with the equal benefit/equal cost defense.[16] Thus, the rule should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State and local tribal governments or communities.

The ADEA applies to all employers with at least 20 employees. 29 U.S.C. § 630(b). The Act prohibits covered employers from discriminating against an employee or job applicant who is at least 40 years of age. 29 U.S.C. 623, 631. According to Census Bureau information, approximately 1,976,216 establishments employed 20 or more employees in 2000.[17]

The exemption would apply to all covered employers who provide health benefits to their retirees. In 2001, the GAO concluded that about one-third of large employers and less than 10% of small employers provided such benefits to current retirees.[18] According to the GAO, in 1999, such employer-sponsored health plans were relied on by 10 million retired individuals aged 55 and over as either their primary source of health coverage or as a supplement to Medicare coverage.[19]

After the Commission took the position that the practice of coordinating retiree health benefits with Medicare eligibility was unlawful unless an employer could meet the equal benefit/equal cost test set forth in Section 4(f)(2)(B)(i) of the ADEA, labor unions and employers expressed concern that the easiest way for an employer-sponsored retiree health plan to comply with the Commission's policy was to reduce or eliminate already existing retiree health benefit coverage. This result has become increasingly likely given the myriad other factors impacting the availability of employer-sponsored retiree health benefits.

In recent years, the cost of employee health care has consistently increased, making it difficult for employers to continue to provide retiree health benefits.[20] As explained in the NPRM, two widely-cited surveys of employer-sponsored health plans—(1) the Health Research and Educational Trust survey sponsored by The Henry J. Kaiser Family Foundation (Kaiser/HRET) and (2) the William M. Mercer, Incorporated survey (formerly produced by Foster Higgins) (Mercer/Foster Higgins)—estimate that premiums for employer-sponsored health insurance increased an average of about 11% in 2001.[21] These studies also identify how cost increases were expected to continue and how such ongoing premium increases are particularly difficult for small employers to cover and continue offering retiree health benefits.[22]

[12] *AARP* v. *EEOC,* 489 F.3d 558, 2007 WL 1584385 (3d Cir., June 4, 2007). The Third Circuit confirmed that its decision lifted the district court's injunction in response to a motion for clarification. *Id.*, Case No. 05–4594 (3d Cir., August 31, 2007).

[13] *AARP* v. *EEOC*, 489 F.3d at 564–565.

[14] That view is reflected in public comments made by groups such as the American Federation of Teachers, the National Education Association, the Wisconsin Education Association Council, the Delaware State Education Association, the National Council on Teacher Retirement, the American Benefits Council, the American Association of Health Plans, the ERISA Industry Committee, the Equal Employment Advisory Council, the Minnesota School Boards Association, the National Rural Electric Cooperative Association, the Society for Human Resource Management, the U.S. Chamber of Commerce, the Washington Business Group on Health, and the Wisconsin Association of School Boards, among others.

[15] NPRM, 68 FR at 41548.

[16] *See id.* at 41546 (explaining that without the final rule, ''[t]his lack of regulatory protection may cause a class of people—retirees not yet 65—to be left without any health insurance. It also may contribute to the loss of valuable employer-sponsored coverage that supplements Medicare for retirees age 65 and over.'')

[17] CENSUS BUREAU, U.S. DEPARTMENT OF COMMERCE, ''Statistics of U.S. Businesses'' (2000).

[18] Hearing Before the House Comm. on Education and the Workforce, 107th Cong.(2001) (statement of William J. Scanlon, Director of Health Care Services, GAO).

[19] U.S. GENERAL ACCOUNTING OFFICE, ''Retiree Health Benefits: Employer-Sponsored Benefits May Be Vulnerable to Further Erosion,'' GAO Doc. No. GAO–01–374, at 1 (May 2001).

[20] NPRM, 68 Fed. at 41543.

[21] THE HENRY J. KAISER FAMILY FOUNDATION & HEALTH RESEARCH AND EDUCATIONAL TRUST, ''Employer Health Benefits, 2001 Annual Survey'' (Menlo Park, CA: The Henry J. Kaiser Family Foundation and Health Research and Educational Trust 2001); WILLIAM M. MERCER, ''Mercer/Foster Higgins National Survey of Employer-Sponsored Health Plans 2001'' (New York, NY: William M. Mercer, Inc. 2002). The 2001 Kaiswer/HRET study, conducted between January and May 2001, surveyed more than 2,500 randomly selected public and private companies in the United States. The 2001 Mercer/Foster Higgins study used a national probability sampling of public and private employers and the results represented about 600,000 employers.

[22] The NPRM explains that the 2001 Kaiser/HRET survey suggests that these changes would affect small employers, defined as those employing between 3–199 workers, at a greater rate than larger companies, THE HENRY J. KAISER FAMILY FOUNDATION & HEALTH RESEARCH AND EDUCATIONAL TRUST, ''Employer Health Benefits, 2001 Annual Survey'' (2001), and the 2002 Kaiser/HRET survey suggests that the number of small employers offering retiree health benefits has eroded. THE HENRY J. KAISER FAMILY FOUNDATION & HEALTH RESEARCH AND

Increased longevity and, thus, increased numbers of retirees, also will continue to mean larger and more frequent payments for health care services on behalf of retired workers.[23] ''The United States General Accounting Office (GAO) projects that, by 2030, the number of people age 65 or older will be double what it is today, while the number of individuals between the ages of 55 and 64 will increase 75 percent by 2020.'' [24] Further, ''it is well-established that utilization of health care services generally rises with age.'' [25] Thus, the demand for and cost of retiree health coverage is likely to grow significantly during a time that there will be comparatively fewer active workers to subsidize such benefits.[26]

Changes in accounting rules also have dramatically impacted the way employers account for retiree health benefit costs.[27] The Financial Accounting Standards Board, which is charged with establishing U.S. standards of financial accounting and reporting, promulgated new rules for retiree health accounting in 1990, referred to as Financial Accounting Standards Number 106 or FAS 106.[28]

FAS 106 requires employers to apportion the costs of retiree health over the working lifetime of employees and to report unfunded retiree health benefit liabilities in accordance with generally accepted accounting principles beginning with fiscal years after December 15, 1992. Because ''the recognition of these liabilities in financial statements dramatically impacts a company's calculation of its profits and losses,'' some companies have said that FAS 106 led to reductions in reported income, thus creating an incentive to reduce expenditures for employee benefits such as retiree health.[29]

''As a result of these increased costs and accounting changes, employers have actively examined ways to reduce health care costs, including by reducing, altering, or eliminating retiree health coverage.'' [30] As explained in the NPRM, studies revealed that employers already were less likely to offer retiree health benefits than in the past and that this trend was expected to continue.[31]

[Further, a]s the number of employers offering retiree health coverage declines, so has the incentive for employers to provide future retirees with such coverage. Unions report that meaningful negotiations about the future provisions of employer-sponsored retiree health benefits are becoming increasingly futile. Union representatives have informed EEOC that increasing numbers of employers have refused to include retiree health among the benefits to be provided to employees.[32]

In this environment, employers are not likely to increase any retiree's benefit in order to comply with the ADEA's equal benefit/equal cost defense. To the contrary, the equal benefit/equal cost rule creates an additional incentive for employers to reduce benefits.

In light of the other factors affecting an employer's decision to provide retiree health benefits, the Commission believes that the current regulatory framework of the ADEA does not provide a sufficient safe harbor to protect and preserve the important employer practice of providing health coverage for retirees.

This lack of regulatory protection may cause a class of people—retirees not yet 65—to be left without any health insurance. It also may contribute to the loss of valuable employer-sponsored coverage that supplements Medicare for retirees age 65 and over. Because almost 60% of retirees between the ages of 55 to 64 rely on employer-sponsored health coverage as their primary source of health coverage, and about one-third of retirees over age 65 rely on employer-provided retiree health plans to supplement Medicare, the Commission believes that such a result is contrary to the public interest and necessitates regulatory action.[33]

As detailed in the NPRM, the Commission examined a variety of ways to end this incentive towards further benefit erosion. These alternatives included various proposals that would have allowed employers to take the cost of Medicare into account when assessing whether they satisfied the equal cost test, or regulations that would require employers to adopt or maintain benefits programs that supplement Medicare in order to satisfy the equal benefits test. However, none of these alternatives reduced the risk to employers of noncompliance with the ADEA while providing them with the flexibility to continue providing coordinated retiree health benefits.

After extensive study, the Commission concluded that ''it does not appear that retiree health costs or benefits can be reasonably quantified in a regulation.'' [34]

Unlike valuation of costs associated with life insurance or long-term disability benefits, calculati[on of] retiree health costs is complex due to the multitude of variables, including types of plans, levels and types of coverage, deductibles, and geographical areas covered. In addition, the subjective nature of some health benefits, such as a greater choice in providers, makes any such valuation more complicated.

EDUCATIONAL TRUST, ''Employer Health Benefits, 2002 Annual Survey'' (Menlo Park, CA: The Henry J. Kaiser Family Foundation and Health Research and Educational Trust 2002) (reporting that the number of small employers who offer retiree health benefits dropped 6% between 2000 and 2002).

[23] NPRM, 68 FR 41543.

[24] *Id.* (citing U.S. GENERAL ACCOUNTING OFFICE, ''Retiree Health Benefits: Employer-Sponsored Benefits May Be Vulnerable to Further Erosion,'' GAO Doc. No. GAO–01–374, at 17 (May 2001)).

[25] NPRM, 68 FR 41543 (citing ANNA M. RAPPAPORT, ''Planning for Health Care Needs in Retirement,'' *in* FORECASTING RETIREMENT NEEDS AND RETIREMENT WEALTH 288, 288–294 (Olivia S. Mitchell *et al.* eds., University of Pennsylvania Press 2000)).

[26] NPRM, 68 FR 41543 (citing U.S. GENERAL ACCOUNTING OFFICE, ''Retiree Health Benefits: Employer-Sponsored Benefits May Be Vulnerable to Further Erosion,'' GAO Doc. No. GAO–01–374, at 17–18 (May 2001)).

[27] NPRM, 68 FR 41543 (citing ANNA M. RAPPAPORT, ''FAS 106 and Strategies for Managing Retiree HealthBenefits,'' *in* COMPENSATION AND BENEFITS MANAGEMENT, 37 (Spring 2001); PAUL FRONSTIN, ''Retiree Health Benefits: Trends and Outlook,'' EBRI ISSUE BRIEF No. 236 (Employee Benefit Research Institute Aug. 2001)).

[28] NPRM, 68 FR at 41543.

[29] *Id.* at 41544 (quoting PAUL FRONSTIN, ''Retiree Health Benefits: Trends and Outlook,'' EBRI ISSUE BRIEF No. 236, at 3 (Employee Benefit Research Institute Aug. 2001)).

[30] NPRM, 68 FR at 41544 (noting that a 2001 survey found that both public and private employers considered controlling health care costs as a top business issue for the next two to three years. THAP! ET AL., ''Productive Workforce Survey: Report of Findings Private Employer/Public Agency'' (THAP!, Andersen and CalPERS Aug. 2001); *see also* ANNA M. RAPPAPORT, ''Postemployment Benefits: Retiree Health Challenges and Trends—2001 and Beyond,'' *in* COMPENSATION AND BENEFITS MANAGEMENT, 52, 56 (Autumn 2001) (''Companies seeking to reduce costs are closely examining retiree medical benefits.'')).

[31] The 2001 Mercer/Foster Higgins study showed a 17% decline between 1993 and 2001 in the number of employers with 500 or more workers offering retiree health benefits, William M. Mercer, ''Mercer/Foster Higgins National Survey of Employer-Sponsored Health Plans 2001'' (New York, NY: William M. Mercer, Inc. 2002), the 2002 Kaiser/HRET study found that only 34% of employers with at least 200 employees offered retiree health coverage in 2002, as opposed to 66% in 1998, The Henry J. Kaiser Family Foundation & Health Research and Educational Trust,'' ''Employer Health Benefits, 2002 Annual Survey'' (Menlo Park, CA: The Henry J. Kaiser Family Foundation and Health Research and Educational Trust 2002), and a study by Hewitt Associates LLC reached similar conclusions. Hewitt Associates LLC, ''Trends in Retiree Health Plans'' (Lincolnshire, IL: Hewitt Associates LLC 2001). The Kaiser study also forecast that this trend would continue.

[32] NPRM, 68 FR at 41544.

[33] NPRM, 68 FR at 41546–47 (citing Hearing Before the House Comm. on Education and the Workforce, 107th Cong. (2001) (statement of William J. Scanlon, Director of Health Care Services, GAO); THE HENRY J. KAISER FAMILY FOUNDATION ET AL., ''Erosion of Private Health Insurance Coverage For Retirees: Findings from the 2000 and 2001 Retiree Health and Prescription Drug Coverage Survey,'' at iv (Menlo Park, CA: The Henry J. Kaiser Family Foundation, Health and Research Educational Trust and The Commonwealth Fund April 2002); and additionally noting that ''[o]f the 56.8% of retirees covered by employer-sponsored health coverage in 1999, 36.3% were covered in their own name and 20.5% received health benefits through a spouse. PAUL FRONSTIN, ''Retiree Health Benefits: Trends and Outlook,'' EBRI ISSUE BRIEF No. 236, at 6–7 (Employee Benefit Research Institute Aug. 2001).'').

[34] NPRM, 68 FR at 41546.

Even allowing an employer to take into account the ''cost'' of Medicare is problematic because the government's cost[s in] provid[ing] Medicare services does not reflect what similar benefits would cost an employer in the marketplace. Nor can an employer's Medicare tax obligation, pursuant to the Federal Insurance Contributions Act, 26 U.S.C. §§ 3101 *et seq.* (FICA), be considered the ''cost'' of any specific retiree's Medicare benefits inasmuch as most retirees have been employed by multiple employers over the course of their careers and employer FICA contributions are paid into a general Medicare fund that is not employee-specific. Additionally, the fact that employees themselves pay for a portion of the cost of Medicare further complicates cost valuation.

The Commission therefore believes that quantifying the cost to employers of post-Medicare retiree health benefits under any formulation of the equal cost test would not be practicable. This is particularly true for employers who maintain multiple plans for different categories of employees. Even for employers with only one plan, the variability in health claims data from year to year can be great. As a result, calculating retiree health benefit expenses would be cost prohibitive for many employers.[35]

This is particularly true for small and medium sized employers, and those unable to hire sophisticated employee benefit professionals.[36] ''As a result, repeatedly having to calculate retiree health benefit expenses under the alternative proposals considered by the Commission would have been cost prohibitive or otherwise impracticable for many employers.'' [37]

Thus, even if it were possible to capture the myriad of complexities involved in a retiree health cost analysis in a regulation, the likelihood is that far too many employers might simply reduce or eliminate existing retiree health benefit plans instead of attempting to comply with such a regulation. Further complicating compliance with many of the alternative proposals considered by the Commission is the fact that employers do not have the same flexibility in designing retiree health benefit programs as they do when designing other types of retirement benefit programs, such as cash-based retirement incentives. For example, providing supplemental health benefits to retirees who are eligible for Medicare may require that the employer obtain and administer a separate policy just for that coverage. Many employers are unable or unwilling to bear such a burden. Instead, if faced with such a choice, employers are more likely to simply eliminate retiree health coverage altogether—for retirees under and over age 65. Furthermore, future changes in the private health insurance market or in Medicare likely would necessitate further regulatory action were the Commission to adopt many of the alternative proposals considered. [Thus, t]he Commission does not believe that it is possible to apply the equal benefit/equal cost test, or a variant of that rule, to the rapidly changing landscape of retiree health care.[38]

In contrast, the Commission's final rule allows employers to offer a wide range of retiree health plan designs that coordinate with Medicare without violating the ADEA. The rule does not otherwise affect an employer's ability to offer health benefits to retirees, consistent with the law. ''This approach also benefits the significant number of [retirees] who rely on employer-sponsored retiree health coverage and would otherwise have to obtain retiree health coverage in the private individual marketplace at substantial personal expense.'' [39]

It is not likely that the final regulation will disrupt the efficient functioning of the economy and private market forces. Until recently, when structuring retiree health benefits, most employers relied on legislative history to the OWBPA stating that the practice of coordinating employer-sponsored retiree health benefits with Medicare eligibility is lawful under the ADEA. This final regulation permits the practice of unrestricted coordination of retiree health benefits with Medicare eligibility to continue.

Paperwork Reduction Act

This final rule contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities, because it imposes no additional economic or reporting burdens on such firms. The rule—which exempts certain practices from regulation—will decrease, not increase, costs to covered employers by reducing the risks of liability for noncompliance with the statute. For this reason, a regulatory flexibility analysis is not required.

List of Subjects in 29 CFR Part 1625 and 1627

Advertising, Aged, Employee benefit plans, Equal employment opportunity, Reporting and recordkeeping requirements, Retirement.

■ For the reasons discussed in the preamble, Chapter XIV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 1627—RECORDS TO BE MADE OR KEPT RELATING TO AGE: NOTICES TO BE POSTED

■ 1. Revise the heading of part 1627 to read as set forth above.

■ 2. The authority citation for 29 CFR part 1627 shall continue to read as follows:

Authority: Sec. 7, 81 Stat. 604; 29 U.S.C. 626; sec. 11, 52 Stat. 1066, 29 U.S.C. 211; sec. 12, 29 U.S.C. 631, Pub. L. 99–592, 100 Stat. 3342; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

■ 3. In § 1627.1, remove paragraph (b) and redesignate paragraph (c) as new paragraph (b).

■ 4. In part 1627, redesignate subpart C (consisting of §§ 1627.15 and 1627.16) as subpart C of Part 1625 (consisting of §§ 1625.30 and 1625.31), respectively.

PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

■ 5. The authority citation for 29 CFR Part 1625 is revised to read as follows:

Authority: 81 Stat. 602; 29 U.S.C. 621; 5 U.S.C. 301; Secretary's Order No. 10–68; Secretary's Order No. 11–68; Sec. 9, 81 Stat. 605; 29 U.S.C. 628; sec. 12, 29 U.S.C. 631, Pub. L. 99–592, 100 Stat. 3342; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

■ 6. In newly redesignated subpart C of part 1625, revise the heading of newly redesignated § 1625.31 and the first sentence of paragraph (a) to read as follows:

§ 1625.31 Special employment programs.

(a) Pursuant to the authority contained in section 9 of the Act and in accordance with the procedure provided therein and in § 1625.30(b) of this part, it has been found necessary and proper in the public interest to exempt from all prohibitions of the Act all activities and programs under Federal contracts or grants, or carried out by the public employment services of the several States, designed exclusively to provide employment for, or to encourage the

[35] *Id.*

[36] *See id.* at 41548 (noting that ''[i]t is clear that small and medium-sized employers, and those unable to hire sophisticated employee benefit professionals, would be most affected by a complicated rule.'').

[37] NPRM, 68 FR at 41548.

[38] *Id.* at 41546.

[39] NPRM, 68 FR at 41548. *See id.* at 41544 (discussing how those who lose coverage have limited options, such as temporary coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, 29 U.S.C. § 1161 *et seq.* (COBRA) or coverage in the private individual insurance market). COBRA coverage is very expensive because, while it allows the employee to remain in the employer's insurance plan, it requires the employee to pay the entire premium. 68 FR 41544. Coverage in the private health insurance often provides limited benefits, or is prohibitively expensive. *Id.* (citing U.S. General Accounting Office, ''Retiree Health Benefits: Employer-Sponsored Benefits May Be Vulnerable to Further Erosion,'' GAO Doc. No. GAO–01–374, at 20–22 (May 2001)).

employment of, persons with special employment problems, including employment activities and programs under the Manpower Development and Training Act of 1962, Pub. L. No. 87–415, 76 Stat. 23 (1962), as amended, and the Economic Opportunity Act of 1964, Pub. L. No. 88–452, 78 Stat. 508 (1964), as amended, for persons among the long-term unemployed, handicapped, members of minority groups, older workers, or youth. * * *

* * * * *

■ 7. Add section 1625.32 to Subpart C of part 1625 to read as follows:

§ 1625.32 Coordination of retiree health benefits with Medicare and State health benefits.

(a) Definitions.

(1) *Employee benefit plan* means an employee benefit plan as defined in 29 U.S.C. 1002(3).

(2) *Medicare* means the health insurance program available pursuant to Title XVIII of the Social Security Act, 42 U.S.C. 1395 *et seq.*

(3) *Comparable State health benefit plan* means a State-sponsored health benefit plan that, like Medicare, provides retired participants who have attained a minimum age with health benefits, whether or not the type, amount or value of those benefits is equivalent to the type, amount or value of the health benefits provided under Medicare.

(b) *Exemption.* Some employee benefit plans provide health benefits for retired participants that are altered, reduced or eliminated when the participant is eligible for Medicare health benefits or for health benefits under a comparable State health benefit plan, whether or not the participant actually enrolls in the other benefit program. Pursuant to the authority contained in section 9 of the Act, and in accordance with the procedures provided therein and in § 1625.30(b) of this part, it is hereby found necessary and proper in the public interest to exempt from all prohibitions of the Act such coordination of retiree health benefits with Medicare or a comparable State health benefit plan.

(c) *Scope of Exemption.* This exemption shall be narrowly construed. No other aspects of ADEA coverage or employment benefits other than those specified in paragraph (b) of this section are affected by the exemption. Thus, for example, the exemption does not apply to the use of eligibility for Medicare or a comparable State health benefit plan in connection with any act, practice or benefit of employment not specified in paragraph (b) of this section. Nor does it apply to the use of the age of eligibility for Medicare or a comparable State health benefit plan in connection with any act, practice or benefit of employment not specified in paragraph (b) of this section.

8. In Subpart C of part 1625, add an Appendix to newly added § 1625.32 as follows:

Appendix to § 1625.32—Questions and Answers Regarding Coordination of Retiree Health Benefits With Medicare and State Health Benefits

Q1. Why is the Commission issuing an exemption from the Act?

A1. The Commission recognizes that while employers are under no legal obligation to offer retiree health benefits, some employers choose to do so in order to maintain a competitive advantage in the marketplace—using these and other benefits to attract and retain the best talent available to work for their organizations. Further, retiree health benefits clearly benefit workers, allowing such individuals to acquire affordable health insurance coverage at a time when private health insurance coverage might otherwise be cost prohibitive. The Commission believes that it is in the best interest of both employers and employees for the Commission to pursue a policy that permits employers to offer these benefits to the greatest extent possible.

Q2. Does the exemption mean that the Act no longer applies to retirees?

A2. No. Only the practice of coordinating retiree health benefits with Medicare (or a comparable State health benefit plan) as specified in paragraph (b) of this section is exempt from the Act. In all other contexts, the Act continues to apply to retirees to the same extent that it did prior to the issuance of this section.

Q3. May an employer offer a ''carve-out plan'' for retirees who are eligible for Medicare or a comparable State health plan?

A3. Yes. A ''carve-out plan'' reduces the benefits available under an employee benefit plan by the amount payable by Medicare or a comparable State health plan. Employers may continue to offer such ''carve-out plans''and make Medicare or a comparable State health plan the primary payer of health benefits for those retirees eligible for Medicare or the comparable State health plan.

Q4. Does the exemption also apply to dependent and/or spousal health benefits that are included as part of the health benefits provided for retired participants?

A4. Yes. Because dependent and/or spousal health benefits are benefits provided to the retired participant, the exemption applies to these benefits, just as it does to the health benefits for the retired participant. However, dependent and/or spousal benefits need not be identical to the health benefits provided for retired participants. Consequently, dependent and/or spousal benefits may be altered, reduced or eliminated pursuant to the exemption whether or not the health benefits provided for retired participants are similarly altered, reduced or eliminated.

Q5. Does the exemption address how the ADEA may apply to other acts, practices or employment benefits not specified in the rule?

A5. No. The exemption only applies to the practice of coordinating employer-sponsored retiree health benefits with eligibility for Medicare or a comparable State health benefit program. No other aspects of ADEA coverage or employment benefits other than retiree health benefits are affected by the exemption.

Q6. Does the exemption apply to existing, as well as to newly created, employee benefit plans?

A6. Yes. The exemption applies to all retiree health benefits that coordinate with Medicare (or a comparable State health benefit plan) as specified in paragraph (b) of this section, whether those benefits are provided for in an existing or newly created employee benefit plan.

Q7. Does the exemption apply to health benefits that are provided to current employees who are at or over the age of Medicare eligibility (or the age of eligibility for a comparable State health benefit plan)?

A7. No. The exemption applies only to retiree health benefits, not to health benefits that are provided to current employees. Thus, health benefits for current employees must be provided in a manner that comports with the requirements of the Act. Moreover, under the laws governing the Medicare program, an employer must offer to current employees who are at or over the age of Medicare eligibility the same health benefits, under the same conditions, that it offers to any current employee under the age of Medicare eligibility.

Dated: December 17, 2007.

For the Commission.

Naomi C. Earp,

Chair.

[FR Doc. E7–24867 Filed 12–21–07; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS FREEDOM (LCS 1) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS

without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective December 26, 2007 and is applicable beginning November 19, 2007.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS FREEDOM (LCS 1) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(a)(i), pertaining to the location of the forward masthead light at a height not less than 12 meters above the hull; Annex I, paragraph 3 (a), pertaining to the location of the forward masthead light in the forward quarter of the ship and the horizontal distance between the masthead lights shall not be less than one-half of the length of the vessel; Annex I, paragraph 2(i)iii, pertaining to the three lights in the task light array being equally spaced; Rule 27, paragraph (b) ii, pertaining to the three all-round lights in a vertical line where they can best be seen. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706–CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Table One, of § 706.2 is amended by adding, in alpha numerical order by ship number, the following entry for USS FREEDOM:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Annex I, para 2(a)(i)
*	*	*
USS FREEDOM	LCS 1	5.99
*	*	*

■ 3. Table Five of § 706.2 is amended by adding, in alpha numerical order by ship number, the following entry for USS FREEDOM:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masterhead lights not over all other lights and obstructions, annex I, sec.2(f)	Forward Masthead light not in forward quarter of ship. annex I, sec. 3(a)	After Masthead Light less than ½ ship's length of forward masthead light. annex i, sec. 3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS FREEDOM	LCS 1	.....	X	X	23
*	*	*	*	*	*

■ 4. Section 706.2 is amended by adding paragraphs 22 and 23 following Table Five to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

22. On the following ships the vertical separation of the task lights do not meet the vertical spacing requirements described by Annex I, 2(i)(iii).

Vessel	Number	Vertical separation of the task light array is not equally spaced, the separation between the middle and lower task light exceed the separation between the upper and middle light by
USS FREEDOM	LCS 1	0.39 meter.

23. On the following ships the verticality of the task lights do not meet verticality requirements described in Rule 27(b)(ii).

Vessel	Number	Verticality of lights, when viewed from directly port or starboard, the lower task light is out of alignment with the upper and middle task light by:
USS FREEDOM	LCS 1	0.37 meter.

Approved: November 19, 2007.

C.J. Spain,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law), Acting.

[FR Doc. E7–24934 Filed 12–21–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 682, and 685

Federal Student Aid Programs (Student Assistance General Provisions, Federal Perkins Loan Program, Federal Direct Loan Program, Federal Family Education Loan Program)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice extending the waivers and modifications of statutory and regulatory provisions pursuant to the Higher Education Relief Opportunities for Students (HEROES) Act of 2003, Public Law 108–76.

SUMMARY: We are extending the actions taken by the Secretary pursuant to the HEROES Act of 2003, as announced in a notice published in the **Federal Register** on December 12, 2003 (68 FR 69312), and extended in a notice published in the **Federal Register** on October 20, 2005 (70 FR 61037).

DATES: Effective Date: December 26, 2007. Applicability Date: The actions announced in the December 12, 2003, **Federal Register** notice and extended in the October 20, 2005, **Federal Register** notice are applicable from September 30, 2007, until September 30, 2012.

FURTHER INFORMATION CONTACT: Wendy Macias, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., room 8017, Washington, DC 20006–8544. Telephone: (202) 502–7526. E-mail: *Wendy.Macias@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you can call the Federal Relay Service (FRS), toll free at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the contact person listed in this section.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** on December 12, 2003 (68 FR 69312), the Secretary exercised the authority granted to her by the HEROES Act of 2003 and announced the waivers and modifications of statutory or regulatory provisions that were appropriate to assist individuals who are applicants and recipients of student financial assistance under Title IV of the Higher Education Act of 1965, as amended (HEA), and who—

- Are serving on active military duty during a war or other military operation or national emergency;
- Are performing qualifying National Guard duty during a war or other military operation or national emergency;
- Reside or are employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency; or
- Suffered direct economic hardship as a direct result of a war or other military operation or national emergency, as determined by the Secretary.

Under the terms of the HEROES Act of 2003, the Secretary's authority to provide the waivers and modifications would expire on September 30, 2005. On September 30, 2005, Pub. L. 109–78 extended the expiration date of the Secretary's authority to September 30, 2007. Accordingly, the Secretary extended the expiration of the waivers and modifications published on December 12, 2003, in a notice in the **Federal Register** published on October 20, 2005 (70 FR 61037).

On September 30, 2007, the President signed into law Public Law 110–93, which eliminated the September 30, 2007, expiration date of the HEROES Act of 2003, thereby making permanent the Secretary's authority to issue waivers and modifications of statutory and regulatory provisions under the HEROES Act of 2003. As a result, we are extending the waivers and modifications announced by the Secretary in the notice published in the **Federal Register** on December 12, 2003. The actions will remain in effect until September 30, 2012, unless the Secretary issues a notice in the **Federal Register** terminating or changing those actions before September 30, 2012.

The Secretary intends to review the waivers and modifications published on December 12, 2003, in light of recent statutory and regulatory changes. After completing that review, the Secretary will consider whether to change some or all of the published waivers and modifications. Any changes to these waivers and modifications will be published in a notice in the **Federal Register** as required by the HEROES Act of 2003.

Electronic Access to This Document

You can view this document, as well as 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.*

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

Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.032 Federal PLUS Program; 84.033 Federal Work Study Program; 84.038 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program.

Program Authority: 20 U.S.C. 1071, 1082, 1087a, 1087aa, Pub. L. 108–76, Pub. L. 109–78, Pub. L. 110–93.

Dated: December 19, 2007.

Diane Auer Jones,

Assistant Secretary for Postsecondary Education.

[FR Doc. E7–24947 Filed 12–21–07; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2007–0601–200747; FRL–8510–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; North Carolina; Redesignation of the Raleigh-Durham-Chapel Hill 8-Hour Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a request submitted on June 7, 2007, from the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NCDENR), to redesignate the Raleigh-Durham-Chapel Hill 8-hour ozone nonattainment area to attainment for the 8-hour ozone National Ambient Air Quality Standard (''NAAQS'', or ''standard''). The Raleigh-Durham-Chapel Hill 8-hour ozone area is comprised of Durham, Franklin, Granville, Johnston, Orange, Person and Wake Counties in their entireties, and Baldwin, Center, New Hope and Williams Townships in Chatham County in North Carolina (hereafter referred to as the ''Triangle Area''). EPA's approval of the redesignation request is based on the determination that North Carolina has demonstrated that the Triangle Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the Triangle Area has attained the 8-hour ozone standard. Additionally, EPA is approving a revision to the North Carolina State Implementation Plan (SIP) including the 8-hour ozone maintenance plan for the Triangle Area that contains the new subarea 2008 and 2017 motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X), and an insignificance determination for volatile organic compounds (VOCs) contribution from motor vehicle emissions to the 8-hour ozone pollution in the entire Triangle Area. Through this action, EPA is also finding the new subarea 2008 and 2017 NO_X MVEBs, and the VOC insignificance determination, adequate for the purposes of transportation conformity. The above described actions were proposed for public comment on October 3, 2007; no comments were received. EPA is also making corrections to inadvertent errors made in the proposed rulemaking published on October 3, 2007, (72 FR 56312) to Tables 1, 6, and 7.

DATES: *Effective Date:* This action is effective December 26, 2007.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2007–0601. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Nacosta Ward can be reached via telephone at (404) 562–9140 or electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Is the Background for the Actions?
II. What Actions Is EPA Taking?
III. Why Is EPA Taking These Actions?
IV. What Are the Effects of These Actions?
V. Final Action
VI. When Is This Action Effective?
VII. Statutory and Executive Order Reviews

I. What Is the Background for the Actions?

On June 7, 2007, North Carolina, through NCDENR, submitted a request to redesignate the Triangle Area to attainment for the 8-hour ozone standard, and for EPA approval of the North Carolina SIP revision containing a maintenance plan for the Triangle Area. In an action published on October 3, 2007 (72 FR 56312), EPA proposed to approve the redesignation of the Triangle Area to attainment. EPA also proposed approval of North Carolina's SIP revision including a plan for maintaining the 8-hour NAAQS as a SIP revision, and proposed to approve the new subarea [1] 2008 and 2017 NO_X MVEBs, and the VOC insignificance determination for the Triangle Area that were contained in the maintenance plan. In the October 3, 2007, proposed action, EPA also provided information on the status of its transportation conformity adequacy determination for the Triangle Area subarea NO_X MVEBs and VOC insignificance determination. EPA received no comments on the

[1] The term ''subarea'' refers to the portion of the area, in a nonattainment or maintenance area, for which the motor vehicle emissions budgets (MVEBs) apply. In this case, the ''subareas'' are established at the county level so this indicates that the MVEBs cover individual counties and also indicates to transportation conformity implementers in this area that there are separate county-level MVEBs for each county in this area. *EPA's Companion Guidance for the July 1, 2004, Final Transportation Conformity Rule: Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards* explains more about the possible geographical extent of a MVEB, how these geographical areas are defined, and how transportation conformity is implemented in these different geographical areas.

October 3, 2007, proposal. This rule is EPA's final action following the October 3, 2007, proposal.

In this action, EPA is also announcing its finding that the new subarea NO_X MVEBs for the Triangle Area and the VOC insignificance determination are adequate for transportation conformity purposes. The new subarea NO_X MVEBs included in the maintenance plan are as follows:

TRIANGLE SUBAREA NO^X MVEBS

[kilograms per day]

County	2008	2017
Chatham	1,565	948
Durham	13,106	4,960
Franklin	2,048	1,139
Granville	4,649	1,714
Johnston	12,583	5,958
Orange	9,933	3,742
Person	1,359	791
Wake	36,615	16,352

EPA's adequacy public comment period on the subarea NO_X MVEBs and the VOC insignificance determination began on March 21, 2007, and closed on April 20, 2007. No comments were received during EPA's adequacy public comment period. Through this **Federal Register** document, EPA is finding the new subarea 2008 and 2017 NO_X MVEBs, as contained in North Carolina's submittal, adequate. These subarea NO_X MVEBs meet the adequacy criteria contained in the transportation conformity rule. The new subarea NO_X MVEBs must be used for future transportation conformity determinations. EPA is also finding adequate North Carolina's demonstration that the VOC emissions from motor vehicles are insignificant, and therefore no MVEBs are necessary for VOC. As a result of this finding (and approval which is discussed later in this rulemaking), the transportation partners are not required to complete a regional emissions analysis for VOC as a precursor for the 8-hour ozone standard for transportation conformity, but all of the other transportation conformity requirements must be met.

As was discussed in greater detail in the October 3, 2007, proposal, this redesignation is for the Triangle Area's 8-hour ozone designation finalized in 2004 (69 FR 23857, April 30, 2007). Various aspects of EPA's Phase 1 8-hour ozone implementation rule were challenged in court and on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. (SCAQMD)* v. *EPA,* 472 F.3d 882 (DC.Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8th decision affirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. The June 8th decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour MVEBs until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

With respect to the requirement for transportation conformity under the 1-hour standard, the Court in its June 8th decision clarified that for those areas with 1-hour MVEBs in their 1-hour maintenance plans, anti-backsliding requires only that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must continue to comply with the applicable requirements of EPA's conformity regulations at 40 CFR Part 93. A portion of the Triangle Area was previously designated nonattainment for the 1-hour ozone standard and thus has 1-hour MVEBs which are currently being used in that area to demonstrate transportation conformity.

For the above reasons, and those set forth in the October 3, 2007, proposal for the redesignation of the Triangle Area, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of the Triangle Area to attainment. Even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

II. What Actions is EPA Taking?

EPA is taking final action to approve North Carolina's redesignation request and to change the legal designation of the Triangle Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also approving North Carolina's 8-hour ozone maintenance plan for the Triangle Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Triangle Area in attainment for the 8-hour ozone NAAQS through 2017. These approval actions are based on EPA's determination that North Carolina has demonstrated that the Triangle Area has met the criteria for redesignation to attainment specified in the CAA, including a demonstration that the Triangle Area has attained the 8-hour ozone standard. EPA's analyses of North Carolina's 8-hour ozone redesignation request and maintenance plan are described in detail in the proposed rule published October 3, 2007 (72 FR 56312).

Consistent with the CAA, the maintenance plan that EPA is approving also includes new subarea 2008 and 2017 MVEBs for NO_X; and a VOC insignificance determination for the Triangle Area. In this action, EPA is approving these new subarea 2008 and 2017 NO_X MVEBs, and the VOC insignificance determination for the Triangle Area. For regional emission analysis years that involve years prior to 2017, the applicable budgets (for the purpose of conducting transportation conformity analyses) are the new subarea 2008 NO_X MVEBs. For regional emission analysis years that involve the year 2017 and beyond, the applicable

budgets, for the purpose of conducting transportation conformity analyses, are the new subarea 2017 NO_X MVEBs. In this action, EPA is also finding adequate and approving the Triangle Area's new subarea MVEBs for NO_X. Further, EPA is finding adequate and approving the VOC insignificance determination for motor vehicles' contribution to the 8-hour ozone pollution for the Triangle Area.

EPA is also making corrections to inadvertent errors made to Table 1. ''TRIANGLE SUBAREA NO_X MVEBS,'' Table 6. ''TRIANGLE SUBAREA NO_X MVEBs,'' and Table 7. ''NO_X SAFETY MARGIN ALLOCATION'' in the proposed rulemaking published on October 3, 2007 (72 FR 56312). The error was the misspelling of Granville County as ''Graham County.'' See the corrected tables below:

TABLE 1.—TRIANGLE SUBAREA NO_X MVEBS

[kilograms per day]

County	2008	2017
Chatham	1,565	948
Durham	13,106	4,960
Franklin	2,048	1,139
Granville	4,649	1,714
Johnston	12,583	5,958
Orange	9,933	3,742
Person	1,359	791
Wake	36,615	16,352

TABLE 6.—TRIANGLE SUBAREA NO_X MVEBS*

[kilograms per day]

County	2008	2017
Chatham	1,565	948
Durham	13,106	4,960
Franklin	2,048	1,139
Granville	4,649	1,714
Johnston	12,583	5,958
Orange	9,933	3,742
Person	1,359	791
Wake	36,615	16,352

* Includes an allocation from the available NO_X safety margins (see Table 7).

TABLE 7.—NO_X SAFETY MARGIN ALLOCATION

[kilograms per day]

County	2008	2017
Chatham	204	190
Durham	1,191	827
Franklin	186	190
Granville	606	343
Johnston	1,144	993
Orange	903	624
Person	177	158
Wake	3,329	2,725
Total	7,741	6,049

III. Why Is EPA Taking These Actions?

EPA has determined that the Triangle Area has attained the 8-hour ozone standard and has also determined that North Carolina has demonstrated that all other criteria for the redesignation of the Triangle Area from nonattainment to attainment of the 8-hour ozone NAAQS have been met. See, section 107(d)(3)(E) of the CAA. EPA is also taking final action to approve the maintenance plan for the Triangle Area as meeting the requirements of sections 175A and 107(d) of the CAA. Furthermore, EPA is finding adequate and approving the new subarea 2008 and 2017 NO_X MVEBs, and the VOC insignificance determination contained in North Carolina's maintenance plan because these MVEBs and the insignificance determination are consistent with maintenance for the Triangle Area. In the October 3, 2007, proposal to redesignate the Triangle Area, EPA described the applicable criteria for redesignation to attainment and its analysis of how those criteria have been met. The rationale for EPA's findings and actions is set forth in the proposed rulemaking and summarized in this rulemaking.

IV. What Are the Effects of These Actions?

Approval of the redesignation request changes the legal designation of the Triangle Area for the 8-hour ozone NAAQS, found at 40 CFR Part 81. The approval also incorporates into the North Carolina SIP a plan for maintaining the 8-hour ozone NAAQS in the Triangle Area through 2017. The maintenance plan includes contingency measures to remedy future violations of the 8-hour ozone NAAQS, and a VOC insignificance determination under 40 CFR 93.109(k) for regional motor vehicle emissions contribution to the 8-hour ozone pollution in the Triangle Area. Additionally, the maintenance plan establishes new subarea NO_X MVEBs for the years 2008 and 2017 for each county in the Triangle Area. These subarea budgets are established for each metropolitan planning organization (MPO), and in some instances, counties that are ''donut areas.'' The conformity rule defines a donut area as the portion of a metropolitan nonattainment or maintenance area that is located outside an MPO's planning boundary (40 CFR 93.101). Donut areas are not considered isolated rural nonattainment and maintenance areas under the transportation conformity rule.

Sections 93.124(c) and (d) of the transportation conformity rule provide the regulatory mechanism for establishing and implementing subarea SIP budgets. In July 2004, EPA released a guidance document that provided additional details for implementing conformity in multi-jurisdictional areas, including establishing subarea SIP budgets in areas with multiple MPOs, entitled ''Companion Guidance for the July 1, 2004 Final Transportation Conformity Rule Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards,'' EPA 420–B–04–012. While that guidance did not address the case where subarea budgets are established for a donut area, such budgets can be established in a manner consistent with the requirements of the CAA that ensures that conformity determinations in the Triangle Area will continue to meet federal conformity requirements.

EPA believes that statutory and regulatory requirements can be met for the entire nonattainment or maintenance area if conformity is determined for every subarea SIP budget at least every four years. Only by meeting all subarea SIP budgets can the SIP's overall purpose be met. As described on page 21 of the 2004 guidance, CAA section 176(c) states that the federal government and MPOs cannot approve transportation activities unless they conform to the SIP and its budgets. In a nonattainment or maintenance area with more than one MPO, all MPOs must conform even if the SIP has established subarea budgets. EPA believes that this same legal standard applies in the case where the SIP establishes a subarea budget for a donut area.

In the case of the Triangle Area 8-hour ozone SIP, subarea budgets have been established for the Area's MPOs and donut areas. Conformity determinations must be completed for all subarea budgets according to the statutory requirement to determine conformity at least every four years in areas with MPOs, transportation plans, and Transportation Improvement Programs (TIPs). MPOs must determine conformity to their respective transportation plans and TIPs every four years, and the interagency consultation process for the Triangle Area should ensure that conformity is demonstrated to any subarea budget for a donut area at least every four years as well. In the

event that an MPO or donut area cannot demonstrate conformity on a four-year cycle, the other subareas cannot complete a conformity determination until all subareas conform. See, EPA's 2004 guidance (pages 20–21) for further information regarding the conformity implications of not meeting subarea budgets.

V. Final Action

After evaluating North Carolina's redesignation request, EPA is taking final action to approve the redesignation and change the legal designation of the Triangle Area from nonattainment to attainment for the 8-hour ozone NAAQS. Through this action, EPA is also approving into the North Carolina SIP the 8-hour ozone maintenance plan for the Triangle Area, which includes the subarea 2008 and 2017 MVEBs for NO_X, and VOC insignificance determination for the entire Triangle Area. Within 24 months from the publication date for this final rule, the North Carolina transportation partners will need to demonstrate conformity to these new subarea NO_X MVEBs pursuant 172(c)(2)(E) of the CAA as added by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), which was signed into law on August 10, 2005. Additionally, the Triangle Area transportation partners should note EPA's finding of adequacy and approval for the VOC insignificance determination in future transportation conformity determinations.

VI. When Is This Action Effective?

EPA finds that there is good cause for these determinations (approval of redesignation and 10-year maintenance plan, including the 2017 MVEBs) to become effective on December 26, 2007, because a delayed effective date is unnecessary due to the nature of these determinations, which relieves the Triangle Area from certain CAA requirements that otherwise would apply to it. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and section 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.''

A redesignation to attainment relieves the Triangle Area from certain CAA requirements that otherwise would apply to it. North Carolina's relief from these obligations is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1) and provides good cause to make this rule effective December 26, 2007, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Whereas here, the final rule relieves obligations associated with nonattainment designations rather than imposing these obligations on affected parties, such as the State of North Carolina. Therefore, there is no need for time to adjust and prepare before the rule takes effect.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L.104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources or allow a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *February 25, 2008*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See, section 307(b)(2) of the CAA).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 13, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ 40 CFR parts 52 and 81 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart II—North Carolina

■ 2. Section 52.1770(e), is amended by adding a new entry at the end of the table for ''8-Hour Ozone Maintenance plan for the Raleigh-Durham-Chapel Hill, North Carolina area'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	**Federal Register** citation
* * *	*	*	* *
8-Hour Ozone Maintenance plan for the Raleigh-Durham-Chapel Hill, North Carolina area (Durham, Franklin, Granville, Johnston, Orange, Person and Wake Counties in their entireties, and Baldwin, Center, New Hope and Williams Townships in Chatham County).	June 7, 2007	December 26, 2007.	[Insert first page of publication]

PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 4. In § 81.334, the table entitled ''North Carolina-Ozone (8-Hour Standard)'' is amended under ''Raleigh-Durham-Chapel Hill, NC'' by revising the entries for ''Chatham County (part) Baldwin Township, Center Township, New Hope Township, Williams Township,'' ''Durham County,'' ''Franklin County,'' ''Granville County,'' ''Johnston County,'' ''Orange County,'' ''Person County,'' and ''Wake County'' to read as follows:

§ 81.334 North Carolina.

* * * * *

NORTH CAROLINA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Raleigh-Durham-Chapel Hill, NC:				
Chatham County (part) Baldwin Township, Center Township, New Hope Township, Williams Township.	This action is effective December 26, 2007.	Attainment.		
Durham County	This action is effective December 26, 2007.	Attainment.		
Franklin County	This action is effective December 26, 2007.	Attainment.		
Granville County	This action is effective December 26, 2007.	Attainment.		
Johnston County	This action is effective December 26, 2007.	Attainment.		
Orange County	This action is effective December 26, 2007.	Attainment.		
Person County	This action is effective December 26, 2007.	Attainment.		
Wake County	This action is effective December 26, 2007.	Attainment.		
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until April 15, 2008.
[3] November 22, 2004.

* * * * *

[FR Doc. E7–24959 Filed 12–21–07; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R07–OAR–2007–0655; FRL–8510–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Iowa; Clean Air Mercury Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the State Plan submitted by Iowa on August 15, 2006, and updates to rules submitted on April 26, 2007. The plan addresses the requirements of EPA's Clean Air Mercury Rule (CAMR), promulgated on May 18, 2005, and subsequently revised on June 9, 2006. EPA has determined that the submitted State Plan fully meets the CAMR requirements for Iowa.

CAMR requires States to regulate emissions of mercury (Hg) from large coal-fired electric generating units (EGUs). CAMR establishes State budgets for annual EGU Hg emissions and requires States to submit State Plans to ensure that annual EGU Hg emissions will not exceed the applicable State budget. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participating in the EPA-administered CAMR cap-and-trade program. In the State Plan that EPA is approving today, Iowa has met the CAMR requirements by electing to participate in the EPA trading program.

DATES: This rule is effective on January 25, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2007–0655. 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, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Michael Jay at (913) 551–7460 or by e-mail at *jay.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action Is EPA Taking?
II. What Is the Regulatory History of CAMR?
III. What Are the General Requirements of CAMR State Plans?
IV. How Can States Comply With CAMR?
V. Analysis of Iowa's CAMR State Plan Submittal
A. State Budgets
B. CAMR State Plan
VI. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

EPA is taking final action to approve Iowa's State Plan, submitted on August 15, 2006, and the incorporation by reference date changes submitted on April 26, 2007. In its State Plan, Iowa has met CAMR by requiring certain coal-fired EGUs to participate in the EPA-administered cap-and-trade program addressing Hg emissions. EPA proposed to approve Iowa's request to amend the State's Plan on September 5, 2007 (72 FR 50913). No comments were received. EPA is finalizing the approval as proposed based on the rationale stated in the proposal and in this final action.

II. What Is the Regulatory History of CAMR?

CAMR was published by EPA on May 18, 2005 (70 FR 28606, ''Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Final Rule''). In this rule, acting pursuant to its authority under section 111(d) of the Clean Air Act (CAA), 42 U.S.C. 7411(d), EPA required that all States and the District of Columbia (all of which are referred to herein as States) meet Statewide annual budgets limiting Hg emissions from coal-fired EGUs (as defined in 40 CFR 60.24(h)(8)) under CAA section 111(d). EPA required all States to submit State Plans with control measures that ensure that total, annual Hg emissions from the coal-fired EGUs located in the respective States do not exceed the applicable statewide annual EGU mercury budget. Under CAMR, States may implement and enforce these reduction requirements by participating in the EPA-administered cap-and-trade program or by adopting any other effective and enforceable control measures.

CAA section 111(d) requires States, and along with CAA section 301(d) and the Tribal Air Rule (40 CFR part 49) allows Tribes granted treatment as States (TAS), to submit State Plans to EPA that implement and enforce the standards of performance. CAMR explains what must be included in State Plans to address the requirements of CAA section 111(d). The State Plans were due to EPA by November 17, 2006. Under 40 CFR 60.27(b), the EPA proposes, and subsequently approves or disapproves, the State Plans.

III. What Are the General Requirements of CAMR State Plans?

CAMR establishes Statewide annual EGU Hg emission budgets and is to be implemented in two phases. The first phase of reductions starts in 2010 and continues through 2017. The second phase of reductions starts in 2018 and continues thereafter. CAMR requires States to implement the budgets by either: (1) Requiring coal-fired EGUs to participate in the EPA-administered cap-and-trade program; or (2) adopting other coal-fired EGU control measures of the respective State's choosing and demonstrating that such control measures will result in compliance with the applicable State annual EGU Hg budget.

Each State Plan must require coal-fired EGUs to comply with the monitoring, recordkeeping, and reporting provisions of 40 CFR part 75 concerning Hg mass emissions. Each State Plan must also show that the State has the legal authority to adopt emission standards and compliance schedules necessary for attainment and maintenance of the State's annual EGU Hg budget and to require the owners and operators of coal-fired EGUs in the State to meet the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75.

IV. How Can States Comply With CAMR?

Each State Plan must impose control requirements that the State demonstrates will limit Statewide annual Hg emissions from new and existing coal-fired EGUs to the amount of the State's applicable annual EGU Hg budget. States have the flexibility to choose the type of EGU control measures they will use to meet the requirements of CAMR. EPA anticipates that many States will choose to meet the CAMR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAMR cap-and-trade program. EPA also anticipates

that many States may choose to control Statewide annual Hg emissions for new and existing coal-fired EGUs through an alternative mechanism other than the EPA-administered CAMR cap-and-trade program. Each State that chooses an alternative mechanism must include with its plan a demonstration that the State Plan will ensure that the State will meet its assigned State annual EGU Hg emission budget.

A State submitting a State Plan that requires coal-fired EGUs to participate in the EPA-administered CAMR cap-and-trade program may either adopt regulations that are substantively identical to the EPA model Hg trading rule (40 CFR part 60, subpart HHHH) or incorporate by reference the model rule. CAMR provides that States may only make limited changes from the model rule if the States want to participate in the EPA-administered trading program. A State Plan may deviate from the model rule only by altering the allowance allocation provisions to provide for State-specific allocation of Hg allowances using a methodology chosen by the State. A State's alternative allowance allocation provisions must meet certain allocation timing requirements and must ensure that total allocations for each calendar year will not exceed the State's annual EGU Hg budget for that year.

V. Analysis of Iowa's CAMR State Plan Submittal

A. State Budgets

In this action, EPA is taking final action to approve Iowa's State Plan that adopts the annual EGU Hg budgets established for the State in CAMR, i.e., 0.727 tons for EGU Hg emissions in 2010–2017 and 0.287 tons for EGU Hg emissions in 2018 and thereafter. Iowa's State Plan sets these budgets as the total amount of allowances available for allocation for each year under the EPA-administered CAMR cap-and-trade program.

B. CAMR State Plan

The Iowa State Plan requires coal-fired EGUs to participate in the EPA-administered CAMR cap-and-trade program. The State Plan incorporates by reference the EPA model Hg trading rule but has adopted an alternative allowance allocation methodology. States may establish in their State Plan submissions a different Hg allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative Hg allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
4. The use of allowance set-asides and, if used, their size.

In Iowa's alternative allowance methodology, as authorized by the CAMR, Iowa has deviated from the portion of the model rule, described above, relating to the basis for allocating allowances to new units commencing operation on or after January 1, 2001. In Iowa's rule 567–34.304, the State has limited the timeframe within which a unit can meet the requirements to apply for allowances under the new unit set-aside to units that commence operation on or after January 1, 2001, and commence construction before January 1, 2006. As a result, one facility meets this criterion and is provided the full allocation under the new source set-aside for both phases amounting to 5 percent of the State's budget for phase I and 3 percent for phase II. Also in the section relating to new units, in the event a generator is served by two or more units, the nameplate capacity will be attributed to each unit in equal fraction of the total nameplate capacity multiplied by 7900 British Thermal Units per Kilowatt Hour for the determination of heat input for each unit.

Iowa's State Plan requires coal-fired EGUs to comply with the monitoring, recordkeeping, and reporting provisions of 40 CFR part 75 concerning Hg mass emissions. Iowa's State Plan also demonstrates that the State has the legal authority to adopt emission standards and compliance schedules necessary for attainment and maintenance of the State's annual EGU Hg budget and to require the owners and operators of coal-fired EGUs in the State to meet the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75. Iowa cites Section 455B.133 of the Iowa Code, which contains the broad enabling authority for Iowa's air pollution control regulations, as containing the legal authority for the Iowa Environmental Protection Commission to adopt the State's rule that allows for Iowa's participation in the nationwide cap and trade program for mercury.

Iowa has addressed the issue related to the definition of ''permit authority'' discussed in the proposal of September 5, 2007 (72 FR 50913). As discussed in more detail in that notice, on February 17, 2007, EPA provided a letter to Iowa that requested and outlined necessary definition revisions for all rules intended to meet the Clean Air Interstate Rule (CAIR) and CAMR. The EPA requested revisions were adopted by the Iowa Environmental Protection Commission on October 1, 2007, and were published in the Iowa Administrative Code on October 24, 2007. The revisions became State effective on November 28, 2007. Once submitted to EPA, and through separate rulemaking, EPA will act on the State's revisions to its 111(d) plan for CAMR and its SIP for CAIR.

EPA's review of Iowa's State Plan has found that it meets the requirements of CAMR. As a result, EPA is taking final action to approve Iowa's State Plan.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this action approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This action also does not have Tribal implications because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action also does not have Federalism implications because it does

not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard. It does not alter the relationship or the distribution of power and responsibilities established in the CAA. This action 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 approves a State rule implementing a Federal standard.

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. EPA guidance [1] states that EPA is to assess whether minority or low-income populations face risk or a rate of exposure to hazards that is significant and that ''appreciably exceed[s] or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group.'' (EPA, 1998) Because this rule merely approves a state rule implementing the Federal standard established by CAMR, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations. However, EPA has already considered the impact of CAMR, including this Federal standard, on minority and low-income populations. In the context of EPA's CAMR published in the **Federal Register** on May 18, 2005, in accordance with Executive Order 12898, the Agency has considered whether CAMR may have disproportionate negative impacts on minority or low income populations and determined it would not.

In reviewing State Plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State Plan for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State Plan submission, to use VCS in place of a State Plan submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *February 25, 2008.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in Part 62

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Mercury, Reporting and recordkeeping.

Dated: December 14, 2007.

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart Q—Iowa

■ 2. Subpart Q is amended by adding an undesignated center heading and § 62.3918 to read as follows:

Mercury Emissions From Coal-Fired Electric Steam Generating Units

§ 62.3918 Identification of Plan.

(a) *Identification of plan.* Section 111(d) plan and associated State regulations as adopted in the Iowa Administrative Bulletin on June 7, 2006, page 1811 and associated amendments on February 28, 2007, page 1157.

(b) *Identification of sources.* The plan applies to all new and existing mercury budget units meeting the applicability requirements in Iowa's State rule 567–34.301.

(c) *Effective date.* The effective date for the portion of the plan applicable to mercury budget units as described in Iowa State rule 567–34.301 is January 25, 2008.

[FR Doc. E7–24962 Filed 12–21–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 89

[EPA–HQ–OAR–2007–0652; FRL–8509–9]

RIN 2060–A037

Partial Removal of Direct Final Rule and Revision of the Nonroad Diesel Technical Amendments and Tier 3 Technical Relief Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; partial removal; revision.

SUMMARY: Because EPA received adverse comment, we are making a partial withdrawal and revision of the direct final rule for ''Nonroad Diesel Technical Amendments and Tier 3 Technical Relief Provision'' published on September 18, 2007.

DATES: This rule and partial withdrawal are effective December 26, 2007.

FOR FURTHER INFORMATION CONTACT: Zuimdie Guerra, Assessment and Standards Division, Office of Transportation and Air Quality, 2000 Traverwood Drive, Ann Arbor, MI, 48105; *telephone number:* (734) 214–4387; *fax number:* (734) 214–4050; *e-mail address: guerra.zuimdie@epa.gov.*

SUPPLEMENTARY INFORMATION: On September 18, 2007 EPA published a direct final rule for ''Nonroad Diesel Technical Amendments and Tier 3 Technical Relief Provision'' (72 FR

[1] U.S. Environmental Protection Agency, 1998. Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses. Office of Federal Activities, Washington, DC, April, 1998.

53118). We stated in that direct final rule that if we received adverse comment by October 18, 2007, we would publish a timely withdrawal in the **Federal Register**. EPA subsequently received adverse comments to Tier 3 technical relief provision in 40 CFR 89.102(i) through (m). Although we were not able to accomplish this action prior to the effective date of the direct final rule, we are now, in light of the adverse comment, withdrawing the direct final rule's revisions to 40 CFR 89.102 paragraphs (i) through (m). The other provisions of the the direct final rule are not affected by this partial withdrawal and are incorporated into the **Federal Register** as of the effective date of November 18, 2007 direct final action.

Concurrent with the direct final rule, we published a separate notice of proposed rulemaking, to provide for the contingency of adverse comments on the DFR. (72 FR 53294). We are now issuing a final rule based on the notice of proposed rulemaking and on comments received. Notice and an opportunity for additional comment on the withdrawal of the direct final rule is unnecessary, within the meaning of 5 U.S.C. 553(b)(B). EPA has a legal obligation to withdraw those portions of the direct final rule that were subject to adverse comments[j1]. In addition, by its terms, the direct final rule would become effective only in the absence of adverse comment.

[j2] In today's final rule, EPA is adopting the technical relief provisions originally proposed as 40 CFR 89.102 paragraphs (i) through (m), including a variety of modifications to address the comments received. The main comment EPA received was to correct an inappropriate cross-reference in the rule language, and this final rule corrects this inadvertent drafting error as the commenter properly suggested. We made the changes the commenter properly suggested. The provision on technical relief is now found in paragraph (i) exclusively.

We responded to comments that did not require changes to the rule in a memo to the docket. One concern of the commenter was that manufacturers may ask for more relief than is needed. The rule is clear that the Agency is not obligated to provide any amount of technical relief if the Agency is not convinced of the need for it. The other concern of the commenter was that manufacturers that use the Tier 3 technical relief may request additional relief for Tier 4 equipment. Manufacturers are aware of this provision in advance of Tier 4 so manufacturers should be able to reconcile their Tier 3 and Tier 4 relief needs.

List of Subjects in 40 CFR Part 89

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: December 17, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 89—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES

■ 1. The authority citation for part 89 is continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart B—[Amended]

■ 2. Section 89.102 is amended by revising paragraph (i) and removing paragraphs (j) through (m).

The revison reads as follows:

§ 89.102 Effective dates, optional inclusion, flexibility for equipment manufacturers.

* * * * *

(i) *Additional exemptions for technical or engineering hardship.* You may request additional engine allowances under paragraph (d)(1) of this section for 56–560 kW power categories or, if you are a small equipment manufacturer, under paragraph (d)(2) of this section for engines at or above 37 and below 75 kW. However, you may use these extra allowances only for those equipment models for which you, or an affiliated company, do not also produce the engine. After considering the circumstances, we may permit you to introduce into U.S. commerce equipment with such engines that do not comply with Tier 3 emission standards, as follows:

(1) We may approve additional exemptions if extreme and unusual circumstances that are clearly outside your control and that could not have been avoided with reasonable discretion have resulted in technical or engineering problems that prevent you from meeting the requirements of this part. You must show that you exercised prudent planning and have taken all reasonable steps to minimize the scope of your request for additional allowances.

(2) To apply for exemptions under this paragraph (i), send the Designated Compliance Officer and the Designated Enforcement Officer a written request as soon as possible before you are in violation. In your request, include the following information:

(i) Describe your process for designing equipment.

(ii) Describe how you normally work cooperatively or concurrently with your engine supplier to design products.

(iii) Describe the engineering or technical problems causing you to request the exemption and explain why you have not been able to solve them. Describe the extreme and unusual circumstances that led to these problems and explain how they were unavoidable.

(iv) Describe any information or products you received from your engine supplier related to equipment design—such as written specifications, performance data, or prototype engines—and when you received it.

(v) Compare the design processes of the equipment model for which you need additional exemptions and that for other models for which you do not need additional exemptions. Explain the technical differences that justify your request.

(vi) Describe your efforts to find and use other compliant engines, or otherwise explain why none is available.

(vii) Describe the steps you have taken to minimize the scope of your request.

(viii) Include other relevant information. You must give us other relevant information if we ask for it.

(ix) Estimate the increased percent of production you need for each equipment model covered by your request, as described in paragraph (i)(3) of this section. Estimate the increased number of allowances you need for each equipment model covered by your request, as described in paragraph (i)(4) of this section.

(3) We may approve your request to increase the allowances under paragraph (d)(1) of this section, subject to the following limitations:

(i) The additional allowances will not exceed 50 percent for each power category.

(ii) You must use up the allowances under paragraph (d)(1) of this section before using any additional allowance under this paragraph (i).

(iii) Any allowances we approve under this paragraph (i)(3) expire 24 months after the provisions of this section start for a given power category. You may use these allowances only for the specific equipment models covered by your request.

(4) We may approve your request to increase the allowances for the 37–75 kW power category under paragraph (d)(2) of this section, subject to the following limitations:

(i) You are eligible for additional allowances under this paragraph (i)(4) only if you are a small equipment manufacturer and you do not use the provisions of paragraph (i)(3) of this section to obtain additional allowances for the 37–75 kW power category.

(ii) You must use up all the available allowances for the 37–75 kW power category under paragraph (d)(2) of this section in a given year before using any additional allowances under this paragraph (i)(4).

(iii) Base your request only on equipment you produce with engines at or above 37 kW and below 75 kW. You may use any additional allowances only for equipment you produce with engines at or above 37 kW and below 75 kW.

(iv) Any allowances we approve under this paragraph (i)(4) expire 24 months after the provisions of this section start for this power category. These additional allowances are not subject to the annual limits specified in paragraph (d)(2) of this section. You may use these allowances only for the specific equipment models covered by your request.

(v) The total allowances under paragraph (d)(2) of this section for the 37–75 kW power category will not exceed 700 units. The total allowances under this paragraph (i)(4) follow the requirements under paragraph (d)(2) of this section for the 37–75 kW power category and will not exceed 200 units. Therefore, the total maximum allowances for the 37–75 kW power category will not exceed 900 units.

(5) For purposes of this paragraph (i), small equipment manufacturer means an equipment manufacturer that had annual U.S.-directed production volume of equipment using nonroad diesel engines between 37 and 75 kW of no more than 3,000 units in 2002 and all earlier calendar years, and has 750 or fewer employees (500 or fewer employees for nonroad equipment manufacturers that produce no construction equipment or industrial trucks). For manufacturers owned by a parent company, the production limit applies to the production of the parent company and all its subsidiaries and the employee limit applies to the total number of employees of the parent company and all its subsidiaries.

(6) The following provisions for adjusted flexibilities for Tier 4 engines apply to equipment manufacturers that are granted additional exemptions for technical or engineering hardship:

(i) If you use the additional allowance under this paragraph (i) you shall forfeit percent of production flexibility plus technical or engineering hardship exemptions available for Tier 4 engines in the amounts shown in Table 1 of this section.

(ii) Table 1 of this section shows the percent of production flexibility and technical or engineering hardship exemptions that you must forfeit for Tier 4 engines. The amount of Tier 4 flexibility forfeited by each equipment manufacturer depends on the percent of production flexibility used for Tier 2 engines and the technical or engineering hardship exemptions granted for Tier 3 engines in the proportions shown in Table 1. For example, if you used 45 percent of your production flexibility for Tier 2 engines, you must forfeit 2 percent of your production flexibility for Tier 4 engines for every 1 percent of technical or engineering hardship flexibility granted for Tier 3 engines. In addition you must also forfeit 1 percent of any technical or engineering hardship exemptions available for Tier 4 engines for every 1 percent technical or engineering hardship exemptions available for Tier 3 engines. If you use the Tier 3 technical or engineering hardship allowances for 5 percent of your equipment in each of two different years, you have used a total allowance of 10 percent. Therefore you must forfeit a total of 20 percent of production flexibility for Tier 4 engines plus 10 percent of any technical or engineering hardship exemptions available for Tier 4 engines.

TABLE 1 OF § 89.102.—ADJUSTMENTS TO TIER 4 FLEXIBILITIES

Percent of use Tier 2 production flexibility	Percent of forfeit Tier 4 production flexibility	Percent of forfeit Tier 4 tech./eng. exemption
Greater than 0% and up to 20%	0	1
Greater than 20% and up to 40%	1	1
Greater than 40% and up to 60%	2	1
Greater than 60% and up to 80%	3	1

(iii) Because the Tier 3 and Tier 4 rules have different power category ranges, the availability of technical relief will be further adjusted based on the sales volume by power category. Table 2 of this section shows the applicable power categories for Tier 3 and Tier 4. The Tier 3 power categories of 37kW to 75kW and 75kW to 130kW correspond to the Tier 4 power category of 56kW to 130kW. For the Tier 3 equipment in the 37 to 75kW category, you must only use the sales volume for equipment that uses engines with a rated power greater than 56kW. For example, if you have a Tier 3 piece of equipment that uses a 40 kW engine, the sales of the equipment are counted in the Tier 4 power category of 19kW to 56kW. If you have a Tier 3 piece of equipment that uses a 60kW engine, the sales of the equipment are counted in the Tier 4 power category of 56kW to 130kW. The Tier 3 power categories of 130kW to 225kW, 225kW to 450kW and 450kW to 560kW correspond to the Tier 4 power category of 130kW to 560kW. You will need to sum the sales of the Tier 3 power categories that correspond to the Tier 4 power category during each calendar year in which Tier 3 technical relief is used. The sum of all the Tier 3 units that are produced and exempted by the technical relief divided by the sum of all the Tier 3 units sold in the corresponding Tier 4 power category will determine the percentage of Tier 4 flexibility affected. For example, if you produce 50 units using Tier 3 technical relief in the range of 130kW to 225kW, and you produce 50 units using Tier 3 technical relief in the range of 225 to 450kW, and no units are produced in the 450kW to 560kW range, and your overall sales volume for the power ranges of 130kW to 560kW in Tier 3 is 400 units, the amount of Tier 3 technical relief used is 100/400 or 25 percent. Because you forfeit 1 percent of your Tier 4 technical relief for every 1 percent of Tier 3 technical relief used, then you will lose 25 percent of your Tier 4 technical relief in the 130kW to 560kW power range category. If you used 45 percent of your production flexibility for Tier 2 engines, you must forfeit 2 percent of production flexibility for Tier 4 engines for every 1 percent of Tier 3 technical relief. Therefore, you will forfeit 50 percent of your Tier 4 production allowance in the 130kW to 560kW power range category.

TABLE 2 OF § 89.102.—CORRESPONDING TIER 3 AND TIER 4 POWER CATEGORIES

Tier 3 power categories	Tier 4 power categories
37≤kW<75*	19≤kW<56
37≤kW<75**, 75≤kW<130	56≤kW<130
130≤kW<225, 225≤kW<450, 450≤kW<560.	130≤kW≤560

* Applies only to use of engines rated between 37kW and 56kW by small volume equipment manufacturers.

** Includes only equipment that uses engines with a rated power greater than 56kw.

(iv) Manufacturers using allowances under this paragraph (i) must comply with the notification and reporting requirements specified in paragraph (i)(7) of this section.

(7) Notification and reporting. You must notify us of your intent to use the technical relief provisions of this paragraph (i) and send us an annual report to verify that you are not exceeding the allowances, as follows:

(i) Before the first year you intend to use the provisions of this section, send the Designated Compliance Officer and the Designated Enforcement Officer a written notice of your intent, including:

(A) Your company's name and address, and your parent company's name and address, if applicable.

(B) Whom to contact for more information.

(C) The calendar years in which you expect to use the exemption provisions of this section.

(D) The name and address of the company that produces the engines you will be using for the equipment exempted under this section.

(E) Your best estimate of the number of units in each power category you will produce under this section and whether you intend to comply under paragraph (d)(1) or (d)(2) of this section.

(F) The number of units in each power category you have sold in previous calendar years under paragraph (d) of this section.

(ii) For each year that you use the provisions of this section, send the Designated Compliance Officer and the Designated Enforcement Officer a written report by March 31 of the following year. Include in your report the total number of engines you sold in the preceding year for each power category, based on actual U.S.-directed production information. Also identify the percentages of U.S.-directed production that correspond to the number of units in each power category and the cumulative numbers and percentages of units for all the units you have sold under this section for each power category. You may omit the percentage figures if you include in the report a statement that you will not be using the percent-of-production allowances in paragraph (d) of this section.

(8) *Recordkeeping.* Keep the following records of all equipment with exempted engines you produce under this paragraph (i) for at least five full years after the final year in which allowances are available for each power category:

(i) The model number, serial number, and the date of manufacture for each engine and piece of equipment.

(ii) The maximum power of each engine.

(iii) The total number or percentage of equipment with exempted engines, as described in paragraph (d) of this section and all documentation supporting your calculation.

(iv) The notifications and reports we require under paragraph (i)(7) of this section.

(9) *Equipment Labeling.* Any engine produced under this paragraph (i) must meet the labeling requirements of 40 CFR 89.110, but add the following statement instead of the compliance statement in 40 CFR 89.110 (b)(10): THIS ENGINE MEETS U.S. EPA EMISSION STANDARDS UNDER 40 CFR 89.102. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN FOR THE EQUIPMENT FLEXIBILITY PROVISIONS OF 40 CFR 89.102 MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(10) *Enforcement.* Producing more exempted engines or equipment than we allow under this paragraph (i) or installing engines that do not meet the applicable Tier 1 emission standards described in § 89.112 violates the prohibitions in § 89.1003(a)(1). You must give us the records we require under this paragraph (i) if we ask for them (*see* § 89.1003(a)(2)).

[FR Doc. E7–24976 Filed 12–21–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0309; FRL–8342–8]

Etoxazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of etoxazole in or on cherry; hop, dried cones; and vegetable, cucurbit subgroup 9A. The Interregional Research Project No. 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 26, 2007. Objections and requests for hearings must be received on or before February 25, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0309. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are

not limited to those engaged in the following activities:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0309 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before February 25, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007– 0309, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of June 27, 2007 (72 FR 35237) (FRL–8133–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6E7150) by the IR–4, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.593 be amended by establishing a tolerance for residues of the insecticide etoxazole, 2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole, in or on cherry at 0.70 parts per million (ppm), hops, dried cones, at 7.0 ppm, and melon subgroup 9A at 0.15 ppm. That notice referenced a summary of the petition prepared by Valent U.S.A. Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon current data supporting the petition, EPA has corrected the commodity definition and revised proposed tolerance levels as follows:

1. For commodity cherry, a revised tolerance at 1.0 ppm from 0.70 ppm; and

2. For the melon subgroup, the crop definition has been changed from ''melon subgroup 9A'' to ''vegetable, cucurbit subgroup 9A'' and the tolerance revised from 0.15 to 0.20 ppm.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of in or on cherry, sweet at 0.60 ppm, cherry, tart at 0.20 ppm, hop, dried cones, at 5.0 ppm, and vegetable, cucurbit subgroup 9A at 0.15 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by etoxazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can

be found at *http://www.regulations.gov*. The referenced document is available in the docket established by this action, which is described under Docket #: EPA–HQ–OPP–2007–0309 and is identified in that docket as PP 6E7150; Revised: Etoxazole in/on Cherries, Hops, and Melon Subgroup 9A; Health Effects Division (HED) Risk Assessment.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA–PEST/1997/November/Day-26/p30948.htm*.

A summary of the toxicological endpoints for etoxazole used for human risk assessment can be found at *http://www.regulations.gov* in document PP#: 6E7150. Revised: Etoxazole in/on Cherries, Hops, and Melon Subgrou 9A. Health Effects Division (HED) Risk Assessment in docket ID number EPA–HQ–OPP–2007–0309.

C. Exposure Assessment

Dietary exposure from food and feed uses. In evaluating dietary exposure to etoxazole, EPA considered exposure under the petitioned-for tolerances as well as all existing etoxazole tolerances in (40 CFR 180.593 EPA assessed dietary exposures from etoxazole in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

An endpoint of concern attributable to a single oral dose was not selected for either the general U.S. population (including infants and children) or the females 13–50 years old population subgroup for etoxazole. The EPA evaluated the suitability of the developmental toxicity study in rabbits in which the developmental NOAEL of 200 mg/kg/day is based upon increased incidences of 27 presacral vertebrae and 27 presacral vertebrae with 13th ribs (skeletal variations) in the fetuses at the LOAEL of 1,000 mg/kg/day (limit dose). Although these developmental effects may be attributed to a single dose, the EPA concluded that etoxazole is unlikely to pose an acute risk because these effects are minor in magnitude and were observed only at the limit dose (1000 mg/kg/day). Therefore, an acute dietary exposure assessment was not performed .

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used DEEM-FCID, Version 2.03), which incorporates consumption data from United States Department of Agriculture's (USDA's) Continuing Surveys of Food Intakes by Individuals (CSFII), 1994–1996 and 1998. The 1994–96, 1998 data are based on the reported consumption of more than 20,000 individuals over two non-consecutive survey days. Foods ''as consumed'' (e.g., apple pie) are linked to EPA-defined food commodities (e.g. apples, peeled fruit - cooked; fresh or N/S; baked; or wheat flour - cooked; fresh or N/S, baked) using publicly available recipe translation files developed jointly by USDA/ARS and EPA. Consumption data are averaged for the entire U.S. population and within population subgroups for chronic exposure assessment.

An unrefined, chronic dietary exposure assessment was conducted for the general U.S. population and various population subgroups using EPA-calculated residues of concern (parent and metabolites) for livestock commodities and tolerance-level residues for all other commodities. For all registered and proposed uses, 100% crop treated (CT) information was used, as well as DEEM 7.81 default processing factors for all commodities other than apple and grape (apple and grape residue data showed that there was no concentration in processed commodities; therefore; these default values were set to 1).

iii. *Cancer*. EPA classified etoxazole as ''not likely to be carcinogenic to humans''. This decision was based on the lack of carcinogenicity in two studies in mice, lack of carcinogenicity in one study in rats, and the lack of hormonal and reproductive effects in special studies. Etoxozole is not a mutagen. Therefore, an exposure assessment related to cancer risk was not performed.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for etoxazole in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of etoxazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

The Agency conducted Tier 1 estimated drinking water concentrations (EDWCs) for etoxazole in assessing water exposure. Environmental fate data indicate that parent (etoxazole) has low mobility and relatively low persistence in soil. The major route of degradation based on the label use pattern will likely be aerobic soil degradation. Based on the aerobic soil metabolism study, Metabolite R–8 was found as a major degradate in 4 out of 5 soils tested, with a maximum of 38% of the applied dose. Metabolite R–8 is mobile and relatively persistent and could be available for runoff and leaching for periods of up to months. Metabolite R–13 was also found as a major degradate in 3 out of 5 soils tested, with a maximum of 30.0% (at 62 days) in an aerobic soil metabolism study. Based on submitted mobility data, Metabolite R–13 appears to be immobile. The Agency believes that metabolites R–8 and R–13 are likely to have similar toxicity to the parent; and, therefore, should be included in the drinking water assessment. Metabolites R–4 and R–7 were also found in aerobic soil dissipation studies, but less frequently. EPA concluded that the

inclusion of Metabolite R–8 should cover the exposure from R–4 and R–7. In summary, the Agency finds that for drinking water risk assessment, the residues of concern are parent, Metabolite R–8, and Metabolite R–13.

FQPA Index Reservoir Screening Tool (FIRST) and Screening Concentrations In Ground Water (SCI-GROW) models were used to calculate the chronic surface water and groundwater EDWCs (parent and metabolites), respectively. Drinking water was incorporated directly in the dietary assessment using the acute concentration for surface water generated by the FIRST model. Tier 1 EDWCs results for etoxazole and metabolites R–8 and R–13 show annual average surface water concentrations of 0.332 parts per billion (ppb), 0.913 ppb and 0.0285 ppb, respectively. Tier 1 EDWCs results for etoxazole and metabolites R–8 and R–13 show ground water concentrations of 0.00173ppb, 0.316 ppb and 0.000322 ppb, respectively.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the total sum of the annual average surface water concentrations for etoxazole and metabolites R–8 and R–13 of 1.27 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Etoxazole is not registered for use in or on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to etoxazole and any other substances and etoxazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that etoxazole has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. No quantitative or qualitative evidence of increased susceptibility was seen following *in utero* exposure to rats or rabbits in developmental studies. Offspring toxicity was more severe (pup mortality) than maternal toxicity (increased liver and adrenal weights) at the same dose in the rat reproduction study.

Since there is qualitative evidence of increased susceptibility following exposure to etoxazole in the rat reproduction study, the EPA performed a Degree-of-Concern Analysis to:

i. Determine the LOC for the effects observed when considered in the context of all available toxicity data; and

ii. Identify any residual uncertainties after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment of this chemical. There is evidence of increased qualitative susceptibility in the rat reproduction study, but the concern is low since:

a. The effects in pups are well-characterized with a clear NOAEL;

b. The pup effects occur at the same dose as maternal toxicity; and,

c. The doses selected for various risk assessment scenarios are lower than the doses that caused off spring toxicity.

Therefore, there are no residual uncertainties for pre-/post-natal toxicity in this study.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicity database for etoxazole is complete for FQPA assessment.

ii. There is no indication that etoxazole is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. No quantitative or qualitative evidence of increased susceptibility was seen following *in utero* exposure to rats or rabbits in developmental studies. Although there is qualitative evidence of increased susceptibility in the rat reproduction study, the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of etoxazole. The degree of concern for prenatal and/or postnatal toxicity is low.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessment utilizes EPA-calculated residues of concern (parent and metabolites) for livestock commodities; tolerance-level residues for other commodities; and 100% crop treated (CT) information for all proposed uses. By using these screening-level assumptions, actual exposures/risks will not be underestimated. The dietary drinking water assessment utilized modeling results which included conservative assumptions for the parent and all degradates of concern. Conservative assumptions were used in the water models. Therefore, the water exposure assessment will not underestimate the potential risks for infant and children.

v. There are no registered or proposed residential uses for etoxazole.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment was not performed because an endpoint of concern attributable to a single oral dose was not selected for any population subgroup (including infants

and children). No acute risk is expected from exposure to etoxazole.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to etoxazole from food and water will utilize 8.3% of the cPAD for children 1–2 years old, the most highly exposed population subgroup. There are no residential uses for etoxazole that result in chronic residential exposure to etoxazole. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term and intermediate-term risk*. Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Etoxazole is not registered or proposed for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

4. *Aggregate cancer risk for U.S. population*. A cancer aggregate risk assessment was not performed because etoxazole is not carcinogenic. Etoxazole is not expected to pose a cancer risk to humans.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to etoxazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression.

The following analytical enforcement methods have been validated: The gas chromatography/mass-selective detector (GC/MSD) method used to determine etoxazole residues in/on cherry matrices is a slightly modified version of a previously-validated method (Method RM–37HM). The validated limit of quantitation (LOQ) was 0.0037 ppm and the limit of detection (LOD) was 0.0012 ppm for etoxazole in/on cherries. The GC with nitrogen-phosphorus detector (NPD) method used to determine etoxazole residues in/on hop matrices is a modified version of a previously-validated method (Method RM–37). The validated LOQ was 0.2 ppm and the LOD was 0.1 ppm for etoxazole in/on dried hop cones.The nitrogen-phosphorus specific flame-ionization detector (NPD) method used to determine etoxazole residues in/on cantaloupe matrices is a slightly modified version of a previously-validated method (Method RM–37). The validated LOQ was 0.0046 ppm and the LOD was 0.0015 ppm for etoxazole in/on cantaloupe.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Road, Fort Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no established or proposed Codex, Canadian or Mexican maximum residue limits (MRLs) for etoxazole.

Therefore, tolerances are established for residues of the insecticide etoxazole, 2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole, in or on cherry at 1.0 ppm, hop, dried cones at 7.0 ppm, and vegetable, cucurbit subgroup 9A at 0.20 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 14, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.593 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.593 Etoxazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Cherry	1.0
* * *	* *
Hop, dried cones	7.0
* * *	* *
Vegetable, cucurbit subgroup 9A	0.20

* * * * *

[FR Doc. E7–24983 Filed 12–21–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0545; FRL–8342–1]

Aspergillus Flavus AF36 on Corn; Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary exemption from the requirement of a tolerance for residues of the *Aspergillus flavus* AF36 on corn when applied/used before corn tasseling occurs. Arizona Cotton Research and Protection Council submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting the temporary tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of *Aspergillus flavus* AF36. The temporary tolerance exemption expires on December 31, 2011.

DATES: This regulation is effective December 26, 2007. Objections and requests for hearings must be received on or before February 25, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0545. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in section 5 of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the regulations promulgated to carry out that provision of FIFRA (40 CFR part 172). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0545 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 25, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–0545, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 8, 2007 (72 FR 44521) (FRL–8139–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 7E7205) by Interregional Research Project Number 4 (IR–4), Rutgers University, 500 College Road East, Suite 201W, Princeton, NJ 08540 on behalf of the Arizona Cotton Research and Protection Council, 3721 E. Wier Ave., Phoenix, AZ 85040. The petition requested that 40 CFR 180.1206 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of *Aspergillus flavus* AF36. This notice included a summary of the petition prepared by the petitioner IR–4, on behalf of the Arizona Cotton Research and Protection Council. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe '' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxicological profile of the unconditionally registered microbial pesticide *Aspergillus flavus* AF36 for use on cotton has been previously described in the final rule of the **Federal Register** of July 14, 2003 (68 FR 41535). Those health effects data were the basis for establishing the exemption from tolerance of *Aspergillus flavus* AF36, a non-aflatoxin-producing strain of *Aspergillus flavus*, on cotton in 40 CFR 180.1206. This exemption from tolerance was amended to include a temporary exemption from tolerance for use of *Aspergillus flavus* AF36 on pistachio on May 23, 2007 (72 FR 28868) (FRL–8129–4). The database supporting the current exemption from tolerance also supports the proposed temporary exemption of this active ingredient on corn.

The pesticide is neither toxic nor infective via the oral and pulmonary routes. It was placed in Toxicity Category IV for acute oral effects. The Toxicity Category III designation for acute inhalation effects is based on the granular nature of the pesticide and the submitted pulmonary studies. This pesticide has been used for more than a decade in experimental laboratory and field trials and in agricultural practice on cotton in Arizona, California, and Texas without any reports of adverse dermal irritation or hypersensitivity effects.

The petitioner, Arizona Cotton Research and Protection Council, now seeks to amend that exemption from tolerance of *Aspergillus flavus* AF36 on cotton, to include a temporary exemption from tolerance for residues of the fungal active ingredient on corn. An Experimental Use Permit (EUP), EPA Registration Number 71693–EUP–E, is proposed for three years to treat corn fields by ground or aerial application before corn tasseling occurs. The applicant also submitted additional data to support the EUP. This data included information from the public literature and from small field trials which indicate that there will not be any incremental harm from the use of the pesticide during the EUP. No further toxicological data are required for this temporary exemption from the requirement of a tolerance for *Aspergillus flavus* AF36 on corn.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food*. The aforesaid final rule for the exemption from tolerance for residues of *Aspergillus flavus* AF 36 on cotton considered all studies submitted by the applicant and found them to be acceptable. Peeling or shucking of corn, washing, cooking, and processing of treated commodities will mitigate against potential dietary exposure.

2. *Drinking water exposure*. Those data are also acceptable to demonstrate that the proposed use of *Aspergillus flavus* AF36 on corn will not harm the U.S adult, infant, and children population from dietary exposure, including food and drinking water. Percolation through the soil and municipal treatment of drinking water are expected to preclude exposure of the U.S. population, infants, and children to residues of the pesticide.

B. Other Non-Occupational Exposure

1. *Dermal exposure*. Dermal non-occupational exposure is expected to be minimal to non-existent for the proposed use of *Aspergillus flavus* AF36 on corn. The pesticide is to be applied to agricultural sites not in the proximity

of residential areas, schools, nursing homes, or daycares.

2. *Inhalation exposure*. For the same reasons non-occupational inhalation exposure to AF36 is expected to be minimal to non-existent.

V. Cumulative Effects

Another non-aflatoxin-producing strain of *Aspergillus flavus*, NRRL 21882, is undergoing research trials on corn in Texas, but not in the same areas to be treated during this EUP for AF36. Cumulative effects of these strains are not expected to exceed the risk cup for the registered *Aspergillus flavus* strains, AF36 and NRRL 21882. Furthermore, these strains are expected to decrease the presence of aflatoxin-producing colonies of the fungus on treated commodities and, thus, decrease the risks posed by the potent liver carcinogen, aflatoxin.

VI. Determination of Safety for U.S. Population, Infants, and Children

Based on the previously evaluated data, it is not necessary to use a safety factor to determine safety to children (see **Federal Register** of July 14, 2003 (68 FR 41535), as cited in Unit III.).

VII. Other Considerations

A. Endocrine Disruptors

See **Federal Register** of July 14, 2003 (68 FR 41535), as cited in Unit III.

B. Analytical Method(s)

See **Federal Register** of July 14, 2003 (68 FR 41535), as cited in Unit III.

C. Codex Maximum Residue Level

There is no Codex Maximum Residue Level (MRL) for residues of *Aspergillus flavus* AF36 on corn.

VIII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, this rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 14, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1206 is amended by adding paragraph (c) to read as follows:

§ 180.1206 *Aspergillus flavus* AF36; exemption from the requirement of a tolerance.

* * * * *

(c) *Apergillus flavus* AF36 is temporarily exempt from the requirement of a tolerance on corn when used in accordance with the Experimental Use Permit 71693–EUP–2. This temporary exemption from tolerance will expire December 31, 2011.

[FR Doc. E7–24979 Filed 12–21–07; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070808450–7714–02]

RIN 0648–AV83

Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Regulatory Amendment to Adopt Fishing Gear Standards for the NE Multispecies Regular B Day-At-Sea (DAS) Program and the Eastern U.S./Canada Haddock Special Access Program (SAP)

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

ACTION: Final rule.

SUMMARY: NMFS amends the regulations governing minimum performance standards of fishing gear proposed for use in both the NE multispecies Regular B DAS Program and the Eastern U.S./Canada Haddock SAP. The New England Fishery Management Council (Council) may request the Administrator, Northeast Region, NMFS (Regional Administrator) approve additional gear types for use in these programs if they meet the standard. The purpose of this rule is to provide greater flexibility to fishermen participating in these programs.

DATES: Effective January 25, 2008.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Management Specialist, (978) 281–9341, FAX (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 2007, the Council approved a motion to recommend that the Regional Administrator approve gear performance standards for additional gear types in the Eastern U.S./Canada Haddock SAP, or additional trawl gear in the Regular B DAS Program.

On October 15, 2007, NMFS published a proposed rule in the **Federal Register** (72 FR 58280) to amend the regulations on procedures and requirements to approve additional gear types for use in these two programs. Public comment was accepted through November 14, 2007, and two comments were received, as summarized below. The NE multispecies DAS effort control system and the history of these two programs were outlined in the proposed rule and are not repeated here.

This final rule also corrects an inadvertent omission by reinserting relevant regulatory text specific to the U.S./Canada Management Area gear requirements that was inadvertently removed through the final rule implementing Framework Adjustment 42 to the Northeast Multispecies Fishery Management Plan. Additional details were provided in the proposed rule and are not repeated here.

Comments and Responses

NMFS received two comments during the comment period for the proposed rule. These comments were submitted by the Council and by the Cape Cod Commercial Hook Fisherman's Association (CCCHFA). The specific issues raised in these two comments are addressed below.

Comment 1: The Council noted that the term ''stock of concern'' is only defined in the regulations as regulated groundfish stocks that are overfished or subject to overfishing and would not be applicable for non-regulated groundfish species.

Response: The proposed rule language specific to ''other stocks of concern'' was based upon the language in the original Council motion. To avoid any uncertainty about the phrase ''other stocks of concern,'' the regulatory language has been further modified to define such other stocks as other non-groundfish stocks that are overfished or subject to overfishing identified by the Council.

Comment 2: The Council commented that the proposed rule was unclear on whether the required reductions in catch were for all regulated groundfish or just stocks of concern. From Council discussions it is clear the intent was to limit the reductions to stocks that are overfished or are experiencing overfishing.

Response: The regulatory language has been modified to clarify that reductions are specific to stocks that are overfished or experiencing overfishing.

Comment 3: The CCCHFA commented that the NMFS Regional Administrator should have greater flexibility to add or remove gear from these programs based on how that gear is used in the fishery, and not solely on its performance in a controlled research setting.

Response: To be consistent with the Council's request for gear standards, and the purpose of allowing certain types of gear in areas where bycatch of groundfish stocks of concern may occur, rigorous experimental comparison is necessary to thoroughly demonstrate that a new proposed gear is comparable to those currently approved. The potential for bycatch, and the impacts of environmental conditions, vessel size, or crew behavior are difficult to properly account for when monitoring the performance of gear in the commercial fishery. However, the performance of gear in the fishery will continue to be monitored and the use of inappropriate modification or misuse of gear to negate the required catch reduction may result in removal of gear from these programs.

Comment 4: The CCCHFA stated that allowing the Council to specify which stocks are subject to the standard and which are not would reduce flexibility in these programs.

Response: This provision was included in the regulatory text specifically to increase the flexibility for both the Council and the NMFS Regional Administrator. If the regulations specified which stocks had to show reduced catch and which could sustain increased mortality, it would require a regulatory change to modify the regulations if rebuilt stocks, or stocks in relatively good condition, for example, declined in the future.

Comment 5: The CCCHFA expressed concern that experimental results may not translate well into gear performance in the fishery. Gear could be misused and either result in reduced harvest of the intended target species, or increased catch of bycatch species.

Response: The proper use of any approved gear is a legitimate concern. To the extent practical, important aspects of approved gear will be specified in the regulations. As noted in the response to Comment 3, the performance of gear in the fishery will continue to be monitored and possession limits, for example, could be adjusted to encourage the proper use of specific gear. If it becomes evident that a gear is not working effectively in the field, it may be removed from these programs.

Changes From the Proposed Rule

NMFS has made changes to the proposed rule. In § 648.85, paragraphs (b)(6)(iv)(J)(*2*)(*i*) and (*ii*) have been revised, in response to comment and in order to be consistent with Council intent, by specifying that required catch reductions apply to regulated species stocks of concern and non-groundfish stocks that are overfished or subject to overfishing.

Classification

The Administrator, Northeast Region, NMFS, determined that the final rule is necessary for the conservation and management of the NE multispecies fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Regional Administrator has determined that this final rule is a minor technical addition, correction, or change to a management plan and is therefore categorically excluded from the requirement to prepare an Environmental Impact Statement or equivalent document under the National Environmental Policy Act.

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 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 or on the economic impacts of the proposed rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 18, 2007

Samuel D. Rauch III,

Deputy Assistant Administrator For RegulatoryPrograms, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, paragraphs (a)(132) and (c)(81) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(132) If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl or a flounder trawl net, as specified in § 648.85(a)(3)(iii); unless using other gear as authorized under § 648.85 (b)(6) or (b)(8).

* * * * *

(c) * * *

(81) If fishing with trawl gear in the Regular B DAS Program specified in § 648.85(b)(6), fail to use a haddock separator trawl as described under § 648.85(a)(3)(iii)(A); or other gear as authorized under § 648.85(b)(6)(iv)(J).

* * * * *

■ 3. In § 648.85, paragraph (a)(3)(iii) introductory text is added, and paragraphs (b)(6)(iv)(J)(*2*) and (b)(8)(v)(E)(*2*) are revised to read as follows:

§ 648.85 Special management programs.

(a) * * *

(3) * * *

(iii) *Gear requirements.* NE multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section, unless otherwise provided in paragraphs (b)(6) and (b)(8) of this section, must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). Gear other than the haddock separator trawl or the flounder trawl net as described in paragraph (a)(3)(iii) of this section, or gear authorized under paragraphs (b)(6) and (b)(8) of this section, may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations at § 648.23(b). The description of the haddock separator trawl and flounder trawl net in this paragraph (a)(3)(iii) may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

* * * * *

(b) * * *

(6) * * *

(iv) * * *

(J) * * *

(*2*) *Approval of additional gear.* At the request of the Council or the Council's Executive Committee, the Regional Administrator may authorize additional gear for use in the Regular B DAS Program, through notice consistent with the Administrative Procedure Act. The proposed gear must satisfy standards specified in paragraph (b)(6)(iv)(J)(*2*)(*i*) or (*ii*) of this section in a completed experiment that has been reviewed according to the standards established by the Council's research policy before the gear can be considered and approved by the Regional Administrator. Comparisons of the criteria specified in this paragraph (b)(6)(iv)(J)(*2*) will be made to an appropriately selected control gear.

(*i*) The gear must show a statistically significant reduction in catch of at least 50 percent (by weight, on a trip-by-trip basis) of each regulated species stock of concern, unless otherwise allowed in this paragraph (b)(6)(iv)(J)(*2*)(*i*), or other non-groundfish stocks that are overfished or subject to overfishing identified by the Council. This requirement does not apply to regulated species identified by the Council as not being subject to gear performance standards; or

(*ii*) The catch of each regulated species stock of concern, unless otherwise allowed in this paragraph (b)(6)(iv)(J)(*2*)(*ii*), or other non-groundfish stocks that are overfished or subject to overfishing identified by the Council, must be less than 5 percent of the total catch of regulated groundfish (by weight, on a trip-by-trip basis). This requirement does not apply to regulated species identified by the Council as not being subject to gear performance standards.

* * * * *

(8) * * *

(v) * * *

(E) * * *

(*2*) *Approval of additional gear.* The Regional Administrator may authorize additional gear for use in the Eastern U.S./Canada Haddock SAP in accordance with the standards and requirements specified at § 648.85(b)(6)(iv)(J)(*2*).

* * * * *

[FR Doc. E7–24948 Filed 12–21–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 246
Wednesday, December 26, 2007

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0371; Directorate Identifier 2007–NM–269–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ 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 service history of incidents and accidents involving transport category turbojet airplanes without leading edge high lift devices, that shows that even small amounts of frost, ice, snow, or slush on the wing leading edges or forward upper wing surfaces can cause an adverse change in the stall speeds, stall characteristics, and the protection provided by the stall protection system. This proposed AD requires revising the airplane flight manual to include a new cold weather operations limitation. We are proposing this AD to prevent possible loss of control on takeoff resulting from even small amounts of frost, ice, snow, or slush on the wing leading edges or forward upper wing surfaces. The proposed AD would require actions that are intended to address the unsafe condition.

DATES: We must receive comments on this proposed AD by January 25, 2008.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0371; Directorate Identifier 2007–NM–269–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

In February 2005, the FAA began a review of certain airplanes of concern—turbojet airplanes without leading edge high lift devices—to determine their sensitivity to takeoff in ice/frost conditions. We have taken a broad and proactive approach to this issue. This approach involved a review of the effect of small amounts of wing contamination on the takeoff safety margins of the existing fleet of turbojet transport category airplanes that do not have leading edge high lift devices. Included in this review were the BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ airplanes. We have already taken airworthiness action against certain airplane types that have experienced accidents and incidents due to a contaminated wing. Although there have been no accidents or incidents related to wing contamination associated with the BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ airplanes, the wings of these airplanes are similarly sensitive to small amounts of wing contamination.

Small, almost visually imperceptible, amounts of ice on the wing's leading edge or upper surface can cause severe aerodynamic penalties and result in a loss of control of the airplane during takeoff. Despite operating rules, procedures, and training programs stressing the importance of a clean wing for takeoff, continued accidents and incidents show that airplanes are still departing with ice-contaminated wings.

This proposed AD would require revising the airplane flight manual (AFM) to include new limitations for cold weather operation. The actions in this proposed AD are intended to prevent possible loss of control on takeoff resulting from even small amounts of frost, ice, snow, or slush on the wing leading edges or forward upper wing surfaces.

FAA's Determination and Requirements of the Proposed AD

These airplanes are manufactured in the United Kingdom 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.

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or

develop in other products of the same type design.

Costs of Compliance

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2007–0371; Directorate Identifier 2007–NM–269–AD.

Comments Due Date

(a) We must receive comments by January 25, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAE 146–100A, –200A, and –300A series airplanes, certificated in any category; and all Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and Rain Protection.

Reason

(e) This AD results from service history of incidents and accidents involving transport category turbojet airplanes without leading edge high lift devices, that shows that even small amounts of frost, ice, snow, or slush on the wing leading edges or forward upper wing surfaces can cause an adverse change in the stall speeds, stall characteristics, and the protection provided by the stall protection system. We are issuing this AD to prevent possible loss of control on take-off resulting from even small amounts of frost, ice, snow, or slush on the wing leading edges or forward upper wing surfaces.

Actions and Compliance

(f) Within 14 days after the effective date of this AD, revise the Limitations Section of the Airplane Flight Manual (AFM) to include the following statement. This may be done by inserting a copy of this AD in the AFM.

''1. Takeoff is prohibited with frost, ice, snow, or slush adhering to the wings, control surfaces, engine inlets, or other critical surfaces.

2. A visual and tactile (hand on surface) check of the wing leading edge and the wing upper surface must be performed to ensure the wing is free from frost, ice, snow, or slush when the outside air temperature is less than 42 degrees F (6 degrees C), or if it cannot be ascertained that the wing fuel temperature is above 32 degrees F (0 degrees C); and

a. There is visible moisture (rain, drizzle, sleet, snow, fog, etc.) present; or

b. Water is present on the wing; or

c. The difference between the dew point and the outside air temperature is 5 degrees F (3 degrees C) or less; or

d. The atmospheric conditions have been conducive to frost formation.''

Note 1: When a statement identical to that in paragraph (f) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, Transport Airplane Directorate, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) None.

Issued in Renton, Washington, on December 14, 2007.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24922 Filed 12–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104713–07]

RIN 1545–BG39

Calculating and Apportioning the Section 11(b)(1) Additional Tax Under Section 1561 for Controlled Groups

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that affect component members of a controlled group of corporations and consolidated groups filing life-nonlife Federal income tax returns. These temporary regulations provide guidance for calculating and apportioning between component members any amount of additional tax and any reduction in the amount exempted from the alternative minimum tax. These temporary regulations also update and clarify the allocation of tax-benefit items in the case in which a component member has a short taxable year not including a December 31st date. Finally, these temporary regulations provide explanations of two concepts: A group's testing date and a member's testing period for use in determining which members of the group and which taxable years of those members are subject to the controlled group rules. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and a request for a public hearing must be received by March 25, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–104713–07), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–104713–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–104713–07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Grid Glyer, (202) 622–7930, concerning submissions of comments and requests for public hearings, Richard A. Hurst, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 to add §§ 1.1502–47T and 1.1561–0T, remove § 1.1561–2, and amend §§ 1.1561–2T and 1.1563–1T. The text of those regulations also serves as the text of these proposed regulations. The preamble to the final and temporary regulations explains these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. With respect to § 1.1502–47, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. Further, these regulations do not require any additional collection of information under § 1.1502–47 because these regulations simply add a section that had been inadvertently removed from the Code of Federal Regulations. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Grid Glyer of the Office of Associate Chief Counsel (Corporate). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1561–0 is added to read as follows:

§ 1.1561–0 Table of contents.

[The text of the proposed § 1.1561–0 is the same as the text for § 1.1561–0T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.1561–2 is added to read as follows:

§ 1.1561–2 Special rules for allocating reductions to certain section 1561(a) tax-benefit items.

[The text of the proposed § 1.1561–2 is the same as the text for § 1.1561–2T(a) through (f)(1) published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.1563–1 is amended to read as follows:

§ 1.1563–1 Definition of controlled group of corporations and component members and related concepts.

[The text of the proposed § 1.1563–1 is the same as the text for § 1.1563–1T published elsewhere in this issue of the **Federal Register**].

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–24886 Filed 12–21–07; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2007–0006]

RIN 1218–AC29

Abbreviated Bitrex® Qualitative Fit-Testing Protocol

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: OSHA is proposing to include the protocol for the abbreviated Bitrex® qualitative fit test (''ABQLFT'') in its Respiratory Protection Standard; the proposed protocol would apply to employers in general industry, shipyard employment, and the construction industry. The proposed ABQLFT protocol consists of seven exercises described in the existing Bitrex® qualitative fit-testing protocol specified in OSHA's Respiratory Protection Standard. However, each of the exercises in the proposed ABQLFT protocol lasts 15 seconds, compared to 60 seconds for exercises in the existing Bitrex® qualitative fit-testing protocol. This proposal describes the test sensitivity, predictive value of a pass, test specificity, and predictive value of a fail for the ABQLFT protocol, and requests the public to comment on whether this evidence supports OSHA including the ABQLFT in the Respiratory Protection Standard.

DATES: Comments to this proposal, including comments to the information-collection (paperwork) determination described under the **SUPPLEMENTARY INFORMATION** section, must be submitted (postmarked, sent, or received) by February 25, 2008.

ADDRESSES: Comments may be submitted as follows:

- *Electronic:* Comments may be submitted electronically to *http://www.regulations.gov*, which is the Federal eRulemaking portal. Follow the instructions online for submitting comments.
- *Facsimile:* OSHA allows facsimile transmission of comments that are 10 pages or fewer in length (including attachments). Send these comments to the OSHA Docket Office at (202) 693–1648; hard copies of these comments are not required. Instead of transmitting facsimile copies of attachments that supplement their comments (e.g., studies, journal articles), commenters may submit these attachments, in triplicate hard copy, to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (i.e., OSHA–2007–0006) so that the Agency can attach them to the appropriate comments.
- *Regular mail, express delivery, hand (courier) delivery, and messenger service:* Submit three copies of comments and any additional material (e.g., studies, journal articles) to the OSHA Docket Office, Docket No. OSHA–2007–0006 or RIN No. 1218–AC29, Technical Data Center, Room N–2625, OSHA, Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; *telephone:* (202) 693–2350. (OSHA's TTY number is (877) 889–5627.) Please contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m. to 4:45 p.m., e.t.
- *Instructions:* All submissions must include the Agency name and the OSHA docket number (i.e., OSHA–2007–0006). Comments and other material, including any personal information, are placed in the public docket without revision, and will be available online at *http://www.regulations.gov*. Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as social security numbers, birth dates, and medical data.
- *Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov* or to the OSHA Docket Office at the address above. Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Mr. Kevin Ropp, Director, Office of Communications, OSHA, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999; facsimile: (202) 693–1634. For technical inquiries, contact Mr. John E. Steelnack, Directorate of Standards and Guidance, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–2289; *facsimile:* (202) 693–1678.

Copies of this **Federal Register** notice are available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210; *telephone:* (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web page at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Summary and Explanation of the Proposal
A. Introduction
B. Summary of the Peer-Reviewed Article
C. Conclusions
D. Issues for Public Comment
III. Procedural Determinations
A. Legal Considerations
B. Preliminary Economic Analysis and Regulatory Flexibility Certification
C. Paperwork Reduction Act
D. Federalism
E. State-Plan States
F. Unfunded Mandates Reform Act
G. Applicability of Existing Consensus Standards
H. Review of the Proposed Standard by the Advisory Committee for Construction Safety and Health (ACCSH)
List of Subjects
Authority and Signature
IV. Proposed Amendment to the Standard

I. Background

Appendix A of OSHA's Respiratory Protection Standard at 29 CFR 1910.134 currently includes four qualitative fit-testing protocols using the following challenge agents: isoamyl acetate; saccharin-solution aerosol; Bitrex® (denatonium benzoate) aerosol in solution; and irritant smoke (stannic chloride). Appendix A of the Respiratory Protection Standard also specifies the procedure for adding new test protocols to this standard. The criteria for determining whether OSHA must publish a fit-testing protocol for notice-and-comment rulemaking under Section 6(b)(7) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) include: (1) A test report prepared by an independent government research laboratory (e.g., Lawrence Livermore National Laboratory, Los Alamos National Laboratory, the National Institute for Standards and Technology) stating that the laboratory tested the protocol and found it to be accurate and reliable; or (2) an article published in a

peer-reviewed industrial-hygiene journal describing the protocol and explaining how the test data support the protocol's accuracy and reliability.

II. Summary and Explanation of the Proposal

A. Introduction

In the letter submitting the abbreviated Bitrex® qualitative fit-testing (''ABQLFT'') protocol for review under the provisions of Appendix A of OSHA's Respiratory Protection Standard (Ex. OSHA–2007–0006–0002), Dr. Michael L. Runge of the 3M Company included a copy of a peer-reviewed article from an industrial-hygiene journal describing the accuracy and reliability of the proposed ABQLFT protocol (Ex. OSHA–2007–0006–0003). This article also described in detail the equipment and procedures required to administer the proposed ABQLFT protocol. According to this description, the proposed protocol is a variation of the existing Bitrex® qualitative fit-testing protocol developed by the 3M Company in the early 1990s, which OSHA approved for inclusion in the final Respiratory Protection Standard. The proposed ABQLFT protocol uses the same fit-testing requirements and instrumentation specified for the existing Bitrex® qualitative fit-testing protocol in paragraphs (a) and (b) of Part I.B.4 of Appendix A of the Respiratory Protection Standard, with the following two exceptions:

- Exercise times are reduced from 60 seconds to 15 seconds; and
- The proposed ABQLFT protocol is used only with test subjects who can taste the Bitrex® screening solution within the first 10 squeezes of the nebulizer bulb (referred to as ''Level 1 sensitivity'').

B. Summary of the Peer-Reviewed Article

The peer-reviewed article, entitled ''Development of an Abbreviated Qualitative Fit Test Using Bitter Aerosol,'' appeared in the Fall/Winter 2003 issue of the Journal of the International Society for Respiratory Protection (Ex. OSHA–2007–0006–0003). The authors of this study were T.J. Nelson of NIHS, Inc., and L.L. Janssen, M.D. Luinenburg, and H.E. Mullins of the 3M Company; the 3M Company supported the study. This article describes a study that determined whether performing a fit test involving seven exercises lasting 15 seconds each while exposed to Bitrex® (referred to as the abbreviated Bitrex® qualitative fit test or ''ABQLFT'') yielded fit-testing results similar to results obtained with a generated-aerosol (i.e., corn oil) quantitative fit test (''GAQNFT'') using one-minute exercises (i.e., the GAQNFT was the criterion measure or ''gold standard'').

The study involved 43 experienced respirator users, 20 females and 23 males. The test subjects followed the existing Bitrex® qualitative fit-testing protocol in Appendix A of OSHA's Respiratory Protection Standard except that they performed each of the fit-testing exercises for 15 seconds (instead of 60 seconds) while wearing a NIOSH-certified elastomeric half-mask respirator equipped with P100 filters. The authors selected the best fitting respirator for each test subject from among four models, each available in three sizes; some test subjects used more than one model during fit testing. In addition, the authors induced poor respirator fits by assigning a respirator to test subjects that was one or two sizes too small or too large as determined by the Los Alamos National Laboratory panel-grid size and observation of the test subjects' facial characteristics. Test subjects could adjust the respirator facepiece for comfort, but they did not perform user seal checks.

In conducting the study, the authors used the recommendations for evaluating new fit-test methods specified by Annex A2 of ANSI Z88.10–2001, including sequencing the ABQLFT and GAQNFT in random order without disturbing facepiece fit. The authors used fit-test sample adaptors or respirators with fixed probes to collect samples inside the respirator. The sample point inside the respirator was located between the nose and the mouth. For both fit tests, the authors had the test subjects perform seven of the eight exercises listed in Part I.A.14 of Appendix A of OSHA's Respiratory Protection Standard, which included: normal breathing, deep breathing, turning the head side to side, moving the head up and down, reading a passage, bending over, and normal breathing.[1] For the GAQNFT, the authors performed particle counts at one-second intervals inside a test chamber for 15–30 seconds before and after fit testing, and inside the respirator for the 60-second duration of each exercise.

The 43 test subjects used in the study had Level 1 sensitivity to Bitrex® because they were able to taste the Bitrex® aerosol within 10 squeezes of the nebulizer bulb. Subjects having Level 2 or 3 sensitivity to Bitrex® were excluded from further participation in thestudy because the nebulizer could not be replenished for additional taste testing within the 15 seconds allotted to perform each fit-testing exercise. After the test subjects passed a Bitrex® sensitivity-screening test, the authors administered the ABQLFT using the procedures and techniques specified for the existing Bitrex® qualitative fit-testing protocol in Part I.B.14 of Appendix A of OSHA's Respiratory Protection Standard, and determined the fit factor using the particle count for the 15-second duration of each exercise.

The authors required a fit factor of 100 to pass a fit test, which served as the basis for determining the following statistics for the ABQLFT: test sensitivity; predictive value of a pass; test specificity; and predictive value of a fail. In calculating these statistics, the authors adopted the variables defined by ANSI Z88.10–2001, in which: A = false positives (passed the fit test with a fit factor < 100); B = true positives (passed the fit test with a fit factor > 100); C = true negatives (failed the fit test with a fit factor ≥ 100); and D = false negatives (failed the fit test with a fit factor ≥ 100). Using these variables, ANSI Z88.10–2001 specifies the formula and recommended value (''RV'') for each statistic as follows: Test sensitivity = C / (A + C), RV > 0.95; predictive value of a pass = B / (A + B), RV > 0.95; test specificity = B / (B + D), RV > 0.50; and predictive value of a fail = C / (C + D), RV > 0.50.

Using the GAQNFT as the criterion measure, the variables for the ABQLFT had the following values: A = 4; B = 95; C = 48; and D = 20. The statistics calculated for the ABQLFT from these values were: test sensitivity = 0.92; predictive value of a pass = 0.96; test specificity = 0.83; and predictive value of a fail = 0.71. Therefore, every statistic for the ABQLFT, except test sensitivity, attained a value in excess of the ANSI Z88.10–2001 recommended value.

The test-sensitivity value of 0.92 for the ABQLFT fell below the ANSI recommended value of 0.95. The authors state that this slight difference represents a single false positive value for the ABQLFT (i.e., failed the GAQNFT but passed the ABQLFT). However, an additional peer-reviewed article submitted by Dr. Runge of the 3M Company suggests an alternative approach to examining these test-sensitivity values (see Ex. OSHA–2007–0006–0004). This article, entitled ''Recommendations for the Acceptance Criteria for New Fit Test Methods'' and published in the Spring/Summer 2004 issue of the *Journal of the International Society for Respiratory Protection*, describes an analytical study conducted

[1] The test subjects did not perform the grimace exercise.

by T.J. Nelson of NIHS, Inc. and H. Mullins of the 3M Company, and supported by the 3M Company. In this study, the authors performed a binary logistic-regression analysis on pass-fail fit-testing data from published studies involving two quantitative, and two qualitative, fit tests. The authors justify using the binary logistic-regression analysis for this purpose as follows:

> When a simple sensitivity test is used to describe a new test, the result can be affected by the distribution of the data. In several cases using the theoretical distributions described in this paper, the outcome of a sensitivity test for the Bitrex and Ambient Particle Counter fit tests could have failed to meet the ANSI Z88.10 sensitivity requirement. The method used to determine acceptability should be independent of specific data collected. (See Ex. OSHA–2007–0006–0004, p. 8.)

The results of the binary logistic-regression analysis performed on the ABQLFT data showed that the ABQLFT had a 0.20 probability of passing a respirator user with a fit factor of 50 and a 0.33 probability of passing a respirator user with a fit factor of 100. Figure 3 of the article compares the binary logistic-regression analysis results of test-sensitivity values obtained for a popular quantitative fit test and the existing 60-second Bitrex® qualitative fit test. The authors conclude that the analysis demonstrates that the distribution of fit-testing data affected the test-sensitivity values derived using the ANSI Z88.10–2001 test-sensitivity calculations. Based on this analysis, the authors assert that ''a sensitivity calculation may not be the best indicator of fit test method performance. The binary logistic regression analysis shows that the result of the 15 second exercise time test is very similar to the ambient aerosol and 60 second bitter aerosol tests'' (Ex. OSHA–2007–0006–0003, p. 108). In summarizing the study's results, the authors state that ''[t]he 15 second bitter aerosol protocol sufficiently screens for adequate respirator fit in subjects with Level 1 Bitrex taste sensitivity.''

C. Conclusions

OSHA believes that the information submitted by Dr. Runge in support of the proposed ABQLFT protocol meets the criteria for proposed fit-testing protocols established by the Agency in Part II of Appendix A of its Respiratory Protection Standard. Therefore, the Agency concludes that the proposed ABQLFT protocol warrants notice-and-comment rulemaking under Section 6(b)(7) of the OSH Act, and is initiating this rulemaking to determine whether to approve the proposed protocol for inclusion in Part I of Appendix A of its Respiratory Protection Standard.

An important difference between the proposed ABQLFT protocol and the existing Bitrex® qualitative fit-testing protocol specified currently in Part I.B.4 of Appendix A of the Respiratory Protection Standard is the duration of the exercises used during fit testing. The Agency is taking comments on whether to add the ABQLFT protocol to Part I.B.4 of Appendix A (see section IV, ''Proposed Amendment to the Standard,'' below); in addition to decreasing exercise durations from 60 seconds to 15 seconds each, the new regulatory text would limit use of the proposed ABQLFT to respirator users who demonstrate Level 1 sensitivity to Bitrex®. If approved, the proposed ABQLFT protocol would be an alternative to the existing qualitative fit-testing protocols already listed in the Part I of Appendix A of the Respiratory Protection Standard; employers would be free to select this alternative or to continue using any of the other protocols currently listed in the Appendix.

D. Issues for Public Comment

OSHA invites comments and data from the public regarding the accuracy and reliability of the proposed ABQLFT protocol, its effectiveness in detecting respirator leakage, and its usefulness in selecting respirators that will protect employees from airborne contaminants in the workplace. Specifically, the Agency invites public comment on the following issues:

- Were the studies described in the submitted articles well controlled, and conducted according to accepted experimental design practices and principles?
- Were the results of the studies described in the submitted articles properly, fully, and fairly presented and interpreted?
- Will the proposed ABQLFT protocol generate reproducible fit-testing results, and what additional experiments or analyses of existing data are necessary to answer this question?
- Will the proposed ABQLFT protocol reliably identify respirators with unacceptable fit as effectively as the qualitative fit-testing protocols, including the existing Bitrex® qualitative fit-testing protocol, already listed in Part I.B of Appendix A of the Respiratory Protection Standard?
- What is the significance of the test-sensitivity value of 0.92 obtained for the ABQLFT relative to the test-sensitivity value of 0.95 recommended by ANSI Z88.10–2001, and does the authors' assertion that ''a sensitivity calculation may not be the best indicator of fit test method performance'' adequately account for the lower test-sensitivity value?
- What is the significance of limiting the ABQLT to respirator users who demonstrate Level 1 sensitivity to Bitrex®?

III. Procedural Determinations

A. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970 (''OSH Act''; 29 U.S.C. 651 *et seq.*) is ''to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources.'' (29 U.S.C. 651(b).) To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. (29 U.S.C. 655(b) and 654(b).) A safety or health standard is a standard that ''requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment.'' (29 U.S.C. 652(8).) A standard is reasonably necessary or appropriate within the meaning of Section 652(8) of the OSH Act when a significant risk of material harm exists in the workplace, and the standard will substantially reduce or eliminate that workplace risk.

Employers covered by this proposal already must comply with the fit-testing requirements specified in paragraph (f) of OSHA's Respiratory Protection Standard at 29 CFR 1910.134. Accordingly, these provisions currently are protecting their employees from the significant risk that results from poorly fitting respirators. For this proposal, the Agency preliminarily determined that the proposed ABQLFT fit-testing protocol provides employees with protection that is comparable to the protection afforded to them by the existing Bitrex® qualitative fit-testing provisions. In this regard, the proposal is not expected to replace existing fit-testing protocols, but instead would be an alternative to them. Therefore, OSHA preliminarily finds that the proposal would not directly increase or decrease the protection afforded to employees, nor would it increase employers' compliance burdens. As demonstrated in the following section, the proposal may reduce employers' compliance burdens by decreasing the time required to fit test respirators for employee use. Accordingly, OSHA concludes that it is unnecessary to determine significant risk or the extent to which this proposal

would reduce that risk, as typically would be required by *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980).

B. Preliminary Economic Analysis and Regulatory Flexibility Certification

The proposal is not economically significant within the context of Executive Order (''E.O.'') 12866 (58 FR 51735). Additionally, the proposal is not a ''major rule'' under Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''; 5 U.S.C. 804). The proposal would impose no additional costs on any private- or public-sector entity, and does not meet any of the criteria for an economically significant or major rule specified by E.O. 12866 or other relevant statutes.

The proposal offers employers an additional option to fit test their employees for respirator use. In addition to the existing Bitrex® qualitative fit-testing protocol, which would continue to be an option, the Agency would add the ABQLFT protocol as a supplemental option if OSHA approves it as a result of this proposed rulemaking. According to a recent National Institute for Occupational Safety and Health-Bureau of Labor Statistics survey of respirator use, approximately 25,000 establishments currently use the existing Bitrex® qualitative fit-testing protocol out of nearly 282,000 establishments requiring respirator use (Ex. 6–3, Docket H–049C).

Under this proposal, employers would have a choice between any of the existing fit-testing protocols, including the existing Bitrex® qualitative fit-testing protocol consisting of exercises lasting one minute each, or the new ABQLFT protocol. By providing regulatory flexibility to these employers, the proposal may reduce their costs by decreasing fit-testing time. In this regard, OSHA assumes that the proposed ABQLFT protocol would be adopted by some employers who use the existing Bitrex® qualitative fit-testing protocol for those employees with Level 1 sensitivity. These employers would adopt the proposed ABQLFT protocol because it consists of exercises lasting a shorter duration than the exercises in the existing Bitrex® qualitative fit-testing protocol, thereby decreasing the time and cost required for fit testing their employees. However, the Agency believes that the proposed protocol is unlikely to be adopted by employers who currently use the generated-aerosol, ambient-aerosol condensation-nuclei counter, or contingent-negative pressure quantitative fit-testing systems because of the significant equipment and training investment they already have made to administer these fit tests.

Based on the above discussion, the Agency preliminarily concludes that this proposed rulemaking would impose no additional costs on employers, thereby eliminating the need for a preliminary economic analysis. Moreover, OSHA certifies that the proposal would not have a significant impact on a substantial number of small entities, and that the Agency does not have to prepare an initial regulatory flexibility analysis for this rulemaking under the SBREFA (5 U.S.C. 601 *et seq.*).

C. Paperwork Reduction Act

After thoroughly analyzing the proposed fit-testing provisions in terms of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.* and 5 CFR part 1320), OSHA believes that these provisions would not add to the existing collection-of-information (i.e., paperwork) requirements regarding fit testing employees for respirator use. The paperwork requirement specified in paragraph (m)(2) of OSHA's Respiratory Protection Standard at 29 CFR 1910.134 specifies that employers must document and maintain the following information on qualitative fit tests administered to employees: The name or identification of the employee tested; the type of fit test performed; the specific make, model, style, and size of respirator tested; the date of the test; and the test results. The employer must maintain this record until the next fit test is administered. However, this paperwork requirement would remain the same whether employers currently use the other fit-testing protocols already listed in Part I of Appendix A of the Respiratory Protection Standard, or implement the proposed fit-testing protocol instead. Therefore, using the proposed fit-testing protocol in the context of the existing fit-testing protocols would not involve an additional paperwork-burden determination by OSHA because it already accounts for this burden under the paperwork analysis for the Respiratory Protection Standard (OMB Control Number 1218–0099).

Members of the public may send comments on this paperwork analysis to: Office of Information and Regulatory Affairs (Attention: Desk Officer for OSHA), Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503. The Agency also encourages commenters to submit a copy of their comments on this paperwork analysis to OSHA, along with their other comments on the proposed rule.

D. Federalism

The Agency reviewed the proposal according to the most recent Executive Order (''E.O.'') on Federalism (E.O. 13132; 64 FR 43225), which requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States before taking actions that restrict their policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. E.O. 13132 allows Federal agencies to preempt State law only with the expressed consent of Congress. In such cases, Federal agencies must limit preemption of State law to the extent possible.

Under Section 18 of the Occupational Safety and Health Act of 1970 (''OSH Act''; 29 U.S.C. 651 *et seq.*), Congress expressly authorizes OSHA to preempt State occupational safety and health standards. Under the OSH Act, a State can avoid such preemption only when it has an OSHA-approved occupational safety and health plan (*i.e.*, is a ''State-plan State''; see 29 U.S.C. 667). Occupational safety and health standards developed by a State-Plan State must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to the limitations specified by the OSH Act at 29 U.S.C. 667, State-Plan States are free to develop and enforce their own requirements for safety and health standards under State law.

This proposed rulemaking complies with E.O. 13132. In States without OSHA-approved State Plans, Congress expressly provides for Agency standards to preempt State job safety and health rules in areas addressed by the Federal standards; in these States, the proposed rule would limit State policy options in the same manner as every OSHA standard. Therefore, with respect to States that do not have OSHA-approved plans, the Agency concludes that this proposal conforms to the preemption provisions of the OSH Act. Additionally, Section 18 of the OSH Act prohibits States without approved plans from issuing citations for violations of OSHA standards; the Agency finds that the proposed rulemaking does not expand this limitation.

OSHA has authority under E.O. 13132 to propose the use of the ABQLFT protocol under its Respiratory Protection Standard at 29 CFR 1910.134 because the problems addressed by these fit-testing requirements are national in scope. In this regard, the proposal offers hundreds of thousands of employers across the nation an

opportunity to use an additional protocol to assess respirator fit among their employees. Therefore, the proposal would provide employers in every State with an alternative means of complying with the fit-testing requirements specified in paragraph (f) of OSHA's Respiratory Protection Standard.

Should the Agency adopt a proposed standard in a final rulemaking, Section 18(c)(2) of the OSH Act (29 U.S.C. 667(c)(2)) requires State-plan States to adopt the same standard, or develop an alternative that is at least as effective as the OSHA standard. However, the new fit-testing protocol proposed in this rulemaking would only provide employers with an alternative to the existing requirements for fit-testing protocols specified in the Respiratory Protection Standard; therefore, the alternative is not, itself, a mandatory standard. Accordingly, States with OSHA-approved State Plans would not be obligated to adopt the final provisions that may result from this rulemaking. Nevertheless, OSHA strongly encourages them to adopt the final provisions to provide compliance options to employers in their States.

E. State-Plan States

When Federal OSHA promulgates a new standard or imposes additional or more stringent requirements than an existing standard, the 26 States and U.S. Territories with their own OSHA-approved occupational safety and health plans (*i.e.*, ''State-Plan States'') must revise their standards to reflect the new OSHA standard or amendment, or show the Agency why such action is unnecessary (*e.g.*, because an existing State standard covering this area already is at least as effective in protecting employees as the new Federal standard or amendment (29 CFR 1953.5(a)). The State standard must be (1) at least as effective as the final Federal rule in protecting employees, (2) applicable to both the private and public (*i.e.*, State and local government employees) sectors, and (3) completed within six months of the publication date of the final Federal rule.

When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, State-Plan States are not required to revise their standards, although the Agency may encourage them to do so. Accordingly, the Agency strongly encourages the 26 States and U.S. Territories with their own OSHA-approved occupational safety and health plans to revise their current Respiratory Protection Standard should the Agency adopt the proposed fit-testing protocol based on this rulemaking. OSHA preliminarily concludes that such a revision would provide employers in the State-plan States with any economic benefits that may accrue from such enactment, while protecting the safety and health of employees who use respirators against hazardous airborne substances in the workplace at least as well as the existing Bitrex® qualitative fit-test protocol. These States and U.S. Territories are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Connecticut, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only.

F. Unfunded Mandates Reform Act

OSHA reviewed the proposal according to the Unfunded Mandates Reform Act of 1995 (''UMRA''; 2 U.S.C. 1501 *et seq.*) and Executive Order 12875. As discussed above in section III.B (''Preliminary Economic Analysis and Regulatory Flexibility Certification'') of this preamble, the Agency made a preliminary determination that the proposal imposes no additional costs on any private- or public-sector entity. The substantive content of the proposal applies only to employers whose employees use respirators for protection against airborne workplace contaminants, and compliance with the proposal would be strictly optional for these employers. Accordingly, the proposal would require no additional expenditures by either public or private employers.

As noted above under section III.E (''State-Plan States'') of this preamble, OSHA standards do not apply to State and local governments except in States that have voluntarily elected to adopt a State Plan approved by the Agency. Consequently, this proposal does not meet the definition of a ''Federal intergovernmental mandate'' (see Section 421(5) of the UMRA (2 U.S.C. 658(5))). Therefore, for the purposes of the UMRA, the Agency certifies that the proposal does not mandate that State, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than $100 million in any year.

G. Applicability of Existing Consensus Standards

When OSHA promulgated its original respirator fit-testing protocols under Appendix A of its final Respiratory Protection Standard (29 CFR 1910.134), no national consensus standards addressed these protocols. However, the American National Standards Institute (ANSI) subsequently developed a national consensus standard on fit-testing protocols (''Respirator Fit Testing Methods,'' ANSI Z88.10–2001) as an adjunct to its national consensus standard on respiratory-protection programs.

Paragraph 7.3 of ANSI Z88.10–2001 provides the requirements for conducting the Bitrex® qualitative fit test, including requirements for administering the fit test; these requirements are consistent with the existing Bitrex® qualitative fit-testing requirements specified in Part I.B.4 of OSHA's Respiratory Protection Standard, except that the ANSI exercises must last at least 30 seconds each while the exercises required by the OSHA standard must last 60 seconds each. In addition, section 9 and Table 1 of ANSI Z88.10–2001 describe the exercises required during fit testing; these exercises duplicate the exercises described in the proposed ABQLFT protocol, except that, as noted previously, the ANSI standard requires that the test exercises last at least 30 seconds each.

H. Review of the Proposed Standard by the Advisory Committee for Construction Safety and Health (''ACCSH'')

By adding the ABQLFT as an optional qualitative fit-testing protocol to Part I.B of Appendix A of OSHA's Respiratory Protection Standard,[2] this proposal would revise the fit-testing requirements specified by that standard for the construction industry. Whenever the Agency proposes a rulemaking that involves the occupational safety and health of construction employees, OSHA's regulation governing the ACCSH at 29 CFR 1912.3 requires the Agency to consult with the ACCSH. Having provided the ACCSH members with copies of the proposal and other relevant information several weeks before the regular meeting, OSHA staff then met with them at the regular meeting on October 11, 2006. At this meeting, OSHA staff discussed the proposal with, and answered questions from, the ACCSH members. At their regular meeting the following day (October 12, 2006), the ACCSH members recommended, by a vote of nine in favor with one abstention, that OSHA publish the proposal.

[2] The Respiratory Protection Standard for the construction industry at 29 CFR 1926.103 cross-references Respiratory Protection Standard for general industry at 29 CFR 1910.134.

List of Subjects in 29 CFR Part 1910

Hazardous substances, Health, Occupational safety and health, Toxic substances.

Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency issues the proposed amendment under the following authorities: Sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*); Section 41 of the Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 5–2007 (72 FR 31159); and 29 CFR part 1911.

Signed at Washington, DC on December 17, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

IV. Proposed Amendment to the Standard

For the reasons stated above in the preamble, the Agency proposes to amend 29 CFR part 1910 as follows:

PART 1910—[AMENDED]

Subpart I—[AMENDED]

1. Revise the authority citation for subpart I of part 1910 to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*); Section 41, Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); and Secretary of Labor's Order Nos. 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2007 (72 FR 31159), as applicable.

Sections 29 CFR 1910.132, 1910.134, and 1910.138 also issued under 29 CFR part 1911.

Sections 29 CFR 1910.133, 1910.135, and 1910.136 also issued under 29 CFR part 1911 and 5 U.S.C. 553.

2. Amend section B.4(b)(8) of Appendix A to § 1910.134 to read as follows:

§ 1910.134 Respiratory protection.

* * * * *

Appendix A to § 1910.134: Fit Testing Procedures (Mandatory)

* * * * *

B. * * *

4. * * *

(b) * * *

(8) After generating the aerosol, the employer shall:

(i) Instruct the test subject to perform the exercises specified by section I.A.14 of this appendix; and

(ii) Ensure that the test subject performs each of these test exercises for one minute; however, if the test subject is able to detect the taste of the Bitrex® sensitivity screening solution within the first 10 squeezes of the nebulizer bulb (''Level 1 sensitivity''), the employer may elect to have the test subject perform each of the test exercises for a minimum of 15 seconds.

* * * * *

[FR Doc. E7–24792 Filed 12–21–07; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF EDUCATION

34 CFR Part 8

[Docket ID ED–2007–OS–0138]

Demands for Testimony or Records in Legal Proceedings

AGENCY: Office of the Secretary, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Department's regulations regarding the production of information pursuant to demands in judicial or administrative proceedings. The changes are intended to promote consistency in the Department's assertion of privileges and objections, and thereby prevent harm that may result from inappropriate disclosure of confidential information or inappropriate allocation of agency resources. These changes would apply only where employees are subpoenaed in litigation to which the agency is not a party. Former Department employees would be expressly required to seek the Secretary's approval prior to responding to subpoenas that seek non-public materials and information acquired during their employment at the Department.

DATES: We must receive your comments on or before February 25, 2008.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* Under ''Search Documents'' go to ''Optional Step 2'' and select ''Department of Education'' from the agency drop-down menu; then click ''Submit.'' In the Docket ID column, select ED–2007–OS–0138 to add or view public comments and to view supporting and related materials available electronically. Information on using *www.regulations.gov,* including instructions for submitting comments, accessing documents, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Christine M. Rose, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6C122, Washington, DC 20202–2110.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Christine M. Rose, *Telephone:* (202) 401–6700.

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 can obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or

increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing *www.regulations.gov.* You may also inspect the comments, in person, in Room 6C122, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

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

Background

The Secretary proposes to amend §§ 8.1 through 8.3 of title 34 of the Code of Federal Regulations (CFR). The regulations in 34 CFR part 8 pertain to production of information pursuant to demands in judicial or administrative proceedings. We are proposing these amendments to require that former Department employees follow the same set of prescribed instructions and procedures that are required of current employees, with respect to the production and disclosure of material or information acquired during the performance of the former employee's official duties or because of the former employee's official status when responding to judicially enforceable subpoenas or demands in judicial or administrative proceedings, except demands from the Congress or in Federal grand jury proceedings.

Significant Proposed Regulations

We do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Sections 8.1 Through 8.3—Production of Information Pursuant to Demands in Judicial or Administrative Proceedings

Statute: 5 U.S.C. 301 allows an agency head to prescribe regulations concerning the conduct of its employees, the performance of its business and the custody and use of agency records.

Current Regulations: The current regulations in 34 CFR part 8 pertain to production of information pursuant to demands in judicial or administrative proceedings. The regulations prescribe instructions and procedures to be followed by current Department employees with respect to the production and disclosure of material or information acquired as a result of performance of the person's official duties or because of the person's official status in response to judicially enforceable subpoenas or demands in judicial or administrative proceedings, except demands from the Congress or in Federal grand jury proceedings.

The current regulations also specify what requirements requestors must follow when submitting a demand for testimony or records.

Proposed Regulations: The proposed regulations would modify the definition of *employee* to include both current and former employees. With this change, the regulations would expressly require former employees to follow the uniform prescribed instructions and procedures that current employees must follow concerning disclosure or production of agency materials or information acquired during their employment with the Department in response to a judicially enforceable subpoena or demand. The proposed regulations also provide that a demand for testimony or records expressly include a statement of why the release of information would not be contrary to an interest of the Department or the United States.

Reason: The Department is proposing to amend the definition of employee to include both current and former employees in order to eliminate any confusion regarding whether the regulations concerning disclosure or production of agency materials or information in judicial or administrative proceedings in response to a judicially enforceable subpoena or demand apply to former employees.

These proposed regulations are intended to provide an orderly means by which both current and former employees respond to demands for material and information covered by the regulations, and to protect the interests of the United States, including the safeguarding of privileged or otherwise sensitive information. The increase in the number of subpoenas and other demands to current and former employees in judicial or administrative proceedings, particularly in cases in which neither the Department nor the United States is a party, necessitates detailed and uniform instructions to be followed by both current and former employees. Additionally, the express inclusion of former employees aligns the Department's regulations to be more consistent with those of other agencies, including the U.S. Department of Justice.

We are proposing to amend the requirements for submitting a demand for testimony or records in order to be consistent with current regulations which identify the items the Secretary must consider when determining whether to grant the request. The Department has an interest in protecting nonpublic materials and information, which extends to subpoenas that seek information that is privileged or confidential, or both, acquired during employment at the Department. The changes are intended to promote consistency in the agency's assertion of privileges and objections, and thereby prevent harm that may result from inappropriate disclosure of confidential information.

These proposed regulations are consistent with the decision in the landmark case of *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951), in which the Supreme Court upheld the ability of an agency head to issue regulations for the preservation of agency records, and determined that an agency employee, acting pursuant to such instructions, could not be held in contempt of court for declining to produce records in response to a subpoena duces tecum. We do not intend the proposed regulations to preclude disclosures or productions in compliance with Court orders except where disclosure would be inappropriate even if required by a court, e.g., where disclosure would be legally prohibited or would be contrary to a recognized privilege.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The Secretary has assessed the potential costs and benefits of this

regulatory action and has determined that the benefits would justify the costs. These changes are intended to promote consistency in the Department's assertion of privileges and objections, and thereby prevent harm that may result from inappropriate disclosure of confidential information or inappropriate allocation of agency resources. The anticipated costs of this regulatory action would be minimal.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 8.1 What is the scope and application of this part?.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

These proposed regulations are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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

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

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 8

Courts, Government employees, Reporting and recordkeeping requirements.

Dated: December 18, 2007.

Margaret Spellings,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend part 8 of title 34 of the Code of Federal Regulations as follows:

PART 8—DEMANDS FOR TESTIMONY OR RECORDS IN LEGAL PROCEEDINGS

1. The authority citation for part 8 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 20 U.S.C. 3474, unless otherwise noted.

§ 8.1 [Amended]

2. The introductory text of § 8.1(a) is amended by removing the words ''if the Department or any departmental employee'' and adding, in their place, the words ''when the Department or any employee of the Department''.

§ 8.2 [Amended]

3. The definition of ''Employee'' in § 8.2 is amended by adding the words ''or former'' between the words ''current'' and ''employee''.

§ 8.3 [Amended]

4. Section 8.3 is amended by:

A. In the introductory text of paragraph (a), removing the words ''or former employee,''.

B. In paragraph (a)(2), removing the words ''and why the information sought is unavailable by any other means'' and adding, in their place, the words '', why the information sought is unavailable by any other means, and the reason why the release of the information would not be contrary to an interest of the Department or the United States''.

C. In paragraph (b), removing the words ''or former employee'' each time they appear.

D. In paragraph (b), removing the words ''room 4083, FOB–6,'' and adding, in their place, the words ''room 6E300, Lyndon Baines Johnson Building,''.

E. In paragraph (c), removing the words ''or former employee''.

F. In paragraph (c), removing the words ''Records Management Branch Chief, Office of Information Resources Management, U.S. Department of Education, 7th and D Streets, SW., ROB–3'' and adding, in their place, the words ''Records Officer, Information Policy and Standards Team, Regulatory Information Management Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., room 9161, PCP''.

[FR Doc. E7–24966 Filed 12–21–07; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R07–OAR–2007–1143; FRL–8510–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Kansas; Clean Air Mercury Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Plan submitted by Kansas on June 19, 2007. The plan addresses the requirements of EPA's Clean Air Mercury Rule (CAMR), promulgated on May 18, 2005, and subsequently revised on June 9, 2006. EPA is proposing to determine that the submitted State Plan fully meets the CAMR requirements for Kansas.

CAMR requires States to regulate emissions of mercury (Hg) from large coal-fired electric generating units (EGUs). CAMR establishes State budgets for annual EGU Hg emissions and requires States to submit State Plans to ensure that annual EGU Hg emissions will not exceed the applicable State budget. States have the flexibility to choose which control measures to adopt to achieve the budgets, including

participating in the EPA-administered CAMR cap-and-trade program. In the State Plan that EPA is proposing to approve, Kansas would meet CAMR requirements by participating in the EPA trading program.

DATES: Comments must be received on or before January 25, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–1143, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: jay.michael@epa.gov.*
3. *Mail:* Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier:* Deliver your comments to Michael Jay, Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2007–1143. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Jay at (913) 551–7460 or by e-mail at *jay.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action Is EPA Proposing To Take?
II. What Is the Regulatory History of CAMR?
III. What Are the General Requirements of CAMR State Plans?
IV. How Can States Comply With CAMR?
V. Analysis of Kansas's CAMR State Plan Submittal
A. State Budgets
B. CAMR State Plan
VI. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing To Take?

EPA is proposing to approve Kansas's State Plan, submitted on June 19, 2007. In its State Plan, Kansas would meet CAMR by requiring certain coal-fired EGUs to participate in the EPA-administered cap-and-trade program addressing Hg emissions. EPA is proposing to determine that the State Plan meets the applicable requirements of CAMR. Kansas has included as part of its submittal Kansas rule K.A.R. 28–19–720, relating to new source performance standards. EPA will take action on those provisions in a separate rulemaking.

II. What Is the Regulatory History of CAMR?

CAMR was published by EPA on May 18, 2005 (70 FR 28606, ''Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Final Rule''). In this rule, acting pursuant to its authority under section 111(d) of the Clean Air Act (CAA), 42 U.S.C. 7411(d), EPA required that all States and the District of Columbia (all of which are referred to herein as States) meet Statewide annual budgets limiting Hg emissions from coal-fired EGUs (as defined in 40 CFR 60.24(h)(8)) under CAA section 111(d). EPA required all States to submit State Plans with control measures that ensure that total, annual Hg emissions from the coal-fired EGUs located in the respective States do not exceed the applicable statewide annual EGU mercury budget. Under CAMR, States may implement and enforce these reduction requirements by participating in the EPA-administered cap-and-trade program or by adopting any other effective and enforceable control measures.

CAA section 111(d) requires States, and along with CAA section 301(d) and the Tribal Air Rule (40 CFR part 49), allows Tribes granted treatment as States (TAS), to submit State Plans to EPA that implement and enforce the standards of performance. CAMR explains what must be included in State Plans to address the requirements of CAA section 111(d). The State Plans were due to EPA by November 17, 2006. Under 40 CFR 60.27(b), the EPA proposes, and subsequently approves or disapproves, the State Plans.

III. What Are the General Requirements of CAMR State Plans?

CAMR establishes Statewide annual EGU Hg emission budgets and is to be implemented in two phases. The first phase of reductions starts in 2010 and continues through 2017. The second phase of reductions starts in 2018 and continues thereafter. CAMR requires States to implement the budgets by either: (1) requiring coal-fired EGUs to participate in the EPA-administered cap-and-trade program; or (2) adopting other coal-fired EGU control measures of the respective State's choosing and demonstrating that such control measures will result in compliance with the applicable State annual EGU Hg budget.

Each State Plan must require coal-fired EGUs to comply with the monitoring, recordkeeping, and reporting provisions of 40 CFR part 75 concerning Hg mass emissions. Each State Plan must also show that the State has the legal authority to adopt emission standards and compliance schedules necessary for attainment and maintenance of the State's annual EGU Hg budget and to require the owners and operators of coal-fired EGUs in the State to meet the monitoring,

recordkeeping, and reporting requirements of 40 CFR part 75.

IV. How Can States Comply With CAMR?

Each State Plan must impose control requirements that the State demonstrates will limit Statewide annual Hg emissions from new and existing coal-fired EGUs to the amount of the State's applicable annual EGU Hg budget. States have the flexibility to choose the type of EGU control measures they will use to meet the requirements of CAMR. EPA anticipates that many States will choose to meet the CAMR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAMR cap-and-trade program. EPA also anticipates that many States may choose to control Statewide annual Hg emissions for new and existing coal-fired EGUs through an alternative mechanism other than the EPA-administered CAMR cap-and-trade program. Each State that chooses an alternative mechanism must include with its plan a demonstration that the State Plan will ensure that the State will meet its assigned State annual EGU Hg emission budget.

A State submitting a State Plan that requires coal-fired EGUs to participate in the EPA-administered CAMR cap-and-trade program may either adopt regulations that are substantively identical to the EPA model Hg trading rule (40 CFR part 60, subpart HHHH) or incorporate by reference the model rule. CAMR provides that States may only make limited changes from the model rule if the States want to participate in the EPA-administered trading program. A State Plan may deviate from the model rule only by altering the allowance allocation provisions to provide for State-specific allocation of Hg allowances using a methodology chosen by the State. A State's alternative allowance allocation provisions must meet certain allocation timing requirements and must ensure that total allocations for each calendar year will not exceed the State's annual EGU Hg budget for that year.

V. Analysis of Kansas's CAMR State Plan Submittal

A. State Budgets

In this action, EPA is proposing to approve Kansas's State Plan that adopts the annual EGU Hg budgets established for the State in CAMR, i.e., 0.723 tons for EGU Hg emissions in 2010–2017 and 0.285 tons for EGU Hg emissions in 2018 and thereafter. Kansas's State Plan sets these budgets as the total amount of allowances available for allocation for each year under the EPA-administered CAMR cap-and-trade program.

B. CAMR State Plan

The Kansas State Plan requires coal-fired EGUs to participate in the EPA-administered CAMR cap-and-trade program. The State Plan incorporates by reference the EPA model Hg trading rule but has adopted an alternative allowance allocation methodology. Under the Hg allowance allocation methodology in the model rule, Hg allowances are allocated to units that have operated for 5 years, based on heat input data from a 3-year period that are adjusted for coal rank by using coal factors of 3.0 for the lignite combusted by the unit, 1.25 for the subbituminous combusted by the unit, and 1 for other coal ranks combusted by the unit. The model rule also provides a new unit set-aside from which units without 5 years of operation are allocated allowances based on the units' prior year emissions.

States may establish in their State Plan submissions a different Hg allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative Hg allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
4. The use of allowance set-asides and, if used, their size.

In Kansas's alternative allowance methodology, as authorized by the CAMR, Kansas has deviated from the portion of the model rule described above relating to the basis for allocating allowances to new units and existing units. For existing units, 97 percent of the total annual allowances are distributed based on the individual unit's pro-rata share of total heat input for all existing units, adjusted by coal type, for the years 2000 through 2004. The baseline for each unit was established by averaging the three highest annual adjusted heat input rates for the five-year period. For new units, allowances will be distributed from a set-aside pool of allowances equal to 3 percent of the State's budget for each year of the program. The new unit methodology distributes allowances based on an emission rate (up to 5 ounces of Hg/MW for 2010–2017 and up to 2 ounces of Hg/MW in 2018 and thereafter) multiplied by the nameplate capacity. However, no single unit can receive more than one-third of the set-aside in a control period nor can the total number of new units receive more than the 3 percent set-aside pool of allowances. Mercury allowances for new and existing units are permanent. Because allocations are considered permanent, if the new unit set-aside is fully subscribed as new units make requests for allowances, there may be future new units that are not allocated allowances from the new unit set-aside. There are also provisions for distribution of allowances in the new unit set-aside for the case of undersubscription. The Kansas allowance distribution methodologies are acceptable under CAMR.

Kansas's State Plan requires coal-fired EGUs to comply with the monitoring, recordkeeping, and reporting provisions of 40 CFR part 75 concerning Hg mass emissions. Kansas's State Plan also demonstrates that the State has the legal authority to adopt emission standards and compliance schedules necessary for attainment and maintenance of the State's annual EGU Hg budget and to require the owners and operators of coal-fired EGUs in the State to meet the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75. The State cites provisions in Kansas State Law, K.S.A. 65–3005, as containing the legal authority for the Kansas Department of Health and Environment to adopt the State's rule that allows for Kansas's participation in the nationwide cap-and-trade program for mercury.

EPA's review of Kansas's State Plan has found that it meets the requirements of CAMR. As a result, EPA is proposing to approve Kansas's State Plan.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to approve State law as meeting Federal requirements and would impose no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule would not have a

significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to approve pre-existing requirements under State law and would 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 proposal also does not have Tribal implications because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This proposed action also does not have Federalism implications because it would 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 a State rule implementing a Federal standard. It does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes to approve a State rule implementing a Federal standard.

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. EPA guidance [1] states that EPA is to assess whether minority or low-income populations face risk or a rate of exposure to hazards that is significant and that ''appreciably exceed[s] or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group.'' (EPA, 1998) Because this rule merely proposes to approve a state rule implementing the Federal standard established by CAMR, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations. However, EPA has already considered the impact of CAMR, including this Federal standard, on minority and low-income populations. In the context of EPA's CAMR published in the **Federal Register** on May 18, 2005, in accordance with Executive Order 12898, the Agency has considered whether CAMR may have disproportionate negative impacts on minority or low-income populations and determined it would not.

In reviewing State Plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State Plan for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State Plan submission, to use VCS in place of a State Plan submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule would 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 62

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Mercury, Reporting and recordkeeping requirements.

Dated: December 14, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7–24967 Filed 12–21–07; 8:45 am]

BILLING CODE 6560–50–P

[1] U.S. Environmental Protection Agency, 1998. Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses. Office of Federal Activities, Washington, DC, April, 1998.

Notices

Federal Register

Vol. 72, No. 246

Wednesday, December 26, 2007

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 18, 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 and Health Inspection Service

Title: Exotic Newcastle Disease in Birds and Poultry; Chlamydiosis in Poultry.

OMB Control Number: 0579–0116.

Summary Of Collection: The Animal Health Protection Act (7 U.S.C. 8301), authorizes the Secretary of Agriculture to take such measures as he may deem proper to prevent the introduction or dissemination of the contagion of any contagious or communicable disease of animals and/or live poultry from a foreign country into the United States or from one State to another. Velogenic or exotic Newcastle disease (END) is the most severe form of Newcastle disease and is foreign to the United States. It is one of the most serious diseases of poultry throughout the world. The virus also infects and causes disease in wild birds including parrots and parakeets. Disease prevention is the most effective method for maintaining a healthy animal population and for enhancing the Animal Plant and Health Inspection Service (APHIS) ability to compete in the world market of animals and animal product trade.

Need and Use of the Information: APHIS will collect information through the use of documents attesting to the health status of the birds or poultry being moved, the number and types of birds or poultry being moved in a particular shipment, the shipment's point of origin, and shipment's designation, and the reason for the interstate movement. These documents provide useful ''trace back'' information in the event an infected bird or chicken is discovered and an investigation must be launched to determine where the bird or chicken originated. The information provided by these documents is critical to APHIS ability to prevent the interstate spread of END, which is highly contagious and capable of causing significant economic harm to the U.S. poultry industry.

Description of Respondents: Business or other for profit.

Number of Respondents: 2.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–24901 Filed 12–21–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Roadless Area Conservation; National Forest System Lands in Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, U.S. Department of Agriculture, is initiating a public rulemaking process to address the management of roadless areas on National Forest System lands within the State of Colorado. This rulemaking is the result of a petition submitted by Governor Bill Ritter on behalf of the State of Colorado pursuant to 7 CFR 1.28, reviewed and recommended by the Department's Roadless Area Conservation National Advisory Committee, and accepted by the Secretary. The State requests specific regulatory protections with certain management flexibility for the approximately four million acres of affected lands. The Forest Service will prepare an environmental impact statement to analyze and disclose potential environmental consequences associated with this rulemaking.

DATES: Comments concerning the scope of the analysis must be received by February 25, 2008.

ADDRESSES: Comments may be sent via e-mail to *COcomments@fsroadless.org.* Written comments concerning this notice should be addressed to Roadless Area Conservation-Colorado, P.O. Box 162909, Sacramento, CA 95816–2909, or via facsimile to 916–456–6724.

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 *http://www.roadless.fs.fed.us/colorado.*

FOR FURTHER INFORMATION CONTACT: Kathy Kurtz, Colorado Roadless Interdisciplinary Team Leader, 303–275–5083, *kkurtz@fs.fed.us.*

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 Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

As a leader in natural resource conservation, the Forest Service provides direction for the management and use of the Nation's forests, rangeland, and aquatic ecosystems. Similarly, the State of Colorado is committed to intelligent, sustained natural resource use and conservation of State and Federal lands within its borders. Furthermore, the Forest Service is charged to collaborate cooperatively with States and other interested parties regarding the use and management of the National Forest System (NFS).

In May 2005, then-Governor Bill Owens signed Colorado Senate Bill 05–243, creating a 13-member bipartisan task force to provide official recommendations regarding the management of inventoried roadless areas in National Forests in the State of Colorado. The task force held nine public meetings throughout the State, reviewed over 40,000 public comments and conducted a comprehensive review of Colorado's approximately four million acres of inventoried roadless areas.

Colorado's petition was submitted to the Secretary of Agriculture for consideration on November 13, 2006, by then-Governor Owens, hereinafter referred to as the 2006 Petition, with the provision that it be considered under section 553(e) of the Administrative Procedure Act and Department regulations at 7 CFR 1.28. On April 11, 2007, Governor Ritter submitted the 2006 Petition with modifications, hereinafter referred to as the 2007 Petition. Governor Ritter's transmittal letter requested that State specific rulemaking be undertaken to provide an ''insurance policy for protection of our roadless areas.''

The Roadless Area Conservation National Advisory Committee reviewed the Colorado petition on June 13 and 14, 2007, in Washington, DC. The Executive Director of the Colorado Department of Natural Resources, representing Governor Ritter, discussed the scope and intent of the petition during the first day of the meeting. The committee also heard comments from other State and Forest Service officials, task force members, and members of the public. On August 8, 2007, the committee issued a unanimous consensus-based recommendation that the Secretary direct the Forest Service, with the State of Colorado as a cooperating agency, to proceed with rulemaking.

On August 24, 2007, the Secretary accepted the 2007 Petition based on the Advisory Committee's review and report and directed the Forest Service to initiate rulemaking.

Additional information on how the State of Colorado petition was developed can be found in the State's petition at: *http://www.keystone.org/html/roadless_areas_task_force.html.*

Colorado's original 2006 Petition, Governor Ritter's 2007 Petition, a summary of the November 29 and 30, 2006, Advisory Committee meeting, the recommendation made by the Roadless Area Conservation National Advisory Committee to the Secretary, and the Secretary's letter to the Governor can be found at the Forest Service Roadless Area Conservation Web site: *http://www.roadless.fs.fed.us/colorado.*

Purpose and Need for Action

The purpose of the proposed rule is to review and consider the State of Colorado's 2007 Petition for rulemaking, which presents direction for the conservation and management of inventoried roadless areas within the State of Colorado. The proposed rule integrates local management concerns with the national objectives for protecting roadless area values and characteristics.

The Department of Agriculture and the State of Colorado are committed to conserving and managing inventoried roadless areas and consider these areas an important component of the National Forest System (NFS). The Department and the State of Colorado believe that the most viable path for lasting conservation of these areas must properly integrate local, State, and national perspectives on roadless area management. The 2007 Petition took into account State and local resource management challenges along with the national interest in maintaining roadless characteristics, and provides for management flexibility. Currently, the conservation and management of inventoried roadless areas is under the direction of the 2001 Roadless Rule, which was reinstated when the 2005 State Petitions Rule was invalidated in *Cal. ex rel. Lockyer* v. *United States Dep't of Agric.,* 2006 U.S, Dist. LEXIS 72226, 52 (N. D. Cal. 2006). As litigation continues over the 2001 Roadless Rule, the State of Colorado desires to institute durable protections for inventoried roadless areas in the State. Therefore, there is a desire to establish a Colorado Roadless Rule to protect and manage the approximately four million acres of National Forest System inventoried roadless areas in Colorado, while working to accomplish the following goals (see 2007 Petition): (1) Conserve roadless area values and characteristics; (2) protect human health and safety; (3) reduce hazardous fuels; (4) restore essential wildlife habitats; (5) maintain existing facilities; and (6) provide reasonable access to public and private property or public and privately owned facilities.

Petitioned Action

The Forest Service, in cooperation with the State of Colorado, is initiating a public rulemaking process in response to the 2007 Petition presented by the Colorado Department of Natural Resources on behalf of Governor Ritter on June 13 and 14, 2007, to the Roadless Area Conservation National Advisory Committee.

The rulemaking, using the 2007 Petition with input from Roadless Area Conservation National Advisory Committee, would designate Colorado Roadless Areas to protect and manage these areas as described below.

This new designation, Colorado Roadless Areas, would supersede previous roadless inventories conducted under the Roadless Area Review Evaluation and the 2001 Roadless Rule. Colorado Roadless Areas would be identified using the 2001 Roadless Area Conservation Rule inventoried roadless areas as a basis, amended by technical corrections to the inventory as well as any revisions to an individual roadless area through revised Forest Plans (Arapaho/Roosevelt, Routt, Rio Grande, and White River) and ongoing Forest Plan Revision (Grand Mesa, Uncompahgre, and Gunnison NFs; San Juan NF; Pike/San Isabel NFs; and Manti-La Sal NFs). Lands located within ski permit area boundaries and/or adjacent to existing ski areas currently allocated to such uses by Forest Plan revisions would be removed from roadless designation and managed subject to forest plan direction. Maps may be found at *http://www.roadless.fs.fed.us/colorado.*

The rulemaking would examine the 2007 Petition's specific proposal to prohibit road construction or reconstruction in Colorado Roadless Areas unless the responsible official determines the proposal cannot be reasonably accomplished without a road, there are no other reasonable alternatives, and one of the listed circumstances exists. The 2007 Petition sought to have the Forest Service, to the extent practicable, emphasize the use of temporary roads and where a temporary road is specified in the listed

circumstance, only a temporary road is allowed. Further, the Forest Service would prepare an Environmental Impact Statement (EIS) whenever proposing construction of a permanent road in designated Colorado Roadless Areas. No-road and temporary road alternatives would be part of such an EIS. Except for Federal Aid Highway projects, these roads would be closed to all motorized vehicles not specifically used for the purpose of the access. The circumstances for road construction are as follows:

a. To conduct a response action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or to conduct a natural resource restoration action under CERCLA;

b. Pursuant to reserved or outstanding rights, or by statute or treaty;

c. To provide access to existing or future grazing allotments, where roading is consistent with the Forest Plan in question;

d. For a Federal Aid Highway project;

e. To allow for construction of, maintenance of, and emergency response to utility and water conveyance structures, where roading is consistent with the Forest Plan in question.

f. A temporary road is needed for treatment actions in areas identified in a community wildfire protection plan or within areas of the wildland-urban interface, as defined by the Healthy Forests Restoration Act of 2003 (HFRA);

g. A temporary road is needed for public health or safety in cases of threat of flood, fire, or other potential catastrophic event that, without intervention, would cause loss of life, property, or natural resource values;

h. A temporary road is needed in conjunction with the continuation, extension, or renewal of a mineral lease; or

i. A temporary road is needed to support the leasing of federal coal reserves under certain lands in the North Fork Valley on the Grand Mesa, Uncompahgre and Gunnison National Forests.

Any temporary road would be obliterated and reclaimed and the affected landscape restored immediately upon termination of the purpose for the road. Roadless areas in which temporary roads are allowed, built, and obliterated would not lose their roadless inventory status.

The 2007 Petition also provided two other circumstances under which road re-construction may be allowed in a Colorado Roadless Area: (1) When road realignment is needed to prevent irreparable resource damage from the original design, use, location, or deterioration of a forest road; or (2) when road reconstruction is needed to implement a road safety project based on local knowledge of a forest road or accident history.

The 2007 Petition specifically proposes to prohibit the cutting, selling or removal of timber from a Colorado Roadless Area unless the responsible official determines that the action falls within one of the following circumstances:

a. Is needed for wildlife habitat management and improvement for wildlife species, in consultation with Colorado Department of Natural Resources and Division of Wildlife, while maintaining or improving roadless characteristics as defined in the 2007 Petition;

b. Is needed to reduce the risk of wildfire effects or large scale insect and disease outbreak effects in areas covered by and as provided in a community wildfire protection plan, or if a protection plan is not present within areas of the wildland urban interface (WUI), as defined in the HFRA;

c. Is incidental to the implementation of a management activity not otherwise prohibited by the Rule;

d. Is needed and appropriate for personal or administrative use; or

e. Roadless characteristics have been substantially altered in a portion of a roadless area due to the construction of a forest road and subsequent timber harvest—which occurred after the roadless area was designated and prior to the effective date of this rule.

The 2007 Petition did not seek to impose limitations on reasonable access to valid and existing rights and authorizations including reasonable access to locatable minerals as allowed under the General Mining Law of 1872 and the ability of the Colorado State Land Board to develop its mineral interest underlying certain Forest Service surface ownership. The Forest Service would emphasize exchange of State mineral interests for Federal interests of comparable value.

The 2007 Petition indicated that it did not seek to affect certain other policies or activities including current or future management status of existing roads or trails in Colorado Roadless Areas or the status of existing grazing allotments. Existing Forest roads within Colorado Roadless Areas would continue to be maintained. Current forms of mechanized access would continue for permits, contracts, or other legal instruments authorizing the occupancy and use of NFS lands that were issued prior to the effective date of the Rule.

The 2007 Petition also stated that the Colorado specific rule would provide for the adjustment of Colorado Roadless Area boundaries as applicable when forests are amending or revising their Forest Plans.

Further, the 2007 Petition provided that no new roads would be constructed in Colorado Roadless Areas for exploration, development or transportation purposes relating to oil and gas leases issued after the date of implementation of the Rule.

The 2007 Petition also contained specific provisions concerning the leasing of federal coal reserves under certain lands in the North Fork Valley on the Grand Mesa/ Uncompahgre/ Gunnison National Forests (GMUG). These lands would remain as Colorado Roadless Areas, but would be managed in a way that permits roads and other activities associated with coal exploration and development. Once coal mining is complete, all roads would be reclaimed and restored to natural conditions and all activities within the area would be consistent with Roadless designation.

The 2007 Petition did not address inventoried roadless acres in national forests and grasslands outside of Colorado. The 2007 Petition did not address travel management or wilderness recommendations.

Possible Alternatives to the Proposed Action

Possible alternatives to the promulgation of a rule pursuant to the 2007 Petition to be considered in the Draft Environmental Impact Statement (DEIS) include:

- Roadless management direction as set forth in the 2001 Roadless Rule.
- Roadless management direction as set forth in current Land and Resource Management Plans.

Additional alternatives may arise from public comments or new information.

Cooperating Agencies

The State of Colorado will participate as a cooperating agency in the preparation of the DEIS.

The State has requested that the Department of Natural Resources and the Division of Wildlife be provided cooperating agency status through a Memorandum of Understanding (MOU) with the Forest Service to assure participation in the evaluation of proposed activities in Colorado Roadless Areas associated with Federal coal reserves under certain lands in the North Fork Valley on the Grand Mesa/ Uncompahgre/Gunnison National Forests (GMUG) and lands removed

from the roadless inventory associated with ski areas.

Responsible Official

The Responsible Official for the rulemaking is the Secretary, USDA, or his designee.

Nature of Decision To Be Made

The Responsible Official, with concurrence of the State of Colorado, will select a management strategy to address the management of roadless areas on National Forest System Lands within the State of Colorado.

Scoping Process

As part of its scoping process, the Forest Service solicits public comment on the nature and scope of the environmental, social, and economic issues related to the rulemaking that should be analyzed in depth in the Draft Environmental Impact Statement. Comments collected during promulgation of the 2001 Roadless Rule and the extensive public involvement process used by the State and Task Force to craft their petition will be heavily relied upon. The nature and scope of the analysis for the Draft Environmental Impact Statement will focus on the land management direction sought in the petition, and the alternatives to it.

Because of the extensive amount of public comment that has already been received on the issue of protecting roadless areas in Colorado, no public meetings are planned for this 60-day scoping effort. However, public meetings will be held after the Draft Environmental Impact Statement and proposed rule have been released, and the public has had a chance to take a careful look at the State site-specific proposed rule, alternatives, and effects.

Comment Requested

Reviewers should provide their comments during the comment period. Timely comments will enable the agency to analyze and respond to them at one time and to use them in the preparation of the Environmental Impact Statement, thus avoiding undue delay in the decision making process. The submission of specific and substantive comments usually results in more effective use of public input and often results in better decisions. As a reminder, reviewers have an obligation to ''structure their participation in the National Environmental Policy Act process so that it is meaningful and alerts the agency to the reviewer's position and contentions.'' *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 552 (1978). Dept. of Transportation* v. *Public Citizen, 541 U.S. 752, 764 (2004).*

Estimated Dates

The draft environmental impact statement is expected May, 2008, and the final environmental impact statement is expected December, 2008.

Dated: December 18, 2007.

Gloria Manning,

Associate Deputy Chief, NFS.

[FR Doc. E7–24894 Filed 12–21–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Roadless Area Conservation National Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Roadless Area Conservation National Advisory Committee will meet in Washington, DC. The purpose of the meeting is to discuss the proposed rule for the management of roadless areas on National Forest System lands in the State of Idaho and to discuss other related roadless area matters.

DATES: The meeting will be held January 16 to January 17, 2008, from 9 a.m. to 5 p.m each day.

ADDRESSES: The meeting will be held at the Forest Service, Sidney R.Yates Building, 201 14th Street, SW., Washington, DC. Written comments concerning this meeting should be addressed to Forest Service, U.S. Department of Agriculture, EMC, Jessica Call, 201 14th Street, SW., Mailstop 1104, Washington, DC 20024. Comments may also be sent via e-mail to *jessicacall@fs.fed.us*, or via facsimile to 202–205–1012. 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 Forest Service, Sidney R.Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to 202–205–1056 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jessica Call, Roadless Area Conservation National Advisory Committee (RACNAC) Coordinator, at *jessicacall@fs.fed.us* or 202–205–1056.

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 and interested parties are invited to attend; building security requires you to provide your name to Jessica Call, RACNAC Coordinator by January 11, 2008. You will need photo identification to enter the building.

While meeting discussion is limited to Forest Service staff and Committee members, the public will be allowed to offer written and oral comments for the Committee's consideration. Attendees wishing to comment orally will be allotted a specific amount of time to speak during a public comment period at the end of the first day's agenda. To offer oral comment, please contact the RACNAC Coordinator at 202–205–1056.

Dated: December 17, 2007.

Gloria Manning,

Associate Deputy Chief, NFS.

[FR Doc. E7–24893 Filed 12–21–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service, an agency delivering the United States Department of Agriculture's (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development and/or Agency, invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 25, 2008.

FOR FURTHER INFORMATION CONTACT: Michele L. Brooks, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5174 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078, FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires

that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that the Agency is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 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: Michele L. Brooks, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Room 5174, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Public Television Station Digital Transition Grant Program.

OMB Control Number: 0572–0134.

Type of Request: Extension of a currently approved information collection.

Abstract: As part of the nation's evolution to digital television, the Federal Communications Commission had ordered all television broadcasters to initiate the broadcast of a digital television signal. Public television stations rely largely on community financial support to operate. In many rural areas the cost of the transition to digital broadcasting may exceed community resources. Since rural communities depend on public television stations for services ranging from educational course content in their schools to local news, weather, and agricultural reports, any disruption of public television broadcasting would be detrimental.

Initiating a digital broadcast requires the installation of a new antenna, transmitter or translator, and new digital program management facilities consisting of processing and storage systems. Public television stations use a combination of transmitters and translators to serve the rural public. If the public television station is to perform program origination functions, as most do, digital cameras, editing and mastering systems are required. A new studio-to-tower site communications link may be required to transport the digital broadcast signal to each transmitter and translator. The capability to broadcast some programming in a high definition television format is inherent in the digital television standard, and this can require additional facilities at the studio. These are the new components of the digital transition.

In designing the national competition for the distribution of these grant funds, priority is given to public television stations serving the areas that would be most unable to fund the digital transition without a grant. The largest sources of funding for public television stations are public membership and business contributions. In rural areas, lower population density reduces the field of membership, and rural areas have fewer businesses per capita than urban and suburban areas. Therefore, rurality is a primary predictor of the need for grant funding for a public television station's digital transition. In addition, some rural areas have per capita income levels that are lower than the national average, and public television stations covering these areas in particular are likely to have difficulty funding the digital transition. As a result, the consideration of the per capita income of a public television station's coverage area is a secondary predictor of the need for grant funding. Finally, some public television stations may face special difficulty accomplishing the transition, and a third scoring factor for station hardship will account for conditions that make these public television stations less likely to accomplish the digital transition without a grant.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 21 hours per response.

Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.12.

Estimated Total Annual Burden on Respondents: 1,168 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853. FAX: (202) 720–4120.

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: December 18, 2007.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. E7–24936 Filed 12–21–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Special American Business Internship Training (SABIT) Program: Applications and Questionnaires.

OMB Control Number: 0625–0225.

Form Number(s): ITA–4143P–5.

Type of Request: Regular submission.

Burden Hours: 5,875.

Number of Respondents: 2,250

Average Hours Per Response: Application—3 hours; Feedback form—1 hour; and End-of-Internship form—2 hours.

Needs and Uses: The participant applications and feedback (exit) surveys are needed to enable SABIT to find the most qualified people for the training programs and to track the success of the program as regards trade to between the United States and the countries of Eurasia. The information also aids in the improvement of content and administration of the programs.

Affected Public: Foreign nationals residing in Eurasia and U.S. company employees.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Fax number (202) 395–7285 or via the Internet at *David_Rostker@omb.eop.gov.*

Dated: December 18, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–24883 Filed 12–21–07; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Awareness Study.

OMB Approval Number: None.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 1,192.

Number of Respondents: 3,096.

Average Hours Per Response: Focus groups, 2 hours; web-based surveys, 20 minutes.

Needs and Uses: Through the recently signed America COMPETES Act (''America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Act''), NOAA is charged with developing and promoting education and outreach activities at all levels for the purpose of heightening the public's current understanding of issues related to atmospheric science, the Earth's environment, and protecting life and property.

NOAA proposes to collect information to assess the general public's understanding and awareness of NOAA programs and services, especially as it relates to the collection and dissemination of scientific, operational, and climate data. The immediate collection of information would allow NOAA to implement a tailored approach to programmatic priorities for outreach and communications as effectively as possible. This would improve service for NOAA users and provide the public with warnings and forecasts that save lives and property and better disseminate products/services to aid in emergency preparedness.

To conduct this evaluation, NOAA has contracted with Harmonics International to conduct 3,000 online surveys and 96 two-hour interviews in a three phase research project among the following target audiences: The American public, key NOAA stakeholders, and other organizations with similar missions. These statistically valid research methodologies will provide NOAA with a complete and accurate assessment of current awareness, perceptions, emotions, and attitudes pertaining to NOAA, its programs, services, and operational data dissemination methods.

Affected Public: Individuals or households.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Fax number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: December 18, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–24884 Filed 12–21–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request: Annual Report from Foreign-Trade Zones

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before February 25, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher J. Kemp, (202) 482–0862, *christopher_kemp@ita.doc.gov*, fax number (202) 482–0002.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Foreign-Trade Zone Annual Report is the vehicle by which Foreign-Trade Zone grantees report annually to the Foreign-Trade Zones Board, pursuant to the requirements of the Foreign Trade Zones Act (19 U.S.C. 81a–81u). The annual reports submitted by grantees are the only complete source of compiled information on FTZ's. The data and information contained in the reports relates to international trade activity in FTZ's. The reports are used by the Congress and the Department to determine the economic effect of the FTZ program. The reports are also used by the FTZ Board and other trade policy officials to determine whether zone activity is consistent with U.S. international trade policy, and whether it is in the public interest. The public uses the information regarding activities carried on in FTZ's to evaluate their effect on industry sectors. The information contained in annual reports also helps zone grantees in their marketing efforts.

II. Method of Collection

The Foreign-Trade Zone Annual Report is collected from zone grantees in paper format. The Foreign-Trade Zones Board is in the process of evaluating possible optional Web-based alternatives to the paper collection method.

III. Data

OMB Control Number: 0625–0109.

Form Number: ITA 359P.

Type of Review: Regular submission.

Affected Public: State, local, or tribal government; not-for-profit institutions.

Estimated Number of Respondents: 163.

Estimated Time Per Response: 38–211 hours (depending on size and structure of foreign-trade zones).

Estimated Total Annual Burden Hours: 14,594.

Estimated Total Annual Cost to Public: $607,350.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 18, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–24882 Filed 12–21–07; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–912

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

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

DATES: *Effective Date:* December 26, 2007.

FOR FURTHER INFORMATION CONTACT: Contact Laurel LaCivita at (202) 482–4243 or Charles Riggle at(202) 482–0650, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2007, the Department of Commerce (''Department'') published the initiation of the antidumping duty investigation of certain new pneumatic off-the-road tires from the People's Republic of China (''PRC''). *See Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China,* 72 FR 43591 (August 6, 2007) (''*Notice of Initiation*''). The notice of initiation stated that we would make our preliminary determination for this antidumping duty investigation no later than 140 days after the date of issuance of the initiation. Currently, the preliminary determination is due December 17, 2007.

Postponement of Preliminary Determination

On November 15, 2007, the Titan Tire Corporation, a subsidiary of Titan International, Inc. (''Titan''), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (''USW'') (collectively, ''Petitioners''), made a timely request pursuant to 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination. Petitioners requested postponement of the preliminary determination because it will provide the Department additional time to evaluate the questionnaire responses. Petitioners argue that issues have emerged concerning potential PRC government involvement in the export and other commercial activities of certain of certain respondents. Finally, Petitioners argue that if the Department issues supplemental questionnaires to the mandatory respondents and the separate-rates companies, those responses would be due in December, which would not provide the Department or the parties sufficient time for analysis and comment, or permit the Department to issue further supplemental questionnaires prior to the currently scheduled December 17, 2007, preliminary determination.

Under section 733(c)(1)(A) of the Tariff Act of 1930, as amended (''the Act''), if Petitioners make a timely request for a postponement of the preliminary determination, the Department may postpone the preliminary determination under subsection (b)(1) until no later than the 190th day after the initiation of the investigation.

Therefore, for reasons identified by Petitioners, we are postponing the preliminary determination under section 733(c)(1)(A) of the Act by 50 days to February 5, 2008. Pursuant to 735(a) of the Act, the deadline for the final determination will continue to be 75 days after the date of the preliminary determination, or if extended, up to 135 days after the date of publication of the preliminary determination in the **Federal Register**.

This notice is issued and published pursuant to sections 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 29, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. 07–5968 Filed 12–21–07; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–801]

Solid Urea From the Russian Federation: Preliminary Results and Extension of Time Limit for Final Results of the Antidumping Duty New-Shipper Review

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

DATES: *Effective Date:* December 26, 2007.

SUMMARY: The Department of Commerce (the Department) is conducting a new-shipper review of the antidumping duty order on solid urea from the Russian Federation manufactured and exported by MCC EuroChem (EuroChem). The period of review (POR) is July 1, 2006, through December 31, 2006. We preliminarily determine that, during the POR, EuroChem did not sell the subject merchandise at less than normal value.

We invite interested parties to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0410 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1987, the Department published the antidumping duty order on solid urea from the Union of Soviet Socialist Republics. See *Antidumping Duty Order; Urea From the Union of Soviet Socialist Republics,* 52 FR 26367 (July 14, 1987). Following the break-up of the Soviet Union, the antidumpng duty order on solid urea from the Soviet Union was transferred to the individual members of the Commonwealth of Independent States. See *Solid Urea from the Union of Soviet Socialist Republics; Transfer of the AD Order on Solid Urea*

from the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment, 57 FR 28828 (June 29, 1992). The rate established in the less-than-fair-value investigation for the Soviet Union was applied to each new independent state, including The Russian Federation.

On January 25, 2007, in accordance with 19 CFR 351.214(c), the Department received a timely request from EuroChem for a new-shipper review of the antidumping duty order on solid urea from The Russian Federation. On February 27, 2007, the Department found that the request for review with respect to EuroChem met all of the regulatory requirements set forth in 19 CFR 351.214(b) and initiated an antidumping duty new-shipper review covering the period July 1, 2006, through December 31, 2006. See *Solid Urea from Russia: Notice of Initiation of Antidumping Duty New-shipper Review,* 72 FR 9930 (March 6, 2007).

On August 24, 2007, the Department published an extension of the time period for issuing the preliminary results of the new-shipper review by an additional 113 days to December 17, 2007, in accordance with section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(I)(2). See *Solid Urea From Russia: Extension of time Limit for Preliminary Results of Antidumping Duty New-Shipper Review,* 72 FR 48617 (August 24, 2007).

On September 27, 2007, the petitioner argued that the Department has the authority to rescind the new-shipper review and the sale under the concurrent administrative review.[1] The petitioner urged the Department to exercise this authority because of the novelty and complexity of the issues before the Department 17, 2007, we issued a decision memorandum in which we determined not to rescind the new-shipper review.

Scope of the Order

The merchandise under review is solid aurea, a high-nitrogen content fertilizer which is produced by reacting ammonia with carbon dioxide. The product is currently classified under the Harmonized Tariff Schedules of the United States (HTSUS) item number 3102.10.00.00. Previously such merchandise was classified under item number 480.3000 of the Tariff Schedules of the United States. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Bona Fide Analysis

Consistent with our practice, we analyzed whether the single U.S. transaction reported by EuroChem during the POR was a *bona fide* sale. Among the factors we examined were the price of the U.S. sale and the nature of EuroChem's reported U.S. customer. Based on our analysis, we preliminarily determine that EuroChem's sale constitutes a *bona fide* transaction. For our complete analysis, see the memorandum from Thomas Schauer to the File entitled ''Analysis of EuroChem's *Bona Fides* As A New Shipper'' dated December 17, 2007, on file in room B–09 of the main Department of Commerce building.

Qualification for New-Shipper Review

On February 16, 2007, the Ad Hoc Committee of Domestic Nitrogen Producers (the petitioner) alleged that EuroChem was not entitled to a new-shipper review and requested that the Department rescind this review. On February 26, 2007, we received comments from EuroChem on this allegation, as well as reply comments from the petitioner on February 27, 2007.

The petitioners contend that the antidumping statue requires that a ''new shipper'' demonstrate that neither it nor its affiliates shipped during the period of investigation (POI). The petitioner asserts that EuroChem's affiliates, namely the plants producing solid urea which it owns, exported solid urea to the United States during the POI. The petitioner bases its assertion on its claim that both plants were among the urea producers included in the Soviet-wide entity that the Department examined in the less-than-fair-value investigation. The petitioner contends further that the change in ownership of the plants and The Russian Federation's transition to a market economy do not entitle EuroChem to a new-shipper review. Citing *Solid Urea from the Russian Federation; Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 70 FR 24528 (May 10, 2005) (*Expedited Sunset Review*), and accompanying Issues and Decision Memorandum at pages 8–10, the petitioner argues that neither privitization nor other changes in ownership result in the removal of a producer of subject merchandise from being subject to an existing order unless that company was found to be a successor to an already revoked or excluded company.

While it is true that the physical plants now owned and operated by EuroChem were in existence and produced solid urea during the POI, the question before us is whether EuroChem as an entity qualifies for a new-shipper review. The Department's position in the *Expedited Sunset Review* to which the petitioner cites was not in response to determining whether a party could qualify as a new shipper. Rather, the Department addressed the following argument in the

Expedited Sunset Review:

> {T}he extraordinary facts involved in this sunset review—the fact the country (the Soviet Union) and entity (Soyuzpromexport) involved in the original investigation and order no longer exist, the changes that have occurred in Russia and the fact that the margins were based on a methodology that no longer applies to Russia—means that there has never been a valid determination of dumping against existing producers of solid urea from Russia and necessitates that the Department refrain from relying on margins derived from the original investigation and consider other information in its sunset review. Such information, respondent interested parties argue, demonstrates that dumping is not likely to continue or recur if the order on solid urea from Russian were revoked.

Id.

Thus, the position to which the petitioner cites had to do with whether the margins the Department found in the less-than-fair value investigation are likely to continue. The Department stated that ''{a}ntidumping duty determinations are country-wide'' and that the ''order on solid urea from the Soviet Union covered all subject merchandise exported from the Soviet Union to be United States and applied to all producers of solid urea in the Soviet Union.'' *Id.* This would be true regardless of whether the production facilities existed at the time of the POI. Thus, we did not speak to the issue we are considering in this review.

In order to ascertain whether EuroChem qualifies for a new-shipper review, we must ascertain whether it is the same entity, or a successor thereof, as existed during the POI. In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in the following: (1) Management; (2) production facilities; (3) supplier relationships; (4) customer base. See, *e.g., Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Orange Juice From Brazil*, 72 FR 1798, 51799 (September 11, 2007) (unchanged in final, 72 FR 59512 (October 22, 207)).

[1] We have initiated a concurrent administrative review which covers the same entry as is covered by this new-shipper review. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 72 FR 48613 (August 24, 2007).

While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, generally the Department will consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *Id.* Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor. *Id.* By inference, then, if the evidence happens to demonstrate that the new company does not operate as the same business entity as the former company, the Department will treat the new company as a different entity than its predecessor.

As a preliminary matter, the ownership of the production facilities in question has changed completely since the POI. During the POI, the plants were wholly owned and operated by the Soviet government. See EuroChem's questionnaire response dated May 8, 2007, at pages 154 and 169. As of 2001, the Russian government divested itself of all interest in either plant. See EuroChem's supplemental response dated July 11, 2007, in answer to question 3 under Appendix V (page numbers not provided in submission). EuroChem, a privately owned entity, began to acquire ownership interest in these plants in 2002. See EuroChem's questionnaire response dated May 8, 2007, at pages 154 and 169.

With respect to management, the top management of the two plants has changed completely since the POI. See EuroChem's questionnaire response dated May 8, 2007, at pages 116–7. In addition, the production facilities have undergone extensive modernization since the POI, including significant upgrades undertaken by EuroChem. See EuroChem's questionnaire response dated May 8, 2007, at pages 153–4, 168, and Confidential Exhibit 16.

With respect to suppliers and customers, EuroChem reported that the plants did not keep records that would permit a comparison of the supplier relationships and customer base that existed during the POI (1986) and the present because, under Russian law, the maximum period for archiving such documents is five years. See EuroChem's supplemental response dated September 24, 2007, in answer to questions 1 and 2 under ''Suppliers and Distributors'' (page numbers not provided in submission).

Although we do not have usable information regarding the supplier relationships or the customer base, we find that the ownership and management of the production facilities at issue have changed completely since the POI. Moreover, there have been significant upgrades to the plants since the POI. As a result of these facts, we preliminarily determine that EuroChem is not the successor-in-interest to the Soviet entity we examined in the less-than-fair-value investigation. Accordingly, we preliminarily determine that, based on the facts on the record of this review, EuroChem and its plants are entitled to a new-shipper review.

Comparisons to Normal Value

To determine whether EuroChem's sale of solid urea from The Russian Federation was made in the United States at less than normal value, we compared that export price to the normal value, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

When making this comparison in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of the Order'' section of this notice, above, that were in the ordinary course of trade for purposes of determining an appropriate product comparison to the U.S. sale. Because we did not find sales of identical merchandise in the home market made in the ordinary course of trade, we compared the U.S. sale to those home-market sales of the most similar merchandise that were most contemporaneous with the U.S. sale in accordance with 19 CFR 351.414(e). Pursuant to section 777A(d)(2) of the Act, we compared the export price of the single U.S. transaction to the weighted-average price of sales of the foreign like product for the calendar month that corresponds most closely to the calendar month of the individual export sale.

Product Comparisons

In accordance with section 771(16) of the Act, we compared products produced by EuroChem and sold in the U.S. and home markets on the basis of the comparison product which was closest in terms of the physical characteristics to the product sold in the United States. These characteristics, in the order of importance, are for, grade, nitrogen content, size, urea-formaldehyde content, other additive/conditioning agent, and biuret content.

Export Price

We used the export price for EuroChem's U.S. sale in accordance with section 772(a) of the Act because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and the use of our constructed export-price methodology was not otherwise warranted based on the facts of the record. We based export price on the packed price to the first unaffiliated purchaser in the United States. We made deductions from the starting price for foreign inland-freight expenses, foreign brokerage and handling expenses, ocean-freight expenses, U.S. customs duties, and U.S. brokerage and handling expenses in accordance with section 772(c)(2)(A) of the Act.

Regarding the U.S. date of sale, EuroChem argued that we should use the contract date as the date of sale for its U.S. sale. The Department's regulations at 19 CFR 351.401(i) state that the Department will normally use the date of invoice as the date of sale, unless a different date better reflects the date on which the material terms of sale are established. We have analyzed the data on the record and preliminarily find that the material terms of the sale were set at the contract date, given that the terms did not change prior to invoicing. Further, because this is the first time that the Department is conducting a review of EuroChem, there is no prior evidence on the record that the terms of sale were changeable after the contract date. Therefore, in accordance with our practice, we preliminarily find that the appropriate U.S. date of sale is the contract date. See *Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results and Partial Recession of Antidumping Duty Administrative Review*, 71 FR 26455, 26458 (May 5, 2006) (unchanged in final, 71 FR 65082 (November 7, 2006)).

Normal Value

A. Home-Market Viability and Selection of Comparison Market

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (*i.e.,* the aggregate volume of home-market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of EuroChem's home-market sales of the foreign like product to the volume of its U.S. sale of subject merchandise, in accordance with section 773(a)(1)(c) of the Act. Based on this comparison, we determined that EuroChem had a viable

home market during the POR. Consequently, we based normal value on home-market sales to unaffiliated purchasers made in the usual quantities in the ordinary course of trade.

B. Cost of Production

Pursuant to section 773(b)(2)(A)(I) of the Act, there were reasonable grounds to believe or suspect that EuroChem made home-market sales at prices below its cost of production (COP) during the POR based on information contained in the cost allegation filed properly by the petitioner. As a result, the Department initiated an investigation to determine whether EuroChem made home-market sales during the POR at prices below its COP. See the Memorandum from Thomas Schauer and Michael Harrison entitled, ''The Petitioner's Allegation of Sales Below the Cost of Production for EuroChem'' dated August 27, 2007 (EuroChem Cost-Allegation Memo).

In its June 5, 2007, cost allegation, the petitioner alleged that EuroChem's reported costs cannot be used to determine whether EuroChem made sales in the home market below its cost of production because natural gas is an important raw-material input into solid urea and prices in the Russian natural gas market are distorted. In the EuroChem Cost-Allegation Memo, we found that ''the evidence on the record indicates that the Russian natural gas sector is still, as a whole, in the early stages or reform and is a sector where prices may be based neither on market principles nor on long-term cost recovery'' and, ''{b}ecause of these potential market distortions in the gas segment, further scrutiny of EuroChem's gas costs is warranted.'' See EuroChem Cost-Allegation Memo at 9.

On September 19, 2007, we sent a letter to interested parties soliciting comments on whether and how to adjust EuroChem's natural-gas costs. On November 5, 2007, we received comments form the government of The Russian Federation and on November 7, 2007, we received comments from the petitioner and from EuroChem. We received rebuttal comments from EuroChem on November 19, 2007, and from the petitioner on December 7, 2007.

We continue to consider the comments made by interested parties, some of which came in as recently as December 7, 2007. Due to the complexity of this issue, we are still in the process of analyzing all of the data and arguments and, thus, we have not had an opportunity to perform the cost test for these preliminary results. Because we did not perform the cost test and because we found contemporaneous home-market matches of merchandise identical to the U.S. sale, we did not use EuroChem's cost-of-production or constructed-value (CV) information in calculating the margin for these preliminary results of new-shipper review.

Before we issue the final results of this new-shipper review, we will issue a decision memorandum with respect to the issue of natural gas. At that point, we will perform the cost test on EuroChem's home-market sales and, if appropriate, recalculate EuroChem's margin. We will also incorporate the CV, if necessary, into our margin recalculation. We will then disclose our calculations to interested parties and we will provide all interested parties with adequate time to comment on this issue.

C. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as export price. The normal-value level of trade is that of the starting-price sales in the comparison market or, when normal value is based on constructed value, that of the sales from which we derive selling expenses, general and administrative expenses, and profit. See 19 CFR 351.412(C)(1)(iii). For export price, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to the unaffiliated U.S. customer. See 19 CFR 351.412(c)(1)(i).

To determine whether normal-value sales are at a different level of trade than export-price sales, we examine stages in the market process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

EuroChem claimed that is sold solid urea at a single level of trade in its home market. Specifically, EuroChem performed the same selling process and functions for all of its home-market sales. After analyzing the data on the record with respect to these functions, we find that EuroChem made all home-market sales at a single marketing stage (*i.e.,* one level for trade) in the home market. In addition, because EuroChem only reported one U.S. sale during the POR, we find that there is a single marketing stage (*i.e.,* one level of trade) in the U.S. market. Furthermore, because EuroChem performed different levels of personnel training/exchange, distributor/dealer training, order input/processing, direct sales, personnel and sales/marketing support for home-market sales than for the U.S. sale, we find that EuroChem's U.S. sale was made at a different level of trade than its home-market sales. See, *e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732 (November 19, 1997), and *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews and Intent to Rescind Review in Part,* 72 FR 31271, 31276 (June 6, 2007) (unchanged in final, 72 FR 58053 (October 12, 2007)).

Although the level of trade of EuroChem's home-market sales is different than the level of trade of its U.S. sale, we are unable to make a determination that there is a pattern of price differences between the levels of trade because there is only one level of trade in the home market. Furthermore, because there is no home-market level of trade which corresponds to the U.S. level of trade, we are unable to quantify a level-of-trade adjustment. Accordingly, we are unable to make a level-of-trade adjustment. See, *e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews.* 62 FR 2081, 2106 (January 15, 1997).

D. Calculation of Normal Value

We based normal value on the starting prices to home-market customers. Pursuant to section 773(a)(6)(B)(ii) of the Act, we deducted inland-freight expenses EuroChem incurred on its home-market sales. Pursuant to section 773(a)(6)(C)(iii) of the Act, we made circumstance-of-sale adjustments for imputed credit expenses. Pursuant to section 773(a)(6) of the Act, we deducted home-market packing costs and added U.S. packing costs. Because we calculated normal value using sales of similar merchandise, we also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Verifications

We conducted a sales verfication of EuroChem from October 22, 2007, through October 24, 2007. We have made changes, as appropriate, to EuroChem's data to reflect our verification findings. See the sales verification report dated November 13, 2007, and the computer programs attached to the preliminary results analysis memorandum dated December 17, 2007, for the specific changes we made. In addition, we intend to conduct a verfication of EuroChem's cost submission after we issue these preliminary results.

Preliminary Results of Review

As a result of this review, we preliminarily determine that a dumping margin of 0.00 percent exists for EuroChem for the period July 1, 2006, through December 31, 2006.

Extension of Time Limit for Final Results of the New-Shipper Review

Section 751(a)(2)(B)(iv) of the Act requires the Department to issue the final results of a new-shipper review of an antidumping duty order within 90 days after the date the preliminary determination is issued. The Act provides further that, if the case is extraordinarily complicated, the Department may extend the 90-day period to 150 days.

We determine that this new-shipper review is extraordinarily complicated and that it is not possible to complete the final results within 90 days of issuance of these preliminary results. Specifically, we find that the issues associated with whether and how to adjust EuroChem's natural-gas costs are extraordinarily complicated.

Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), we are extending the time period for issuing the final results of this review by 60 days to May 15, 2008.

Public Comment

We will disclose the documents resulting from our analysis to parties in this review within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. Because we have not yet made a determination with respect to the treatment of costs for natural gas, we will notify interested parties of the schedule for filing case briefs and rebuttal briefs after we issue the decision memorandum, which will include an explanation of our decision, a cost calculation, sales-below-cost test, and margin recalculation.

We intend to issue the final results of this new-shipper review, including the results of our analysis of issues raised in the written comments, within 150 days after the date on which the preliminary results are issued. See 19 CFR 351.214(I)(1).

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue assessment instructions for EuroChem directly to CBP 15 days after the date of publication of the final results of this new-shipper review.

Because we found no margin for the U.S. sale subject to this new-shipper review, we preliminarily intend to instruct CBP to liquidate the entry without regard to antidumping duties. If we calculate a margin for the U.S. sale subject to this review for final results of review, because we have entered the value of EuroChem's U.S. sale, we will calculate an importer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sale to the total entered value of the sale pursuant to 19 CFR 351.212(b)(1).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification applies to entries of subject merchandise during the POR produced by EuroChem where EuroChem did not know that its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash-Deposit Requirements

The following cash-deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new-shipper review, as provided by section 751(a)(2)(C) of the Act: (1) The cash-deposit rate for EuroChem (*i.e.,* for subject merchandise both manufactured and exported by EuroChem) will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash-deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be 64.93 percent, the all-others rate established in the LTFV investigation. See *Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value,* 52 FR 19557 (May 26, 1987). These cash-deposit rates, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act and 19 CFR 351.214.

Dated: December 17, 2007.

David M. Spooner,

Assistant Secretary, for Import Administration.

[FR Doc. 07–6155 Filed 12–21–07; 8:45 am]

BILLING CODE 3510-D5-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE57

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries in the Bering Sea, Aleutian Islands and Gulf of Alaska

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

ACTION: Notice; intent to prepare an environmental impact statement; request for written comments.

SUMMARY: NMFS, in consultation with the North Pacific Fishery Management Council (Council), announces its intent to prepare a Supplemental Environmental Impact Statement (SEIS) on revisions to Steller sea lion protection measures, in accordance with the National Environmental Policy Act of 1969 (NEPA). The proposed action is to revise the Steller sea lion protection measures for the Bering Sea and Aleutian Islands (BSAI) and the Gulf of Alaska (GOA) groundfish fisheries. The scope of the SEIS will be to determine the impacts to the human environment resulting from modifications to the existing protection measures. NMFS will accept written comments from the public to determine the issues of concern and the appropriate range of management alternatives to be addressed in the SEIS.

DATES: Written comments must be received by April 21, 2008.

ADDRESSES: Written comments on issues and alternatives for the SEIS should be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by

- E-mail: *SSL-SEISM@noaa.gov*. Include in the subject line the following document identifier: SSL SEIS. E-mail comments, with or without attachments, are limited to 5 megabytes;
- Mail: P.O. Box 21668, Juneau, AK 99802;
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK; or
- Fax: 907–586–7557.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, (907) 586–7228 or *gretchen.harrington@noaa.gov*.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the United States has exclusive fishery management authority over all living marine resources found within the exclusive economic zone (EEZ). The management of these marine resources, with the exception of certain marine mammals and birds, is vested in the Secretary of Commerce (Secretary). The Council has the responsibility to prepare fishery management plans for those marine resources off Alaska requiring conservation and management. Management of the Federal groundfish fishery located off Alaska in the EEZ is carried out under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). These FMPs, their amendments, and implementing regulations (found at 50 CFR part 679) are developed in accordance with the requirements of the Magnuson-Stevens Act and other applicable Federal laws and executive orders, notably NEPA and the Endangered Species Act (ESA).

The Council is considering revising the Steller sea lion protection measures for the groundfish fisheries based on new information available regarding the potential interactions between Steller sea lions and groundfish fisheries. NMFS and the Council have determined that the preparation of an SEIS may be required for this action because revisions to the groundfish fishery regulations to protect Steller sea lions may result in significant impacts on the human environment not previously analyzed in the Final SEIS for Steller Sea Lion Protection Measures (November 2001). Thus, NMFS, in consultation with the Council, is initiating scoping for an SEIS in the event that an SEIS is needed.

NMFS is seeking information from the public through the SEIS scoping process on the range of alternatives to be analyzed; and on the environmental, social, and economic issues to be considered in the analysis. Written comments generated during this scoping process will be shared with the Council and incorporated into the SEIS.

The SEIS would be integrated with the related ESA documents that have been or are being prepared to address Steller sea lion issues to avoid redundancy, while providing a decision-making document that analyzes the potential impacts of the proposed action and its alternatives on the human environment. Related ESA documents (biological assessments, biological opinions, and a draft recovery plan) and background information are available on the NMFS Alaska Region website at *http://stellersealions.noaa.gov/*.

The SEIS on revisions to Steller sea lion protection measures will supplement the Steller Sea Lion Protection Measures Final SEIS (November 2001), which is available on the NMFS Alaska Region website at *http://www.fakr.noaa.gov/sustainablefisheries/seis/sslpm/default.htm*.

The preferred alternative for Steller sea lions protection measures in the 2001 SEIS was the area and fishery specific approach, which allowed for different protection measures specific to the type of fishery in the Aleutian Islands, Bering Sea, and Gulf of Alaska. NMFS implemented the current protection measures in 2003 (68 FR 204, January 2, 2003). This approach was a precautionary response to concerns about Steller sea lions and was intended to reduce the economic impact of the protection measures on participants in the groundfish fisheries. The protection measures in the preferred alternative were determined to neither jeopardize the continued existence of Steller sea lions nor adversely modify their designated critical habitat. Further, this approach met the Magnuson-Stevens Act mandates, especially with regards to safety at sea, minimizing bycatch, minimizing impacts to fishing communities, and attaining optimum yield.

Steller sea lion protection measures for the groundfish fishery currently include (1) global harvest controls for Steller sea lion prey species (pollock, Pacific cod, and Atka mackerel); (2) spatial harvest controls specific to prey species, gear type, and proximity to rookery, haulout, or forage areas to limit prey species removal in an area; (3) temporal harvest controls for pollock, Pacific cod, and Atka mackerel, including seasonal apportionments to limit prey species removal during certain times of the year; and (4) a vessel monitoring system requirement for all vessels (except vessels using jig gear) fishing for pollock, Pacific cod, or Atka mackerel.

Proposed Action

The proposed action is to revise the Steller sea lion protection measures for the Bering Sea and Aleutian Islands and Gulf of Alaska groundfish fisheries based on new information available regarding the potential interactions between Steller sea lions and groundfish fisheries. The purpose of the proposed action is to maintain adequate protection for Steller sea lions to avoid jeopardy of extinction and destruction or adverse modification of designated critical habitat under the ESA, while minimizing to the extent practicable the impacts to the fishing industry and coastal communities that result from complying with the protection measures. The revisions are necessary to ensure the best scientific information available is used to: (1) ensure the fisheries are not likely to result in jeopardy of extinction and destruction or adverse modification of designated critical habitat; (2) alleviate any unnecessary restrictions for the fleet to improve efficiency and ensure economic viability for the industry; and (3)

minimize potential adverse economic impacts on coastal communities.

Alternatives

The SEIS will evaluate a range of alternative management measures for the Bering Sea and Aleutian Islands and Gulf of Alaska groundfish fisheries. The Council's Steller Sea Lion Mitigation Committee (SSLMC) is reviewing the latest scientific information regarding Steller sea lions and potential groundfish fisheries interactions and developing alternative Steller sea lion protection measures. The SSLMC has collected proposals from the public for changes to the Steller sea lion protection measures and is scheduled to evaluate and prioritize these proposals for Council consideration in June 2008. After Council consideration, the Council may recommend management measures to the Secretary for evaluation and implementation. Information regarding the SSLMC and the proposal evaluation process is available from the Alaska Region website at *http://www.fakr.noaa.gov/sustainablefisheries/sslmc/default.htm*.

Alternatives may include those identified here, and those developed through public scoping, Council, and SSLMC processes. Possible alternatives could include one, or a combination of, the following:

1.No action – retain the current suite of Steller sea lion protection measures as are currently in place for fishing year 2008.

2.Change the current spatial management of the Atka mackerel, pollock, or Pacific cod fisheries in the GOA and/or BSAI by opening or closing areas near Steller sea lion rookeries, haulouts, and/or foraging areas.

3.Change the current temporal management of harvests in the GOA and/or BSAI Atka mackerel, pollock, and/or Pacific cod fisheries.

4.Change other management measures that currently apply to the GOA and/or BSAI Atka mackerel, pollock, and/or Pacific cod fisheries, such as changes to gear restrictions or the Aleutian Islands platoon management system for Atka mackerel.

Preliminary Identification of Issues

A principal objective of the scoping and public input process is to identify potentially significant impacts to the human environment that should be analyzed in the SEIS. The analysis will evaluate the effects of the alternatives for all resources, species, and issues that may directly or indirectly interact with Steller sea lions and the groundfish fisheries within the action area.

The primary issues to be analyzed are the effects of the proposed action and its alternatives on Steller sea lions and their designated critical habitat. Additional impacts to the following components of the biological and physical environment may be evaluated: (1) other species listed under the ESA and their critical habitat, and other species protected under the Marine Mammal Protection Act; (2) target and non-target fish stocks, including forage fish and prohibited species; (3) seabirds; and (4) the ecosystem.

Social and economic impacts also would be considered in terms of the effects that changes in the Steller sea lion protection measures would have on the following groups of individuals: (1) those who participate in harvesting the groundfish resources; (2) those who process and market groundfish and groundfish products; (3) those who consume groundfish products; (4) those who rely on living marine resources in the management area, particularly Steller sea lions, for subsistence needs; (5) those who benefit from non-consumptive uses of Steller sea lions and other living marine resources; and (6) fishing communities.

Public Involvement

Scoping is an early and open process for determining the scope of issues to be addressed in an Environmental Impact Statement and for identifying the significant issues related to the proposed action. A principal objective of the scoping and public involvement process is to identify a reasonable range of management alternatives that, with adequate analysis, will delineate critical issues and provide a clear basis for distinguishing between those alternatives and for selecting a preferred alternative. Through this notice, NMFS is notifying the public that an SEIS and decision-making process for this proposed action has been initiated so that interested or affected people may participate and contribute to the final decision.

NMFS is seeking written public comments on the scope of issues, including potential impacts, and alternatives that should be considered in revising the Steller sea lion protection measures. Written comments will be accepted at the address above (see **ADDRESSES**). Written comments should be as specific as possible to be the most helpful. Written comments received during the scoping process, including the names and addresses of those submitting them, will be considered part of the public record on this proposal and will be available for public inspection.

The public is invited to participate in the SSLMC meetings and Council meetings where the latest scientific information regarding Steller sea lions and fisheries interactions are being reviewed and alternative protection measures are being developed and evaluated. Future Council and SSLMC meetings will be noticed in the **Federal Register** and on the website at *http://www.fakr.noaa.gov/*. Additional information regarding regulatory, ESA, and NEPA activities for Steller sea lions is available at the website at *http://stellersealions.noaa.gov*. Please visit this website for more information on this SEIS and for guidance on submitting effective public comments.

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

Dated: December 18, 2007.

James P. Burgess,

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

[FR Doc. E7–24951 Filed 12–21–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD93

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries in the Bering Sea and Aleutian Islands

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

ACTION: Notice; request for written comments.

SUMMARY: NMFS, in consultation with the North Pacific Fishery Management Council, announces its intent to prepare an Environmental Impact Statement (EIS) on salmon bycatch reduction measures in the Bering Sea and Aleutian Islands management area (BSAI), in accordance with the National Environmental Policy Act of 1969. The proposed action would replace the current Chinook and Chum Salmon Savings Areas in the BSAI with new regulatory closures, salmon bycatch limits, or a combination of both. These management measures could incorporate current or new bycatch reduction methods. The scope of the EIS will be to determine the impacts to the human environment resulting from these salmon bycatch reduction measures. NMFS will accept written comments from the public to determine the issues of concern and the

appropriate range of management alternatives for analysis in the EIS.

DATES: Written comments must be received by February 15, 2008.

ADDRESSES: Written comments on issues and alternatives for the EIS should be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by

- E-mail: *0648–AW25–SalmonBycatchEIS@noaa.gov*. Include in the subject line the following document identifier: Salmon Bycatch EIS. E-mail comments, with or without attachments, are limited to 5 megabytes;
- Mail: P.O. Box 21668, Juneau, AK 99802;
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK; or
- Fax: 907–586–7557.

All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, (907) 586–7228 or *jason.anderson@noaa.gov*.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the United States has exclusive fishery management authority over all living marine resources found within the exclusive economic zone. The management of these marine resources, with the exception of certain marine mammals and birds, is vested in the Secretary of Commerce. The North Pacific Fishery Management Council (Council) has the responsibility to prepare fishery management plans for those marine resources off Alaska requiring conservation and management. Management of the Federal groundfish fishery in the BSAI is carried out under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The FMP, its amendments, and implementing regulations (found at 50 CFR part 679) are developed in accordance with the requirements of the Magnuson-Stevens Act and other applicable Federal laws and executive orders, notably the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA).

The Council is considering replacing the current Chinook and Chum Salmon Savings Areas in the BSAI with new regulatory closures, salmon bycatch limits, or a combination of both. These management measures could incorporate current or new bycatch reduction methods. NMFS and the Council have determined the preparation of an Environmental Impact Statement (EIS) may be required for this action because some important aspects of the impacts of salmon bycatch in the BSAI on the salmon stocks of origin and users of these salmon are uncertain or unknown and may result in significant impacts on the human environment not previously analyzed. Thus, NMFS and the Council are initiating scoping for an EIS in the event that an EIS is needed.

NMFS and the Council are seeking information from the public through the EIS scoping process on the range of alternatives to be analyzed, and on the environmental, social, and economic issues to be considered in the analysis. Written comments generated during this scoping process will be provided to the Council and incorporated into the EIS.

Chinook and Chum Salmon Savings Areas

To address Chinook salmon bycatch concerns, the Council adopted several management measures designed to reduce overall Chinook salmon bycatch in the BSAI trawl fisheries. In 1995, the Council adopted, and NMFS approved, Amendment 21b to the FMP. Based on historic information on salmon bycatch, Amendment 21b established a Chinook Salmon Savings Area (60 FR 61215, November 29, 1995). Under Amendment 21b, the Chinook Salmon Savings Area closed when the bycatch of Chinook salmon in BSAI trawl fisheries reached 48,000 fish. Amendment 58 to the FMP revised the Chinook Salmon Savings Area measures (65 FR 60587, October 12, 2000). Amendment 58 reduced the Chinook salmon bycatch limit from 48,000 fish to 29,000 fish, mandated year-round accounting of Chinook bycatch in the directed pollock fishery, revised the boundaries of the Chinook Salmon Savings Area closure, and implemented new closure dates.

The Council also adopted a time-area closure designed to reduce overall non-Chinook salmon bycatch in the BSAI trawl fisheries. In 1995, Amendment 35 to the FMP established the Chum Salmon Savings Area (60 FR 34904, July 5, 1995). This area is closed to all trawling from August 1 through August 31 of each year. Additionally, if 42,000 non-Chinook salmon are caught in the Catcher Vessel Operational Area during the period August 15 through October 14, the area remains closed for the remainder of the calendar year.

The Chinook and Chum Salmon Savings Areas were adopted based on historic observed salmon bycatch rates and were designed to avoid high spatial and temporal levels of salmon bycatch. From 1990 through 2001, the BSAI salmon bycatch average was 37,819 Chinook and 69,332 non-Chinook annually. Recently, however, salmon bycatch numbers have increased substantially. The numbers of Chinook and non-Chinook salmon bycatch in the BSAI groundfish fisheries from 2003 through December 7, 2007, are shown in the following table:

Year	Number of Chinook	Number of non-Chinook
2003	55,422	197,287
2004	63,188	457,817
2005	74,967	711,938
2006	87,730	326,445
2007 through December 7	130,246	97,904

NMFS and the Council are concerned with this level of salmon bycatch because of the potential negative impacts on salmon stocks in general, and on western Alaska salmon stocks in particular.

Recent Salmon Bycatch Management Measures

To address these increasing salmon bycatch amounts, the Council adopted, and NMFS implemented on October 29, 2007, Amendment 84 to the FMP (72 FR 61070, October 29, 2007). Spatial and temporal comparisons of non-community development quota (CDQ) vessels fishing outside of the salmon savings areas with CDQ vessels fishing inside of the salmon savings areas indicated that salmon bycatch rates were much higher outside of the savings areas, and closures were displacing vessels to higher bycatch areas. Amendment 84 exempts non-CDQ and CDQ pollock vessels participating in a salmon bycatch reduction inter-cooperative agreement (ICA) from closures of the Chinook and Chum Salmon Savings Areas in the BSAI. Additionally, vessels participating in trawl fisheries for species other than pollock are exempt from Chum Salmon Savings Area Closures

The purpose of the salmon bycatch avoidance ICA is to use real-time salmon bycatch information to avoid areas of high non-Chinook and Chinook

salmon bycatch rates. The ICA utilizes a system of base bycatch rates, assignment of vessels to tiers based on bycatch rates relative to the base rate, a system of closures for vessels in certain tiers, and monitoring and enforcement through private contractual arrangements.

Amendment 84 was adopted by the Council because it was perceived to be relatively simple to implement, with the potential to reduce salmon bycatch rates. Meanwhile, the Council also initiated analysis on this proposed action to further address salmon bycatch issues, and provide additional management measures should ICA members choose not to participate in the ICA in the future.

Proposed Action

The proposed action is to replace the current Chinook and Chum Salmon Savings Areas in the BSAI with new regulatory closures, salmon bycatch limits, or a combination of both based on current salmon bycatch information. These management measures could incorporate current or new bycatch reduction methods. The purpose of the proposed action is to minimize non-Chinook and Chinook salmon bycatch to the extent practicable. The proposed action is necessary to maintain a healthy marine ecosystem, ensure long-term conservation and abundance of salmon, provide maximum benefit to fishermen and communities that depend on these resources, and comply with the Magnuson-Stevens Act.

Alternative Management Measures

NMFS, in consultation with the Council, will evaluate a range of alternative management measures for the BSAI groundfish fisheries. The Council's Salmon Bycatch Workgroup is reviewing the latest scientific information regarding the impacts of salmon interactions with groundfish fisheries and developing alternative salmon bycatch reduction measures. Alternatives may be formulated based on the elements identified here, and those developed through the public scoping and Council processes. Possible alternatives could be constructed from one or more of the following measures:

1.Prohibited Species Catch (PSC) limit Establish a PSC limit for non-Chinook and Chinook salmon bycatch in the CDQ and non-CDQ pollock fisheries. PSC limits could be allocated among pollock fishery sectors or fishery cooperatives. Fishery participants would be required to stop fishing when a PSC limit is reached.

2.Fixed closures Establish one or more salmon savings area closures based on current salmon bycatch information. These closures would occur on an annual or seasonal basis regardless of salmon bycatch amounts at the time of the closure.

3.Triggered closures Establish one or more salmon savings area closures based on current salmon bycatch information. These closures would occur based on criteria evaluated in the EIS. Criteria could include a threshold salmon bycatch number or rate.

4.PSC accounting period Revise the current PSC accounting period to coincide with the salmon biological year to provide additional protections to salmon in the BSAI. Accounting would begin annually in the ''B'' season, and continue through the following ''A'' season.

Additionally, the Council may incorporate the current or a new version of the salmon bycatch reduction ICA into one or more alternatives.

Preliminary Identification of Issues

A principal objective of the scoping and public input process is to identify potentially significant impacts to the human environment that should be analyzed in the EIS. The analysis will evaluate the impacts of the alternatives for all resources, species, and issues that may be directly or indirectly affected by salmon bycatch in the BSAI pollock fisheries. The following components of the biological and physical environment may be evaluated: (1) target and non-target fish stocks, forage fish, and prohibited species, including salmon species; (2) species listed under the ESA and their critical habitat; (3) seabirds; (4) marine mammals; and (5) the ecosystem.

Social and economic impacts also would be considered in terms of the effects that changes to salmon bycatch management measures would have on the following groups of individuals: (1) those who participate in harvesting pollock; (2) those who process and market pollock and pollock products; (3) those who consume pollock products; (4) those who rely on living marine resources caught in the management area, particularly salmon; (5) those who benefit from commercial, subsistence, and recreational salmon fisheries; and (6) fishing communities.

Public Involvement

Scoping is an early and open process for determining the scope of issues to be addressed in an EIS and for identifying the significant issues related to the proposed action. A principal objective of the scoping and public involvement process is to identify a range of reasonable of management alternatives that, with adequate analysis, will delineate critical issues and provide a clear basis for distinguishing among those alternatives and selecting a preferred alternative. Through this notice, NMFS is notifying the public that an EIS and decision-making process for this proposed action have been initiated so that interested or affected people may participate and contribute to the final decision.

NMFS is seeking written public comments on the scope of issues, including potential impacts, and alternatives that should be considered in revising salmon bycatch management measures. Written comments will be accepted at the address above (see **ADDRESSES**). Written comments should be as specific as possible to be the most helpful. Written comments received during the scoping process, including the names and addresses of those submitting them, will be considered part of the public record of this proposal and will be available for public inspection.

The public is invited to participate and provide input at Council and Salmon Bycatch Workgroup meetings where the latest scientific information regarding salmon bycatch in the BSAI groundfish fisheries is reviewed and alternative salmon bycatch reduction measures are developed and evaluated. Notice of future Council and Salmon Bycatch Workgroup meetings will be published in the **Federal Register** and on the Internet at *http://www.fakr.gov*. Please visit this website for more information on this EIS and for guidance on submitting effective public comments.

Dated: December 18, 2007.

James P. Burgess,

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

[FR Doc. E7–24953 Filed 12–21–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD61

Marine Mammals; File No. 10080

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Dr. Kathryn A. Ono, Department of Biological Sciences, University of New England, Biddeford, ME, has been

issued a permit to conduct research on marine mammals.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

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; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Jaclyn Daly, (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 26, 2007, notice was published in the **Federal Register** (72 FR 60822) that a request for a permit to conduct scientific research on harbor seals (*Phoca vitulina concolor*) and grey seals (*Halichoerus grypus*) in the Gulf of Maine had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permit authorizes capture, sampling, and marking activities related to: (1) assessing the state of harbor seal population health; (2) determining movement and diving patterns of weaned harbor seal pups; (3) comparing disease loads, survival, and behavior of rehabilitated harbor seal pups with wild pups; and (4) assessing behavior, population dynamics, and health of grey seals. The permit expires on December 31, 2012.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: December 18, 2007.

Patrick Opay,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–24942 Filed 12–21–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE37

Marine Mammals; File No. 473–1700

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 Janice Straley, University of Alaska, 1332 Seward Ave, Sitka, Alaska 99835, has requested an amendment to scientific research Permit No. 473–1700–01.

DATES: Written, telefaxed, or e-mail comments must be received on or before January 25, 2008.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

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; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

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. 473–1700.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 473–1700–01 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. 473–1700 was issued to the applicant on June 20, 2004 (69 FR 44514). A minor amendment (No. 473–1700–01) was issued on December 4, 2005 and remains valid through June 30, 2009. The current permit authorizes the permit holder to conduct research on humpback whales (*Megaptera novaeangliae*), gray whales (*Eschrichtius robustus*) , minke whales (*Balaenoptera acustorostrata*), sperm whales (*Physeter macrocephalus*) , fin whales (*Balaenoptera physalus*), and killer whales (*Orcinus orca*). Incidental harassment of harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*P. dalli*), Atlantic white-sided dolphins (*Lagenorhynchus obliquidens*), Steller sea lions (*Eumetopias jubatus*), harbor seals (*Phoca vitulina*) and Northern fur seals (*Callorhinus ursinus*) is also authorized. Research methods include photo-identification, passive acoustic recording, behavioral observations, suction-cup tagging (including Crittercam), and biopsy. The permit holder requests authorization to increase the number of sperm whales that may be suction-cup tagged to 50 (an increase of 25 animals), attach satellite tags to 20 sperm whales and 20 killer whales, and modify operations of fishing vessel methods which could result in the taking of 40 sperm whales by Level B harassment. All research would be conducted in the Gulf of Alaska. The permit amendment would be effective until the permit expiration date.

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.

Dated: December 18, 2007.

Patrick Opay,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–24944 Filed 12–21–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE58

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Fishery Management Action Team (FMAT) will hold a public meeting regarding Amendment 15 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

DATES: The meeting will be held on Wednesday, January 16, 2008, from 10 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Four Points Sheraton, 407 Squire Rd., Revere, MA 02151; telephone: (781) 284–7200).

Council address: Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904, telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904, telephone: (302) 674–2331, extension 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to initiate work on Amendment 15 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. Amendment 15 will be a comprehensive document which addresses issues relevant to the commercial and recreational fisheries for summer flounder, scup, and black sea bass.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan at the Mid-Atlantic Council Office, (302) 674–2331 extension 18, at least 5 days prior to the meeting date.

Dated: December 19, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–24916 Filed 12–21–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE59

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Management Team (HMSMT) will hold a work session, which is open to the public.

DATES: The work session will be from 8:30 a.m. to 5 p.m. on Tuesday, January 15 and from 8:30 a.m. until the business of the meeting is finished on Wednesday, January 16, 2008.

ADDRESSES: The work session will be held at the National Marine Fisheries Service, Southwest Fisheries Science Center, Large Conference Room, 8604 La Jolla Shores Drive, La Jolla, CA 92037, telephone: (858) 546–7000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The HMSMT will discuss two major topics: (1) developing a range of alternatives for a limited entry program to allow a shallow-set longline fishery, which targets swordfish, to be prosecuted on the high seas from the West Coast and (2) a draft report on Council recommendations in response to overfishing of Eastern Pacific yellowfin tuna, as required by Section 304(i) of the Magnuson-Stevens Fishery Conservation and Management Act. The Council is scheduled to take up both these issues at their March 2008, meeting in Sacramento, CA. Time permitting, the HMSMT may discuss additional items to include PacFIN/RecFIN data issues and preparation of the Highly Migratory Species Stock Assessment Fishery Evaluation (SAFE) report.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

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

Dated: December 19, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–24917 Filed 12–21–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE60

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings of the South Atlantic Fishery Management Limited Access Privilege (LAP) Program Exploratory Workgroup.

SUMMARY: The South Atlantic Fishery Management Council will hold meetings of its LAP Program Exploratory Workgroup in North Charleston, SC.

DATES: The meetings will take place January 15–16, 2008 and February 12–13, 2008. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Hilton Garden Inn, Charleston Airport, 5265 International Boulevard, North Charleston, SC 29418; telephone: (877) 782–9444 or (843) 308–9330; fax: (843) 308–9331.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Members of the LAP Program Exploratory

Workgroup will meet from 1 p.m. - 6 p.m. on January 15, 2008, and from 8:30 a.m. - 3 p.m. on January 16, 2008. The Workgroup will also meet from 1 p.m. - 6 p.m. on February 12, 2008 and from 8:30 a.m. until 3 p.m. on February 13, 2008.

These meetings are being convened to address issues relevant to the Council's consideration of implementing a Limited Access Privilege Program (LAP) for the commercial snapper grouper fishery in the South Atlantic region.

Items for discussion by the Workgroup January 15–16, 2008 include: (1) Analyses completed on initial allocation methodologies for several economically important species and (2) Preferred ownership caps for various species.

Items for discussion by the Workgroup February 12–13, 2008 include: (1) Sector allocation programs, cooperatives, ownership of LAPs by regional fishery associations and communities and 2) Finalization of the LAP Workgroup Working Document.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meetings.

Note: The times and sequence specified in this agenda are subject to change.

Dated: December 19, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–24918 Filed 12–21–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2007–0049]

Change in Publication Format of Patent and Trademark Office Notices and Changes in Display of Patent and Trademark Office Notices in Electronic Official Gazette

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is discontinuing the separate weekly publication in paper form of Patent and Trademark Office notices, and the annual publication in paper form of the consolidated listing of notices pertaining to USPTO practices and procedures. In addition, notice is hereby given that the weekly electronic Official Gazette of the United States Patent and Trademark Office—Patents (the eOG:P) will display the Patent and Trademark Office notices with volume/page numbers, and the last weekly eOG:P of each calendar year will include the annual publication of consolidated notices pertaining to USPTO practices and procedures.

DATES: The last separate weekly publication in paper form of Patent and Trademark Office notices will be December 25, 2007. The last annual publication in paper form of the consolidated listing of notices pertaining to USPTO practices and procedures will be December 25, 2007. Volume/page numbers will be displayed in the notices in the weekly eOG:P beginning January 1, 2008. The first annual publication in the eOG:P of the consolidated notices pertaining to USPTO practices and procedures will be December 30, 2008.

FOR FURTHER INFORMATION CONTACT: Electronic Information Products Division at (571) 272–5600 or e-mail at *IPD@uspto.gov*.

SUPPLEMENTARY INFORMATION: In accordance with 35 U.S.C. 10 and the Presidential E-Government Initiatives to utilize technology in ways that will improve how Federal Agencies serve the public, the USPTO will begin electronically publishing the weekly Patent and Trademark Office notices in 2008. The separate weekly publication in paper form of the Patent and Trademark Office notices will be discontinued after December 25, 2007.

In the period since the last paper version of the weekly Official Gazette on September 24, 2002, the separate weekly paper publication of the notices has shown the notices with volume/page numbers while the display of the notices in the weekly eOG:P has not. Beginning January 1, 2008, the volume/page numbers that have been shown in the separate weekly paper publication of the notices will be carried forward to the notices as they are displayed in the weekly eOG:P. The presence of volume/page numbers in the notices as they are displayed in the weekly eOG:P will enhance the readability of the electronic notices and will facilitate citations of them.

As with the weekly Patent and Trademark Office notices, the annual publication of the consolidated listing of notices pertaining to USPTO practices and procedures will occur electronically, not in paper, beginning in 2008. The last listing of consolidated notices in paper form will be published December 25, 2007. Thereafter the last weekly eOG:P of each calendar year will include the consolidated listing of notices pertaining to USPTO practices and procedures. The first such annual publication of the consolidated notices in the eOG:P will take place December 30, 2008.

The eOG:P displaying the weekly notices with volume/page numbers will be available on the USPTO Web site at *http://www.uspto.gov/web/patents/patog* each Tuesday beginning January 1, 2008.

The first annual publication in the eOG:P of the consolidated notices pertaining to USPTO practices and procedures will be available on the USPTO Web site at *http://www.uspto.gov/web/patents/patog* on December 30, 2008.

The eOG:P on CD–ROM with the above-described changes will be published and distributed close to issue date. The eOG:P CD-ROM product with the above-described changes will be available from the Information Products Division, Chief Information Officer, United States Patent and Trademark Office, as an annual subscription for $460 per year and as single copies for $20 per issue.

Dated: December 18, 2007.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E7–24961 Filed 12–21–07; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 08–29]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–29 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 18, 2007

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–01–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

DEC 06 2007
In reply refer to:
I-07/014886-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-29, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $220 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-29

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Saudi Arabia

(ii) **Total Estimated Value:**

Major Defense Equipment*	$100 million
Other	$120 million
TOTAL	$220 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 40 AN/AAQ-33 SNIPER Advanced Targeting Pods, aircraft installation and checkout, digital data recorders/cartridges, pylons, spare and repair parts, support equipment, publications and technical documentation, contractor engineering and technical support, and other related elements of program support.

(iv) **Military Department:** Air Force (QAJ)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.

(viii) **Date Report Delivered to Congress:** DEC 06 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia – AN/AAQ-22 SNIPER Targeting Pods

The Government of Saudi Arabia has requested a possible sale of 40 AN/AAQ-33 SNIPER Advanced Targeting Pods, aircraft installation and checkout, digital data recorders/cartridges, pylons, spare and repair parts, support equipment, publications and technical documentation, contractor engineering and technical support, and other related elements of program support. The estimated cost is $220 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale will improve the operational capability of the Royal Saudi Air Force (RSAF) by upgrading the long-range target detection and identification systems of the Saudi F-15s. The proposed sale will provide an upgraded capability of the RSAF's existing 1980's LANTIRN pod technology. This sale also will increase the RSAF AWACS sustainability and interoperability with the U.S. Air Force, the Gulf Cooperation Council countries, and other coalition air forces.

The proposed sale of a modern F-15 SNIPER targeting system will greatly improve the RSAF's capabilities against offensive air force capabilities. Saudi Arabia will have no difficulty absorbing this improved system capability into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Missiles and Fire Control Company in Dallas, Texas. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of approximately four contractor representatives to Saudi Arabia to provide technical assistance to integrate the aircraft into the operational units. Also, this program will require U.S government and contractor personnel to conduct annual, one-week Program Management Reviews in Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-29

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act (U)

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The SNIPER (AN/AAQ-33) targeting system is Unclassified, but contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. The software object code is classified Confidential. Sensitive elements include the forward-looking infrared (FLIR) sensors, Laser Pulse Interval Modulation (PIM) and doublet coding, the AGM-65 Missile Boresight Correlator (MBC), and Electronic counter-countermeasures features that increase capability in a jamming environment. The SNIPER system to be released will not include the Lockheed Martin (LM) proprietary XR image processing algorithm (no extended range capability).

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 07–6150 Filed 12–21–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 08–13]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–13 with attached transmittal, and policy justification.

Dated: December 18, 2007.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

DEC 10 2007
In reply refer to:
I-07/011657-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-13, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to United Kingdom for defense articles and services estimated to cost $122 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-13

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** United Kingdom

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$122 million
TOTAL	$122 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** follow-on support for the Tomahawk Weapon System (TWS) including missile modifications, maintenance, spare and repair parts, system and test equipment, engineering support, communications equipment, technical assistance, personnel training/equipment, and other related elements of logistics support.

(iv) **Military Department:** Navy (GDP)

(v) **Prior Related Cases, if any:**
FMS Case AGS - $158M - 16Oct95
FMS Case AHA - $ 32M - 26Aug99
FMS Case AHE - $ 39M - 14Dec01
FMS Case GWY- $ 5M - 20Jan00
FMS Case GYU - $ 29M - 13Jun02
FMS Case LIS - $ 50M - 18Jun04
FMS Case GXQ -$ 91M - 27Nov00
FMS Case AHJ - $109M - 26Mar04

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** None.

(viii) **Date Report Delivered to Congress:** DEC 10 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Kingdom – Follow-On Support for Tomahawk Weapon System (TWS)

The United Kingdom has requested a possible sale of follow-on support for the Tomahawk Weapon System (TWS) to include missile modifications, maintenance, spare and repair parts, system and test equipment, engineering support, communications equipment, technical assistance, personnel training/equipment, and other related elements of logistics support. The estimated cost is $122 million.

The United Kingdom requests these capabilities to provide for the defense of deployed troops, regional security, and interoperability with the United States. This program will increase the United Kingdom's ability to contribute to future NATO, coalition, and anti-terrorism operations. The United Kingdom is a major political and economic power in NATO and Europe and a critical ally of the United States. British troops are deployed in support of operations in Iraq and Afghanistan, where U.S. assets currently employ these TWS capabilities.

The proposed sale of this support and equipment and support will not affect the basic military balance in the region. The United Kingdom will have no difficulty absorbing this follow-on support into its armed forces.

The principal contractor will be Raytheon Missile Systems, Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives to the United Kingdom.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 07–6151 Filed 12–21–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–28]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–28 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 18, 2007.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

DEC 06 2007
In reply refer to:
I-07/014830-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-28, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $400 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations

Transmittal No. 08-28

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Saudi Arabia

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 90 million
Other	$310 million
TOTAL	$400 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** five sets of Airborne Early Warning (AEW) and Command, Control and Communications (C^3) mission equipment/Radar System Improvement Program (RSIP) Group B kits for subsequent installation and checkout in five E-3 Airborne Warning and Control Systems (AWACS). In addition, this proposed sale will include spare and repair parts, support equipment, publications and technical documentation, contractor engineering and technical support, and other related elements of program support.

(iv) **Military Department:** Air Force (YAF)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.

(viii) **Date Report Delivered to Congress:** DEC 06 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia – Mission Equipment for AWACS Aircraft

The Government of Saudi Arabia has requested a possible sale of five sets of Airborne Early Warning (AEW) and Command, Control and Communications (C^3) mission equipment/Radar System Improvement Program (RSIP) Group B kits for subsequent installation and checkout in five E-3 Airborne Warning and Control Systems (AWACS). In addition, this proposed sale will include spare and repair parts, support equipment, publications and technical documentation, contractor engineering and technical support, and other related elements of program support. The estimated cost is $400 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale will enhance training opportunities; increase the RSAF's AWACS operational capability, sustainability, and interoperability with the USAF, Gulf Cooperation Council, and other coalition air forces. Saudi Arabia needs this additional mission equipment to continue its development of an extended Airborne Early Warning (AEW) capability, as well as enhanced command, control and communications (C^3). Saudi Arabia will have no difficulty absorbing the upgraded AWACS radar capability into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Aerospace Company in Seattle, Washington. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of approximately four contractor representatives to Saudi Arabia to provide technical assistance to integrate the aircraft into the operational units. Also, this program will require U.S. government and contractor personnel to conduct annual, one-week Program Management Reviews in Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-28

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act (U)

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Royal Saudi Air Force AWACS mission suite is Unclassified except as mentioned below. Sensitive elements include the radar, identification, data analysis group, navigation equipment, and communications equipment. Classified elements include U.S. Government provided secure communications equipment, mission system software, operations and maintenance publications, and training. These elements are classified up to and including Secret to protect vulnerabilities, design parameters, system related data, and similar critical information. The source code is sensitive, but will not be released to Saudi Arabia.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 07–6177 Filed 12–21–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; Elemental Wireless, LLC

AGENCY: Department of the Navy, DoD.
ACTION: Notice.

SUMMARY: The Department of the Navy herby gives notice of its intent to grant to Elemental Wireless, LLC., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-Owned inventions described in U.S. Patent Numbers 5,528,612 entitled ''Laser with Multiple Gain Elements'', issue date June 18, 1996// U.S. Patent Number 5,530,711 entitled ''Low threshold diode-pumped tunable dye laser'', issue date June 25, 1996// U.S. Patent Number 5,541,946 entitled ''Laser with multiple gain elements pumped by a single excitation source'', issue date July 30, 1996// U.S. Patent Number 6,759,303 entitled ''Complementary vertical bipolar junction transistors fabricated of silicon-on-sapphire utilizing wide base PNP transistors'', issue date July 6, 2004.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than January 10, 2008.

ADDRESSES: Written objections are to be filed with the Office of Research and Technology Applications, Space and Naval Warfare Systems Center, Code 73120, 53560 Hull St., San Diego, CA 92152–5048.

FOR FURTHER INFORMATION CONTACT: Stephen H. Lieberman, Ph.D., Head, Office of Research and Technology Applications, Space and Naval Warfare Systems Center, Code 73120, 53560 Hull St., San Diego, CA 92152–5048, telephone 619–553–2778, e-mail: *stephen.lieberman@navy.mil.*

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: December 18, 2007.
T.M. Cruz,
Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.
[FR Doc. E7–24921 Filed 12–21–07; 8:45 am]
BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.031S]

Developing Hispanic-Serving Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.
ACTION: Notice of intent to fund down the fiscal year (FY) 2007 slate for the Developing Hispanic-Serving Institutions (HSI) Program.

SUMMARY: The Secretary intends to use the grant slate developed for the HSI Program authorized by Title V of the Higher Education Act of 1965, as amended, in FY 2007 to make new Individual Development grant awards in FY 2008. The Secretary takes this action because a significant number of high-quality applications remain on last year's grant slate. The Administration

has requested $94,914,000 for the HSI program for FY 2008, of which we intend to use an estimated $13,408,000 for new awards. The actual level of funding for the FY 2008 program, if any, depends on final Congressional action. No Cooperative Development grant awards will be made from the FY 2008 appropriation for this program.

The College Cost Reduction and Access Act of 2007 (CCRAA) has provided $100 million for grants to Hispanic-serving institutions for Science, Technology, Engineering, or Mathematics (STEM) and articulation programs in each of the FYs 2008 and 2009. Further information about the criteria and priorities applicable to these awards and the Secretary's plans for conducting the FY 2008 competition under the CCRAA, including workshops, will be forthcoming.

FOR FURTHER INFORMATION CONTACT: Carnisia M. Proctor, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7606 or via Internet: *carnisia.proctor@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you can call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On July 11, 2007, we published a notice in the **Federal Register** (72 FR 37735–37740) inviting applications for new awards under the HSI Program.

We received a large number of high-quality applications and awarded 30 new grants from the slate. However, many applications that were given high scores by peer reviewers did not receive funding in FY 2007.

Based on the anticipated FY 2008 appropriation level, funding is expected for new awards under the HSI program. To conserve funding that would have been required for a peer review of new grant applications and to use those funds instead to support grant activities, we will select grantees in FY 2008 from the FY 2007 slate of applicants. This slate was developed during the FY 2007 competition using the selection criteria, application requirements, priorities, and definitions referenced in the notice inviting applications that was published in the **Federal Register** on July 11, 2007 (72 FR 37735). No changes to the selection criteria, application requirements, and definitions are required by this action.

The CCRAA (Pub. L. 110–84) provided $100 million for additional awards to Hispanic-serving institutions for FYs 2008 and 2009. Further information about the criteria and priorities applicable to these additional awards and the Secretary's plans for conducting the FY 2008 competition under the CCRAA, including workshops, will be forthcoming.

Note: All Individual Development grant applicants that received a peer review score of 96 or above in the FY 2007 HSI Program competition and did not receive funding in the FY 2007 competition for the HSI Program MUST apply for FY 2008 Title III/V eligibility to be eligible to receive a grant for FY 2008. We intend to publish the notice inviting applications for designation as an Eligible Institution under Title III and Title V of the Higher Education Act of 1965, as amended, for FY 2008 in January 2008.

Program Authority: 20 U.S.C. 1101–1101d, 1103–1103g.

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: *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: *www.gpoaccess.gov/nara/index.html.*

Dated: December 19, 2007.

Diane Auer Jones,

Assistant Secretary for Postsecondary Education.

[FR Doc. E7–24945 Filed 12–21–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Models of Exemplary, Effective, and Promising Alcohol or Other Drug Abuse Prevention Programs on College Campuses

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of proposed priority, definitions, requirements, and selection criteria.

SUMMARY: The Assistant Deputy Secretary for Safe and Drug-Free Schools proposes a priority, definitions, requirements, and selection criteria under the Models of Exemplary, Effective, and Promising Alcohol or Other Drug Abuse Prevention Programs on College Campuses grant competition. The Assistant Deputy Secretary may use the priority, definitions, requirements, and selection criteria for competitions in fiscal year (FY) 2008 and later years. The Assistant Deputy Secretary intends to use the priority, definitions, requirements, and selection criteria to identify exemplary, effective, and promising campus-based alcohol or other drug abuse prevention programs and to disseminate information about exemplary and effective programs to other colleges and universities where similar efforts may be adopted.

DATES: We must receive your comments on or before January 25, 2008.

ADDRESSES: Address all comments about the proposed priority, definitions, requirements, and selection criteria to Richard Lucey, Jr., U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E335, Washington, DC 20202–6450. If you prefer to send your comments through the Internet, use the following address: *richard.lucey@ed.gov.*

You must include the phrase ''Models of Exemplary, Effective, and Promising Alcohol or Other Drug Abuse Prevention Programs on College Campuses—Comments on FY 2008 Proposed Priority'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Richard Lucey, Jr. (202) 205–5471 or via Internet: *richard.lucey@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 contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding the proposed priority, definitions, requirements, and selection criteria. To ensure that your comments have maximum effect in developing the notice of final priority, definitions, requirements, and selection criteria, we urge you to identify clearly the specific proposed priority, definitions,

requirements, or selection criterion your comment addresses.

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

During and after the comment period, you may inspect all public comments about the proposed priority, definitions, requirements, and selection criteria in room 3E335, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

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

Proposed Priority, Definitions, Requirements, and Selection Criteria

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

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

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

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

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

Discussion of Proposed Priority

Proposed Priority—Exemplary, Effective, and Promising Alcohol or Other Drug Abuse Prevention Programs on College Campuses

Background

Alcohol and other drug abuse among college students contributes to a number of academic, social, and health-related problems. According to recent findings from the Monitoring the Future National Survey Results on Drug Use, 1975–2006, in 2006, approximately 40 percent of the Nation's college students engaged in heavy drinking (defined as five or more drinks in a row in the past two weeks). In addition, 34 percent of college students used an illicit drug in 2006.

Survey data from the Core Institute, located at Southern Illinois University Carbondale, also illustrate the consequences of student drinking. For example, in 2006, as a result of drinking in the year prior to the survey, more than 32 percent of students reported that they had gotten into an argument or fight; 27 percent drove a car while under the influence; approximately 30 percent missed a class; and almost 16 percent were hurt or injured. Given these statistics, there is a national need to identify exemplary, effective, and promising programs that reduce alcohol and other drug abuse among college students.

Proposed Priority: Under this proposed priority the Department would provide funding to institutions of higher education (IHEs) that have implemented an exemplary, effective, or promising alcohol or other drug abuse prevention program on their campus. In its application, an applicant must:

1. Describe the program that has for at least two full years been implemented on its campus, including the structure and content of the program, the student population that is targeted by the program, and any unique features of the program;
2. Provide a detailed theoretical basis for the program's effectiveness;
3. Provide data to demonstrate the program's impact on the target student population, including evidence of cognitive or behavioral changes, or both, among the target population; and
4. Consent to a site visit to clarify information in the application and verify evaluation data.

Under this program, the Department selects an institution of higher education for recognition as having an exemplary, effective, or promising program based on the recommendation from the two peer reviewers who conduct the site visit. Therefore, note that selection for a site visit does not ensure recognition as an exemplary, effective, or promising program by the Department.

Recognition Types: Contingent upon the quality of data provided by the applicant and the recommendation of site visitors, an applicant may earn one of three levels of recognition.

Level 1 is recognition as an exemplary program. An IHE whose program is designated as exemplary must:

1. Within 30 days of receiving an award, provide to the Department a plan to disseminate information about its program to other IHEs;
2. Upon approval by the Department, implement its dissemination plan; and
3. Enhance and further evaluate the exemplary program during the project period of the grant award.

Level 2 is recognition as an effective program. An IHE whose program is designated as effective must:

1. Within 30 days of receiving an award, provide to the Department a plan to disseminate information about its program to other IHEs;
2. Upon approval by the Department, implement its dissemination plan; and
3. Enhance and further evaluate the effective program during the project period of the grant award.

Level 3 is designation as a promising program. An IHE whose program is recognized as promising must:

1. Within 30 days of receiving an award submit to the Department a plan to enhance and further evaluate its program;
2. Upon approval by the Department, implement its enhancement and evaluation plan; and
3. Within 12 months of award provide to the Department a report detailing the results of its evaluation.

Discussion of Proposed Definitions

Proposed Definitions

Three important terms associated with this competition are not defined in section 4121 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. We propose the following definitions:

1. *Exemplary program* means a program that has a strong theoretical base and demonstrated effectiveness in reducing alcohol or other drug abuse among college students or reducing problems resulting from alcohol or other drug use among college students, using a research design of the highest quality. For the purpose of this grant competition, a research design of the highest quality means an experimental design in which students are randomly assigned to participate in a project being evaluated (treatment group) or not participate in the project (control group). The effect of the project is the difference in outcomes between the treatment and control groups.

If strong, experimentally determined evidence of the effectiveness of a program already exists, and the program was implemented on the applicant's campus with fidelity to the research, then a quasi-experimental evaluation of the program's implementation on the applicant's campus may be an acceptable research design. For the purpose of this grant competition, quasi-experimental designs include several designs that attempt to approximate a random assignment design.

2. *Effective program* means a program that has a strong theoretical base and has been evaluated using either an experimental or quasi-experimental research design, with the evaluation results suggesting effectiveness in reducing alcohol or other drug abuse among college students, reducing problems resulting from alcohol or other drug use among college students, reducing risk factors, enhancing protective factors, or resulting in some combination of those impacts.

3. *Promising program* means a program that has a strong theoretical base and for which evidence has been obtained, using limited research methods, that the program may reduce alcohol or other drug abuse among college students, reduce problems resulting from alcohol or other drug use among college students, reduce risk factors, enhance protective factors, or result in some combination of those impacts. For the purpose of this grant competition, limited research methods are methods that include a pre- and post-treatment measurement of the effects of a treatment on a single subject or group of single subjects.

Discussion of Proposed Requirements

Background

Applicants from prior competitions under this grant program and former grantees under this grant program have suggested that we clarify or modify certain application requirements. These include: Eligible applicants, limitations on eligibility, and funding limits for applicants.

We have carefully considered this input, and propose several new or modified program requirements. First, because the purpose of this grant program is to identify models of exemplary, effective, and promising alcohol or other drug abuse prevention programs on college campuses, we propose to limit the pool of eligible applicants to IHEs that offer an associate or baccalaureate degree, which is consistent with the eligibility restriction under the former Alcohol and Other Drug Prevention Models on College Campuses grant program.

We also propose to establish a limitation on eligibility for IHEs that are recognized for having an exemplary or effective program. Under the former Alcohol and Other Drug Prevention Models on College Campuses Grant Competition published in the **Federal Register** on February 5, 2007 (72 FR 5279), IHEs that received an award were ineligible to apply for another award for a period of five fiscal years. We believe that a five-year prohibition on eligibility may contribute to an unnecessary decrease in the number of quality applications submitted for funding consideration. Therefore, we propose to shorten or eliminate this prohibition, depending on the category of program.

Finally, we propose to limit the amount of funds available to an applicant that is recognized as having an exemplary, effective, or promising program. We believe that the identified maximum amounts are sufficient to cover project-related expenses during the grant period.

Accordingly we propose the following requirements:

Proposed Requirement 1: Eligible Applicants

Only IHEs that offer an associate or baccalaureate degree will be eligible under this program.

Proposed Requirement 2: Limitations on Eligibility

(a) *Exemplary or effective programs.* The length of time an IHE is ineligible for a subsequent award after receiving recognition for an exemplary or effective program is three years.

(b) *Promising programs.* Programs recognized as promising may be eligible for a new award when their current grant is no longer active. A grant is considered active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds. A project that fails to achieve exemplary or effective status after a second designation as a promising program may not reapply for three years after its second project period is no longer active.

Proposed Requirement 3: Funding Limits for Applicants

The maximum amount an applicant may receive for a project recognized as an exemplary or effective program may be no more than $150,000 plus indirect costs, and a project recognized as a promising program may receive no more than $100,000 plus indirect costs.

Discussion of Proposed Selection Criteria

Background

Since the original Alcohol and Other Drug Prevention Models on College Campuses Grant Competition in FY 1999, six additional competitions have been held (FY 2000, 2001, 2004, 2005, 2006, and 2007). Our experience with administering these competitions, including feedback from peer reviewers, applicants, and funded grantees, demonstrates the need to use program-specific selection criteria to better identify applications for funding and recognition as an exemplary, effective, or promising program. We believe these refinements will contribute to our ongoing efforts to improve this grant program.

Proposed Selection Criteria

We propose the following selection criteria for this program:

1. Significance

(a) The potential contribution of the program to the development and advancement of theory, knowledge, and practices in the field of study.

(b) The quality of the applicant's plan to disseminate the program in ways that will enable others to use the information or strategies, including evidence of the program's readiness for replication.

2. Project Design

(a) The extent to which the design of the program reflects up-to-date knowledge from research and effective practices.

(b) The extent to which the plan to enhance the program reflects up-to-date knowledge from research and effective practices.

(c) The extent to which the goals, objectives, and outcomes to be achieved by the enhancement to the program are clearly specified and measurable.

3. Project Evaluation

(a) The extent to which the evaluation data provide evidence of the effectiveness of the program in reducing alcohol or other drug use, or both, reducing problems resulting from alcohol or other drug use, or both, reducing risk factors, enhancing protective factors, or some combination of those impacts.

(b) The extent to which the methods of evaluation used during the implementation of the program will provide guidance about effective strategies suitable for replication or testing in other settings.

(c) The extent to which the methods of evaluation used during the enhancement of the program will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Executive Order 12866

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

The potential costs associated with the notice of proposed priority, definitions, requirements, and selection criteria are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

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

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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

You can also view this document in text at the following site: *http://www.ed.gov/programs/dvpcollege/applicant.html.*

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

(Catalog of Federal Domestic Assistance Number: 84.184N Office of Safe and Drug-Free Schools—Models of Effective and Promising Alcohol and Other Drug Abuse Prevention Programs on College Campuses)

Program Authority: 20 U.S.C. 7131.

Dated: December 19, 2007.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. E7–24954 Filed 12–21–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Notice of Renewal of the Biological and Environmental Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with Title 41 of the Code of Federal Regulations, Section 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Biological and Environmental Research Advisory Committee has been renewed for a two-year period beginning December 14, 2007.

The Committee will provide advice to the Director, Office of Science, on the Biological and Environmental Research Program managed by the Office of Biological and Environmental Research. The Secretary of Energy has determined that renewal of the Biological and Environmental Research Advisory Committee is essential to the conduct of the Department's business and is in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC, on December 14, 2007.

Carol A. Matthews,

Acting Committee Management Officer.

[FR Doc. E7–24958 Filed 12–21–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. 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, January 17, 2008, 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

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:

6 p.m. Call to Order, Introductions, Review of Agenda, and Approval of November Meeting Minutes.

6:10 p.m. Deputy Designated Federal Officer's Comments.

6:30 p.m. Federal Coordinator's Comments.

6:35 p.m. Liaisons' Comments.

6:45 p.m. Committee Reports

- Water Disposition/Water Quality Committee.
- Community Outreach Committee.
- Long Range Strategy/Stewardship Committee.
- Executive Committee.

7 p.m. Public Comments.
7:15 p.m. Administrative Issues
- Recommendations.
- Motions.
- Review of Work Plan.
- Review of Next Agenda.

8 p.m. Final Comments.
8:15 p.m. Adjourn.
Breaks Taken as Appropriate

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 Reinhard Knerr 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: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.org/currentyear.htm.*

Issued at Washington, DC on December 19, 2007.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E7–24964 Filed 12–21–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 14, 2007.

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

Docket Numbers: EC08–15–000.
Applicants: Calpine Corporation, Harbinger Capital Partners Master Fund I, Harbinger Capital Partners Special Situations Fund, L.P.; SPO Partners II, L.P.; San Francisco Partners II, L.P.
Description: Calpine Corporation et al. submit amendment to their joint application submitted on 11/16/07.
Filed Date: 12/11/2007.
Accession Number: 20071212–0136.
Comment Date: 5 p.m. Eastern Time on Friday, December 21, 2007.

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

Docket Numbers: ER98–1643–011.
Applicants: Portland General Electric Company.
Description: Portland General Electric Co submits an amendment to its 10/31/07 filing of Notice of Change in Status pursuant to FERC's Order issued 2/10/05.
Filed Date: 12/07/2007.
Accession Number: 20071211–0106.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: ER99–1435–016.
Applicants: Avista Corporation.
Description: Avista Corp submits a clean version and a blackline version of Substitute Original Sheet 1–21 of their FERC Electric Tariff, Seventh Revised Volume 9.
Filed Date: 12/07/2007.
Accession Number: 20071211–0048.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: ER02–2330–049.
Applicants: New England Power Pool.
Description: ISO New England, Inc submits a motion to discontinue the SMD Quarterly Status Reports.
Filed Date: 12/10/2007.
Accession Number: 20071212–0035.
Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Docket Numbers: ER03–1413–005.
Applicants: Sempra Energy Trading Corp.
Description: Sempra Energy Trading Corp's response to a request for additional information issued by FERC.
Filed Date: 12/07/2007.
Accession Number: 20071211–0105.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: ER04–691–089.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest ISO submits proposed revisions to FERC Electric Tariff, Third Revised Volume No. 1.
Filed Date: 12/05/2007.
Accession Number: 20071207–0097.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: ER06–864–008; ER00–2885–016; ER01–2765–015; ER02–2102–015; ER03–1283–010.
Applicants: Bear Energy LP; Cedar Brakes I LLC; Cedar Brakes II, LLC; Utility Contract Funding LLC.; Vineland Energy LLC.
Description: Bear Energy LP et al. submits a notice of non-material change in status.
Filed Date: 12/10/2007.
Accession Number: 20071212–0058.
Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Docket Numbers: ER07–1388–001.
Applicants: Midwest Independent Transmission System.
Description: Midwest ISO submits the proposed revisions in compliance with FERC's 11/9/07 Order.
Filed Date: 12/10/2007.
Accession Number: 20071212–0034.
Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Docket Numbers: ER07–1417–001.
Applicants: Midwest Independent Transmission System.
Description: Midwest ISO et al. submits proposed revisions to the Congestion Management Process of their Joint Operating Agreement.
Filed Date: 12/07/2007.
Accession Number: 20071210–0035.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: ER07–720–003.
Applicants: New York Independent System Operator, Inc.
Description: New York ISO submits a supplemental compliance filing in response to FERC's 6/5/07 Letter Order.
Filed Date: 12/07/2007.
Accession Number: 20071211–0047.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: ER08–320–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: The Midwest ISO submits an unexecuted Facilities Construction Agreement with Summit Wind, LLC.
Filed Date: 12/10/2007.
Accession Number: 20071212–0033.
Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Docket Numbers: ER08–321–000.
Applicants: New York Independent System Operator, Inc.
Description: New York ISO Attachment III to the Report of Tariff Implementation Issues and request for Limited Tariff Waivers.
Filed Date: 12/10/2007.
Accession Number: 20071212–0039.
Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Docket Numbers: ER08–322–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits a Notice of Cancellation of an Electric Power Supply Agreement with the City of Vermillion, Kansas.
Filed Date: 12/11/2007.
Accession Number: 20071212–0032.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 2, 2008.

Docket Numbers: ER08–323–000.
Applicants: Synergy Power Marketing Inc.
Description: Synergy Power Marketing Inc submits FERC Electric Tariff, Original Volume No. 1.

Filed Date: 12/11/2007.
Accession Number: 20071212–0031.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 2, 2008.

Docket Numbers: ER08–324–000.
Applicants: PPL Electric Utilities Corporation.
Description: PPL Electric Utilities Corp on behalf of Metropolitan Edison Co submits a revised Interconnection Agreement with Metropolitan Edison Co.
Filed Date: 12/11/2007.
Accession Number: 20071213–0007.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 2, 2008.

Docket Numbers: ER08–325–000.
Applicants: Patriot Partnership, LLC.
Description: Patriot Partnership, LLC submits their FERC Electric Rate Schedule.
Filed Date: 12/12/2007.
Accession Number: 20071213–0005.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 2, 2008.

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

Docket Numbers: ES08–9–000.
Applicants: Bicent (California) Malburg LLC.
Description: Bicent (California) Malburg LLC submits an application for approval under section 204 of the Federal Power Act and request for expedited consideration.
Filed Date: 12/07/2007.
Accession Number: 20071211–0054.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: ES08–12–000.
Applicants: Consolidated Edison Co. of New York, Inc.
Description: Request of Consolidated Edison Company of New York, Inc. for Authorization to Acquire Short-Term Debt.
Filed Date: 12/12/2007.
Accession Number: 20071212–5094.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 2, 2008.

Docket Numbers: ES08–13–000.
Applicants: Orange and Rockland Utilities, Inc.
Description: Request of Orange and Rockland Utilities, Inc. for Authorization to Issue Short-Term Debt.
Filed Date: 12/12/2007.
Accession Number: 20071212–5097.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 2, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–14–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest ISO submits proposed revisions to its Open Access Transmission and Energy Markets Tariff related to the concurrently-filed transmission planning principles etc.
Filed Date: 12/07/2007.
Accession Number: 20071213–0039.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–42–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest ISO *et al.* submits proposed revisions to Attachment FF–ATCLLC of their Open Access Transmission and Energy Markets Tariff.
Filed Date: 12/07/2007.
Accession Number: 20071211–0052.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–46–001.
Applicants: South Carolina Electric & Gas Company.
Description: Revised Attachment K to Order No. 890 OATT of South Carolina Electric & Gas Company.
Filed Date: 12/12/2007.
Accession Number: 20071212–5106.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 2, 2008.

Docket Numbers: OA08–49–000.
Applicants: NewCorp Resources Electric Cooperative, Inc.
Description: NewCorp Resources Electric Cooperative, Inc. submits a request for waiver of the requirement to develop and include as Attachment K to its OATT revised provisions etc.
Filed Date: 12/07/2007.
Accession Number: 20071211–0051.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–50–000; OA08–51–000.
Applicants: Duke Energy Carolinas, LLC; Progress Energy Carolinas, Inc.
Description: Duke Energy Carolinas, LLC *et al.* submit a joint compliance filing re Attachment K.
Filed Date: 12/07/2007.
Accession Number: 20071211–0053.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–52–000.
Applicants: New York Independent System Operator, Inc.
Description: NYISO submits revision to Attach. Y of its OATT in compliance with Order No. 890.
Filed Date: 12/07/2007.
Accession Number: 20071207–5111.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–53–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest ISO submits proposed revisions to the Open Access Transmission and Energy Markets Tariff to comply with the transmission planning principles etc.
Filed Date: 12/07/2007.
Accession Number: 20071213–0038.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA08–58–000.
Applicants: ISO New England, Inc.
Description: ISO New England, Inc. *et al.* submits the proposed revisions to Section II of the ISO Tariff in compliance with Order 890.
Filed Date: 12/07/2007.
Accession Number: 20071210–0040.
Comment Date: 5 p.m. Eastern Time on Friday, December 28, 2007.

Docket Numbers: OA07–88–001.
Applicants: Florida Power Corporation, Carolina Power & Light Company.
Description: Carolina Power & Light Co and Florida Power Corp submit an errata to correct its 9/11/07 filing in compliance with Order 890.
Filed Date: 12/10/2007.
Accession Number: 20071212–0036.
Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH08–10–000.
Applicants: LGB Cap Rock LLC.
Description: FERC Form 65 A—Exemption Notification and Notice of Material Change in Facts of LGB Cap Rock.
Filed Date: 12/10/2007.
Accession Number: 20071210–5105.
Comment Date: 5 p.m. Eastern Time on Monday, December 31, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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

Nathaniel J. Davis, Sr.,

Deputy Director.

[FR Doc. E7–24887 Filed 12–21–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 17, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP99–301–189.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits Rate Schedule FTS–1 negotiated rate service agreement and one Rate Schedule FSS negotiated rate service agreement with City of Duluth.
Filed Date: 12/13/2007.
Accession Number: 20071214–0051.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP99–301–190.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits Rate Schedule FSS negotiated rate service agreement with Eagle Partners 1, LP.
Filed Date: 12/13/2007.
Accession Number: 20071214–0048.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP99–301–191.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits Rate Schedule FSS negotiated rate service agreement with Nexen Marketing USA Inc.
Filed Date: 12/13/2007.
Accession Number: 20071214–0049.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP99–301–192.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits amendment to three Rate Schedule FSS negotiated rate agreements with Northern Indiana Public Service Company.
Filed Date: 12/13/2007.
Accession Number: 20071214–0047.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP99–301–193.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits amendment to one Rate Schedule FSS negotiated rate agreement with Northern States Power Company of Minnesota.
Filed Date: 12/13/2007.
Accession Number: 20071214–0046.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP99–301–194.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits FSS negotiated rate service agreement with Southwest Energy LP.
Filed Date: 12/13/2007.
Accession Number: 20071214–0044.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP99–301–195.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits Rate Schedule FSS negotiated rate service agreement with ANR and Wisconsin Electric Power Company.
Filed Date: 12/13/2007.
Accession Number: 20071214–0045.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP99–301–196.
Applicants: ANR Pipeline Company
Description: ANR Pipeline Company submits five copies of one Rate Schedule FSS negotiated rate service agreement.
Filed Date: 12/13/2007.
Accession Number: 20071214–0043.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP99–480–019.
Applicants: Texas Eastern Transmission LP.
Description: Texas Eastern Transmission, LP submits Substitute Original Sheet 117 to FERC Gas Tariff, Seventh Revised Volume 1 to be effective 12/1/07.
Filed Date: 12/13/2007.
Accession Number: 20071214–0085.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP07–433–004.
Applicants: Crossroads Pipeline Company.
Description: Crossroads Pipeline Company submits Second Revised Sheet 359 to FERC Gas Tariff, First Revised Volume 1, effective 6/1/07.
Filed Date: 12/13/2007.
Accession Number: 20071213–0237.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Docket Numbers: RP08–118–000.
Applicants: North Baja Pipeline, LLC.
Description: North Baja Pipeline, LLC submits First Revised Sheet 117 *et al.* to FERC Gas Tariff Original Volume 1.
Filed Date: 12/13/2007.
Accession Number: 20071214–0084.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 26, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E7–24888 Filed 12–21–07; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

December 14, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. Sections 3501—3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 25, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5126, and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* or by U.S. mail to Leslie F. Smith, Federal Communications Commission, Room 1–C216, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information contact Leslie F. Smith via e-mail at *PRA@fcc.gov* or call (202) 418–0217. To view a copy of this information collection request: 3060–0972, submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of the ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about the ICR.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0972.

Title: Multi-Association Group (MAG) Plan Order, Parts 54 and 69 Filing Requirements for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.

Form Number(s): FCC Forms 507, 508, and 509.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; and business or other for-profit.

Number of Respondents and Responses: 1,300 respondents; 9,826 responses.

Estimated Time per Response: 1 hour to 90 hours.

Frequency of Response: On occasion, quarterly, annual, one-time, and three year reporting requirements; recordkeeping; and third party disclosure.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 40,451 hours.

Total Annual Cost: $45,195.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: To administer the Universal Service Interstate Common Line Support (ICLS) mechanism, the Administrator of USAC (Universal Service Administrative Company) must collect projected cost and revenue data and actual cost and revenue data from non-price cap incumbent local exchange carriers and interexchange carriers. In order to implement change to the interstate access tariffs, the Commission must continue to collect certain tariff-related information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–24895 Filed 12–21–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 2007.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Franklin Resources, Inc., San Mateo, California; to retain 24.4 percent of the voting shares of First Chicago Bancorp, and thereby indirectly retain voting shares of First Chicago Bank & Trust, both of Chicago, Illinois.

Board of Governors of the Federal Reserve System, December 19, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–24969 Filed 12–21–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Personalized Healthcare Workgroup Meeting

AGENCY: Announcement of Meeting.

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 11th meeting of the American Health Information Community Personalized Healthcare Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: January 30, 2008, from 1 p.m. to 4 p.m. [Eastern Time].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. Please bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/healthcare/.*

SUPPLEMENTARY INFORMATION: The Workgroup will discuss possible common data standards to incorporate interoperable, clinically useful genetic/genomic information and analytical tools into Electronic Health Records (EHRs) to support clinical decision-making for the clinician and consumer.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/healthcare/phc—instruct.htm.*

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–6132 Filed 12–21–07; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Consumer Empowerment Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 22nd meeting of the American Health Information Community Consumer Empowerment Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: January 29, 2008, from 1 p.m. to 4 p.m. [Eastern].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. Please bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http:///www.hhs.gov/healthit/ahic/consumer/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on how to encourage the widespread adoption of a personal health record that is easy-to-use, portable, longitudinal, affordable, and consumer-centered.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/consumer/ce_instruct.html.*

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–6133 Filed 12–21–07; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Confidentiality, Privacy, and Security Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 16th meeting of the American Health Information Community Confidentiality, Privacy, and Security Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: January 24, 2008, from 1 p.m. to 5 p.m. [Eastern Time].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/confidentiality/.*

SUPPLEMENTARY INFORMATION: The Workgroup Members will continue discussing and evaluating the confidentiality, privacy, and security protections and requirements for participants in electronic health information exchange environments.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/cps_instruct.html.*

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–6134 Filed 12–21–07; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Electronic Health Records Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 21st meeting of the American Health Information Community Electronic Health Records Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: January 22, 2008, from 1 p.m. to 4 p.m. [Eastern].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. Please bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/healthrecords/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on ways to achieve widespread adoption of certified EHRs, minimizing gaps in adoption among providers.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/healthrecords/ehr_instruct.html.*

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–6135 Filed 12–21–07; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Electronic Health Records Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 21st meeting of the American Health Information Community Chronic Care Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: January 17, 2008, from 1 p.m. to 4 p.m., Eastern Time.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. Please bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/chroniccare/*

SUPPLEMENTARY INFORMATION: The Workgroup will hear testimony on ways to use information technology to better coordinate care for patients with chronic conditions and will discuss this information in light of opportunities to better facilitate patient care coordination.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/chrnoccare/cc_instruct.html.*

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–6136 Filed 12–21–07; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Population Health and Clinical Care Connections Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 22nd meeting of the American Health Information Community Population Health and Clinical Care Connections Workgroup in accordance with the Federal Advisory Committee act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: January 3, 2008, from 1 p.m. to 4 p.m. [Eastern Time].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/population/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on how to facilitate the flow of reliable health information among population health and clinical care systems necessary to protect and improve the public's health.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/population/pop_instruct.html.*

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–6157 Filed 12–21–07; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–08–07AW]

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

Experimental and Theoretical Study of Early Detection and Isolation of Influenza—New—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Federal Occupational Safety and Health Act of 1970, section 501, enables NIOSH to carry out research relevant to the health and safety of workers. Some diseases like influenza and Severe Acute Respiratory Syndrome (SARS) can be spread when people produce clouds of droplets (called aerosols) by coughing or sneezing. Aerosol transmission of infectious diseases is of particular interest today because of increased concern over a possible global influenza pandemic. The possible airborne spread of influenza is especially important to health-care workers and emergency responders, who face a much greater risk of exposure than does the general public. However, substantial gaps exist in our understanding of the generation and spread of infectious aerosols containing influenza. This lack of information hampers the ability of health scientists to model and predict the transmission of influenza by airborne particles and to understand whether or not aerosols are likely to be an important route of transmission of influenza during a pandemic.

The purpose of this study is to gain a better understanding of the production and dissemination of aerosols containing the influenza virus. The results of this research will give

scientists and health professionals greater insight into the airborne transmission of influenza and allow them to better assess the potential effectiveness of preventive measures.

The first part of this study will measure the quantity and size distribution of aerosol droplets produced by people with influenza when they cough. To accomplish this, volunteers with influenza-like illness will be asked to provide an oral swab for influenza testing, and then will cough into a spirometer. The aerosol produced by each person will be measured using commercially-available instrumentation. The oral swabs will be processed after the aerosol experiments are completed.

The second part of this study will determine the amount and size of airborne particles containing influenza virus that are present in a hospital emergency department during influenza season. Health care workers will be recruited to wear small aerosol collection devices as they go about their normal duties. The collected samples will then be analyzed for influenza virus. Adult patients in the emergency department with influenza-like illness will be asked to provide an oral swab to test for the flu virus in order to estimate the number of potential sources of viral-laden airborne particles. There will be no costs to study participants. The total estimated annualized burden hours are 35.

TOTAL ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Specific Aim 1: Volunteers with influenza				
Initial participants	Health questionnaire	42	1	5/60
Qualified participants	Consent form	40	1	20/60
Specific Aim 2: Health care workers				
Initial participants	Health questionnaire	32	1	5/60
Qualified participants	Consent form	30	1	20/60
Specific Aim 2: Emergency Department patients				
Participants	Consent form	15	1	20/60

Dated: December 14, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–24929 Filed 12–21–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–08–06BU]

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 Acting Reports Clearance Officer at 404–639–5960 and 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

The Effectiveness of Teen Safe Driving Messages and Creative Elements on Parents and Teens—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Car crashes are the number one killer of teens, accounting for approximately one-third of all deaths within this age group. The National Center for Health Statistics reports that in 2004, a total of 3,620 young drivers were killed and an additional 303,000 were injured in motor vehicle crashes. In order to reduce these preventable deaths and injuries, parental awareness and education about Graduated Driver's Licensing (GDL) laws and the ways that parents can influence their children's safe driving are necessary. In preparation for a national campaign to educate parents about their role in their teens' driver education, it is necessary to determine the most effective messages and channels through which to communicate with parents. Ogilvy Public Relations Worldwide, PerformTech, International Communications Research (ICR) Survey and Fieldwork Network, on behalf of CDC, will conduct two studies to assess the appropriateness and impact of messages and creative materials intended to (a) increase parental involvement in their teen's driving education and experience, and (b) encourage teens to adopt safer driving practices.

The first information collection will be accomplished through focus group testing of campaign messages and materials with representatives from our target audiences, parents and teens, in two cities in the U.S. The findings will provide valuable information regarding parents' and teens' levels of awareness and concern about safe driving; motivators for behavior change, especially GDL compliance; and message/channel preferences. The information collected will be used to develop final creative materials to implement the teen safe driving campaign in pilot cities. The second information collection will be accomplished through pilot city testing, which will evaluate knowledge, attitude and behaviors of intended audiences both pre- and post-communications campaign. The campaign will target parents of newly licensed drivers. It will encourage parents to understand state regulations regarding new drivers, talk with their teens about safe driving practices, and both manage and monitor their teens' driving behavior. Testing

will be conducted through brief telephone surveys intended to assess knowledge, attitudes and behaviors of parents and teens related to safe driving practices, GDL laws, and parental management of new drivers before and after the campaign; with the goal of observing a marked increase in parental management at the time of the post campaign survey.

There is no cost to the respondents other than their time. The total estimated annualized burden hours are 195.

Estimated Annualized Burden Hours:

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)
Parents	Parent Focus Group Screener	70	1	1/60
Teens	Teen Focus Group Screener	35	1	1/60
Parents	Parent Focus Group Questions	20	1	2
Teens	Teen Focus Group Questions	10	1	2
Parents	Pre/Post Intervention Survey Screener	900	1	1/60
Parents	Pre/Post Intervention Survey	400	1	15/60

Dated: December 18, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers of Disease Control and Prevention.

[FR Doc. E7–24932 Filed 12–21–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–08–06BN]

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

Conduct a Chronic Fatigue Syndrome Registry Pilot Test (Bibb County, Georgia)—New—National Center for Zoonotic, Vector-borne, and Enteric Diseases (NCZVED), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is tasked with establishing a registry of chronic fatigue syndrome (CFS) and other fatiguing illnesses. The objective of the registry is to identify persons with unexplained fatiguing illnesses, including CFS, who access the healthcare system because of their symptoms. Patients will be between the ages of 12 and 59, inclusive.

Specific aims of the registry are: (1) Identify and enroll patients with CFS and other unexplained fatiguing illnesses who are receiving medical and ancillary medical care and describe their epidemiologic and clinical characteristics; (2) follow CFS patients and patients with other fatiguing illnesses over time to characterize the natural history of CFS and other unexplained fatiguing illnesses; (3) assess and monitor health care providers' knowledge, attitudes, and beliefs concerning CFS; (4) and to identify well-characterized CFS patients for clinical studies and intervention trials. These specific aims require inclusion of subjects in early stages of CFS (i.e., ill less than one year duration) who can be followed longitudinally to assess changes in their CFS symptoms. Data on persons with CFS in the general population has been collected in a separate study and is not an objective of this Registry.

In order to determine the most effective and cost-efficient design for achieving the objective and specific aims, CDC will conduct a pilot test of the Registry of CFS and other fatiguing illnesses in Bibb County, Georgia. The CFS Registry Pilot Test will assess two Registry designs for efficacy and efficiency in identifying adult and adolescent subjects with CFS who are receiving medical and ancillary medical care. Specifically, the CFS Registry Pilot Test will evaluate surveillance of patients with CFS identified through physician practices and a surveillance of CFS patients identified by physicians and other health care providers.

The proposed study will begin when a provider refers a patient to the registry. Patients who consent to be contacted for the registry will be asked to complete a detailed telephone interview that screens for medical and psychiatric eligibility. Eligible subjects will be invited to have a clinical evaluation that comprises a physical examination; collection of blood, urine, and saliva specimens; a mental health interview; and self-administered questionnaires.

There is no cost to respondents other than their time. Patients who are clinically evaluated will be reimbursed for their time and effort. The total estimated annualized burden hours are 2,077.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	Number of respondents	Number of responses per respondent	Average hours per response
Health Care Provider Verification Form	583	1	17/60
Health Care Provider Knowledge, Attitudes and Beliefs Questionnaire (Pre-intervention)	466	1	8/60
Health Care Provider Knowledge, Attitudes and Beliefs Questionnaire (Post Intervention)	373	1	8/60
Health Care Provider Knowledge Attitudes and Beliefs Questionnaire (at CDC presentations)	100	1	8/60
Referral/Consent to Contact Form	373	2	8/60

ESTIMATED ANNUALIZED BURDEN HOURS

Form	Number of respondents	Number of responses per respondent	Average hours per response
Referral/Consent to Contact Form (Patient)	507	1	12/60
CATI Detailed Telephone Interview	395	1	42/60
Health Care Utilization/Sense of Community (for adult)	196	1	20/60
Health Care Utilization (for parent of adolescent)	50	1	20/60
Economic Impact (adult)	196	1	20/60
Spielberger State-Trait Anxiety Inventory (for adult subjects)	196	1	20/60
Personality Diagnostic Questionnaire (PDQ–4+) (for adults)	196	1	42/60
Childhood Trauma Questionnaire (for adult subjects)	196	1	25/60
Traumatic Life Events Questionnaire (for adult subjects)	196	1	20/60
Life Experiences Survey (for adult subjects)	196	1	20/60
Adolescent Subject Fatigue Questionnaire	50	1	8/60
Adolescent Health Questionnaire	50	1	20/60
Symptoms Inventory	246	1	12/60
Medical Outcomes Study Short Form 36	246	1	20/60
Multi-dimensional Fatigue Inventory	246	1	12/60
Zung Self-Rating Depression Scale	246	1	20/60
Illness Perception Questionnaire	246	1	20/60
Davidson Trauma Scale	246	1	12/60
Ironson-Woods Spirituality/Religiousness Index	246	1	8/60
Illness Management Questionnaire	246	1	20/60
Ways of Coping Questionnaire	246	1	33/60
Social Support Questionnaire	246	1	20/60

Dated: December 14, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–24933 Filed 12–21–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 72 FR 67308, dated November 28, 2007) is amended to reflect the reorganization of the Division of Healthcare Quality Promotion, National Center for Preparedness, Detection and Control of Infectious Diseases, Coordinating Center for Infectious Diseases, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows: Delete in their entirety the functional statements for the *Division of Healthcare Quality Promotion (CVKD),* and insert the following:

Division of Healthcare Quality Promotion (CVKD). The mission of the Division of Healthcare Quality Promotion (DHQP) is to protect patients; protect healthcare personnel; and promote safety, quality, and value in both national and international healthcare delivery systems. In carrying out its mission, DHQP: (1) Measures, validates, interprets, and responds to data relevant to healthcare processes and outcomes, healthcare-associated infections, antimicrobial resistance, adverse drug events, and other related adverse events or medical errors in healthcare affecting patients and healthcare personnel; (2) investigates and responds to emerging infections and related adverse events among patients and healthcare providers, or others associated with the healthcare environment; (3) collaborates with academic and public health partners to design, develop, and evaluate the efficacy of interventions for preventing infections and reducing antimicrobial resistance, and related adverse events or medical errors; (4) develops and disseminates evidence-based guidelines and recommendations to prevent and control healthcare-associated infections/antimicrobial resistance, and related adverse events or medical errors; (5) promotes the nationwide implementation of Healthcare Infection Control Practices Advisory Committee (HICPAC) recommendations and other evidence-based interventions to prevent healthcare-associated infections, antimicrobial resistance, and related adverse events or medical errors among patients and healthcare personnel; evaluates the impact of these recommendations and interventions across the spectrum of healthcare delivery sites; (6) develops, implements, and evaluates the effectiveness and impact of interventions to prevent transmission of healthcare-associated human immunodeficiency virus (HIV) and other bloodborne pathogen infections; (7) develops and evaluates diagnostic instruments and novel laboratory tests to detect and characterize antimicrobial-resistant bacterial pathogens and the infections that they cause; (8) promotes high standards of water quality in healthcare settings and tests and assures the water quality for CCID laboratories; (9) conducts epidemiologic, and basic and applied laboratory research to identify new strategies to prevent infections/antimicrobial resistance, and related adverse events or medical errors, especially those associated with medical or surgical procedures, indwelling medical devices, contaminated products, dialysis, and water; (10) establishes evidence-based data for bioterrorism preparedness, and building and site remediation by performing laboratory research on surface sampling, detection of bacterial bioterrorist agents by non-culture methods, and rapid detection of antimicrobial resistance in category A and B bacterial bioterrorist agents; (11) serves as the National

Reference Laboratory for the identification and antimicrobial susceptibility testing of staphylococci, anaerobic bacteria, and those gram-negative bacilli causing healthcare-associated infections; (12) develops and maintains the National Healthcare Safety Network (NHSN), a tool for monitoring healthcare-associated infections, for measuring healthcare outcomes and processes, and for monitoring healthcare worker vaccination and selected health measures in healthcare facilities; (13) continually assesses rates of infections caused by resistant-bacteria in the U.S. through active surveillance, review of national healthcare data sets, and laboratory surveillance programs; (14) promotes the integration of the healthcare delivery system in federal/state/local public health preparedness planning; (15) coordinates activities, guidance, and research related to infection control across the agency and with national and international partners; (16) collaborates with other CDC National Centers (NC) and partners to assure quality clinical microbiology laboratory practices through proficiency testing, educational programs, and training of personnel; (17) trains Epidemic Intelligence Service Officers and other trainees; (18) coordinates antimicrobial resistance activities at CDC; (19) represents CDC as co-chair of the federal Interagency Task Force on Antimicrobial Resistance; (20) works in a national leadership capacity with public and private organizations to enhance antimicrobial resistance prevention and control, surveillance and response, and applied research; (21) coordinates blood, organ, and other tissue safety at CDC; (22) represents CDC on the Advisory Committee on Blood Safety and Availability and the Advisory Committee on Organ Transplantation; and (23) works in a national leadership capacity with other public and private organizations to enhance blood, organ, and other tissue safety through coordination of investigation, prevention, response, surveillance, applied research, health communication, and public policy.

Office of the Director (CVDK1). (1) Manages, directs, and coordinates the activities of the DHQP: (2) provides leadership and guidance on policy, communications/media, program planning and development, program management, and operations; (3) provides DHQP-wide administrative and program services and coordinates or ensures coordination with the appropriate NC's and CDC staff offices on administrative and program matters; (4) provides liaison with other governmental agencies, international organizations, and other outside groups; (5) coordinates, in collaboration with the appropriate NC and CDC components, global health activities relating to the prevention of healthcare-associated infections/antimicrobial resistance, and related adverse events or medical errors; (6) coordinates activities, guidance, and research related to infection control across the agency and with national and international partners; (7) works with other federal agencies, state governments, medical societies, and other public and private organizations to promote collaboration and to integrate healthcare preparedness in federal/state/local public health preparedness planning; (8) develops and conducts healthcare preparedness exercises and drills; (9) leads and staffs the Healthcare Delivery and the Infection Control/Clinical Care functional seats in the CDC Director's Emergency Operations Center; (10) coordinates antimicrobial resistance activities at CDC and represents CDC as co-chair of the federal Interagency Task Force on Antimicrobial Resistance; (11) works with other agencies, state governments, medical societies, and other public and private organizations to enhance antimicrobial resistance prevention and control, surveillance and response, and applied research; (12) coordinates blood, organ, and other tissue safety at CDC and represents CDC on the Advisory Committee on Blood Safety and Availability and the Advisory Committee on Organ Transplantation; (13) works with other federal agencies, state governments, and other public and private organizations to enhance blood, organ, and other tissue safety through coordination of investigation, prevention, response, surveillance, applied research, health communication, and public policy; (14) provides program and administrative support for HICPAC; and (15) advises the Director, NCPDCID, on policy matters concerning DHQP activities.

Clinical and Environmental Microbiology Branch (CVKDB). (1) Collaborates with the Prevention and Response Branch to provide laboratory response to outbreaks and emerging threats associated with infections/antimicrobial resistance and related adverse events throughout the healthcare delivery system; (2) provides comprehensive laboratory support and expertise for investigations of recognized and emerging bacterial agents in healthcare settings; (3) develops methods to assess contamination of environmental surfaces with bacterial agents of bioterrorism, the effectiveness of various water treatment strategies to control the intentional introduction of agents of bioterrorism into municipal water systems, and develops molecular methods for rapid assessment of antimicrobial resistance in agents of bioterrorism; (4) investigates novel and emerging mechanisms of antimicrobial resistance among targeted pathogens found in healthcare settings; (5) detects the toxins/virulence factors of bacteria causing healthcare-associated infections to understand their transmission and pathogenicity; (6) conducts research in collaboration with partners to develop new, accurate methods of detecting antimicrobial resistance in bacteria and to improve reporting of antimicrobial susceptibility testing results to physicians to improve antimicrobial use; (7) conducts laboratory research to identify new strategies to prevent infections/antimicrobial resistance, related adverse events, and medical errors, especially those associated with invasive medical devices, contaminated products, dialysis, and water; (8) evaluates commercial microbial identification and antimicrobial susceptibility testing systems and products and facilitates their improvement to provide accurate patient test results; (9) provides leadership in reducing microbiology laboratory errors that affect patient outcomes by evaluating laboratory proficiency and promoting laboratory quality improvements; (10) investigates the role of biofilms, particularly those detected in indwelling medical devices and medical water systems, in medicine and public health, and identifies novel methods to eliminate colonization and biofilm formation on foreign bodies; (11) investigates the role of the water distribution systems in healthcare facilities in order to understand and prevent waterborne healthcare-associated infections; (12) provides expertise, research opportunity, training, and laboratory support for investigations of infections and related adverse events to those in other CDC NCs and to our partners in areas related to quality clinical microbiology laboratory practices, investigation of emerging pathogens, environmental microbiology and bioterrorism preparedness.

Prevention and Response Branch (CVKDC). (1) Coordinates rapid and effective epidemiologic response to strategically selected outbreaks and emerging threats caused by healthcare-associated infections, related adverse

healthcare events, related infections in the community, and antimicrobial resistance; communicates the results and findings of response activities with federal and state agencies in order to alert healthcare providers and educate the public to prevent similar adverse events in the future; (2) strategically supports local, state, national, and international efforts to prevent healthcare-associated infections, related infections in the community, antimicrobial resistance, and related adverse events or medical errors using evidence-based recommendations and effective health communications strategies that enhance rapid and reliable information dissemination and exchange; (3) develops and/or evaluates the effectiveness of both experimental and applied interventions to prevent healthcare-associated infections, related infections in the community, antimicrobial resistance, blood-borne virus transmission, and related adverse events or medical errors across the spectrum of healthcare delivery sites; (4) provides epidemiology support to laboratory branch for investigation and study of both recognized and emerging bacterial healthcare pathogens and related community pathogens, including antimicrobial resistant forms of these pathogens; (5) develops, promotes, and monitors implementation of guidelines/recommendations, and other proven interventions to prevent healthcare-associated infections, related infections in the community, blood-borne virus transmission, antimicrobial resistance, medical errors, and occupational infections/exposures among healthcare personnel; (6) develops and/or evaluates the effectiveness of both experimental and applied interventions to promote healthcare worker safety; (7) develops, promotes, and monitors implementation of interventions to prevent transmission of healthcare-associated HIV infections and conducts case investigations of occupational HIV infections; (8) conducts research, including applied epidemiologic and clinical, to prevent healthcare-associated infections and antimicrobial resistant infections; (9) provides expert consultation, guidance, and technical support to other branches in the division, across the agency, to domestic and international partners, and the U.S. public on the epidemiology and prevention of healthcare-associated infections, related community infections, antimicrobial resistance, and exposures/injuries among healthcare personnel; and (10) provides epidemiology support to clinical and environmental microbiology branch to identify new strategies to prevent adverse events due to infections associated with indwelling medical devices, contaminated products, dialysis, and water.

Surveillance Branch (CVKDD). (1) Monitors and evaluates on the national level the extent, distribution, and impact of healthcare-associated infections, antimicrobial use and resistance, adverse drug events, healthcare worker safety events, and adherence to clinical processes and intervention programs designed to prevent or control adverse exposures or outcomes in healthcare; (2) provides leadership and consultative services for statistical methods and analysis to investigators in the Branch, Division, and other organizations responsible for surveillance, research studies, and prevention and control of healthcare-associated infections and other healthcare-associated adverse events; (3) improves methods and enables wider use of clinical performance measurements by healthcare facilities and public health entities for specific interventions and prevention strategies designed to safeguard patients and healthcare workers from risk exposures and adverse outcomes through collaborations with extramural partners; (4) collaborates with public and private sector partners to further standardize, integrate, and streamline systems by which healthcare organizations collect, manage, analyze, report, and respond to data on clinical guideline adherence, healthcare-associated infections, including transmission of multi-drug-resistant organisms and other healthcare-associated adverse events; (5) coordinates, further develops, enables wider use, and maintains the NHSN, (a web-based system for healthcare facilities throughout the U.S. to collect and analyze their own data and share data with DHQP and other organizations on healthcare-associated adverse events and process-of-care measures) to obtain scientifically valid clinical performance indices and benchmarks that promote healthcare quality and value at the facility, state, and national levels; (6) conducts applied research to identify and develop innovative methods to detect and monitor healthcare-associated infections and antimicrobial resistance; (7) conducts special studies and provides national estimates of targeted, healthcare-associated adverse events, antimicrobial use and resistance patterns, and the extent to which prevention and control safeguards are in use to protect at-risk patients across the spectrum of healthcare delivery sites; and (8) uses NHSN and other data sources to conduct special studies and provide national estimates of targeted occupational illnesses and injuries among healthcare workers and the extent to which preventive safeguards are in use across the spectrum of healthcare delivery sites.

Dated: December 13, 2007.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 07–6130 Filed 12–21–07; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Survey of Child and Adolescent Well-Being-Second Cohort (NSCAW II).

OMB No.: 0970–0202.

Description: The Department of Health and Human Services (HHS) intends to collect data on a new sample of children and families for the National Survey of Child and Adolescent Well-Being (NSCAW). The NSCAW was authorized under Section 427 of the Personal Responsibility and Work Opportunities Reconciliation Act of 1996. The original survey began in November 1999 with a national sample of 5,501 children, ages 0–14, who had been the subject of investigation by Child Protective Services during the baseline data collection period, which extended from November 1999 through April 2000. Direct assessments and interviews were conducted with the children themselves, their primary caregivers, their caseworkers, and, for school-aged children, their teachers; agency directors also were interviewed at baseline. Follow-up data collections were conducted 12 months, 18 months, and 36 months post-baseline, and a fifth data collection is currently under way.

The NSCAW is the only source of nationally representative, firsthand information about the functioning and well-being, service needs, and service utilization of children and families who come to the attention of the child welfare system. Information is collected about children's cognitive, social, emotional, behavioral, and adaptive functioning, as well as family and community factors that are likely to influence their functioning. Family service needs and service utilization also are addressed in the data collection.

The current data collection plan calls for selecting a new cohort of 5,700

children and families and repeating the data collection procedures used in the original study. Selection of a new cohort will allow the comparison of characteristics of children who are entering the child welfare system today with those who entered prior to the implementation of the Adoption and Safe Families Act and prior to the advent of the Child and Family Services Review process. The data collection will follow the same format as that used in previous rounds of data collection, and will employ, with only modest revisions, the same instruments that have been used in previous rounds. Currently, HHS intends to collect baseline data and one follow-up 18 months later, with future follow-up rounds contingent on funding availability. Data from NSCAW are made available to the research community though licensing arrangements from the National Data Archive on Child Abuse and Neglect at Cornell University.

Respondents: 5,700 children and their associated permanent or foster caregivers, caseworkers, and teachers; in addition, an administrator will be interviewed in each location from which children are sampled.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Child Interview	5,700	1	1.2	6,840
Permanent Caregiver Interview	3,800	1	2.0	7,600
Foster Caregiver Interview	1,990	1	1.5	2,985
Caseworker Interview	5,700	1	1.0	5,700
Teacher Questionnaire	3,000	1	.75	2,250
Agency Questionnaire	97	1	1.0	97
Estimated Total Annual Burden Hours:				25,472

Additional Information

Copies of the proposed collection may be obtained 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. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, FAX: 202–395–6974, Attn: Desk Officer for ACF.

Dated: December 17, 2007.

Brendan Kelly,

Reports Clearance Officer.

[FR Doc. 07–6143 Filed 12–21–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Compassion Capital Fund Impact Evaluation Process Study.

OMB No.: New Collection.

Description: The information collection activity proposed under this notice will obtain information about intermediary grantee agencies providing capacity building assistance to faith-based and community organizations under the Compassion Capital Fund (CCF) Demonstration program. The information gathered under this data collection activity will be used to describe the approach and methods used by intermediaries to provide the services that are being evaluated in the CCF impact evaluation. Information collection will be through informal discussions and observations on-site at the organizations, using uniform protocols.

Respondents: Directors and staff providing technical assistance and related services to faith-based and community organizations and directors and staff in faith-based and community organizations that have received capacity building assistance.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Intermediary Protocol for Executive Director	10	1	3	30
Intermediary Protocol for Key Staff	30	1	1	30
Faith-based or Community Organization Protocol for Executive Director	30	1	2	60
Faith-based or Community Organization Protocol for Key Staff	60	1	1	60

Estimated Total Annual Burden Hours: 180.

Additional Information:

Copies of the proposed collection may be obtained 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. All requests should be

identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for ACF.

Dated: December 18, 2007.

Brendan Kelly,

Reports Clearance Officer.

[FR Doc. 07–6158 Filed 12–21–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0472]

Agency Emergency Processing Under the Office of Management and Budget Review; Certification to Accompany Drug, Biological Product, and Device Applications or Submissions; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of December 12, 2007 (72 FR 70599). The document announced that a proposed collection of information had been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995. The document was published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Planning, and Preparedness (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION:IN FR DOC. 07–6023, APPEARING ON PAGE 70599 IN THE Federal Register OF WEDNESDAY, DECEMBER 12, 2007, THE FOLLOWING CORRECTION IS MADE: 1. On page 70599, in the third column, in the second full paragraph, the second sentence is corrected to read ''Specifically, at the time of submission of an application under sections 505, 515, or 520(m) of the FD&C Act (21 U.S.C. 355, 360e, or 360j(m)), or under section 351 of the PHS Act (42 U.S.C. 262), or submission of a report under section 510(k) of the FD&C Act (21 U.S.C. 360(k)), such application or submission must be accompanied by a certification that all applicable requirements of section 402(j) of the PHS Act have been met.''

Dated: December 17, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–24914 Filed 12–21–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007C–0474]

DSM Nutritional Products, Inc.; Filing of Color Additive Petition; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of December 4, 2007 (72 FR 68166). The document announced that DSM Nutritional Products, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of astaxanthin dimethyldisuccinate as a color additive in the feed of salmonid fish to enhance the color of their flesh.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Planning, and Preparedness, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. E7–23473, appearing on page 68166 in the **Federal Register** of Tuesday, December 4, 2007, the following correction is made:

1. On page 68166, in the third column, in the heading of the document, ''[Docket No. 2007N–0453]'' is corrected to read ''[Docket No. 2007C–0474]''.

Dated: December 17, 2007.

Laura M. Tarantino,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. E7–24911 Filed 12–21–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Trial Design for Community-Acquired Pneumonia; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop, cosponsored with the Infectious Diseases Society of America (IDSA), regarding scientific issues in clinical trial design for community-acquired pneumonia. This public workshop is intended to provide information for and to gain perspective from health care providers, academia, and industry on various aspects of antimicrobial drug development for community-acquired pneumonia, including diagnosis of community-acquired pneumonia, effect of antimicrobial treatment for community-acquired pneumonia, endpoints for trials of community-acquired pneumonia, and statistical issues in analysis of results of trials in community-acquired pneumonia. The input from this public workshop will help in developing topics for further discussion.

Date and Time: The public workshop will be held on January 17, 2008, from 8 a.m. to 6 p.m. and on January 18, 2008, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Crowne Plaza Hotel, Kennedy Room, 8777 Georgia Ave., Silver Spring, MD 20910, 301–589–0800. Seating is limited and available only on a first-come, first-served basis.

Contact Person: Chris Moser or Lori Benner, Center for Drug Evaluation and Research, Office of Antimicrobial Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6413, Silver Spring, MD 20993–0002, 301–796–0767, or 301–796–0849.

Registration: There is no registration fee for the public workshop. Space is limited; therefore, interested parties are encouraged to register early. Seating will be available on a first-come, first-served basis. To register electronically, e-mail registration information (including name, title, firm name, address, telephone, and fax number) to *CAPwkshp@fda.hhs.gov* by January 9, 2008. Persons without access to the Internet can call 301–796–1300 to register. Persons needing a sign language interpreter or other special

accommodations should notify Chris Moser or Lori Benner (see *Contact Person*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop, cosponsored with IDSA, regarding antimicrobial drug development. This public workshop will focus on scientific considerations in designing clinical trials for community-acquired pneumonia. The topics for discussion include approaches to the diagnosis of community-acquired pneumonia, the effect of antimicrobial treatment for community-acquired pneumonia, various endpoints that might be considered as endpoints for trials of community-acquired pneumonia, and statistical issues in analysis of results from trials in community-acquired pneumonia. The input from this public workshop will help in developing topics for further discussion.

The agency encourages individuals, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons to attend this public workshop.

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 20 working days after the public workshop, at a cost of 10 cents per page.

Dated: December 18, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–24927 Filed 12–21–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0480]

Maximizing the Public Health Benefit of Adverse Event Collection Throughout a Product's Marketed Life Cycle; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) at the Food and Drug Administration (FDA) are announcing a public workshop entitled ''Maximizing the Public Health Benefit of Adverse Event Collection Throughout a Product's Marketed Life Cycle.'' The purpose of the public workshop is to solicit information and views from interested persons on research approaches and methods associated with the best ways to assess the public health benefit of collecting and reporting all adverse events (AEs). The input from this workshop will be used to publish a request for information to determine the types of outside organizations that would be interested in, and have the capability to conduct, the research described in this paragraph, followed by a request for proposal (RFP).

DATES: The public workshop will be held on January 29, 2008, from 8:30 a.m. to 5 p.m. Individuals who wish to speak during the public workshop must register on or before January 15, 2008. See section III of this document for information on how to attend or present at the meeting.

We are opening a docket to receive your written or electronic comments. Written or electronic comments must be submitted to the docket by February 29, 2008.

ADDRESSES: The public workshop will be held at The Conference Facility (terrace level) located at 5635 Fishers Lane, Rockville, MD 20857 (Metro: Twinbrook Station on the Red Line).

Submit written or electronic comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

FOR FURTHER INFORMATION CONTACT: Lana Pauls, Center for Drug Evaluation and Research (HFD–006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–0518, FAX: 301–827–1069, e-mail: *lana.pauls@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The collection of information relating to AEs is an integral part of understanding the safety of a product throughout its marketed life cycle. FDA is committed to maximizing the public health benefit of collecting and reporting serious and non-serious AEs. Central to addressing this question is determining the number and type of safety concerns discovered by AE collection, the age of products at the time safety concerns are detected by AE collection, and the types of actions that are subsequently taken to protect patient safety.

The workshop objectives are as follows: (1) Initiate constructive dialogue and information-sharing among regulators, researchers, the pharmaceutical industry, health organizations, and individuals affected by postmarketing AE collection, reporting, and evaluation; (2) share current FDA practices regarding postmarketing AE collection and reporting; and (3) obtain input on the questions and methods that will be used to conduct research on this topic.

Two panel discussions will focus on how FDA currently uses spontaneous reports and other methods of signal detection, the key research questions that should be addressed by the RFP, and appropriate research approaches and methods including, but not limited to, hypothesis, study design, data sources, outcome measures, and analytic methods. Panel one will focus on the key research questions; panel two will discuss research approaches and methods.

Some of the key questions to be addressed in the RFP include the following:

(1) What is the value to patient safety of collecting AEs through a passive surveillance system over the marketed life cycle of a product? How are these data best used in regulatory decision-making?

(2) How can safety issue identification and subsequent regulatory action be characterized in relation to time elapsed following product approval? Is this influenced by the type of regulatory action and/or the nature of the safety signal?

(3) What are the roles of serious and non-serious outcome reports in safety issue identification and subsequent regulatory action? How do the roles of

these report types change over the product's marketed life cycle?

(4) What are the roles of reports by health care professionals and consumers in safety signal detection?

(5) Are there any types of AE reports that are not helpful to safety signal detection?

(6) What do we know about non-reported AEs or characteristics associated with non-reporting?

FDA is working to refine the workshop agenda and to invite panel members. We are seeking broad participation by safety researchers, health system officials, the pharmaceutical industry, and others. We anticipate issuing a summary of the workshop findings, including a discussion of implications and next steps for further development.

II. Comments

The agency is interested in hearing comments at the public workshop or receiving written comments (see **ADDRESSES**) on the issues described previously. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Attendance and Registration

The Conference Facility (terrace level) located at 5635 Fishers Lane is a Federal facility with limited seating and security procedures for entrance. Workshop attendees will be required to show proper identification and are asked to allow time for security procedures. Seating will be made available on a first-come basis. Individuals who wish to speak during the public workshop must register on or before January 15, 2008. You should identify the subject matter you wish to address during the public workshop. Please specify either panel one or panel two (see section I of this document). To register to speak, please contact Lana Pauls (see **FOR FORTHER INFORMATION CONTACT**).

Ample time will be allowed during the scheduled agenda for attendees to ask questions of panelists. In addition, we strongly encourage written comments to the docket.

If you need special accommodations because of disability, please contact Lana Pauls (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the workshop.

IV. Workshop Transcripts

The workshop will be transcribed. The transcript will be available for review at the Division of Dockets Management (see **ADDRESSES**) and on the Internet at *http://www.fda.gov/ohrms/dockets*, approximately 30 days after the workshop.

Dated: December 18, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–24960 Filed 12–21–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Loan Repayment; Proposed Collection; Comment Request; National Institutes of Health Loan Repayment Programs

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Division of Loan Repayment, National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: National Institutes of Health Loan Repayment Programs. *Type of Information Collection Request:* Revision of currently approved collection (OMB No. 0925–0361, expiration date 6/30/08). Form Numbers: NIH 2674–1, NIH 2674–2, NIH 2674–3, NIH 2674–4, NIH 2674–5, NIH 2674–6, NIH 2674–7, NIH 2674–8, NIH 2674–9, NIH 2674–10, NIH 2674–11, NIH 2674–12, NIH 2674–13, NIH 2674–14, NIH 2674–15, NIH 2674–16, NIH 2674–17, NIH 2674–18, and NIH 2674–19. *Need and Use of Information Collection:* The NIH makes available financial assistance, in the form of educational loan repayment, to M.D., Ph.D., Pharm.D., D.D.S., D.M.D., D.P.M., D.C., and N.D. degree holders, or the equivalent, who perform biomedical or behavioral research in NIH intramural laboratories or as extramural grantees for a minimum of 2 years (3 years for the General Research Loan Repayment Program (LRP)) in research areas supporting the mission and priorities of the NIH.

The AIDS Research Loan Repayment Program (AIDS–LRP) is authorized by Section 487A of the Public Health Service Act (42 U.S.C. 288–1); the Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (CR–LRP) is authorized by Section 487E (42 U.S.C. 288–5); the General Research Loan Repayment Program (GR–LRP) is authorized by Section 487C (42 U.S.C. 288–3); the Loan Repayment Program Regarding Clinical Researchers (LRP–CR) is authorized by Section 487F (42 U.S.C. 288–5a); the Pediatric Research Loan Repayment Program (PR–LRP) is authorized by Section 487F (42 U.S.C. 288–6); the Extramural Clinical Research LRP for Individuals from Disadvantaged Backgrounds (ECR-LRP) is authorized by an amendment to Section 487E (42 U.S.C. 288–5); the Contraception and Infertility Research LRP (CIR–LRP) is authorized by Section 487B (42 U.S.C. 288–2); and the Health Disparities Research Loan Repayment Program (HD–LRP) is authorized by Section 485G (42 U.S.C. 287c-33).

The Loan Repayment Programs provide for the repayment of up to $35,000 a year of the principal and interest of the educational loan debt of qualified health professionals who agree to conduct qualifying research for each year of obligated service. The information proposed for collection will be used to determine an applicant's eligibility for participation in the program. *Frequency of Response:* Initial application and annual or biennial renewal application. *Affected Public:* Applicants, financial institutions, research institutions, recommenders. *Type of Respondents:* Physicians, other scientific or medical personnel, and organizational officials. The annual reporting burden is as follows:

Type of respondents	Number of respondents	Estimated number of responses per respondent	Average burden hours per response	Annual burden hours requested
Intramural LRPs				
Initial Applicants	30	1	10.11	303.30
Advisors/Supervisors	30	1	.5	15.00
Recommenders	90	1	.33	29.70
Financial Institutions	10	1	1.25	12.50

Type of respondents	Number of respondents	Estimated number of responses per respondent	Average burden hours per response	Annual burden hours requested
Subtotal	160			360.50
Extramural LRPs				
Initial Applicants	1,900	1	10.35	19,665.00
Advisors/Supervisors	1,750	1	.5	875.00
Recommenders	5,700	1	.33	1881.00
Financial Institutions	300	1	1.25	375.00
Subtotal	9,650			22,796.00
Intramural LRPs				
Renewal Applicants	60	1	7.42	445.20
Advisors/Supervisors	60	1	1.33	79.80
Subtotal	120			525.00
Extramural LRPs				
Renewal Applicants	1,225	1	8.58	10,510.50
Advisors/Supervisors	925	1	1.00	925.00
Recommenders	3,675	1	.33	1,212.75
Subtotal	5,825			12,648.25
Total	15,755			36,329.75

The annualized cost to respondents is estimated at $1,298,341. There are no capital costs, operating costs, or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Sherry Mills, M.D., M.P.H., Acting Director, Division of Loan Repayment, National Institutes of Health, 6011 Executive Blvd, Room 206 (MSC 7650), Bethesda, Maryland 20892–7650. Dr. Mills may be contacted via e-mail at *Millsshe@od.nih.gov* or by calling 301–402–2642 (not a toll-free number).

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days from the date of this publication.

Dated: December 17, 2007.

Raynard S. Kington,

Deputy Director, National Institutes of Health.

[FR Doc. E7–24899 Filed 12–21–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Blood Substitute Study.

Date: January 15, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Youngsuk Oh, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Vaccine Study.

Date: January 22, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Youngsuk Oh, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Cardiovascular and Lung Imaging.

Date: January 23, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Youngsuk Oh, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases

and Resources Research, National Institutes Health, HHS)

Dated: December 14, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6141 Filed 12–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; The NIDDK Central Data Repository Contract Review.

Date: January 22, 2008.

Time: 11 a.m.to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 14, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6139 Filed 12–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: January 30, 2008.

Open: 8:30 a.m. to 12:30 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Rm. 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: January 30, 2008.

Open: 1:15 p.m. to 2:15 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: 2:15 p.m. to 3:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Rm. 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

Date: January 30, 2008.

Open: 1:15 p.m. to 1:45 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Closed: 1:45 p.m. to 3:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Rm. 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: January 30, 2008.

Open: 1:15 p.m. to 2:15 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Closed: 2:15 p.m. to 3:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Rm. 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license

or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 98.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 14, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6140 Filed 12–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Conte Centers for the Neuroscience for Mental Disorders.

Date: February 22, 2008.

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

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22201.

Contact Person: Vinod Charles, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 17, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6159 Filed 12–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, MTA Followup.

Date: January 16, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281; Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 17, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6160 Filed 12–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Committee for Disorders Related to Schizophrenia, Late Life, or Personality.

Date: February 8, 2008.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Serena P. Chu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892, 301–443–0004, *sechu@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Initial Review Group, Mental Health Services in MH Specialty Settings.

Date: February 8, 2008.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Committee for Adult Mood and Anxiety Disorders.

Date: February 12, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Initial Review Group, Mental Health Services in Non-Specialty Settings.

Date: February 23–13, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1552, *aschulte@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Committee for Disorders Involving Children and Their Families.

Date: February 12–13, 2008.

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

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Christopher S. Sarampote PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1959, *csarampo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 17, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6162 Filed 12–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, International Extramural Associates Research Development Awards (IEARDA).

Date: January 10, 2008.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Persons: Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institutes of Health, National Institute for Child Health, and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20812–7510, (301) 435–8382, *hindialm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: December 17, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6165 Filed 12–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis And Musculoskeletal And Skin Diseases; Notice of Closed Meeting

Pursuant to section 19(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual other conducted by the National Institute of Arthritis and Musculoskeletal And Skin Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAMS.

Date: January 22–23, 2008.

Time: 9:20 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 4C32, Bethesda, MD 20892.

Contact Person: John J. O'Shea, MD, PhD., Scientific Director, National Institute of Arthritis & Musculoskeletal and Skin Diseases, Building 10, Room 9N228, MSC 1820, Bethesda, MD 20892, (301) 496–2612, *osheaj@arb.niams.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 17, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6166 Filed 12–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals,

the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.
Date: January 28, 2008.
Open: 10:30 a.m. to 11:40 a.m.
Agenda: Report from the Institute Director.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.
Closed: 11:40 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.
Contact Person: Marvin R. Kalt, PhD., Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.
Date: January 28, 2008.
Closed: 8:30 a.m. to 10:15 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.
Open: 1 p.m. to adjournment.
Agenda: Program advisory discussions and reports from division staff.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.
Contact Person: Marvin R. Kalt, PhD., Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.
Date: January 28, 2008.
Closed: 8:30 a.m. to 10:15 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.
Open: 1 p.m. to Adjournment.
Agenda: Reports from the Division Director and other staff.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.
Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council Allergy, Immunology and Transplantation Subcommittee.
Date: January 28, 2008.
Closed: 8:30 a.m. to 10:15 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.
Open: 1 p.m. to Adjournment.
Agenda: Reports from the Division Director and other staff.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.
Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council.
Date: May 27, 2008.
Open: 10:30 a.m. to 11:40 a.m.
Agenda: Report from the Institute Director and the Director of the Vaccine Research Center.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.
Closed: 11:40 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.
Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.
Date: May 27, 2008.
Closed: 8:30 a.m. to 10:15 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of health, Natcher Building 45 Center Drive, Conference Room D, Bethesda, MD 20892.
Open: 1 p.m. to Adjournment.
Agenda: Report from the Division Director and other staff.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.
Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltrmr@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndome Subcommittee.
Date: May 27, 2008.
Closed: 8:30 a.m. to 10:15 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.
Open: 1 p.m. to Adjournment.
Agenda: Program advisory discussions and reports from division staff.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.
Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltrmr@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.
Date: May 27, 2008.
Closed: 8:30 a.m. to 10:15 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.
Open: 1 p.m. to Adjournment.
Agenda: Reports from Division Director and other staff.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.
Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltrmr@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council.
Date: September 15, 2008.
Open: 10:30 a.m. to 11:40 a.m.
Agenda: Report from the Institute Director and the Director, Division of Intramural Research.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.
Closed: 11:40 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.
Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.
Date: September 15, 2008.
Closed: 8:30 a.m. to 10:15 a.m.
Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.

Open: 1 p.m. to Adjournment.

Agenda: Program advisory discussion and reports division staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, *kaltmr@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: September 15, 2008.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to Adjournment.

Agenda: Reports from Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892-7610, 301–496–7291, *kaltmr@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: September 15, 2008.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 1 p.m. to Adjournment.

Agenda: Reports from Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.niaid.nih.gov/facts/facts.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 17, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6167 Filed 12–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, GI Tract Program Projects.

Date: February 25, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Translational Research.

Date: March 12, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 17, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6168 Filed 12–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the AIDS Research Advisory Committee, NIAID.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed blow in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: January 28, 2008.

Time: 1 p.m. to 5:30 p.m.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601, 301–435–3732.

Name of Committee: AIDS Research Advisory Committee, NIAID.
Date: May 27, 2008.
Time: 1 p.m. to 5 p.m.
Agenda: Reports from the Division Director and other staff.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.
Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601, 301–435–3732.

Name of Committee: AIDS Research Advisory Committee, NIAID.
Date: September 15, 2008.
Time: 1 p.m. to 5 p.m.
Agenda: Reports from the Division Director and other staff.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.
Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601, 301–435–3732.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 17, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6169 Filed 12–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal policy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Review R01.
Date: January 17, 2008.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jonathan Horsford, PhD, Scientific Review Officer, NIDCR, 45 Center Drive, 4AN–24E, Bethesda, MD 20892, 301–594–4859, *horsforj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 17, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6170 Filed 12–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Dental and Craniofacial Research Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.
Date: January 25, 2008.
Open: 8:30 a.m. to 1 p.m.
Agenda: Reports from the Institute Director and other staff.
Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C10, Bethesda, MD 20892.
Closed: 1 p.m. to Adjournment.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C10, Bethesda, MD 20892.
Contact Person: Norman S. Braveman, PhD, Assistant to the Director, NIH–NIDCR, Building 31, Rm. 5B55, Bethesda, MD 20892, 301–594–2089, *norman.braveman@nih.gov.*

Name of Committee: National Advisory Dental and Craniofacial Research Council.
Date: June 23, 2008.
Open: 8:30 a.m. to 1 p.m.
Agenda: Reports from the Institute Director and other staff.
Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C10, Bethesda, MD 20892.
Closed: 1 p.m. to Adjournment.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C10, Bethesda, MD 20892.
Contact Person: Norman S. Braveman, PhD, Assistant to the Director, NIH–NIDCR,

Building 31, Rm. 5B55, Bethesda, MD 20892, 301–594–2089, *norman.braveman@nih.gov.*

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: September 26, 2008.

Open: 8:30 a.m. to 1 p.m.

Agenda: Reports from Institute Director and other staff.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C10, Bethesda, MD 20892.

Closed: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C10, Bethesda, MD 20892.

Contact Person: Norman S. Braveman, PhD, Assistant to the Director, NIH–NIDCR, Building 31, RM. 5B55, Bethesda, MD 20892, 301–594–2089, *Norman.Braveman@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 17, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6171 Filed 12–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Arthritis, Connective Tissue and Skin Study Section.

Date: January 17–18, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 594–6376, *ansaria@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Auditory Neuroscience.

Date: January 21, 2008.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Pathogenic Eukaryotes Study Section.

Date: January 24–25, 2008.

Time: 7:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Jean Hickman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3194, MSC 7808, Bethesda, MD 20892, (301) 435–1146, *hickmanj@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Biodata Management and Analysis Study Section.

Date: January 28, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Parc 55 Hotel, 55 Cyril Magnin Street, San Francisco, CA 94102.

Contact Person: Marc Rigas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7849, Bethesda, MD 20892, 301–402–1074, *rigasm@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Molecular and Integrative Signal Transduction Study Section.

Date: January 30, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037.

Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, (301) 402–8228, *rayam@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Virology—B Study Section.

Date: January 31, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, (301) 435–1050, *freundr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.892, 93.893, National Institutes of Health, HHS)

Dated: December 17, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6163 Filed 12–21–07; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2007–0086]

Homeland Security Advisory Council

AGENCY: Policy Directorate, DHS.

ACTION: Notice of partially closed Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will meet for purposes of reviewing recommendations from the Administration Transition Task Force and HSAC subgroups. In addition, the HSAC will receive briefings from Secretary Michael Chertoff and other DHS officials. The meeting will be partially closed.

DATES: Thursday, January 10, 2008. The open session will run from 10:55 am to 12:30 pm. The closed portions of the meeting will be held in the Seminar Room, from 8:30 a.m. to 10:55 a.m., and from 12:30 p.m. to 3:30 p.m.

ADDRESSES: The open portion of the meeting will be held at the U.S. Secret Service building located at 950 H Street, NW., Washington, DC, in the William P. Wood Conference Center.

If you desire to submit written comments, they must be submitted by January 3, 2008. Comments must be identified by DHS–2007–0086 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: HSAC@dhs.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 282–9207.
- *Mail:* Ms. Jennifer Myers, Homeland Security Advisory Council, Department of Homeland Security, Mailstop 0850, 245 Murray Lane, SW., Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and DHS–2007–0086, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the DHS Homeland Security Advisory Council, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Myers, Homeland Security Advisory Council, Washington, DC 20528, (202) 447–3135, *HSAC@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The HSAC exists to provide independent advice to the Secretary of the Department aiding in the creation of expeditious implementation of critical and actionable policy and operational capacities across the spectrum of homeland security operations. The HSAC shall periodically report, as appropriate, to the Secretary on matters within the scope of that function. The HSAC serves as an advisory body with the goal of providing advice upon the request of the Secretary.

The HSAC will meet to review recommendations from the Administration Transition Task Force (ATTF) and other HSAC subgroups. The ATTF has focused on identifying issues and priorities for DHS and relevant partners to address to effectively plan for the transition in administrations. In addition, recommendations from the HSAC's other subgroups are expected on the following topics: medical surge capabilities, Real-ID implementation, DHS training and education efforts, and private sector and state and local information sharing efforts. The Essential Technology Task Force will update the HSAC on its progress and planned activities but will not report recommendations at this meeting.

During the open portion of the meeting, the HSAC will consider the recommendations from its various subgroups as outlined above.

Public Attendance: A limited number of members of the public may register to attend the public session on a first-come, first-served basis per the procedures that follow. Security requires that any member of the public who wishes to attend the public session provide his or her full legal name, date of birth, and Social Security Number no later than 5 p.m. EST., January 3, 2008, to Jennifer Myers or a staff member of the HSAC via e-mail at *HSAC@dhs.gov* or via phone at (202) 447–3135. Photo identification will be required for entry into the public session, and everyone in attendance must be present and seated by 10:45 a.m.

Information on Services for Individuals With Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Kezia Williams as soon as possible.

Basis for Closure: The Federal Advisory Committee Act permits the closure of advisory committee meetings, or portions thereof, as a matter of public interest subject to the requirements of the Government in the Sunshine Act (5 U.S.C., 552b(c)). At this meeting, the HSAC will participate in sensitive discussions with senior officials regarding priorities and ongoing initiatives in the Department.

Pursuant to 5 U.S.C. 552b(c)(9)(B), the nature of discussions could lead to premature disclosure of information on Department of Homeland Security actions that would be ''likely to significantly frustrate implementation of proposed agency action.'' Additionally, discussions of ongoing investigations with Department of Homeland Security enforcement components and outside law enforcement partners fall within the meaning of 5 U.S.C. 552b(c)(7)(E) insofar as they will disclose investigative techniques and procedures.

Closed portions of the meeting will include discussions on general administrative updates, ethics requirements for advisory committee members, updates on operational challenges, intelligence briefing, and pre-decisional policy decisions. During the closed portions of the meeting, various speakers from Customs and Border Protection, United States Secret Service, Intelligence and Analysis, Policy Directorate, Management Directorate, and the Transportation Security Administration will discuss planning efforts for the transition in administrations, potential changes to airport security, border security, potential areas to focus the Quadrennial Homeland Security Review, and the challenges faced by the United States Secret Service in a presidential election year. The discussion will involve discussions of law enforcement and airport security procedures of Department of Homeland Security components. The nature of the discussions could lead to premature disclosure of information on Department of Homeland Security actions that would be ''likely to significantly frustrate implementation of a proposed agency action.'' Additionally, discussions of ongoing investigations with Department of Homeland Security enforcement components and outside law enforcement partners fall within the meaning of 5 U.S.C. 552b(c)(7)(E) insofar as they will ''disclose investigative techniques and procedures.''

Dated: December 14, 2007.

Doug Hoelscher,

Executive Director, Homeland Security Advisory Committees.

[FR Doc. E7–24902 Filed 12–21–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

New Emergency Agency Information Collection Activity Under OMB Review: Critical Facility Information of the Top 100 Most Critical Pipelines

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of emergency clearance request.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for emergency processing and approval under the Paperwork Reduction Act. The ICR describes the nature of information collection and its expected burden. This collection provides TSA critical facility and annual product through-put information from owners/operators of the nation's largest pipelines, and is necessitated by the requirements set forth in the

Implementing the Recommendations of the 9/11 Commission Act of 2007.

DATES: Send your comments by January 25, 2008. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, Communications Branch, Business Management Office, Operational Process and Technology, TSA–32, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–3651; facsimile (703) 603–0822.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Critical Facility Information of the Top 100 Most Critical Pipelines.

Type of Request: Emergency processing request of new collection.

OMB Control Number: Not yet assigned.

Forms(s): None.

Affected Public: Owners and operators of the top 125 pipeline systems in terms of reported annual through-put.

Abstract: Sec. 1557(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53, 121 Stat. 266, 475, 08/03/2007) (9/11 Act), specifically tasks TSA to develop and implement a plan for inspecting critical facilities at the 100 most critical pipeline systems. TSA is requesting emergency processing of this request to meet the 9/11 Act established timelines. To meet the 9/11 Act's requirement, TSA will request a report of annual product through-put and a listing of critical facilities from the top 125 pipeline systems in terms of annual through-put, as reported in pipeline trade journals and other sources. System through-put is a figure already determined and frequently used by pipeline companies for various business financial and operations performance purposes. Further, pipeline companies were required to determine critical facilities in accordance with guidance set forth in the ''Pipeline Security Circular September 4, 2002'' (2002 Guidelines) issued by the U.S. Department of Transportation's Pipeline and Hazardous Material Safety Administration (PHMSA), formerly the Office of Pipeline Safety.

TSA determines pipeline system criticality based on the amount of hazardous liquid or natural gas product transported through a pipeline in one year (i.e., annual through-put). TSA will request the information from the top 125 pipeline systems in terms of annual through-put, and out of these, TSA will make a determination of the top 100 most critical pipeline systems. The request for information will be transmitted by TSA via e-mail to the 125 respondents. TSA will ask the respondents to provide the information to TSA via e-mail. To the extent the information transmitted is Sensitive Security Information, TSA will safeguard the information in accordance with 49 CFR parts 15 and 1520. TSA will use the information to develop and implement a plan for inspecting critical facilities at the 100 most critical pipeline systems.

The information on both critical facilities and system through-put are already produced and in use or retained by pipeline owners/operators, the burden lies only in compiling, reviewing and transmitting the information to TSA. TSA estimates that system owners and operators would spend a maximum of four hours per system to collect, review and submit the information to TSA. Thus, TSA estimates the total annual hour burden to the public would be (125 owner/operators) × (4 hours per owner/operator) = 500 total hours per year.

Number of Respondents: 125.

Estimated Annual Burden Hours: An estimated 500 hours annually.

Issued in Arlington, Virginia, on November 18, 2007.

Fran Lozito,

Director, Business Management Office, Operational Process and Technology.

[FR Doc. E7–24900 Filed 12–21–07; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket Nos. TSA–2006–24191; Coast Guard–2006–24196]

Transportation Worker Identification Credential (TWIC); Enrollment Dates for the Ports of Hilo, HI; International Falls, MN; Ontonagon, MI; Morehead City, NC; Huntington, WV; and Port Canaveral, FL

AGENCY: Transportation Security Administration; United States Coast Guard; DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) through the Transportation Security Administration (TSA) issues this notice of the dates for the beginning of the initial enrollment for the Transportation Worker Identification Credential (TWIC) for the Ports of Hilo, HI; International Falls, MN; Ontonagon, MI; Morehead City, NC; Huntington, WV; and Port Canaveral, FL.

DATES: TWIC enrollment in Hilo on January 3, 2008; International Falls, Ontonagon, Morehead City, and Huntington on January 16, 2008; and Port Canaveral on January 17, 2008.

ADDRESSES: You may view published documents and comments concerning the TWIC Final Rule, identified by the docket numbers of this notice, using any one of the following methods.

(1) Searching the Federal Docket Management System (FDMS) Web page at *www.regulations.gov;*

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

FOR FURTHER INFORMATION CONTACT: James Orgill, TSA–19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

Transportation Threat Assessment and Credentialing (TTAC), TWIC Program, (571) 227–4545; e-mail: *credentialing@dhs.gov.*

Background

The Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration (TSA), issued a joint final rule (72 FR 3492; January 25, 2007) pursuant to the Maritime Transportation Security Act (MTSA), Public Law 107–295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347 (October 13, 2006). This rule requires all credentialed merchant mariners and individuals with unescorted access to secure areas of a regulated facility or vessel to obtain a TWIC. In this final rule, on page 3510, TSA and Coast Guard stated that a phased enrollment approach based upon risk assessment and cost/benefit would be used to implement the program nationwide, and that TSA would publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate.

This notice provides the start date for TWIC initial enrollment at the Ports of Hilo, HI; International Falls, MN; Ontonagon, MI; Morehead City, NC; Huntington, WV; and Port Canaveral, FL. Enrollment will begin in Hilo on January 3, 2008; International Falls, Ontonagon, Morehead City, and Huntington on January 16, 2008; and Port Canaveral on January 17, 2008. The Coast Guard will publish a separate notice in the **Federal Register** indicating when facilities within the Captain of the Port Zone Honolulu, including those in the Port of Hilo; Captain of the Port Zone Duluth, including those in the Ports of International Falls and Ontonagon; Captain of the Port Zone North Carolina, including those in the Port of Morehead City; Captain of the Port Zone Ohio Valley, including those in the Port of Huntington; and Captain of the Port Zone Jacksonville, including those in the Port of Port Canaveral must comply with the portions of the final rule requiring TWIC to be used as an access control measure. That notice will be published at least 90 days before compliance is required.

To obtain information on the pre-enrollment and enrollment process, and enrollment locations, visit TSA's TWIC Web site at *http://www.tsa.gov/twic.*

Issued in Arlington, Virginia, on December 18, 2007.

Stephen Sadler,

Director, Maritime and Surface Credentialing, Office of Transportation Threat Assessment and Credentialing, Transportation Security Administration.

[FR Doc. E7–24913 Filed 12–21–07; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW155501]

WYOMING: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Gasconade Oil Co. for competitive oil and gas lease WYW155501 for land in Lincoln County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof per year, and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW155501 effective May 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E7–24925 Filed 12–21–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW157577]

WYOMING: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Nerd Gas Company, LLC for competitive oil and gas lease WYW157577 for land in Uinta County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16–2/3 percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW157577 effective May 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E7–24926 Filed 12–21–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2007–OMM–0075]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0068).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart M, ''Unitization.''

DATE: Submit written comments by February 25, 2008.

ADDRESSES: You may submit comments by any either of the following methods listed below.

- Electronically: go to *http://www.regulations.gov*, select ''Minerals Management Service'' from the agency drop-down menu, then click ''submit.'' In the Docket ID column, select MMS–2007–OMM–0063 to submit public comments and to view supporting and related materials available. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. All comments submitted will be published and posted to the docket after the closing period.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0068'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart M, Unitization.

OMB Control Number: 1010–0068.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

This notice concerns the reporting and recordkeeping elements of 30 CFR Part 250, Subpart M, Unitization. We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2) and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' No items of a sensitive nature are collected. Responses are required to retain a benefit. The MMS OCS Regions use the information to determine whether to approve a proposal to enter into an agreement to unitize operations under two or more leases or to approve modifications when circumstances change. The information is necessary to ensure that operations will result in preventing waste, conserving natural resources, and protecting correlative rights, including the Government's interests. We also use information submitted to determine competitiveness of a reservoir or to decide that compelling unitization will achieve these results.

Frequency: The frequency of reporting is on occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 5,884 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR part 250 subpart M	Reporting requirement	Hour burden; fee burden
1301	General description of requirements	Burden included in the following sections.
1301(d), (f)(3), (g)(1), (g)(2), (ii)	Request suspension of production or operations	Burden covered in 1010–0114.
1302(b)	Request preliminary determination on competitive reservoir	39
1302(b)	Submit concurrence or objection on competitiveness with supporting evidence	39
1302(c), (d)	Submit joint plan of operations, supplemental plans, or a separate plan if agreement cannot be reached.	39
1303	Apply for voluntary unitization, including submitting unit agreement or revision, unit operating agreement, initial plan of operation, and supporting data; request for variance from model agreement and other related requirements.	161 $10,700 fee.
1304(b)	Request compulsory unitization, including submitting unit agreement, unit operating agreement, initial plan of operation, and supporting data; serving non-consenting lessees with documents.	161
1303; 1304	Submit revisions or modifications to unit agreement, unit operating agreement, plan of operation, change of unit operator, etc.*.	7 Hrs—GOM. 8 Hrs—POCS. $760 fee.
1303; 1304	Submit initial, and revisions to, participating area*	50
1304(d)	Request hearing on required unitization	1
1304(e)	Submit statement at hearing on compulsory unitization	5
1304(e)	Pay for and submit three copies of verbatim transcript of hearing	1
1304(f)	Appeal final order of compulsory unitization	Exempt under 5 CFR 1320(a)(2), (c).

Citation 30 CFR part 250 subpart M	Reporting requirement	Hour burden; fee burden
1300–1304	General departure and alternative compliance requests not specifically covered elsewhere in subpart M regulations.	1

* These requirements are specified in each Unit Agreement.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified two ''non-hour cost'' burdens for this collection. Section 1303 requires fees for a voluntary unitization or unit expansion and a fee for a unitization revision. We have not identified any other ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: 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.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: December 11, 2007.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E7–24928 Filed 12–21–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Site Progress Report to the World Heritage Committee for Yellowstone National Park

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Draft Site Progress Report to the World Heritage Committee, Yellowstone National Park.

SUMMARY: Pursuant to the Decision adopted by the 27th Session of the World Heritage Committee (Document: WHC–03/27.COM/7A.12) accepted by the United States Government, the National Park Service (NPS) announces the publication for comment of a Draft Site Progress Report to the World Heritage Committee for Yellowstone National Park, Wyoming, Idaho and Montana.

DATES: There will be a 30-day public review period for comments on this document. Comments must be received on or before January 25, 2008.

ADDRESSES: The Draft Site Report is posted on the park's Web site at: *http://www.nps.gov/yell/planyourvisit/world-heritage-committee-report.htm.* Copies are also available by writing to Suzanne Lewis, Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, WY 82190–0168; by telephoning 307–344–2002; by sending an e-mail message to *yell_world_heritage@nps.gov;* or by picking up a copy in person at the park's headquarters in Mammoth Hot Springs, Wyoming, 82190.

FOR FURTHER INFORMATION CONTACT: Suzanne Lewis, Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, WY 82190–0168, or by calling 307–344–2002.

SUPPLEMENTARY INFORMATION: The draft report summarizes the status of several issues, including mining activities, threats to bison, threats to cutthroat trout, water quality, road impacts, and visitor use impacts, which raised the concerns of the World Heritage Committee in 1995 and led to the park's inclusion the List of World Heritage in Danger that year. The World Heritage Committee removed Yellowstone National Park from the In Danger List in 2003, and at that time requested that the United States submit a report to the Committee on the status of these issues every two years.

Persons wishing to comment may do so by any one of several methods. They may mail comments to Suzanne Lewis, Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, WY 82190–0168. They also may comment via e-mail to *yell_world_heritage@nps.gov* (include name and return address in the e-mail message). Finally, they may hand-deliver comments to park headquarters in Mammoth Hot Springs, Wyoming 82190. 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. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Todd Willens,

Deputy Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 07–6147 Filed 12–21–07; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 17, 2007.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: John Kraemer, OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, Telephone: 202–395–4816 / Fax: 202–395–6974 (these are not a toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Records of Tests and Examinations of Personnel Hoisting Equipment.

OMB Control Number: 1219–0034.

Affected Public: Private Sector: Business or other for-profit (Mines).

Agency Form Number: None.

Estimated Number of Respondents: 255.

Estimated Total Annual Burden Hours: 6,873.

Estimated Total Annual Cost Burden: $306,000.

Description: MSHA requires records of specific tests and inspections of mine personnel hoisting systems, including wire ropes, to ensure that such systems are safe to operate while in use. For additional information, see related notice published on October 17, 2007 at 72 FR 58900.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Respirator Program Records.

OMB Control Number: 1219–0048.

Affected Public: Private Sector: Business or other for-profit (Mines).

Agency Form Number: None.

Estimated Number of Respondents: 300.

Estimated Total Annual Burden Hours: 2,174 .

Estimated Total Annual Cost Burden: $90,000.

Description: MSHA requires metal and nonmetal mine operators to (1) establish written standard operating procedures governing the selection, maintenance, and use of respirators, and (2) to keep records of the results of respirator fit-tests. For additional information, see related notice published on October 15, 2007 at 72 FR 58336.

Agency Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Hoist Operators' Physical Fitness.

OMB Control Number: 1219–0049.

Affected Public: Private Sector: Business or other for-profit (Mines).

Agency Form Number: None.

Estimated Number of Respondents: 64.

Estimated Total Annual Burden Hours: 11.

Estimated Total Annual Cost Burden: $98,560.

Description: Mine operators are required to have hoist operators examined and certified annually for fitness of duty, by a qualified, licensed physician. For additional information, see related notice published on October 15, 2007 at 72 FR 58337.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Rock Burst Control Plan (Pertains to Underground Metal/Nonmetal Mines—30 CFR 57.3461).

OMB Control Number: 1219–0097.

Affected Public: Private Sector: Business or other for-profit (Mines).

Agency Form Number: None.

Estimated Number of Respondents: 2.

Estimated Total Annual Burden Hours: 24.

Estimated Total Annual Cost Burden: $0.

Description: Requires underground metal and nonmetal mine operators to develop a rock burst plan within 90 days after a rock burst has been experienced. Stress data is normally recorded on gauges and plotted on maps. This information is used for work assignments to assure miner safety and to schedule correction work. For additional information, see related notice published on October 15, 2007 at 72 FR 58337.

Darrin A, King,

Acting Departmental Clearance Officer.

[FR Doc. E7–24904 Filed 12–21–07; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL INDIAN GAMING COMMISSION

Fee Rate

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted final annual fee rates of 0.00% for tier 1 and 0.059% (.00059) for tier 2 for calendar year 2007. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the final fee rate on class II revenues for calendar year 2007 shall be one-half of the annual fee rate, which is 0.0295% (.000295).

FOR FURTHER INFORMATION CONTACT: Kwame Mainoo, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone (202) 632–7003; fax (202) 632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates, the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the final rate being adopted today are effective for calendar year 2007. Therefore, all gaming operations within the jurisdiction of the Commission are required to self administer the provisions of these regulations, and report and pay any fees that are due to the Commission by December 31, 2007.

Dated: December 18, 2007.

Philip N. Hogen,

Chairman, National Indian Gaming Commission.

[FR Doc. 07–6182 Filed 12–21–07; 8:45 am]

BILLING CODE 7565–01–M

DEPARTMENT OF ENERGY

Office of Nuclear Energy

Nuclear Energy Advisory Committee; Notice of Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, App. 2, and section 102–3.65, title 41, Code of Federal Regulations and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Nuclear Energy Advisory Committee, formerly known as the Nuclear Energy Research Advisory Committee, has been renewed for a two year period.

The Committee will provide advice to the Office of Nuclear Energy on planning and priorities in the nuclear energy program. The Secretary of Energy has determined that renewal of the Nuclear Energy Advisory Committee is essential to conduct the business of the Department of Energy and is in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

For Further Information Contact: Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington DC on December 15, 2007.

Carol A. Matthews,

Acting Committee Management Officer.

[FR Doc. E7–24957 Filed 12–21–07; 8:45 am]

BILLING CODE 6450–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–317]

Calvert Cliffs Nuclear Power Plant, Inc.; Calvert Cliffs Nuclear Power Plant, Unit No. 1; Exemption

1.0 Background

Calvert Cliffs Nuclear Power Plant, Inc. (the licensee), is the holder of Renewed Facility Operating License Nos. DPR–53 and DPR–69, which authorize operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (Calvert Cliffs 1 and 2), respectively. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Calvert County, Maryland.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Section 50.46, ''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' requires, in part, that ''Each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO™ cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents [LOCAs] conforms to the criteria set forth in paragraph (b) of this section.'' Appendix K, ''ECCS Evaluation Models,'' to 10 CFR Part 50 requires, in part, that the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation. The Baker-Just equation assumes that the cladding material is composed of either zircaloy or ZIRLO™.

By letter dated February 23, 2007, the licensee requested an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 to allow the use of lead fuel assemblies (LFAs) clad with advanced zirconium-based alloys manufactured by Westinghouse Electric Company and M5™ alloy manufactured by AREVA. The advanced zirconium-based and M5™ alloys are proprietary alloys and are chemically different from either zircaloy or ZIRLO™ fuel cladding materials, which are approved for use. Therefore, a plant-specific exemption from these regulations is required to support the use of LFAs that are not manufactured with zircaloy or ZIRLO™.

Previously, by letter dated April 11, 2003, the NRC staff approved the irradiation of 8 LFAs, four Westinghouse LFAs and four AREVA LFAs, for 2 operating cycles in the core of Calvert Cliffs 2. These LFAs were inserted into the Unit 2 core in April of 2003 and remained there during Operating Cycles 15 and 16. Subsequently, by letter dated November 9, 2006, the NRC staff approved the irradiation of 4 LFAs, two Westinghouse LFAs and two AREVA LFAs, for a third operating cycle in either Calvert Cliffs 1 or Calvert Cliffs 2. The licensee subsequently inserted these 4 LFAs into the core of Calvert Cliffs 2 during their spring 2007 refueling outage for operating cycle 17 which is currently ongoing. The remaining 4 LFAs, two Westinghouse LFAs and two AREVA LFAs, were discharged to the spent fuel pool for detailed post-irradiation examinations during the spring 2007 Unit 2 refueling outage.

In the licensee's letter of February 23, 2007, the licensee requested the exemption to support the re-insertion of the remaining 4 LFAs, two

Westinghouse LFAs and two AREVA LFAs, for a third operating cycle. These LFAs would be placed in high-duty core locations in Calvert Cliffs 1 for operating cycle 19 in order to gain high burnup experience. The licensee requested to irradiate the LFAs beyond the current burnup limit to a peak rod average of 70,000 MWD/MTU for Calvert Cliffs Unit 1.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under Section 50.12(a)(2), special circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

Authorized by Law

This exemption would allow the licensee to re-insert up to four LFAs, two Westinghouse LFAs and two AREVA LFAs, which contain some fuel rods clad with advanced zirconium-based and M5 ™ alloys that do not meet the definition of Zircaloy or ZIRLO ™ as specified by 10 CFR 50.46, into the core of Calvert Cliffs 1. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance. Previously, the Westinghouse safety evaluation (WCAP–15874–NP, Revision 0, ''Safety Analysis Report for Use of Improved Zirconium-based Cladding Materials in Calvert Cliffs Unit 2 Batch T Lead Fuel Assemblies,'' dated April 2002) and approved Framatome ANP Topical Report (BAW–10227P–A, ''Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel,'' Framatome Cogema Fuels, February 2000) demonstrated the acceptability of the advanced zirconium-based and M5 ™ cladding under LOCA conditions. The unique features of the LFAs were evaluated for effects on the LOCA analysis. The results showed that the LFAs would not adversely affect the ECCS performance. Since the four LFAs will be located at high-duty other than LOCA-limiting core locations, the licensee concludes that the LOCA safety analyses will remain bounding for these LFAs for Calvert Cliffs 1.

Paragraph I.A.5 of Appendix K to 10 CFR Part 50 states that the rates of energy, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of the rule would not permit use of the equation for the advanced zirconium-based and M5 ™ alloys for determining acceptable fuel performance. The underlying intent of this portion of the Appendix is to ensure that analysis of fuel response to LOCAs is conservatively calculated. The Westinghouse safety evaluation and approved AREVA topical report show that, due to the similarities in the chemical composition of the advanced zirconium-based and M5 ™ alloys and zircaloy, the application of the Baker-Just equation in the analysis of the advanced zirconium-based and M5 ™ clad fuel rods will continue to conservatively bound all post-LOCA scenarios. Thus, the application of Appendix K, Paragraph I.A.5 is not necessary to achieve its underlying purpose in these circumstances.

Based on the acceptable performance of 8 LFAs in the Calvert Cliffs 2 reactor core during operating cycles 15 and 16, the staff concludes that the licensee has demonstrated that the four LFAs will perform adequately under LOCA conditions, and thus the LFAs are acceptable for operation for Calvert Cliffs 1 operating cycle 19. Based on the above, the staff concludes that it is acceptable to grant an exemption from the requirements of 10 CFR 50.46, and Appendix K to 10 CFR Part 50 for Calvert Cliffs 1.

Based on the above, no new accident precursors are created by the exemption to allow use of advanced zirconium-based and M5 ™ alloy clad fuel, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk [since risk is probability × consequences] to public health and safety.

Consistent With Common Defense and Security

The proposed exemption would allow the use of LFAs with advanced cladding materials. This change to the plant core configuration has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 is to establish acceptance criteria for ECCS performance. The licensee stated that the wording of the regulations renders the criteria of 10 CFR 50.46 and Appendix K inapplicable to the advanced zirconium-based and M5 ™ alloy clad fuel, even though the approved Westinghouse safety evaluation and AREVA topical report shows that the intent of the regulations are met. Therefore, since the underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 is achieved with the use of the advanced zirconium-based and M5 ™ alloy clad fuel, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for granting of an exemption from 10 CFR 50.46 and Appendix K exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.46 and 10 CFR Part 50, Appendix K with respect to the use of LFAs with advanced zirconium-based and M5 ™ alloy clad fuel.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (72 FR 71449).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 17th day of December 2007.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–24975 Filed 12–21–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Company; FERMI 2; Exemption

1.0 Background

Detroit Edison Company (the licensee) is the holder of Facility Operating License No. NPF–43, which authorizes operation of Fermi 2. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a boiling-water reactor located in Monroe County, Michigan.

Fermi 2 is in the process of re-racking its spent fuel pool (SFP), which involves the replacement of some older racks with higher-density racks. The NRC approved the re-rack project in its letter dated January 25, 2001. A result of the re-rack effort is that some of the SFP floor space that was previously used to store miscellaneous items is no longer available, due to the addition of the new racks. To address this, Fermi 2 is introducing two Holtec Overhead Platforms (HOPs) to the SFP which are designed to be placed on two specific spent fuel storage racks as approved by the NRC in its letter dated January 25, 2001.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 74, section 74.19(c), requires that each licensee authorized to possess special nuclear material (SNM), at any one time and site location, in a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall conduct a physical inventory of all SNM in its possession under license at intervals not to exceed 12 months.

By letter dated April 27, 2007, as supplemented by letter dated November 9, 2007, the licensee requested an exemption from the requirements of 10 CFR 74.19(c) to conduct a physical inventory of all special nuclear material at intervals not to exceed 12 months. Specifically, the request is for exemption from the physical inventory requirements for those fuel assemblies that are stored under the HOPs when the HOPs are installed in the spent fuel racks.

3.0 Discussion

Pursuant to 10 CFR 74.7, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 74, when the exemptions are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Authorized by Law

This exemption would exempt the licensee from the requirements of 10 CFR 74.19(c) for the physical inventory requirements of the fuel assemblies that are stored under the HOPs when the HOPs are installed in the spent fuel racks. As stated above, 10 CFR 74.7 allows the NRC to grant exemptions from the requirements of 10 CFR Part 74. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

Will Not Endanger Life or Property or Common Defense and Security

Administrative controls associated with the movement of the HOPs and the HOP itself (physical barrier) will prohibit movement of the fuel assemblies in the fuel storage racks below the HOPs when the HOPs are installed. The licensee submitted regulatory commitments in Enclosure 1 of the letter dated November 9, 2007, that provide further assurance that the SNM stored under the HOPs will be adequately controlled and accounted for by the licensee. The HOPs add another barrier for access to the SNM in the SFP, thus, increasing security of SNM stored under the HOPs when the HOPs are installed. Therefore, the exemption will not endanger life or property or common defense and security.

Otherwise in the Public Interest

The licensee was previously approved by the NRC to install the HOPs as part of the licensee's re-rack of Fermi 2 SFP. The re-rack project increased the capacity of the SFP from 2,414 to 4,608 fuel assemblies to provide full core discharge capability after June 2001. As discussed above, the HOPs are needed to be installed because, due to the addition of the new racks, some of the SFP floor space that was previously used to store miscellaneous items is no longer available. In order for the licensee to perform physical inventory of the SNM stored below the HOPs, the licensee would have to clear and uninstall the HOPs. The HOPs add another barrier for access to the SNM in the SFP, thus increasing security of SNM stored under the HOP when the HOPs are installed. An increase in security is beneficial to public interest. Therefore, the exemption is otherwise in the public interest.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 74.7, the exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Detroit Edison Company an exemption to Fermi 2 from the requirements of 10 CFR 74.19(c) for physical inventory for those fuel assemblies that are stored under the HOPs when the HOPs are installed in the spent fuel racks. The annual physical inventory of all other SNM will continue to be performed per the requirements of 10 CFR 74.19(c).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (72 FR 70619).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 17th day of December 2007.

For the Nuclear Regulatory Commission.

Catherine Haney,

Division Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–24973 Filed 12–21–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the Joint ACRS Subcommittees on Thermal-Hydraulic Phenomena and on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Joint Subcommittees on Thermal-Hydraulic Phenomena and on Reliability and Probabilistic Risk Assessment will hold a meeting on January 18, 2008, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, January 18, 2008–8:30 a.m. until the conclusion of business.

The Subcommittees will discuss the results of the Cable Response to Live Fire (CAROLFIRE) Testing Program, including staff's resolution of public comments. In addition, the Subcommittees will be briefed on the fire model Phenomena Identification and Ranking Table (PIRT). The Subcommittees will hear presentations by and hold discussions with representatives of NRC staff regarding this matter. The Subcommittees will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Hossein P. Nourbakhsh, (Telephone: 301–415–5622) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: December 18, 2007.

Cayetano Santos,

Branch Chief, ACRS.

[FR Doc. E7–24970 Filed 12–21–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of December 24, 31, 2007, January 7, 14, 21, 28, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED: *Week of December 24, 2007—Tentative.*

There are no meetings scheduled for the Week of December 24, 2007.

Week of December 31, 2007—Tentative.

There are no meetings scheduled for the Week of December 31, 2007.

Week of January 7, 2008—Tentative.

There are no meetings scheduled for the Week of January 7, 2008.

Week of January 14, 2008—Tentative.

There are no meetings scheduled for the Week of January 14, 2008.

Week of January 21, 2008—Tentative.

There are no meetings scheduled for the Week of January 21, 2008.

Week of January 28, 2008—Tentative.

There are no meetings scheduled for the Week of January 28, 2008.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: December 19, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–6195 Filed 12–20–07; 10:18 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: C. Penn, Group Manager, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between November 1, 2007, and November 30, 2007. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments were approved for November 2007.

Schedule B

No Schedule B appointments were approved for November 2007.

Schedule C

The following Schedule C appointments were approved during November 2007.

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS80001 Confidential Assistant to the Administrator, E-Government and Information Technology. Effective November 09, 2007.

Office of National Drug Control Policy

QQGS80001 Special Assistant, Office of State and Local and Tribal Affairs to the Deputy Director for State and Local Affairs. Effective November 21, 2007.

Section 213.3304 Department of State

DSGS61267 Special Assistant to the Assistant Secretary for International Organizational Affairs. Effective November 06, 2007.

DSGS61268 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs. Effective November 09, 2007.

DSGS68234 Foreign Affairs Officer to the Assistant Secretary for Democracy

Human Rights and Labor. Effective November 13, 2007.

Section 213.3305 Department of the Treasury

DYGS00441 Director of Outreach to the Deputy Assistant Secretary (Financial Education). Effective November 06, 2007.

DYGS00489 Operations Coordinator to the Director of Operations. Effective November 30, 2007.

Section 213.3306 Department of Defense

DDGS17116 Protocol Specialist to the Special Assistant to the Secretary of Defense for Protocol. Effective November 05, 2007.

DDGS17119 Special Assistant to the Under Secretary of Defense (Intelligence). Effective November 09, 2007.

DDGS17034 Administrative Assistant to the Director, Department of Defense Office of Legislative Counsel. Effective November 13, 2007.

DDGS17118 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective November 13, 2007.

DDGS17109 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective November 14, 2007.

Section 213.3307 Department of the Army

DWGS00089 Personal and Confidential Assistant to the Secretary of the Army. Effective November 09, 2007.

Section 213.3308 Department of the Navy

DNGS07408 Confidential Assistant to the Assistant Secretary of the Navy (Research Development and Acquisition). Effective November 26, 2007.

Section 213.3310 Department of Justice

DJGS00072 Senior Advisor to the Director, Office of Public Affairs. Effective November 01, 2007.

DJGS00102 Counsel to the Assistant Attorney General. Effective November 21, 2007.

Section 213.3311 Department of Homeland Security

DMGS00726 Chief of Staff to the Assistant Secretary for Policy. Effective November 09, 2007.

DMGS00727 Advisor to the Chief of Staff. Effective November 14, 2007.

DMGS00652 Director, Ready Campaign to the Assistant Secretary for Public Affairs. Effective November 21, 2007.

DMGS00728 Press Secretary to the Assistant Secretary for Public Affairs. Effective November 29, 2007.

Section 213.3312 Department of the Interior

DIGS01111 Associate Director—External and Intergovernmental Affairs to the Director, External and Intergovernmental Affairs. Effective November 09, 2007.

Section 213.3313 Department of Agriculture

DAGS00846 Deputy Director of Communications to the Director of Communications. Effective November 30, 2007.

Section 213.3314 Department of Commerce

DCGS00465 Confidential Assistant to the Director Office of White House Liaison. Effective November 06, 2007.

DCGS00540 Deputy Chief of Protocol to the Chief of Staff. Effective November 07, 2007.

DCGS00325 Special Assistant to the Assistant Secretary for Market Access and Compliance. Effective November 21, 2007.

DCGS00472 Confidential Assistant to the Assistant Secretary and Director General of United States/For Commercial Services. Effective November 21, 2007.

DCGS00599 Confidential Assistant to the Director, Office of Legislative Affairs. Effective November 21, 2007.

Section 213.3315 Department of Labor

DLGS00166 Staff Assistant to the Director, 21st Century Office and Deputy Assistant Secretary for Intergovernmental Affairs. Effective November 07, 2007.

Section 213.3316 Department of Health and Human Services

DHGS60058 Confidential Assistant to the Director, Congressional Liaison Office. Effective November 13, 2007.

DHGS60129 Special Assistant to the Administrator Centers for Medicare and Medicaid Services. Effective November 21, 2007.

Section 213.3317 Department of Education

DBGS00533 Special Assistant to the Director, White House Liaison. Effective November 13, 2007.

DBGS00606 Secretary's Regional Representative, Region 3 to the Director, Regional Services. Effective November 13, 2007.

Section 213.3318 Environmental Protection Agency

EPGS07027 Strategic Scheduler to the Deputy Chief of Staff (Operations). Effective November 14, 2007.

EPGS07026 Senior Advisor to the Assistant Administrator for Research and Development. Effective November 21, 2007.

EPGS07028 Confidential Assistant to the Deputy Chief of Staff (Operations). Effective November 21, 2007.

EPGS07029 Director of Advance to the Deputy Chief of Staff (Operations). Effective November 21, 2007.

EPGS07030 Deputy to the Scheduler to the Deputy Chief of Staff (Operations). Effective November 21, 2007.

Section 213.3331 Department of Energy

DEGS00622 Special Advisor to the Chief of Staff. Effective November 06, 2007.

DEGS00623 Special Assistant to the Director, Public Affairs. Effective November 06, 2007.

DEGS00618 Energy Operations Coordinator to the Assistant Secretary (Electricity Delivery and Energy Reliability). Effective November 14, 2007.

DEGS00619 Director of International Activities to the Principal Deputy Assistant Secretary. Effective November 14, 2007.

DEGS00620 Director, Office of Technology Advancement and Outreach to the Chief Operating Officer for Energy Efficiency and Renewable Energy. Effective November 14, 2007.

DEGS00621 Special Assistant to the Deputy Secretary of Energy. Effective November 14, 2007.

DEGS00625 Principal Deputy Director to the Director, Public Affairs. Effective November 29, 2007.

Section 213.3332 Small Business Administration

SBGS00637 Congressional Liaison to the Assistant Administrator for Congressional and Legislative Affairs. Effective November 21, 2007.

SBGS00639 Congressional Liaison to the Assistant Administrator for Congressional and Legislative Affairs. Effective November 21, 2007.

SBGS00640 Regional Administrator (Region II) to the Administrator. Effective November 23, 2007.

Section 213.3337 General Services Administration

GSGS00063 Senior Communications Advisor to the Deputy Associate Administrator for Communications. Effective November 21, 2007.

Section 213.3353 Merit Systems Protection Board

MPGS60014 Counsel to the Chairman. Effective November 09, 2007.

Section 213.3357 National Credit Union Administration

CUOT01324 Staff Assistant to the Director of Public and Congressional Affairs to the Chairman. Effective November 09, 2007.

Section 213.3384 Department of Housing and Urban Development

DUGS60417 Special Assistant to the Assistant Deputy Secretary for Field Policy and Management. Effective November 14, 2007.

Section 213.3396 National Transportation Safety Board

TBGS81116 Confidential Assistant to the Chairman. Effective November 29, 2007.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Howard C. Weizmann,

Deputy Director.

[FR Doc. E7–24924 Filed 12–21–07; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 0–2, Form ADV–NR; SEC File No. 270–214; OMB Control No. 3235–0240.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 0–2'' (17 CFR 275.0–2) and ''Form ADV–NR'' (17 CFR 279.4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1). Rule 0–2 and Form ADV–NR facilitate service of process to non-resident investment advisers and their non-resident general partners or non-resident managing agents. The Form requires these persons to designate the Commission as agent for service of process. The purpose of this collection of information is to enable the commencement of legal and/or regulatory actions against investment advisers that are doing business in the United States, but are not residents.

The respondents to this information collection would be each non-resident general partner or non-resident managing agent of an SEC-registered adviser. The Commission has estimated that compliance with the requirement to complete Form ADV–NR imposes a total burden of approximately 1 hour for an adviser. Based on our experience with these filings, we estimate that we will receive 18 Form ADV–NR filings annually. Based on the 1.0 hour per respondent estimate, the Commission staff estimates a total annual burden of 18 hours for this collection of information.

Rule 0–2 and Form ADV–NR do not require recordkeeping or records retention. The collection of information requirements under the rule and form are mandatory. The information collected pursuant to the rule and Form ADV–NR is a filing with the Commission. This filing is not kept confidential and must be preserved until at least three years after termination of the enterprise. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 17, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24885 Filed 12–21–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8874; 34–56989; File No. 265–24]

Advisory Committee on Improvements to Financial Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Meeting of SEC Advisory Committee on Improvements to Financial Reporting.

SUMMARY: The Securities and Exchange Commission Advisory Committee on Improvements to Financial Reporting is providing notice that it will hold a public meeting on Friday, January 11, 2008, in the Multipurpose Room, Room L–006, at the Commission's main offices, 100 F Street, NE., Washington, DC, beginning at 9:30 a.m. The meeting will be open to the public. The meeting will be webcast on the Commission's Web site at *http://www.sec.gov.* The public is invited to submit written statements for the meeting.

The agenda for the meeting includes: (1) Discussion and deliberation of a Committee progress report with concrete proposals and conceptual approaches based on the Committee's work to date in the areas of substantive complexity, standard setting, audit process and compliance and delivery of financial information; (2) a decision to use the Committee progress report as the basis for a report to be published for public comment; and (3) a discussion of next steps and planning for the next meeting.

DATES: Written statements should be received on or before January 4, 2008.

ADDRESSES: Written statements may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number 265–24 on the subject line.

Paper Comments

- Send paper statements in triplicate to Nancy M. Morris, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–24. This file number should be included on the subject line if e-mail is used. To help us process and review your statements more efficiently, please

use only one method. The Commission staff will post all statements on the Advisory Committee's Web site (*http://www.sec.gov/about/offices/oca/acifr.shtml*). Statements also will be available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: James L. Kroeker, Deputy Chief Accountant, or Shelly C. Luisi, Senior Associate Chief Accountant, at (202) 551–5300, Office of the Chief Accountant, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6561.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, § 10(a), James L. Kroeker, Designated Federal Officer of the Committee, has approved publication of this notice.

Dated: December 19, 2007.

Nancy M. Morris,

Committee Management Officer.

[FR Doc. E7–24905 Filed 12–21–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 8873; Release No. 56986]

Securities Act of 1933; Securities Exchange Act of 1934; Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2008

The Sarbanes-Oxley Act of 2002 (the ''Act'') established the Public Company Accounting Oversight Board (''PCAOB'') to oversee the audits of public companies and related matters, to protect investors, and to further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB is to accomplish these goals through registration of public accounting firms and standard setting, inspection, and disciplinary programs. Section 109 of the Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Section 109(h) amends section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with section 109 of the Act. Under section 109(f), the aggregate annual accounting support fee shall not exceed the PCAOB's aggregate ''recoverable budget expenses,'' which may include operating, capital and accrued items. Section 109(b) of the Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Securities and Exchange Commission (the ''Commission'').

On July 18, 2006, the Commission amended its Rules of Practice related to its Informal and Other Procedures to add a rule to facilitate the Commission's review and approval of PCAOB budgets and accounting support fees.[1] The new budget rule provides, among other things, a timetable for the preparation and submission of the PCAOB budget and for Commission actions related to each budget, a description of the information that should be included in each budget submission, limits on the PCAOB's ability to incur expenses and obligations except as provided in the approved budget, procedures relating to supplemental budget requests, requirements for the PCAOB to furnish on a quarterly basis certain budget-related information, and a list of definitions that apply to the rule and to general discussions of PCAOB budget matters.

The new budget rule requires compliance beginning with the budget process for fiscal year 2008. Accordingly, in March 2007 the PCAOB provided the Commission with a narrative description of its program issues and outlook for the 2008 budget year. In response, the Commission staff provided to the PCAOB staff economic assumptions and budgetary guidance for the 2008 budget year. The PCAOB subsequently delivered a preliminary budget and budget justification to the Commission. The staff from the Commission's Offices of the Chief Accountant, Executive Director and Information Technology dedicated a substantial amount of time to the review and analysis of the PCAOB's programs, projects and budget estimates, reviewed the PCAOB's estimates of 2007 actual spending, and attended several meetings with management and staff of the PCAOB to develop an understanding of the PCAOB's budget and operations. During the course of the Commission's review, the Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this comprehensive review, the Commission issued a ''pass back'' to the PCAOB. The PCAOB approved its 2008 budget on November 19, 2007 and submitted that budget for Commission approval.

After considering the above, the Commission did not identify any proposed disbursements in the 2008 budget adopted by the PCAOB that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2008 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2008.

As part of its review of the 2008 PCAOB budget, the Commission notes that this is the first year of compliance with the new budget rule. The Commission recognizes that the PCAOB is continuing to work with its program areas to develop full and robust submissions in response to the new budget rule. The PCAOB also is in an important review and reorganization phase regarding its IT program, and the PCAOB intends to implement annual and special reporting for registered public accounting firms, a function required by section 102(d) of the Sarbanes-Oxley Act of 2002, in the 2008 budget year.

In addition, the Commission believes an integral part of the PCAOB's budget process, and of import to the Commission in fulfilling its oversight responsibilities, is the PCAOB's long-range strategic planning. The budget rule requires the PCAOB to maintain a comprehensive strategic plan that supports each budget request,[2] describes the required minimum elements of the plan,[3] and requires the PCAOB's budget submission to describe the relationship between the strategic plan and the resources requested in the budget.[4] The Board submitted a strategic plan to the Commission in May, 2007, and the Commission subsequently provided comments designed to improve the plan so that it better informs the budget request as anticipated by the rule and facilitates the Commission's review and approval thereof. Because of the important role that the strategic plan plays in informing the PCAOB's budget request, and to address the other items mentioned above, the Commission

[1] 17 CFR 202.11. *See* Release No. 33–8724 (July 18, 2006) [71 FR 41998 (July 24, 2006)].

[2] See 17 CFR 202.11(g).

[3] See 17 CFR 202.11(b)(9).

[4] See 17 CFR 202.11(b)(2) and (b)(5).

deems it necessary to set forth the following specific measures.

Accordingly, with respect to the PCAOB's 2009 budget cycle, the PCAOB will:

1. Develop a full and robust strategic plan, preliminary budget and budget justification. In particular:

a. The PCAOB will review its strategic plan in connection with the description of the minimum elements of such a plan in the Commission's budget approval rule and the Commission's comments noted above. Consistent with the foregoing, the PCAOB will submit a draft to the Commission by February 29, 2008 of a revised strategic plan that includes, among other things, (i) quantifiable and measurable performance targets, (ii) forecasts of total headcount and budget summary figures for the current and four following years, (iii) a candid assessment of the PCAOB's strengths and weaknesses, and (iv) a broader discussion of environmental factors. The Commission will provide views to the PCAOB within two weeks after it receives the new draft plan. Thereafter, the PCAOB will adopt a new strategic plan, reflecting such views, by March 31, 2008.

b. The PCAOB will further develop and submit a more detailed preliminary budget, budget justification and performance budget, including performance targets as required under the budget rule.

2. Include more detailed information about the state of the PCAOB's IT review and reorganization in its quarterly reports to the Commission, including plans and estimated and actual costs for IT projects such as the proposed annual and special reporting system;

3. Implement annual and special reporting in accordance with the Act and provide an analysis of historical and planned expenditures related to the review and processing of registrations and annual reports of public accounting firms, including any associated information technology costs, and provide a timetable for recovering those amounts from registered public accounting firms as required by section 102(f) of the Act;

4. Not increase Chairman and Board salaries for 2008 beyond the 3.3% budgeted increase in the 2008 budget, and Chairman and Board salaries shall not be further linked to FASB Chairman and Board salaries; and

5. Keep the Commission and its staff informed of any internal or third-party reviews of the PCAOB's programs and offices and the findings of any such reviews. The Commission has determined that the PCAOB's 2008 budget and annual accounting support fee are consistent with section 109 of the Act. Accordingly,

It is ordered, pursuant to section 109 of the Act, that the PCAOB budget and annual accounting support fee for calendar year 2008 are approved.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–24909 Filed 12–21–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56977; File No. SR–CBOE–2007–148]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Equity Options Obvious Error Rule

December 18, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 14, 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 has designated this proposal as one concerned solely with the administration of the Exchange under section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 6.25, which is the Exchange's rule applicable to the nullification and adjustment of equity options transactions. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.cboe.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(2).

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. CBOE has substantially prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under CBOE's equity obvious error rule, an Obvious Error Panel may be formed to review decisions made by Trading Officials under the rule. The Obvious Error Panel is currently comprised of at least one Trading Floor Liaison (''TFL'') staff member and four Exchange members. The purpose of the proposed rule change is to replace the reference to the ''TFL'' staff with a reference to the ''Exchange's staff designated to perform Obvious Error Panel functions.'' The Exchange is proposing to make this change because it recently determined to reassign the Obvious Error Panel function from the CBOE TFL group to a group of designated Exchange personnel within CBOE's market control center. In trying to accommodate the reassignment of these particular TFL functions, the Exchange believes a better approach than specifically referencing a particular Exchange staff group is to reference the ''Exchange's staff designated to perform'' the particular function. In this way, the Exchange will have the flexibility to delegate the authorities under the obvious error rules to the appropriate Exchange staff and will not have to make a rule change merely, for instance, to accommodate a future change in the title of a staff group or to accommodate the reassignment of the authority to another staff group. The Exchange believes that because the authority exercised by Exchange staff is delegated pursuant to Exchange rules, the title of the particular group exercising their authority should not be relevant.[5]

[5] The Exchange recently made a similar change when it deleted specific references to TFLs in its obvious error rules in order to accommodate the reassignment of Trading Official functions under the rules from the TFL group to a group of

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [6] in general, and furthers the objectives of section 6(b)(5) of the Act [7] in particular, in that it is designed to promote just and equitable principles of trade, foster cooperation among persons engaged in facilitating securities transactions, and protect investors and the public interest. The Exchange believes that this proposal complies with the Act because the Exchange is amending its rules to update and/or generalize references to certain Exchange staff in order to facilitate compliance.

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 neither solicited nor received comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as concerned solely with the administration of the Exchange pursuant to section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(3) [9] thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

designated Exchange personnel within CBOE's market control center. *See* Securities Exchange Act Release No. 56494 (September 21, 2007), 72 FR 55264 (September 28, 2007) (SR–CBOE–2007–110). Under the revised rules, ''Trading Officials'' now means two Exchange members designated as Floor Officials and one member of the Exchange's staff designated to perform Trading Official functions. *See* CBOE Rules 6.25, Commentary 02 and 24.16, Commentary 02.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(3).

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–CBOE–2007–148 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–CBOE–2007–148. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–148 and should be submitted on or before January 16, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24890 Filed 12–21–07; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56905; File No. SR–NASDAQ–2007–087]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Fees for Members Using the Nasdaq Market Center

December 5, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II , and III below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify pricing for Nasdaq members using the Nasdaq Market Center. Nasdaq will implement this proposed rule change on November 1, 2007. The text of the proposed rule change is available at the Exchange's Web site, the Exchange 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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

[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)(2).

rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective November 1, 2007, Nasdaq is implementing a set of pricing changes relating to securities listed on exchanges other than Nasdaq and the New York Stock Exchange (''NYSE'').[5] Specifically, for certain ''Low-Volume Securities,'' Nasdaq is adopting an enhanced liquidity provider rebate of $0.004 per share executed.[6] A Low-Volume Security is defined as a security listed on an exchange other than Nasdaq or the NYSE with an average daily volume on all venues during the preceding month of less than 200,000 shares. For each calendar month, the determination of Low-Volume Securities will be made on the 25th day of the preceding month, based on trading volumes since the 25th day of the month before. For example, the determination of Low-Volume Securities for trading during the calendar month of November would be made on October 25, based on trading volumes from September 25 until October 24. The list of Low-Volume Securities will be posted on the NasdaqTrader.com Web site. By announcing the list prior to the first of the month, Nasdaq believes that it will enable market participants to reflect on the list when making trading decisions at the beginning of the month. A security with seven or fewer trading days during an assessment period, such as a new listing, will not be considered a Low-Volume Security, regardless of its volume, since the lack of trading data does not provide a meaningful basis for determining the security's potential volume during the following month.

As a corollary to the enhanced liquidity provider rebate for Low-Volume Securities, Nasdaq will be eliminating market data revenue sharing for these same securities. Nasdaq's existing program for sharing 50% of market data revenue with liquidity providers in Tape B securities will remain in effect for Tape B securities that are not Low-Volume Securities.

Nasdaq believes that because the amount of a liquidity provider rebate is known by market participants prior to order execution, it provides a more direct incentive for liquidity provision than market data revenue sharing, the exact amount of which is estimated monthly but confirmed on a quarterly basis and depends upon a range of factors beyond the control of a particular market participant. Accordingly, Nasdaq believes that substituting an enhanced rebate for market data revenue sharing may encourage market participants to make greater use of Nasdaq for trading the securities covered by the program.

At present, Nasdaq's only active program for market data revenue sharing is for liquidity providers in Tape B securities.[7] Accordingly, the proposed enhanced rebate applies only to these securities. Moreover, Nasdaq's initial focus is on Low-Volume Securities (as defined above and in the rule) because Nasdaq believes that an enhanced credit may encourage tighter spreads and more overall activity in these stocks. Moreover, the focus on these securities will allow Nasdaq to evaluate the financial and market behavior impact of the change without materially increasing the overall amount of liquidity provider credits that it pays.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[8] in general, and with section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. The change responds to fee changes by NYSE to ensure that Nasdaq's fees for routing to NYSE are generally consistent with charges that NYSE imposes on Nasdaq when it routes orders to it.

B. Self Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is filed pursuant to section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4 thereunder[11] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by a self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2007–087 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–2007–087. 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

[5] Transaction reports for these securities are disseminated by the Consolidated Tape Association (''CTA'') on ''Tape B.''

[6] There is, however, no liquidity provider rebate if the execution price is less than $1 per share.

[7] The Financial Industry Regulatory Authority (''FINRA'')/NASDAQ Trade Reporting Facility also maintains a revenue sharing program, but Nasdaq's program under Rule 7024, which allows for discretionary sharing of an unspecified percentage of certain operating revenues, is not currently in use.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2007–087 and should be submitted on or before January 16, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24897 Filed 12–21–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56976; File No. SR–NYSE–2007–98]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Reduce From Six Months to Three Months the Period for Which a Company's Average Global Market Capitalization Must Exceed the Levels Established by the Exchange's Pure Valuation/Revenue Test

December 17, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2007, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On December 14, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce from six months to three months the period for which the average global market capitalization of prospective listed companies must exceed the levels established by the Exchange's ''pure valuation/revenue'' test contained in section 102.01C of the Exchange's Listed Company Manual (the ''Manual''). The text of the proposed rule change is included below. Proposed new language is italicized; proposed deletions are in [brackets].

NYSE Listed Company Manual

* * * * *

102.01 Minimum Numerical Standards—Domestic Companies—Equity Listings

* * * * *

102.01C A company must meet one of the following financial standards.

* * * * *

(II) Valuation/Revenue Test Companies listing under this standard may satisfy either (a) the Valuation/Revenue with Cash Flow Test or (b) the Pure Valuation/Revenue Test.

* * * * *

(b) Pure Valuation/Revenue Test—

(1) At least $750,000,000 in global market capitalization, and

(2) At least $75,000,000 in revenues during the most recent fiscal year*.

In the case of companies listing in connection with an IPO, the company's underwriter (or, in the case of a spin-off, the parent company's investment banker or other financial advisor) must provide a written representation that demonstrates the company's ability to meet the $750,000,000 global market capitalization requirement based upon the completion of the offering (or distribution). For all other companies, market capitalization valuation will be determined over a [six]*three*-month average. *In considering the suitability for listing of a company pursuant to the provision in the immediately preceding sentence, the Exchange will consider whether the company's business prospects and operating results indicate that the company's market capitalization value is likely to be sustained or increase over time.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to reduce from six months to three months the period for which the average global market capitalization of prospective listed companies must exceed the levels established by the Exchange's financial listing criteria contained in section 102.01C of the Manual.

Section 102.01C requires companies listing under the Exchange's ''pure valuation/revenue'' test to have a global market capitalization of $750 million. In the case of companies listing other than in connection with an initial public offering or a spin-off or upon emergence from bankruptcy, section 102.01C provides that the company must have met the required level of market capitalization on the basis of a six-month average. The Exchange believes that a reduction of this requirement from six months to three months will not diminish the quality of companies listing under the relevant tests. Rather, the Exchange believes that the primary effect of the proposed amendment would be to permit the earlier listing of companies that would ultimately qualify on the basis of a six-month average.[4] In accepting companies that

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that Amendment No. 1 superseded the original filing in its entirety.

[4] The Exchange notes that under The NASDAQ Stock Market LLC (''Nasdaq'') Global Market Standard 3, a company can list with $75 million in market value of listed securities (sustained over 90 consecutive trading days) and $20 million in market value of publicly held shares. *See* Nasdaq Rule 4420(c). The Exchange believes that, notwithstanding the proposed shift to a three-month from a six-month test period, the NYSE's ''pure valuation/revenue'' standard's requirement of a global market capitalization of $750 million is far more stringent than Nasdaq Global Market Standard 3.

have met the required market capitalization requirement for less than six months, the Exchange will consider whether the company's business prospects and operating results indicate that the company's market capitalization value is likely to be sustained or increase over time or whether more transient conditions have led to a valuation that is unlikely to be sustained.[5]

2. Statutory Basis

The proposed rule change is consistent with section 6(b)[6] of the Act, in general, and furthers the objectives of section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–98 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–98. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–98 and should be submitted on or before January 16, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24889 Filed 12–21–07; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* proposed rule text, *supra* Section I.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11122 and # 11123]

Oregon Disaster Number OR–00023

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of OREGON (FEMA–1733–DR), dated 12/09/2007.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 12/01/2007 and continuing.

DATES: *Effective Date:* 12/15/2007.

Physical Loan Application Deadline Date: 02/07/2008.

EIDL Loan Application Deadline Date: 09/09/2008.

ADDRESSES: Submit completed loan applications to : U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of OREGON, dated 12/09/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: Polk, Yamhill.

Contiguous Counties:

Oregon: Benton, Clackamas, Linn, Marion.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–24941 Filed 12–21–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration # 11124 and # 11125; Washington Disaster Number WA–00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Washington (FEMA—1734—DR) , dated 12/09/2007.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 12/01/2007 and continuing.

Effective Date: 12/15/2007.

Physical Loan Application Deadline Date: 02/07/2008.

EIDL Loan Application Deadline Date: 09/09/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Washington, dated 12/09/2007is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Mason, Pacific, and Thurston.

Contiguous Counties:

Washington Kitsap.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–24946 Filed 12–21–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Waiver of the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing product number 6525.

SUMMARY: The U.S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing (X-Ray Equipment and Supplies).

The basis for waiver is that no small business manufacturers are supplying this class of product to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses; service-disabled veteran-owned small businesses or SBA's 8(a) Business Development Program.

DATES: This waiver is effective January 10, 2008.

FOR FURTHER INFORMATION CONTACT: Pamela M. McClam, Program Analyst, by telephone at (202) 205–7408; by FAX at (202) 481–4783; or by e-mail at *Pamela.McClam@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act) 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202 (c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code required as a data entry field by the Federal Procurement Data System.

The SBA received a request on September 21, 2007, to waive the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing (X-Ray Equipment and Supplies).

In response, on October 31, 2007, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing (X-Ray Equipment and Supplies). SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of products. In response to this notice, three (3) comments were received from interested parties. However, none of the interested parties are small business manufacturers of X-Ray Equipment and Supplies. SBA has determined that there are no small business manufacturers of this class of products, and is therefore granting the waiver of the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing (X-Ray Equipment and Supplies) NAICS code 334517 and product number 6525.

Authority: 15 U.S.C. 637(a)(17).

Dated: December 11, 2007.

Arthur E. Collins, Jr.,

Director for Government Contracting.

[FR Doc. E7–24952 Filed 12–21–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6039]

State-36 Security Records

Summary: Notice is hereby given that the Department of State proposes to alter an existing system of records, STATE–36, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C.(r)), and Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on 12–12–2007.

It is proposed that the current system will retain the name ''Security Records.'' It is also proposed that due to the expanded scope of the current system, the altered system description will include revisions and/or additions to the following sections: System Location; Categories of Individuals covered by the System; Authority for Maintenance of the System; and Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of such Uses. Changes to the existing system description are proposed in order to reflect more accurately the Bureau of Diplomatic Security's record-keeping system, the Authority establishing its existence and responsibilities, and the uses and users of the system. Any persons interested in commenting on the altered system of records may do so by submitting comments in writing to Margaret P. Grafeld, Director; Office of Information Programs and Services; A/ISS/IPS; Department of State, SA–2; Washington, DC 20522–8001. This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The altered system description, ''Security Records, State-36,'' will read as set forth below.

Dated: December 12, 2007.

Raj Chellaraj,

Assistant Secretary for the Bureau of Administration, Department of State.

STATE—36

SYSTEM NAME:

Security Records.

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

Department of State, Bureau of Diplomatic Security, State Annex 1, 2401 E Street NW, Washington, DC 20037; State Annex 7, 7943–59 Cluny Court, Springfield, VA 22153; State Annex 11, 2216 Gallows Road, Cedar Hill, Fairfax, VA 22222; State Annex 11A 2222 Gallows Road, Fairfax, VA 22222; State Annex 11B, 2230 Gallows Road, Fairfax, VA 22222; State Annex 14, 1400 Wilson Blvd., Arlington, VA 22209; State Annex 20, 1801 North Lynn Street, Washington, DC 20522–2008; State Annex 24, 5800 Barclay Drive, Springfield, VA 22315; State Annex 31, 7942 Angus Court, Bays G&H, Springfield, VA 22150; State Annex 33, 3507 International Place, Federal Building NW., Washington, DC 20008; State Annex 42, 4020 Arlington Blvd., George P. Shultz (NFATC), Rosslyn, VA 22204–1500; Harry S Truman Building, 2201 C Street NW., Washington, DC 20520; various field offices throughout the United States; and overseas at some U.S. Embassies, U.S. Consulates General, and U.S. Consulates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former employees of the Department of State including Diplomatic Security Special Agents; applicants for Department employment who have been or are presently being investigated for security clearance; contractors working for the Department; interns and detailees to the Department; individuals requiring access to the official Department of State premises who have undergone or are undergoing security clearance; diplomatic, consular, administrative and technical staff, international organization employees, domestic and household members to include private servants, and other foreign government personnel and their dependents accredited to the United States; some passport and visa applicants concerning matters of adjudication; individuals involved in matters of passport and visa fraud; individuals involved in unauthorized access to classified information; prospective alien spouses of American personnel of the Department of State; individuals or groups whose activities have a potential bearing on the security of Departmental or Foreign Service operations, including those involved in criminal or terrorist activity; visitors to the Department of State main building (Harry S Truman Building), to its domestic annexes, field offices, missions, and to the United States embassies and consulates and missions overseas; and all other individuals requiring access to official Department of State premises who have undergone or are undergoing a security clearance. Other files include individuals issued security violations or infractions or cyber security violations or cyber security infractions; litigants in civil suits and criminal prosecutions of interest to the Bureau of Diplomatic Security; individuals who have Department building passes; uniformed security officers; individuals named in congressional inquiries to the Bureau of Diplomatic security; individuals subject to investigations conducted abroad on behalf of other Federal agencies; individuals whose activities other agencies believe may have a bearing on U.S. foreign policy interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(a) 5 U.S.C. 301 (Management of Executive Agencies); (b) 5 U.S.C. 7311 (Suitability, Security, and Conduct); (c) 5 U.S.C. 7531–33 (Adverse Actions, Suspension and Removal, and effect on Other Statutes); (d) U.S.C. 1104 (Aliens and Nationality—passport and visa fraud investigations); (e) 18 U.S.C.111 (Crimes and Criminal Procedures)(Assaulting, resisting, or impeding certain officers or employees); (f) 18 U.S.C. 112 (Protection of foreign officials, official guests, and internationally protected persons); (g) 18 U.S.C. 201 (Bribery of public officials and witnesses); (h) 18 U.S.C. 202 (Bribery, Graft, and Conflicts of Interest—Definitions); (i) 18 U.S.C. 1114 (Protection of officers and employees of the U.S.); (j) 18 U.S.C. 1116 (Murder or manslaughter of foreign officials, official guests, or internationally protected persons); (k) 18 U.S.C. 1117 (Conspiracy to murder); (l) 18 U.S.C. 1541–1546 (Issuance without authority, false statement in application and use of passport, forgery or false use of passport, misuse of passport, safe conduct violation, fraud and misuse of visas, permits, and other documents); (m) 22 U.S.C. 211a (Foreign Relations and Intercourse) (Authority to grant, issue, and verify passports); (n) 22 U.S.C. 842, 846, 911 (Duties of Officers and Employees and Foreign Service Officers) (Repealed, but applicable to past records); (o) 22 U.S.C. 2454 (Administration); (p) 22 U.S.C. 2651a (Organization of the Department of State); (q) 22 U.S.C. 2658 (Rules and regulations; promulgation by Secretary; delegation of authority) (applicable to past records); (r) 22 U.S.C. 2267 (Empowered security officers of the Department of State and Foreign Service to make arrests without warrant) (Repealed, but applicable to past records); (s) 22 U.S.C. 2709 (Special Agents); (t) 22 U.S.C. 2712 (Authority to control certain terrorism-related services); (u) 22 U.S.C. 3921 (Management of service); (v) 22 U.S.C. 4802, 4804(3)(D) (Diplomatic Security) (generally) and (Responsibilities of Assistant Secretary for Diplomatic Security) (generally) (Repealed, but applicable to past records); (w) 22 U.S.C. 4831–4835 (Accountability review, accountability review board, procedures, findings and recommendations by a board, relation to other proceedings); (x) 44 U.S.C. 3101 (Federal Records Act of 1950, Sec. 506(a) as amended) (applicable to past records); (y) Executive Order 10450 (Security requirements for government employment); (z) Executive Order 12107, Title 5 (Relating to the Civil Service Commission and Labor-Management in the Federal Service); (aa) Executive Order 12958 and its predecessor orders (National Security Information); (bb) Executive Order 12968 (Access to Classified Information); (cc) 22 CFR Subchapter M (International Traffic in Arms) (applicable to past records); (dd) 40 U.S.C. Chapter 10 (Federal Property and Administrative Services Act (1949)); (ee) 31 U.S.C. (Tax Code); (ff) Pub. L. 99–399, 8/27/86; (Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended); (gg) Pub. L. 99–529, 10/24/86 (Special Foreign Assistance Act of 1986, concerns Haiti) (applicable to past records); (hh) Pub. L. 100–124, Section 155a (concerns special security program for Department employees responsible for security at certain posts) (applicable to past records); (ii) Pub. L. 100–202, 12/22/87 (Appropriations for Departments of Commerce, Justice, and State) (applicable to past records); (jj) Pub. L. 100–461, 10/1/88 (Foreign Operations, Export Financing, and Related Programs Appropriations Act); (kk) Pub. L. 102–138, 10/28/91 (Foreign Relations Authorization Act, Fiscal Years 1992 and 1993) (applicable to past records); (ll) Pub. L. 107–56, 115 Stat. 272, 10/26/2001 (USA PATRIOT Act); (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism); (mm) Pub. L.

108–066, 117 Stat. 650, 4/30/2003 (PROTECT Act) (Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003); (nn) Executive Order 12356 (National Security Information) applicable to past records); (oo) Executive Order 9397 (Numbering System for Federal Accounts Relating to Individual Persons); (pp) HSPD–12, 7/24/2004 (Homeland Security Presidential Directive); (qq) Executive Order 13356, 8/27/04 (Strengthening the Sharing of Terrorism Information to Protect Americans); (rr) P.L. 108–458 (Sect. 1016) (Intelligence Reform and Terrorism Prevention Act of 2004); (ss) 22 U.S.C. 254 (Diplomatic Relations Act); 22 U.S.C. 288 (International Organizations Immunities Act); 22 U.S.C. 4301–4306 (Foreign Missions Act).

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigatory material relating to any category of individual described above, including case files containing items such as applications for passports and employment, photographs, fingerprints, birth certificates, credit checks, intelligence reports, security evaluations and clearances, other agency reports and informant reports; legal case pleadings and files; evidence materials collected during investigations; security violation files; training reports; administrative files related to the notification of appointment, termination of appointment and dependent employment requests for diplomats, consular officers, administrative and technical staff, employees of international organizations, domestic and household members to include private servants, and other foreign government personnel and their dependents accredited to the United States (this category of records is maintained also by the Office of the Chief of Protocol in the Department of State); weapons assignment data base; firing proficiency scores; availability for special protective assignments; language proficiency scores; intelligence reports; counterintelligence material; counterterrorism material; internal Departmental memoranda; internal personnel, fiscal, and other administrative documents; emergency contact information for Department employees and contractors. For Visitors: Name; Date of birth; Citizenship; ID type; ID number; temporary badge number; host's name; office symbol; room number; and telephone number; for all others: Name; date and place of birth; home address; employer; employer's address; badge number; home and office telephone numbers; Social Security Account Number; specific areas and times of authorized accessibility; escort authority; status and level of security clearance; issuing agency and issue date; and for all individuals: date and times of building entrance and exit. Additionally, security files contain information needed to provide protective services for the Secretary of State and visiting foreign dignitaries; and to protect the Department's official facilities. There are also information copies of investigations of individuals conducted abroad on behalf of other Federal agencies.

Finally, security files contain documents and reports furnished to the Department by other agencies concerning individuals whose activities the other agencies believe may have a bearing on U.S. foreign policy interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in the Security Records is used by:

(a) Department of State officials in the administration of their responsibilities;

(b) Appropriate Committees of the Congress in furtherance of their respective oversight functions;

(c) Department of Treasury; U.S. Office of Personnel Management; Agency for International Development; U.S. Information Agency (past records); Department of Commerce; Peace Corps; Arms Control and Disarmament Agency (past records); U.S. Secret Service; Immigration and Naturalization Service; Department of Defense; Central Intelligence Agency; Department of Justice; Federal Bureau of Investigation; National Security Agency; Drug Enforcement Administration; National Counter Terrorism Center; and other Federal agencies inquiring pursuant to law or Executive Order in order to make a determination of general suitability for employment or retention in employment, to grant a contract or issue a license, grant, or security clearance;

(d) Any Federal, state, municipal, foreign or international law enforcement or other relevant agency or organization for law enforcement or counterterrorism purposes: threat alerts and analyses, protective intelligence and counterintelligence information, information relevant for screening purposes, and other law enforcement and terrorism-related information as needed by appropriate agencies of the Federal government, states, or municipalities, or foreign or international governments or agencies;

(e) Any other agency or Department of the Federal government pursuant to statutory intelligence responsibilities or other lawful purposes;

(f) Any other agency or Department of the Executive Branch having oversight or review authority with regard to its investigative responsibilities;

(g) A federal, state, local, foreign, or international agency or other public authority that investigates, prosecutes or assists in investigation, prosecution or violation of criminal law or enforces, implements or assists in enforcement or implementation of statute, rule, regulation or order;

(h) A federal, state, local or foreign agency or other public authority or professional organization maintaining civil, criminal, and other relevant enforcement or pertinent records such as current licenses; information may be given to a customer reporting Agency:

(1) In order to obtain information, relevant enforcement records or other pertinent records such as current licenses or

(2) To obtain information relevant to an agency investigation, a decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance or the initiation of administrative, civil, or criminal action;

(i) Officials of the Department or other government agencies in the letting of a contract, issuance of a license, grant or other benefit, and the establishment of a claim;

(j) Any private or public source, witness, or subject from which information is requested in the course of a legitimate agency investigation or other inquiry to the extent necessary to identify an individual; to inform a source, witness or subject of the nature and purpose of the investigation or other inquiry; and to identify the information requested;

(k) An attorney or other designated representative of any source, witness or subject described in paragraph (j) of the Privacy Act only to the extent that the information would be provided to that category of individual itself in the course of an investigation or other inquiry;

(l) By a Federal agency following a response to its subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury;

(m) Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interest, e.g., to assist in the location of Federal fugitives, to provide notification of arrests, and where necessary for protection from imminent threat to life or property;

(n) State, local, federal or non-governmental agencies and entities as needed for purposes of emergency or disaster response.

Also see ''Routine Uses'' of Prefatory Statement published in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, microfilm, microfiche, tape recordings, electronic media, and photographs.

RETRIEVABILITY:

The system is accessed by individual name, personal identifier, case number, badge number, and Social Security Account Number (for other than visitors), as well as by each ''category of record in the system''; but the files may be grouped for the convenience of the user by type, country code, group name, subject, contract number, weapons serial number, or building pass number.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough personnel security background investigation. Access to the Department of State building and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Access to Annex 20 also has security access controls (code entrances) and/or security alarm systems. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

Retention of those records varies depending upon the specific kind of record involved. The records are retired or destroyed in accordance with published schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of Information Programs and Services (A/ISS/IPS), SA–2, Department of State, Washington, DC 20522–6001.

SYSTEM MANAGER AND ADDRESS:

Principal Deputy Assistant Secretary for Diplomatic Security and Director for the Diplomatic Security Service; Department of State, SA–20, 23rd Floor, 1801North Lynn Street, Washington, DC 20522–2008 for the Harry S. Truman Building, domestic annexes, field offices and missions; Security Officers at respective U.S. Embassies, Consulates, and missions overseas.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Bureau of Diplomatic Security may have security/investigative records pertaining to themselves should write to the Director, Office of Information Programs and Services, A/ISS/IPS, SA–2, Department of State, Washington, DC 20522–6001. The individual must specify that he/she wishes the Security Records to be checked. At a minimum, the individual must include: Name; date and place of birth; current mailing address and zip code; signature; and a brief description of the circumstances which may have caused the creation of the record.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of Information Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained from the individual; persons having knowledge of the individual; persons having knowledge of incidents or other matters of investigative interest to the Department; other U.S. law enforcement agencies and court systems; pertinent records of other Federal, state, or local agencies or foreign governments; pertinent records of private firms or organizations; the intelligence community; and other public sources. The records also contain information obtained from interviews, review of records, and other authorized investigative techniques.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records originated by another agency when that agency has determined that the record is exempt under 5 U.S.C. 552a(j). Also, records contained within this system of records are exempted from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), and (e)(4)(G), (H), and (I), and (f) to the extent they meet the criteria of section (j)(2) of the Act. See 22 CFR 171.36.

[FR Doc. E7–24956 Filed 12–21–07; 8:45 am]

BILLING CODE 4710–24–P

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 limitations on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by FHWA that are final agency actions within the meaning of 23 U.S.C. 139 (I)(1). These final agency actions relate to a proposed highway project, U.S. 64 Improvements—Asheboro, Randolph County, North Carolina from just east of SR 1424 (Stutts Road) to U.S. 64 east of U.S. 64/Presnell Street, where the Record of Decision (ROD) identifies Alternative 29 as the selected alternative, as it is the Least Environmentally Damaging Practicable Alternative (LEDPA). The Abbreviated Final Environmental Impact Statement (FEIS) was approved and published by FHWA in March, 2007 and a ROD was issued on December 6, 2007. FHWA selects Alternative 29 in the ROD based on public and resource agency input, including the North Carolina Department of Transportation. Selecting Alternative 29 is in the best overall public interest because it was identified as the LEDPA, it avoids controversial and serious neighborhood impacts of other alternative analyzed, has the fourth fewest number of stream crossings, affects the smallest area of wetlands, has the fourth lowest noise receiver impacts of the nine alternatives considered, is supported by local governments including the city of Asheboro, and is supported by many citizens.

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 June 23, 2008. 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) 747–7014; 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, Ph.D., Project Development and Environmental Analysis Branch Manager, North Carolina Department of Transportation (NCDOT), 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 has taken final agency action subject to 23 U.S.C. 139 (l)(1) by issuing a decision for the following highway project in the State of North Carolina: U.S. 64 Improvements, Federal Aid No. NHF–64(19), Randolph County, North Carolina. This project identified a need to address capacity constraints and safety considerations on the current U.S. 64 in Asheboro, North Carolina. The proposed action will improve 14 miles of U.S. Highway 64 from just east of SR 1424 (Stutts Road) to 0.6 miles east of SR 2345 (Presnell Street). The selected alternative (Alternative 29) constructs a four-lane, median divided facility with full access control on new location as well as a two-lane parkway facility known as the Zoo Connector. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Abbreviated Final Environmental Impact Statement (FEIS) for the project, approved on May 12, 2007, in the FHWA Record of Decision (ROD) issued on December 6, 2007, 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 8 Construction Engineer Office, 902 N. Sandhills Blvd., Aberdeen, North Carolina; Randolph County Public Library, 201 Worth Street, Asheboro, North Carolina; Randolph County Planning & Zoning Department, 204 East Academy Street, Asheboro, North Carolina; Randolph County School System, 2222 South Fayetteville Street, Asheboro, North Carolina; City of Asheboro Planning Department, 146 North Church Street, Asheboro, North Carolina; City of Asheboro Engineering Department, 146 North Church Street, Asheboro, North Carolina and Asheboro/Randolph Chamber of Commerce, 317 Dixie Drive, Asheboro, 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 Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].
8. 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: December 18, 2007.

Clarence W. Coleman,

Operations Engineer, Raleigh, North Carolina.

[FR Doc. E7–24923 Filed 12–21–07; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–0057]

Agency Information Collection Activities; Revision of an Approved Information Collection: Designation of Agents, Motor Carriers, Brokers and Freight Forwarders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval and invites public comment. The FMCSA requests approval to revise an ICR entitled, ''Designation of Agents, Motor Carriers, Brokers and Freight Forwarders,'' which is used to provide registered motor carriers, property brokers, and freight forwarders a means of meeting process agent requirements.

DATES: We must receive your comments on or before February 25, 2008.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2007–0057.

- *Web Site:* Go to *http://www.regulations.gov.* Follow the

instructions for submitting comments on the Federal electronic docket site.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below:

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or post card or print the acknowledgement page that appears after submitting on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** on April 11, 2000 (65 FR 19477–78). This information is also available at *http://docketsinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Loretta G. Bitner, Commercial Enforcement (MC–ECC), Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–385–2400.

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Transportation (Secretary) is authorized to register for-hire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902; freight forwarders under the provisions of 49 U.S.C. 13903; and property brokers under provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary has delegated authority pertaining to these registration requirements to the FMCSA.

Registered motor carriers (including private carriers) and freight forwarders must designate: (1) An agent on whom service of notices in proceedings before the Secretary may be made (49 U.S.C. 13303); and (2) for every State in which they operate and traverse in the United States during such operations, agents on whom process issued by a court may be served in actions brought against the registered transportation entity (49 U.S.C. 13304). Every broker shall make a designation for each State in which its offices are located or in which contracts are written. Regulations governing the designation of process agents are found at 49 CFR part 366. This designation is filed with the FMCSA on Form BOC–3, ''Designation of Agent for Service of Process.''

Title: Designation of Agents, Motor Carriers, Brokers and Freight Forwarders.

OMB Control Number: 2126–0015.

Type of Request: Revision of a currently approved collection.

Respondents: Motor carriers, freight forwarders and brokers.

Estimated Number of Respondents: 89,000.

Estimated Time per Response: 10 minutes.

Expiration Date: April 30, 2008.

Frequency of Response: Form BOC–3 must be filed by all for-hire motor carriers and freight forwarders when the transportation entity first registers with the FMCSA. All brokers shall file Form BOC–3 as necessary and make a designation for each State in which it has an office or in which contracts are written. Subsequent filings are made only if the motor carrier, broker or freight forwarder changes process agents.

Estimated Total Annual Burden: 14,833 hours [89,000 Form BOC–3 filings per year × 10 minutes/60 minutes to complete form = 14,833 hours].

Public Comments Invited: We invite you to comment on any aspect of this information collection, including, but not limited to: (1) Whether the collection of information is necessary for the proper performance of the functions of the FMCSA, including whether the information is practical and useful; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: December 12, 2007.

Terry Shelton,

Associate Administrator and Chief Information Officer, Office of Research and Information Technology.

[FR Doc. 07–6145 Filed 12–21–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2007–0030]

Notice of Request for a New Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve a new information collection:

Customer Satisfaction Survey for FTA's Public Web site Contact Us Tool.

DATES: Comments must be submitted before February 25, 2008.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–493–2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-

addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Dave Longo, FTA Office of Communications and Congressional Affairs, (202) 366–0608, or e-mail: *David.Longo@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Customer Satisfaction Survey for FTA's Public Web site Contact Us Tool.

OMB Number: 2132–New.

Background: Executive Order 12862, ''Setting Customer Service Standards,'' requires FTA to identify its customers and determine what they think about FTA's service. The surveys covered in this request will provide FTA with a means to gather data directly from its customers. The information obtained from the surveys will be used to assess how FTA's services are perceived by customers and stakeholders, determine opportunities for improvement and ensure FTA's customers receive the highest level of customer support. The surveys will be limited to data collections that solicit voluntary opinions and will not involve information that is required by regulations.

Respondents: General public, State and local government, public and private transit operators, transit constituents, and other stakeholders.

Estimated Annual Burden on Respondents: 10 minutes for each of the 1,230 respondents.

Estimated Total Annual Burden: 205 hours.

Frequency: Annual.

Issued: December 17, 2007.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. E7–24891 Filed 12–21–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Medical Care or Services; 2008 Calendar Year Update

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Title 38 of the Code of Federal Regulations (CFR), section 17.01 sets forth the Department of Veterans Affairs (VA) medical regulations concerning ''reasonable charges'' for medical care or services provided or furnished by VA to a veteran for: (1) A non-service-connected disability for which the veteran is entitled to care or the payment of expenses for care under a health plan contract; (2) a non-service-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or (3) a non-service-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The regulations include methodologies for establishing billed amounts for the following types of charges: Acute inpatient facility charges; skilled nursing facility and sub-acute inpatient facility charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by Healthcare Common Procedure Coding System (HCPCS) Level II codes. The regulations also provide that data for calculating actual charge amounts at individual VA facilities based on these methodologies will either be published as a notice in the **Federal Register** or will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/cbo,* under ''Charge Data.'' Certain charges are hereby updated as described in the **SUPPLEMENTARY INFORMATION** section of this notice. These changes are effective January 1, 2008.

In circumstances when charges for medical care or services provided or furnished at VA expense, by either VA or non-VA providers, have not been established under other provisions or regulations, the method for determining VA's charges is set forth at 38 CFR 17.101(a)(8).

FOR FURTHER INFORMATION CONTACT: Romona Greene, Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254–0361. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Of the charge types listed in the Summary section of this notice, acute inpatient facility charges and skilled nursing facility/sub-acute inpatient facility charges are not being changed. Acute inpatient facility charges remain the same as set forth in a notice published in the **Federal Register** on September 28, 2007 (72 FR 57276). VA's current inpatient charge structure utilizes the methodology set forth in 38 CFR 17.101 and does not itemize inpatient bills. Skilled nursing facility/sub-acute inpatient facility charges also remain the same as set forth in a notice published in the **Federal Register** on September 28, 2007 (72 FR 57276).

Based on the methodologies set forth in 38 CFR 17.101, this document provides an update to charges for 2008 HCPCS Level II and Current Procedural Technology (CPT) codes. Charges are also being updated based on more recent versions of data sources for the following charge types: Partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by

HCPCS Level II codes. These updated charges are effective January 1, 2008.

In this update, we are retaining the table designations used for HCPCS Level II and Current Procedural Technology (CPT) Codes in the notice posted on the Internet site of the Veterans Health Administration Chief Business Office currently at *http://www.va.gov/cbo,* under ''Charge Data.'' The effective date of this change was December 22, 2006, and the notice can also be found in the **Federal Register** (71 FR 77096). Accordingly, the tables identified as being updated by this notice correspond to the applicable tables posted on the Internet with the notice, beginning with Table C.

VA has updated the list of data sources presented in Supplementary Table 1 to reflect the updated data sources used to establish the updated charges described in this notice.

The list of VA medical facility locations has also been updated. As a reminder, in Supplementary Table 3 we set forth the list of VA medical facility locations, which includes the first three-digits of their zip codes and provider based/non-provider based designations.

Consistent with the VA's regulations, the updated data tables and supplementary tables containing the changes described in this notice will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/cbo,* under ''Charge Data (Rates).'' The updated data tables and supplementary tables containing the changes described will be effective until changed by a subsequent **Federal Register** notice.

Approved: December 17, 2007.

Gordon H. Mansfield,

Acting Secretary.

[FR Doc. E7–24912 Filed 12–21–07; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
December 26, 2007

Part II

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2007; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5148–N–03]

Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2007

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on July 1, 2007 and ending on September 30, 2007.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276,Washington, DC 20410–0500, telephone (202) 708–3055 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the third quarter of calendar year 2007.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from July 1, 2007, through September 30, 2007. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the third quarter of calendar year 2007) before the next report is published (the fourth quarter of calendar year 2007), HUD will include any additional waivers granted for the third quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: December 14, 2007.

Robert M. Couch,

General Counsel.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development July 1, 2007 through September 30, 2007

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory Waivers Granted by the Office of Community Planning and Development

II. Regulatory Waivers Granted by the Office of Housing

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 91.225(b)(4)(ii).

Project/Activity: The City of Waterloo, Iowa, sought a waiver to amend its certification of its overall benefit period so that it may use Community Development Block Grant (CDBG) funds to pay for construction of the Riverwalk Loop/reconstruction of the existing Cedar River Dam, which can only meet the national objective of slum/blight on an area basis.

Nature of Requirement: The HOME regulations at 24 CFR 91.225(b)(4)(ii) require that a grantee must certify it will achieve the primary objective of benefit to low- and moderate-income persons by expending 70 percent of its CDBG

grant for such persons over a period of one, two, or three consecutive program years as selected by the grantee.

Granted by: Roy Bernardi, Deputy Secretary.

Date: July 20, 2007.

Reason Waived: The waiver was granted to allow the city to change its overall benefit certification from program years 2005–2007 to a one year certification period for program year 2005 and a new three year certification period for program years 2006–2008 in order that the city could carry out the Riverwalk Loop/Cedar River Dam project using the slum/blight area national objective.

Contact: Gloria Coates, Office of Block Grant Assistance, Entitlement Communities Division, Office of Community Planning and Development, 451 Seventh Street, SW., Room 7282, Washington, DC 20410–7000, telephone (202) 402–2184, *gloria.l.coates@hud.gov.*

• *Regulations:* 24 CFR 92.500(d)(1)(B) and 24 CFR 92.500(d)(1)(C).

Project/Activity: The Jefferson Parish Consortium, Louisiana, requested a suspension of its FY 2005 commitment deadline and FY 2002 expenditure requirement to facilitate its recovery from the devastation caused by Hurricanes Katrina and Rita. The Consortium is located within a declared disaster area pursuant to Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The Consortium undertook a number of actions to expedite the use of its HOME funds, and completed the conditions inventory of its HOME-assisted properties that was previously requested by HUD.

Nature of Requirement: The HOME regulations at 24 CFR 92.500(d)(1)(B) require that a participating jurisdiction (PJ) commit its annual allocation of HOME funds within 24 months after HUD notifies the PJ that HUD has executed the jurisdiction's HOME Investment Partnership Agreement. Section 92.500(d)(1)(C) of the regulations require that a PJ expend its annual allocation of HOME funds within five years after HUD notifies the PJ that HUD has executed the jurisdiction's HOME Investment Partnership Agreement.

Granted By: Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 14, 2007.

Reasons Waived: It was determined that the waiver would facilitate the recovery of the Jefferson Parish Consortium from the devastation caused by Hurricane Katrina and Hurricane Rita by suspending its FY 2005 HOME commitment requirement and FY 2002 HOME expenditure requirement. It was also determined that the waiver would help ensure that needed HOME funds are not deobligated, and that the Consortium has sufficient time to rebuild its capacity and housing delivery systems.

Contact: Virginia Sardone, Office of Affordable Housing Programs, Office of Community and Planning Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7158, Washington, DC 20410–7000, telephone (202) 708–2470.

• Regulation: 24 CFR 570.208(a)(3).

Project/Activity: Hillsborough County, Florida's acquisition of land where 160 single unit residential structures will be constructed.

Nature of Requirement: The CDBG regulations 24 CFR 570.208(3) require that 100 percent of single-unit residential structures be occupied by low and moderate income households.

Granted by: Roy Bernardi, Deputy Secretary.

Date: September 27, 2007.

Reason Waived: The waiver was granted to allow only 100 of the 160 single-unit residential structures to be occupied by low and moderate income households. The Bayou Pass project is a mixed-income development. Hillsborough County sought to provide mixed-income housing targeted to a broader sector of the housing market on the basis that the project would increase the supply of affordable housing available to low- and moderate-income households as well as essential service personnel. Inasmuch as the objectives of the CDBG program include the provision of decent housing and a suitable living environment, the waiver was granted.

Contact: Gloria Coates, Office of Block Grant Assistance, Entitlement Communities Division, Office of Community Planning and Development, 451 Seventh Street, SW., Room 7282, Washington, DC 20410–7000, telephone (202)–402–2184, *gloria.l.coates@hud.gov.*

• *Regulation:* 24 CFR 570.209(b)(3)(i)(A) and (b)(1).

Project/Activity: Convention Center and Oceanographic Center—Poncé, Puerto Rico.

Nature of Requirement: The CDBG regulations at 24 CFR 570.209(b)(3)(i)(A) and (b)(1) establish standards for evaluating public benefit for individual activities and in the aggregate, requires the grantee to make sure that at least a minimum level of public benefit is obtained from the expenditure of CDBG funds. In this case, the amount of CDBG assistance shall not exceed $50,000 per full-time equivalent, permanent job created or retained for individual activities, or $35,000 in the aggregate.

Granted by: Roy A. Bernardi, Deputy Secretary.

Date Granted: July 20, 2007.

Reason Waived: The Municipality of Poncé, Puerto Rico, requested a waiver of 24 CFR 570.209(b)(3)(i)(A) and (b)(1) because the proposed use of its Section 108 Loan Guarantee request for the publicly owned convention center would exceed the public benefit standard for an individual activity of expending not more than $50,000 in CDBG assistance per full-time equivalent, permanent job created or retained. Such expenditure was also expected to prevent the Municipality from complying with standards for activities in the aggregate under 24 CFR 570.209(b)(1). The development of the publicly owned convention center development showed good cause for the waiver because it was an economic development activity which was estimated to create 221 new jobs, primarily benefiting low and moderate income persons. Also, it would serve as the key anchor facility for the development of two hotels which would create an estimated 490 new jobs, primarily benefiting low- and moderate-income persons.

Contact: Paul Webster, Director, Financial Management Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7180, Washington, DC 20410–7000, telephone 202–708–1871.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 203.32(c)(3).

Project/Activity: FHASecure.

Nature of Requirement: Section 203.32(c)(3) of HUD's Federal Housing Administration (FHA) regulations provides that to be eligible for FHA insurance, the sum of a first mortgage with a second mortgage secured by the mortgaged property cannot exceed the permissible loan-to-value applicable to the insured mortgage and cannot exceed the maximum mortgage limit for the area in which the property is located.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 4, 2007.

Reason Waived: FHASecure is a temporary initiative developed to assist current owners of non-FHA adjustable rate mortgages (ARMs) that have ''reset'' to large increases in mortgage payments, resulting in, or may result in, delinquent mortgages. The initiative permits holders of non-FHA (ARMs) the ability to refinance into an FHA mortgage insurance product. The waiver allows mortgage lenders to refinance non-FHA ARMs where debt costs exceed the FHA loan-to-value and maximum mortgage amount limits.

Contact: Maynard T. Curry, Housing Program and Policy Specialist, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9266, Washington, DC 20410–8000, telephone (202) 708–2121.

• *Regulation:* 24 CFR 203.43(f).

Project/Activity: Manufactured housing installation requirements in Federal Emergency Management Agency (FEMA) designated flood zone areas in the State of Louisiana.

Nature of Requirement: FHA's regulations at 24 CFR 203.43(f)(c)(i) provides that manufactured homes which have not been permanently sited for more than one year prior to application for FHA mortgage insurance, must have the finished grade beneath the manufactured home at or above the 100 year return frequency flood elevation. Section 203.43(f)(d)(ii) requires that manufactured homes which have been permanently erected on a site for more than one year prior to the date of application for mortgage insurance must have the finished grade beneath the manufactured home at or above the 100 year return frequency flood elevation. HUD's minimum property standards for one- and two-family dwellings, at 24 CFR 200.296d(c)(4)(i) provide that the elevation of the lowest floor in structures with basements, located in FEMA designated areas of special flood hazard, shall be at or above the base flood level (100 year flood level) required for new construction or substantial improvement of residential structures under regulations for the National Flood Insurance Program (NFIP) found at 44 CFR 60.3. NFIP installation requirements for manufactured homes are primarily set forth at 44 CFR 60.3(c)(6) and (12). Section 60.3(c)(6) of 44 CFR requires the unit to be elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation collapse and lateral movement. Installation requirements for manufactured homes not subject to 44 CFR 60.3(c)(6) are found at 44 CFR 60.3(c)(12) and provide that the manufactured home be elevated so that either: (1) The lowest floor is at or above the base floor elevation, or (2) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 2, 2007.

Reason Waived: This measure extended a waiver originally granted October 12, 2006, to continue to permit the placement of FHA mortgage insurance on manufactured homes installed in FEMA-designated flood plains in accordance with the NFIP installation requirements. HUD's installation requirements for manufactured homes were viewed as more strenuous than the requirements for any other form of single family housing.

Contact: Maynard T. Curry, Housing Program and Policy Specialist, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9266, Washington, DC 20410–8000, telephone (202) 708–2121.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Centennial Estates, Hamilton County, Ohio, FHA Project Number 046–45005, Formerly 046–44171. The owners requested a waiver of the regulation governing repayment of the flexible subsidy loan term to extend it beyond the prepayment date and the May 1, 2020, maturity date of the existing mortgage.

Nature of Requirement: Section 219.220(b) of FHA's regulations governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 and states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.* * *'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 5, 2007.

Reason Waived: This regulatory waiver was granted to allow Centennial Estates to extend the term of the flexible subsidy loan beyond the prepayment date and the May 1, 2020, maturity date of the existing mortgage. Centennial Estates obtained a section 223(a)(7) firm commitment from Prudential Huntoon Paige. The new committed subsidy balance of the interest reduction payments (IRP) is to be fully utilized to pay all of the principal and interest payments attributable to the Part-A portion of the loan. The loan is to be amortized for 25.5 years which is 12 years beyond the unexpired term of the existing mortgage. Loan proceeds are to be used to cover the existing mortgage debt, loan closing charges and used for repairs on the project. The financial viability of the project will improve.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 219.220(b) (1995).

Project/Activity: Bishop Cooperative Apartments, Wyandotte, Michigan, FHA Project Number 044–SH032. The owner has requested waiver of the regulations governing repayment of the Flexible Subsidy Note at the time of prepayment of an FHA-insured mortgage.

Nature of Requirement: Section 219.220(b) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.* * *'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 17, 2007.

Reason Waived: This regulatory waiver was granted to address the property's capital improvement needs. Required monthly payments will be decreased, improving cash flow at the property and will help alleviate any increases to the budget with the increased debt service. The owner

proposes to pay a lump sum at the time of the refinancing and fully retire the remaining flexible subsidy debt over the new 35-year mortgage term. The project will continue to operate as affordable housing for low- and moderate-income residents until January 1, 2053.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 236.725(e)(2).

Project/Activity: St. Clair Village Apartments, Belleville, Illinois, FHA Project Number 072–011NI. Permission has been requested for continuation of Rental Assistance Payments (RAP) after the payoff of the original non-insured Section 236 mortgage under a Section 236(e)(2) Decoupling transaction.

Nature of Requirement: Section 236.725 of FHA's regulations limits the term of the rental assistance contract to the term of the mortgage or 40 years from the date of the first payment made under the contract, whichever is the lesser.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 13, 2007.

Reason Waived: This regulatory waiver was granted because the project is to be maintained as an affordable housing resource to the maturity date of the non-insured Section 236 mortgage plus an additional 5 years through the execution and recording of a Decoupling Use Agreement, and therefore provided good cause for the granting of the waiver. This waiver was predicated on the fact that the Decoupling proposal did not request an increase in the Section 236 Basic Rents, future increases will be based on budget driven project operating cost increases that will not include any new debt service costs attributable to the Decoupling transaction. Further, this waiver is predicated on the project owner entering into a Decoupling Use Restriction Agreement prescribed by the Section 236(e)(2) Decoupling program.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Hyde Park, St. Louis, MO, Project Number: 085–HD045/MO36–Q051–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 12, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Crest View South, Sidney, NE, Project Number: 103–HD034/NE26–Q051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 17, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: La Casa De Junny, Inc., Mayaguez, PR, Project Number: 056–HD029/RQ46–Q051–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 17, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: The Groves at the Woodlands, Bradford Woods, PA, Project Number: 033–HD095/PA28–Q051–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 25, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Creekside Terrace, Cissna Park, IL, Project Number: 072–EE160/IL06–S051–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: July 25, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Iowa Elderly Housing, Iowa, LA, Project Number: 064–EE201/LA48–S061–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 8, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Forest Hills Senior Apartments, Forest Hills, PA, Project Number: 033–EE122/PA28–S041–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 8, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Community Action Partnership, Williston, ND, Project Number: 094–HD013/ND99–Q051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 8, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Dalewood Estates Senior Housing, Inc., Albany, GA, Project Number: 061–EE125/GA06–S031–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 13, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: VNA Somerville, Somerville, MA, Project Number: 023–EE204/MA06–S061–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 13, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Crest View South, Sidney, NE, Project Number: 103–HD034/NE26–Q051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 14, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Friendship Living Bryant, Bryant, AR, Project Number: 082–HD088/AR37–Q051–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 15, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Desert Willow, Ridgecrest, CA, Project Number: 122–HD162/CA16–Q041–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 15, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: AHEPA DOP, Houston, TX, Project Number: 114–EE125/TX24–S051–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 15, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban

Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: The Village, Moulton, AL, Project Number: 062–HD057/AL09–Q051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 16, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant dministration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: The Presbyterian Home at Dover Township, Dover Township, NJ, Project Number: 035–EE050/NJ39–S051–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 17, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Memphis Volunteers of America Housing, Memphis, TN, Project Number: 081–EE042/TN40–S051–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 17, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Rockford Supportive Housing Development, Rockford, IL, Project Number: 071–HD150/IL06–Q051–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 17, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: New Millennium Village, McGehee, AR, Project Number: 082–HD089/AR37–Q051–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 20, 2007.

Reason Waived: The project is economically designed and the cost appears reasonable as there are no other four unit group homes in the area to compare costs, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Miller Park, Meridian, MS, Project Number: 065–HD040/MS26–Q051–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 24, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Manteca Senior Housing II, Manteca, CA, Project Number: 136–EE080/CA30–S051–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 24, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Restoration Plaza of Barlow, Barlow, OH, Project Number: 043–EE114/OH16–S051–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 24, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Maine Supportive Housing, Inc., Kennebunk, ME, Project Number: 024–HD045/ME36–Q041–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 24, 2007.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6143, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Bledsoe Lane, Las Vegas, NV, Project Number: 125–HD073/NV25–Q051–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 28, 2007.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Burlington Disabled Housing, Burlington, WI, Project Number: 075–HD088/WI39–Q041–007.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 30, 2007.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Quaker Estates III, Portsmouth, RI, Project Number: 016–EE058/RI43–S051–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: August 30, 2007.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: NCR of Alief II, Houston, TX, Project Number: 114–EE120/TX24–S041–008.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 4, 2007.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: ASI Fort Collins, Incorporated, Fort Collins, CO, Project Number: 101–HD041/CO99–Q051–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 4, 2007.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Aaniyak Senior Housing, Anaktuvuk Pass, AK, Project Number: 176–EE030/AK06–S021–005.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: September 7, 2007.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Kaktovik Senior Housing, Kaktovik, AK, Project Number: 176–EE032/AK06–S021–007.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: September 7, 2007.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Utuqqanaaqagvik Senior Housing, Nisqsut, AK, Project Number: 176–EE033/AK06–S021–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 7, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Olgonikgum Uttuganaknich Senior Housing, Wainwright, AK, Project Number: 176–EE031/AK06–S021–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 7, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Bayview Senior Apartments, LaPorte, TX, Project Number: 114–EE133/TX24–S061–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 7, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Marshfield Disabled Housing, Marshfield, WI, Project Number: 075–HD090/WI39–Q051–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 7, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Central Wisconsin Housing, Wisconsin Rapids, WI, Project Number: 075–HD092/WI39–Q061–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 7, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: New Life Estates, Cranston, RI, Project Number: 016–HD045/RI43–Q031–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 13, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: A. Porters Haven, Vinton, VA, Project Number: 051–EE110/VA36–S051–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 13, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Tikigaqmiut Senior Housing, Point Hope, AK, Project Number: 176–EE029/AK06–S021–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 14, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Fellowship Commons Westville, New Haven, CT, Project Number: 017–HD037/CT26–Q051–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the

amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 14, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Hyde Park, St. Louis, MO, Project Number: 085–HD045/MO36–Q051–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 18, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Sartell Supportive Housing, Sartell, MN, Project Number: 092–HD068/MN46–Q061–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 19, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Options Supported Housing Project XI, Selden, NY, Project Number: 012–HD134/NY36–Q061–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 19, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Albert Lea Senior Housing, Albert Lea, MN, Project Number: 092–EE122/MN46–S061–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 20, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Esther Gitlow Towers II, Suffern, NY, Project Number: 012–EE328/NY36–S031–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 20, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Good Shepherd Village, Kansas City, MO, Project Number: 084–HD053/MO16–Q051–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 21, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Valle del Desierto, Somerton, AZ, Project Number: 123–EE101/AZ20–S051–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 21, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Options Supported Housing Project XI, Patchogue, NY, Project Number: 012–HD133/NY36–Q061–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September, 24, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Reba Brown Senior Residence, Philadelphia, PA, Project Number: 034–EE141/PA26–S051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 24, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Tikigaqmiut Senior Housing, Point Hope, AK, Project Number: 176–EE029/AK06–S021–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 24, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Jawonio Residential Opportunities III, New City, NY, Project Number: 012–HD119/NY36–Q031–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 27, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: HOME, Incorporated, Syracuse, NY, Project Number: 014–HD127/NY06–Q051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 27, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Webb Avenue Senior Housing, Bronx, NY, Project Number: 012–EE335/NY36–S051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 27, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Saugus/GLSS Housing Initiative. Saugus, MS, Project Number: 023–EE175/MA06–S041–010.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 28, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.130.

Project/Activity: Harry and Jeanette Weinberg Nanaikeola Senior Apartments, Project Number: 140–EE019/HI10–S991–001.

Nature of Requirement: Section 891.130 prohibits officers and board members of the project's sponsor and owner from having any financial interest in any contract with the owner or any firm which has a contract with the owner. It also prohibits an identity of interest between the sponsor or owner with development team members or between development team members until two years after final closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 11, 2007.

Reason Waived: The leasing of the site from the Village Corporation, to which all of the directors of the owner have an interest acquired under the Indian Claims Settlement Act, was approved because it is being leased for $1 and there is a lack of suitable sites in the community. The general contractor, of which the Village Corporation owns 51 per cent of the shares, was approved because of the specialized experience of the contractor for constructing in the community, the benefit to the community in providing employment opportunities for the local labor force, and the isolated location of the community.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing,

Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.130.

Project/Activity: Hickory Estates, Hermitage, MO, Project Number: 084–EE062/MO16–S051–001.

Nature of Requirement: Section 891.130 prohibits officers and board members of the project's sponsor and owner from having any financial interest in any contract with the owner or any firm which has a contract with the owner. It also prohibits an identity of interest between the sponsor or owner with development team members or between development team members until two years after final closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 25, 2007.

Reason Waived: The Department no longer considers it a prohibited relationship involving a land sale transaction between the sponsor and its affiliated owner. The regulations are to be revised in the future to permit such a transaction.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.130.

Project/Activity: Good Shepherd Village, Kansas City, MO, Project Number: 084–HD053/MO16–Q051–002.

Nature of Requirement: Section 891.130(a) prohibits officers and board members of the project and owner from having any financial interest in any contract with the owner or any firm which has a contract with the owner. It also prohibits an identity of interest between the sponsor or owner with development team members or between development team members until two years after final closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 21, 2007.

Reason Waived: The Department no longer considers it a prohibited relationship involving a land sale transaction between the sponsor and its affiliated owner. The regulations are to be revised in the future to permit such a transaction.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Harvest Pointe Senior Housing, Loveland, CO, Project Number: 101–EE062/CO99–S041–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 9, 2007.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Planning Office of Urban Affairs, Lowell, MA, Project Number: 023–EE164/MA06–S021–015.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 13, 2007.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Esther Gitlow Towers II, Suffern, NY, Project Number: 012–EE328/NY36–S031–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 24, 2007.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Vernon Street Residence, Framingham, MA, Project Number: 023–HD222/MA06–Q051–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 13, 2007.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW.,

Room 6134, Washington DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Laurel Place, West Hollywood, CA, Project Number: 122–EE187/CA16–S031–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 17, 2007.

Reason Waived: The sponsor/owner needed additional time to resolve litigation proceeding and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Woodside Village, Toledo, OH, Project Number: 042–HD112/OH12–Q031–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 7, 2007.

Reason Waived: The sponsor/owner needed additional time to redesign the scope of work and to reduce costs of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Maine Supportive Housing, Incorporated, Kennebunk, ME, Project Number: 024–HD045/ME36–Q041–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 7, 2007.

Reason Waived: The sponsor/owner needed additional time for the firm commitment to be issued and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Wild Flower Terrace, Alliance, NE, Project Number: 103–EE035/NE26–S051–002.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax exemption status under section 501(c)(3) or (c)(4) of the Internal Revenue Code.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 25, 2007.

Reason Waived: The required tax-exemption ruling from Internal Revenue Service (IRS) was to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Willow Creek Apartments, LeMars, IA, Project Number: 074–EE048/IA05–S051–001.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax exemption status under section 501(c)(3) or (c)(4) of the Internal Revenue Code.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 30, 2007.

Reason Waived: The required tax-exemption ruling from IRS is to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Murphy Lake Apartments, Warrensburg, MO, Project Number: 084–EE065/MO16–S051–004.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax exemption status under Section 501(c)(3) or (c)(4) of the Internal Revenue Code.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 15, 2007.

Reason Waived: The required tax-exemption ruling from IRS is to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Bayview Senior Apartments, La Porte, TX, Project Number: 114–EE133/TX24–S061–004.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax exemption status under Section 501(c)(3) or (c)(4) of the Internal Revenue Code.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 4, 2007.

Reason Waived: The required tax-exemption ruling from IRS was to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Luther House IV, West Grove, PA, Project Number: 034–EE150/PA26–S061–002.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax exemption status under section 501(c)(3) or (c)(4) of the Internal Revenue Code.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 21, 2007.

Reason Waived: The required tax-exemption ruling from IRS was to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Booth Manor II, Philadelphia, PA, Project Number: 034–EE142/PA26–S051–002.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax exemption status under section 501(c)(3) or (c)(4) of the Internal Revenue Code.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 24, 2007.

Reason Waived: The required tax-exemption ruling from IRS is to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Albert Lea Senior Housing, Albert Lea, MN, Project Number: 092–EE122/MN46–S061–008.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax exemption status under section 501(c)(3) or (c)(4) of the Internal Revenue Code.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 24, 2007.

Reason Waived: The required tax-exemption ruling from IRS is to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.305.

Project/Activity: Good Shepherd Village, Kansas City, MO, Project Number: 084–HD053/MO16–Q051–002.

Nature of Requirement: Section 891.305 requires Section 811 project owners to have tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 24, 2007.

Reason Waived: The required tax-exemption ruling from IRS is to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

• *Regulation:* 24 CFR 891.305.

Project/Activity: Sartell Supportive Housing, Sartell, MN, Project Number: 092–HD068?MN46–Q061–001.

Nature of Requirement: Section 891.305 requires Section 811 project owners to have tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 20, 2007.

Reason Waived: The required tax-exemption ruling from IRS is to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

• *Regulation:* 24 CFR 891.310(b)(1).

Project/Activity: Maple House, Harrison, NY, Project Number: 012–HD104/NY36–Q011–001.

Nature of Requirement: Section 891.310(b)(1) requires that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: July 12, 2007.

Reason Waived: The design of the existing structure is such that it would not be economically or architecturally feasible to make the group home accessible. However, 50 percent of the group home split from the project will be feasible as well as over 25 percent of the sponsor's other units are accessible.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

• *Regulation:* 24 CFR 891.310(b)(1) and 891.310(b)(2).

Project/Activity: Options Supported Housing Project XI, Selen, NY, Project Number: 012–HD134/NY36–Q061–004.

Nature of Requirement: Section 891.310(b) requires that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities. Section 891.310(b)(2) requires that a minimum of 10 percent of all bedrooms and bathrooms in a group home for the chronically mentally ill be accessible or adaptable for persons with disabilities.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 24, 2007.

Reason Waived: The design of the three of the four existing single family homes is such that it would not be economically or architecturally feasible to make all four group homes accessible. One group home will be accessible and if additional accessible units are needed, the sponsor has other permanent housing projects which are 23 percent accessible.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

• *Regulation:* 24 CFR 891.310(b)(1) and 891.310(b)(2).

Project/Activity: Options Supported Housing Project XII, Patchogue, NY, Project Number: 012–HD133/NY36–Q061–003.

Nature of Requirement: Section 891.310(b) requires that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities. Section 891.310(b)(2) requires that a minimum of 10 percent of all bedrooms and bathrooms in a group home for the chronically mentally ill be accessible or adaptable for persons with disabilities.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 24, 2007.

Reason Waived: The design of the three of the four existing single family homes is such that it would not be economically or architecturally feasible to make all four group homes accessible. One group home will be accessible and if additional accessible units are needed, the sponsor has other permanent housing projects which are 23 percent accessible.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

• *Regulation:* 24 CFR 891.401(c).

Project/Activity: Biimaadiiziiwiin, White Earth, Minnesota, FHA Project Number 092–EE086. This project continues to experience vacancy problems and is requesting that the regulatory age and income waiver be extended for one year.

Nature of Requirement: HUD regulations at 24 CFR part 891 requires

occupancy to be limited to very low income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at the time of initial occupancy). These regulations also require that an owner is to determine the eligibility in selecting tenants.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 7, 2007.

Reason Waived: This property is located on an Indian Reservation where there is insufficient demand for very-low income housing. A previous waiver was granted for one year; however, the project continued to experience severe vacancy problems. It was determined that an extension of the waiver would allow the project to operate successfully and achieve full occupancy. Additionally, it would stabilize the project's current financial status and prevent foreclosure.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Fairview Senior Housing, Warden, Washington, FHA Project Number 171–EE009. The project is experiencing severe vacancy problems and has requested waiver of the regulation concerning determination of eligibility and selection of tenants.

Nature of Requirement: HUD regulations at 24 CFR part 891 requires occupancy to be limited to very low income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at the time of initial occupancy). These regulations also require that an owner is to determine the eligibility in selecting tenants.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 24, 2007.

Reason Waived: A waiver of this requirement was granted to provide the management agent freedom to offer units to applicants between 55–62 years of age and allow applicants to instead meet the low-income eligibility requirement. Providing this waiver will target units to a wider audience and allow the project to obtain full vacancy and have sufficient income to sustain its operations.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Wheat Ridge Heights, Winfield, Kansas, FHA Project Number 102–EE027. The project is experiencing low occupancy levels which will not support operations of the project. Waiver of the regulation concerning determination of eligibility and selection of tenants will allow outreach to a wider audience and assist in renting up vacant units.

Nature of Requirement: HUD regulations at 24 CFR part 891 requires occupancy to be limited to very low income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at the time of initial occupancy). These regulations also require that an owner is to determine the eligibility in selecting tenants.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 4, 2007.

Reason Waived: This regulatory waiver was granted because the current occupancy level at the project will not support its operation. A waiver of the regulations governing determination of eligibility and selection of tenants was granted. This waiver will allow the owner additional flexibility in attempting to rent vacant units and perhaps start a waiting list, helping to alleviate the occupancy and financial problems the property is experiencing.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: North Main Manor, Osceola, Iowa. FHA Project Number 074–EE040. The current occupancy level at the project will not support its continued operation.

Nature of Requirement: HUD regulations at 24 CFR part 891 requires occupancy to be limited to very low income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at the time of initial occupancy). These regulations also require that an owner is to determine the eligibility in selecting tenants.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: September 4, 2007.

Reason Waived: This regulatory waiver was granted due to the project's inability to achieve sustaining occupancy since initial rent-up which began January 1, 2005. Permission was requested to admit 6 over-income applicants between the 51–80 percent of the area median for a one year period, with priority at all times to income-qualified applicants. All reasonable marketing efforts, including advertising in newspapers and shoppers in and around Osceola, Iowa, contacting all area agencies serving the elderly, marketing outside the county, distributing flyers in businesses serving elderly clientele, housing needs cannot be met. This waiver will assist in alleviating the current occupancy and financial problems the project is currently experiencing.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.830(b)

Project/Activity: Wade Chateau Apartments, Cleveland, OH, Project Number: 042–EE168/OH12–S041–004.

Nature of Requirement: Section 891.830(b) requires that capital advance funds be drawn down only in approved ratio to other funds, in accordance with a drawdown schedule approved by HUD.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 24, 2007.

Reason Waived: In order to to limit the out-of-pocket interest costs of the mixed-finance owner, it was determined that the waiver would permit the capital advance funds to be drawn down using a different mechanism, as approved by HUD, than a pro rata basis. With this approval, the mixed-finance owner would be able to keep the undisbursed bond proceeds invested and the interest earned on the investment would be used to offset the interest that is accruing on the tax-exempt bonds, thereby reducing the cost to develop the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

• *Regulation:* 24 CFR 891.830(b) and 24 CFR 891.830(c)(4)

Project/Activity: Casa Grande Senior Apartments, Petaluma, CA, Project Number: 121–EE196/CA39–S061–008.

Nature of Requirement: Section 891.830(b) requires that capital advance funds be drawn down only in approved ratio to other funds, in accordance with

a drawdown schedule approved by HUD. Section 891.830(c)(4) prohibits the capital advance funds from paying off bridge or construction financing, or repaying or collateralizing bonds.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: August 30, 2007.

Reason Waived: In order to not delay the construction of this mixed finance project, the waiver was granted to permit the capital advance funds to be drawn down using a different mechanism, as approved by HUD, other than a pro rata basis. However, the capital advance funds would not be drawn down any faster than a pro rata disbursement basis would have permitted. It was determined that the waiver would also permit capital advance funds to be used to pay off that portion of a bridge or construction financing, or repaying a portion of bonds that strictly relate to capital advance eligible costs. It was agreed that the costs would be documented in the owner's audited cost certification and subsequently approved by the Program Center as capital advance eligible.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801.

Project/Activity: New York City Department of Housing Preservation and Development, (NY110), New York, NY.

Nature of Requirement: HUD's regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted no later than 9 months after the housing authority's fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: July 6, 2007.

Reason Waived: The New York City Department of Housing Preservation and Development (HA) was granted a waiver of the audited financial reporting requirements under the Section 8 Program for FYE December 31, 2006, for the following reasons: (1) the HA is under the single audit requirements of the Office of Management and Budget A–133 and does not conduct a separate audit; and (2) the Section 8 Program is funded on a January 1 to December 31 basis and the city's fiscal year is from July 1 to June 30. Consequently, the single audit report would not be available until 9 months after June 30. The circumstances surrounding the waiver were unusual and beyond the HA's control.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: State of New Jersey, Department of Community Affairs (NJ912), Trenton, NJ.

Nature of Requirement: HUD's regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted no later than 9 months after the housing authority's fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 8, 2007.

Reason Waived: The State of New Jersey, Department of Community Affairs (HA), a Section 8 only entity, was granted a waiver of the audited financial reporting requirements under the Section 8 Program for FYE June 30, 2006. The HA is a component of the state government, and is subject to the single audit. The New Jersey Office of Management and Budget engaged the auditor to perform the single audit for the state of New Jersey. However, because the Housing Choice Voucher (HCV) Program is not considered a major fund, the HCV program was not tested nor was the Financial Data Schedule subject to review by the auditor. The HA was required to secure a program specific audit for FYE June 30, 2007.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Pittsburg Housing Authority (KS149), Pittsburg, KS.

Nature of Requirement: HUD's regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted no later than 9 months after the housing authority's fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 29, 2007.

Reason Waived: The Pittsburg Housing Authority (HA) was granted a waiver of the audited financial reporting deadline of June 30, 2007, under the Section 8 Program for FYE September 30, 2006. The waiver granted a new submission deadline of September 30, 2007, because the HA's audit is included with the City of Pittsburg whose FYE is December 31.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8988.

• *Regulation:* 24 CFR 902.20.

Project/Activity: Housing Authority of the City of Wisconsin Rapids (WI068), Wisconsin Rapids, WI.

Nature of Requirement: Section 902.20 is part of the regulations that implement HUD's Public Housing Assessment System (PHAS) and § 902.20 addresses the physical condition indicator of PHAS, which is one of four indicators examined of a public housing agency's operations. The purpose of the physical condition indicator is to determine whether a housing authority (HA) is meeting the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 17, 2007.

Reason Waived: The HA received a waiver of the physical inspections for fiscal year ending (FYE) December 31, 2006, because of damage caused by a hail storm and the repairs are not scheduled to be completed until December 2007. No inspections will be conducted for fiscal year 2006, but will resume for FYE December 31, 2007.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th

Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8988.

• *Regulation:* 24 CFR 902.20, 902.40, and 902.50.

Project/Activity: Housing Authority of Starr County (TX396), Rio Grande City, TX.

Nature of Requirement: Section 902.20 of HUD's regulations addresses the physical condition indicator of HUD's Public Housing Assessment System (PHAS). Section 902.40 addresses the management operations indicator of PHAS and § 902.50 addresses the resident service and satisfaction indicator. Each of these sections required certain actions on the part of public housing agency.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 18, 2007.

Reason Waived: The Housing Authority of Starr County (HA) was granted a waiver of the physical inspections, submission of the management operations certifications and resident satisfaction surveys for FYE June 30, 2007, due to a natural disaster of severe flooding. The HA was forced to abandon its office and establish a temporary office at another location.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8988.

• *Regulation:* 24 CFR 902.33.

Project/Activity: Dearborn Housing Commission (MI003), Dearborn, MI.

Nature of Requirement: Section 902.33 of HUD's PHAS regulations establishes certain reporting compliance dates. The audited financial statements are required to be submitted no later than nine months after the housing authority's fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 29, 2007.

Reason Waived: The Dearborn Housing Commission (HA) was granted a waiver of the audited financial reporting requirements due for FYE March 31, 2006, because the City of Dearborn implemented a program for blocking spam which blocked the incoming email from the auditor indicating that the financial portion was ready for completion and submission by the HA. The communication oversight caused the HA to receive a Late Presumptive Failure (LPF) and a score of zero under the financial indicator. The Real Estate Assessment Center's (REAC) records confirmed that the audit was completed and ready for submission. The waiver also invalidated the LPF.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8988.

• *Regulation:* 24 CFR 902.33.

Project/Activity: St. Bernard Parish Government Department of Human Resources (LA187), Chalmette, LA.

Nature of Requirement: Section 902.33 of HUD's PHAS regulations establishes certain reporting compliance dates; namely, the unaudited financial statements are required to be submitted within two months after the housing authority's Fiscal Year End (FYE), and the audited financial statements are required to be submitted no later than nine months after the HA's FYE, in accordance with the Single Audit Act and OMB Circular A–133 (24 CFR 902.33).

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 20, 2007.

Reason Waived: The St. Bernard Parish Government Department of Human Resources (HA) was granted a waiver of the unaudited and audited financial submission for FYE December 31, 2005 and 2006, due to Hurricane Katrina where all government activity ceased due to emergency operations. The HA received its FYE 2005 audit report, but was informed that the 2006 financial report would not be finalized until September 30, 2007. The waiver allowed the HA to October 31, 2007, to submit its FYE 2006 audited financial statements, and to immediately submit its FYE 2005 audited financial report.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8988.

• *Regulation:* 24 CFR 902.33.

Project/Activity: Arizona Public Housing Authority of the Arizona Department of Housing (AZ901), Phoenix, AZ.

Nature of Requirement: Section 902.33 of HUD's PHAS regulations establishes certain reporting compliance dates; namely, the audited financial statements are required to be submitted no later than nine months after the housing authority's Fiscal Year End (FYE), in accordance with the Single Audit Act and OMB Circular A–133 (24 CFR 902.33).

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 8, 2007.

Reason Waived: The Arizona Public Housing Authority (HA) of the Arizona Department of Housing falls under the single audit requirement of the Office of Management and Budget A–133, and does not conduct a separate audit. The HA, whose Section 8 Housing Voucher Program budget is less than $300,000.00, is dependent upon the Office of the Auditor General (OAG) to conduct its audit. The OAG indicated that the HA's audit for FYE June 30, 2006 would not be completed by the March 31, 2007 deadline. The waiver granted provided the HA with additional time to submit its audited financial information because the HA expends less than $500,000 and is not the primary reporting agency, as it is under the jurisdiction of the primary reporting agency, the Arizona Department of Housing.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8988.

• *Regulation:* 24 CFR 902.33.

Project/Activity: Housing Authority of the City of Raton (NM008), Raton, NM.

Nature of Requirement: Section 902.33 of HUD's PHAS regulations establishes certain reporting compliance dates; namely, the audited financial statements are required to be submitted no later than nine months after the housing authority's Fiscal Year End (FYE), in accordance with the Single Audit Act and OMB Circular A–133 (24 CFR 902.33).

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 13, 2007.

Reason Waived: The Housing Authority of the City of Raton (HA) submitted its audited financial data for FYE June 30, 2006 by the due date. The HA's submission was rejected, and upon resubmission of the corrected audited submission, the HA and the new auditor made errors while processing the resubmission of the audit to the Real Estate Assessment Center (REAC) that resulted in a Late Presumptive Score of zero under the financial indicator. The HA's Executive Director was proactive

in reminding the auditor to follow-up with the resubmission; however, circumstances beyond the control of the HA caused the HA not to resubmit on time.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8988.

• *Regulation:* 24 CFR 902.33.

Project/Activity: Housing Authority of Snohomish County (WA039), Everett, WA.

Nature of Requirement: Section 902.33 of HUD's PHAS regulations establishes certain reporting compliance dates. The audited financial statements are required to be submitted no later than nine months after the housing authority's fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: July 25, 2007.

Reason Waived: The Housing Authority of Snohomish County (HA) was granted a waiver of the Late Presumptive Failure (LPF) score of zero under the audited Financial Assessment Subsystem (FASS) indicator for failing to submit the audited financial data. The audit was completed timely. The HA and the auditor completed the first and second step of the three-step submission process; however, the auditor failed to notify the HA that the audit was ready for resubmission to the Real Estate Assessment Center. The miscommunication resulted in the LPF. The waiver allowed the HA to resubmit its audit and to receive a new FASS indicator score.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8988.

• *Regulation:* 24 CFR 902.33.

Project/Activity: Detroit Housing Commission (MI001), Detroit, MI.

Nature of Requirement: Section 902.33 of HUD's PHAS regulations establishes certain reporting compliance dates. The unaudited financial statements are required to be submitted no later than two months after the housing authority's fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 26, 2007.

Reason Waived: The Detroit Housing Commission (HA) was granted an extension waiver of 120 days to submit its unaudited financial data for FYE June 30, 2007. The HA is currently under the HUD Recovery Administrator, and is completing the process for ensuring compliance with the Generally Accepted Accounting Principles (GAAP) reporting requirements. The HA was required to submit by no later than December 29, 2007.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8988.

• *Regulation:* 24 CFR 902.60(d) and (e).

Project/Activity: Metropolitan Development and Housing Agency of Nashville (TN005), Nashville, TN.

Nature of Requirement: Section 902.60 of HUD's PHAS regulations establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: July 19, 2007.

Reason Waived: The Metropolitan Development and Housing Agency of Nashville (HA) was granted a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver from the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal year ending September 30, 2007. The Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System will be carried from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410, telephone (202) 475–8632.

• *Regulation:* 24 CFR 902.60(d) and (e).

Project/Activity: Housing Authority for the City of Troy, (AL177), Troy, AL.

Nature of Requirement: Section 902.60 of HUD's PHAS regulations establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 13, 2007.

Reason Waived: The Housing Authority for the City of Troy, (HA) was granted a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver from the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal year ending June 30, 2007. The Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System will be carried over from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410, telephone (202) 475–8632.

• *Regulation:* 24 CFR 902.60(d) and (e).

Project/Activity: Dyersburg Housing Authority, (TN021), Dyersburg, TN.

Nature of Requirement: Section 902.60 of HUD's PHAS regulations establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 13, 2007.

Reason Waived: The Dyersburg Housing Authority (HA) was granted a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver from the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal year ending June 30, 2007. The Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System will be carried over from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of

Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410, telephone (202) 475–8632.

• *Regulation:* 24 CFR 902.60(d) and (e).

Project/Activity: Rahway Housing Authority, (NJ032), Rahway, NJ.

Nature of Requirement: Section 902.60 of HUD's PHAS regulations establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 13, 2007.

Reason Waived: The Rahway Housing Authority (HA) was granted a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver from the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal year ending September 30, 2007. The Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System will be carried over from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410, telephone (202) 475–8632.

• *Regulation:* 24 CFR 902.60(d) and (e).

Project/Activity: Housing Authority for the County of Butte, (CA043), Chico, CA.

Nature of Requirement: Section 902.60 of HUD's PHAS regulations establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 21, 2007.

Reason Waived: Housing Authority for the County of Butte (HA) was granted a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver from the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal year ending September 30, 2007. The Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System will be carried over from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410, telephone (202) 475–8632.

• *Regulation:* 24 CFR 902.60(d) and (e).

Project/Activity: Helena Housing Authority, (MT004), Helena, MT.

Nature of Requirement: Section 902.60 of HUD's PHAS regulations establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 28, 2007.

Reason Waived: Helena Housing Authority (HA) was granted a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver from the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal year ending September 30, 2007. The Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System will be carried over from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410, telephone (202) 475–8632.

• *Regulation:* 24 CFR 902.60(d) and (e).

Project/Activity: Housing Authority for the City of Eufaula, (AL118), Eufaula, AL.

Nature of Requirement: Section 902.60 of HUD's PHAS regulations establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 29, 2007.

Reason Waived: Housing Authority for the City of Eufaula (HA) was granted a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver from the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal year ending December 31, 2007. The Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System will be carried from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC, 20410, telephone (202) 475–8632.

• *Regulation:* 24 CFR 902.60(d) and (e).

Project/Activity: Housing Authority for the City of Talladega, (AL105), Talladega, AL.

Nature of Requirement: Section 902.60 of HUD's PHAS regulations establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 4, 2007.

Reason Waived: Housing Authority for the City of Taladega (HA) was granted a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver from the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal year ending December 31, 2007. The Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System will be carried over from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200,

Washington, DC, 20410, telephone (202) 475–8632.

• *Regulation:* 24 CFR 902.60(d) and (e).

Project/Activity: The Greene Metropolitan Housing Authority, (OH022), Xenia, OH.

Nature of Requirement: Section 902.60 of HUD's PHAS regulations establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 10, 2007.

Reason Waived: Greene Metropolitan Housing Authority (HA) was granted a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver from the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal year ending December 31, 2007. The Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System will be carried from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC, 20410, telephone (202) 475–8632.

• *Regulation:* 24 CFR 902.60(d) and (e).

Project/Activity: Housing Authority for the City of Inkster, (MI027), Inkster, MI.

Nature of Requirement: Section 902.60 of HUD's PHAS regulations establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 26, 2007.

Reason Waived: Housing Authority for the City of Inkster (HA) was granted a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver from the requirements of 24 CFR 902.60(d), the requirement to submit a management operations certification, for the fiscal year ending December 31, 2007 and 24 CFR 902.60(e), the resident satisfaction survey, for the fiscal years ending December 31, 2006 and December 31, 2007. The Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System will be carried over from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC, 20410, telephone (202) 475–8632.

• *Regulation:* 24 CFR 941.606(n)(1)(ii).

Project/Activity: Charleston Replacement Housing Mixed-Finance Rental Project. Waiver requested by the Charleston Kanawha Housing Authority (CKHA), Charleston, West Virginia for the Charleston Replacement Housing Mixed-Finance Rental project consisting of 22 public housing units and 22 project-based Section 8 units.

Nature of Requirement: Section 941.606 of HUD's public housing regulations provides ''that if the partner and/or owner entity (or any other entity with an identity of interest with such parties) wants to serve as the general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest bid submitted in response to a public request for bids''.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 12, 2007.

Reason Waived: CHKA submitted a certification by an independent third-party construction cost estimator and HUD reviewed the independent cost estimates and related budgets. The project is below the Total Development Cost limit, pursuant to PIH Notice 2007–19, and HUD performed a fee analysis of the construction contract which showed that all of the construction fees are within HUD's Cost Control and Safe Harbor Standards, revised April 9, 2003.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20140–5000, Room 4130, telephone (202) 402–4181.

• *Regulation:* 24 CFR 941.606(n)(1)(ii)(B).

Project/Activity: Albany Housing Authority, Albany, NY; Arbor Hill 3–B (HOPE VI rental housing development).

Nature of Requirement: Section 941.606 of HUD's public housing regulations provides that partner and/or owner entity can award a construction contract to itself or a related entity only if it can demonstrate to HUD's satisfaction that the contractor's bid is the lowest bid submitted in response to a public request for bids.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: July 25, 2007.

Reason Waived: AHA procured the services of an independent third-party construction cost estimating firm. The identity of interest party's contract cost was less than the independent third-party's cost estimate. AHA has demonstrated that the construction costs are reasonable and are within applicable HUD cost limits.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20140–5000, telephone (202) 402–4181.

• *Regulation:* 24 CFR 941.610(a)(1)–(a)(7).

Project/Activity: Charlotte Housing Authority Piedmont Courts HOPE VI Project: 940 Brevard Mixed-Finance Project.

Nature of Requirement: Section 941.610 of HUD's public housing regulations requires HUD review and approval of certain legal documents related to mixed-finance development before closing can occur and public housing funds can be released.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: July 6, 2007.

Reason Waived: CHA is a high performing housing authority with extensive development and mixed-finance experience. CHA has received four HOPE VI grants and has done over 20 mixed-finance and homeownership projects related to the HOPE VI grants. The partners in the project are equally experienced. All partners in this project have extensive internal review processes and financial control mechanisms related to financing. The attorneys representing each of the partners also have extensive mixed-finance experience. HUD review would repeat and duplicate the activities which these processes are already performing. This project is also a near duplicate of the many previous mixed-finance projects undertaken by CHA, all of which underwent full evidentiary document review and approval by HUD.

Many of these deals had the same ownership structure, participating parties, tax credit investor, and financial structure as 940 Brevard.

Good cause was presented to grant the waiver of 24 CFR 941.610(a)(1)–(a)(7). Under the waiver, these documents no longer need to be submitted to HUD for review. In lieu of HUD's review of these documents, and before public housing funds can be released, the PHA must submit documentation which certifies, in form specified by HUD, to the accuracy and authenticity of the legal documents detailed in § 941.610(a)(1)–(a)(7).

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20140–5000, telephone (202) 402–4181.

• *Regulation:* 24 CFR 941.610(a)(1)–(a)(7).

Project/Activity: Charlotte Housing Authority Earle Village HOPE VI Project Glen Cove and McAlpine Terrace Mixed-Finance Projects HOPE VI Project Number: NC19URD003I193.

Nature of Requirement: Section 941.610 of HUD's public housing regulations requires HUD review and approval of certain legal documents related to mixed-finance development before closing can occur and public housing funds can be released.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: July 20, 2007.

Reason Waived: CHA is a high performing housing authority with extensive development and mixed-finance experience. CHA has received four HOPE VI grants and has done over 20 mixed-finance and homeownership projects related to the HOPE VI grants. CHA has worked on numerous occasions with the City to finance mixed-finance transactions. The partners in the project are equally experienced. All partners in this project have extensive internal review processes and financial control mechanisms related to financing. The attorneys representing CHA also have extensive mixed-finance experience. HUD review would repeat and duplicate the activities which these processes are already performing. This project is also a near duplicate of the many previous mixed-finance projects undertaken by CHA, all of which underwent full evidentiary document review and approval by HUD. Many of these deals had the same ownership structure, participating parties, tax credit investor, and financial structure as 940 Brevard.

Good cause was presented to grant the waiver of 24 CFR 941.610 (a)(1)–(a)(7). Under the waiver, these documents no longer need to be submitted to HUD for review. In lieu of HUD's review of these documents, and before public housing funds can be released, the PHA must submit documentation which certifies, in form specified by HUD, to the accuracy and authenticity of the legal documents detailed in § 941.610(a)(1)–(a)(7).

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20140–5000, telephone (202) 402–4181.

• *Regulation:* 24 CFR 983.51, 983.152, and 983.204.

Project/Activity: Housing Authority of New Orleans (HANO), New Orleans, LA. In regard to its project-based voucher (PBV) developments, Flint Goodridge and Redemptorist Apartments, the HANO requested a waiver regarding competition of owner proposals, housing quality standards (HQS) inspections; and the Agreement to enter into a Housing Assistance Payments (AHAP) contract.

Nature of Requirement: Section 983.51 of HUD's voucher regulations states the requirements of owner proposal selection. Section 983.152 states the requirements for the AHAP. Section 983.204 states the requirements for the passage of HQS inspections before the execution of a housing assistance payments (HAP) contract.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 26, 2007.

Reason Waived: The regulations were waived due to the critical housing needs of New Orleans pursuant to Hurricanes Katrina and Rita and the continuing re-occupancy efforts over the past two years, as well as the willingness of all parties to correct initial contract deficiencies.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.54(j).

Project/Activity: Macon Housing Authority (MHA), Macon, GA. The MHA requested a waiver regarding attaching project-based vouchers (PBV) to 25 units at Vineville Christian Towers since it is a Section 101 rent supplement project.

Nature of Requirement: Section 983.54(j) of HUD's voucher regulation states that a public housing agency may not attach or pay PBV assistance to units in a Section 101 rent supplement project (12 U.S.C. 1701s).

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 29, 2007.

Reason Waived: The rent supplement contract provides subsidy for 23 of 39 units operating at a loss, and the PBV contract will only attach assistance to 25 of the 157 unsubsidized units and no duplicative subsidy will be provided for the project.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 985.101(a).

Project/Activity: Gainesville Housing Authority (GA), Gainesville, TX. The GHA requested a waiver regarding submission of its Section 8 Management Assessment Program (SEMAP) certification for its fiscal year ending June 30, 2007.

Nature of Requirement: Section 985.101(a) of HUD's voucher regulations states that a public housing agency must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 12, 2007.

Reason Waived: The GHA was unable to gather and verify the data that is entered on the SEMAP certification due to substantial flooding and damage to the records.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.207(b)(3).

Project/Activity: Contra Costa County Housing Authority (CCCHA), Contra Costa County, CA. The CCHA requested a waiver of a selection preference

regulation in order to select Housing Opportunities for Persons with AIDS (HOPWA)-eligible families to occupy five of the units receiving project-based voucher assistance at the 124-unit Lakeside Apartments project.

Nature of Requirement: Section 982.207(b)(3) of HUD's voucher regulations, which governs tenant selection under the project-based voucher program, states that a housing agency may adopt a preference for admission of families that include a person with disabilities, but may not adopt a preference for persons with a specific disability.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 13, 2007.

Reason Waived: Since by law, persons with HIV/AIDS only may occupy units developed with HOPWA funds, a public housing agency may only authorize occupancy of such units that also receive project-based voucher assistance by persons with HIV/AIDS. Therefore, in selecting families to refer to the owner for occupancy of these units, the CCHA will have to pass over persons on its waiting list until it reaches a person with HIV/AIDS who is interested in moving into one of these units at Lakeside Apartments.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of Snohomish County (HASC), Snohomish County, WA. The HASC requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to a person with disabilities.

Nature of Requirement: Section 982.505(d) of HUD's voucher regulations states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 26, 2007.

Reason Waived: The applicant, who is a person with disabilities, owns a manufactured home that meets her physical needs and is accessible to stores and her doctor's office. To provide a reasonable accommodation so that this applicant would pay no more than 40 percent of adjusted income toward the family share, the HASC was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR Section 982.505(d).

Project/Activity: Housing Authority of Snohomish County (HASC) Snohomish County, WA. The HASC requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to a person with disabilities.

Nature of Requirement: Section 982.505(d) of HUD's voucher regulations states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 12, 2007.

Reason Waived: The applicant, who is a person with disabilities, owns a manufactured home that meets her physical needs and is accessible to her social support system. To provide a reasonable accommodation so that this applicant would pay no more than 40 percent of adjusted income toward the family share, the HASC was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Schenectady Municipal Housing Authority (SMHA), Schenectady, NY. The SMHA requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to a person with disabilities.

Nature of Requirement: Section 982.505(d) of HUD's voucher regulations states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 5, 2007.

Reason Waived: An applicant, who is a person with disabilities, located a unit that met her needs for a wheelchair-accessible unit that was near her parents and medical support system. To provide a reasonable accommodation so that this applicant would pay no more than 40 percent of adjusted income toward the family share, the SMHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the City of New Haven (HACNH), New Haven, CT. The HACNH requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to a person with disabilities.

Nature of Requirement: Section 982.505(d) of HUD's voucher regulations states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 30, 2007.

Reason Waived: An applicant, who is a person with disabilities, located a unit that met his needs for a wheelchair-accessible unit after an extensive housing search. To provide a reasonable accommodation so that this applicant would pay no more than 40 percent of adjusted income toward the family share, the HACNH was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Danielle Bastarache, Director, Housing Voucher Management

and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Milford Housing Authority (MHA), Milford, MA. The MHA requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to a person with disabilities.

Nature of Requirement: Section 982.505(d) of HUD's voucher regulations states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 20, 2007.

Reason Waived: The participant, who is a person with disabilities, located a unit that met her needs after an extensive housing search. To provide a reasonable accommodation so that this participant would pay no more than 40 percent of adjusted income toward the family share, the MHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 990.185(a).

Project/Activity: The Housing Authority of the County of San Bernardino (HACSB), San Bernardino, California. The HACSB is contracting to Energy Performance through a term longer than the stated 12-year maximum.

Nature of Requirement: On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005. Public Law 109–58, Subtitle D—Public Housing, Section 151, (2)(B) amends Section 9(e)(2)(C) of the United States Housing Act of 1937 by adding a new paragraph (iii), which states ''Term of contract:—The total term of a contract shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating systems replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.'' However, HUD's current regulation 24 CFR 990.185(a) states that the contract period shall not exceed 12 years.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 26, 2007.

Reason Waived: The HACSB is undertaking a self-developed energy project, acting as an Energy Services company, and has hired a qualified third party consultant to provide energy management expertise. HACSB anticipates that recommendations arising from its energy audit will incorporate a selection of energy conservation measures whose life cycle expectations and costs will exceed the 12-year regulatory limitation in 24 CFR 990.185(a). The HASB anticipates that the selection of retrofits will be capable of generating adequate savings to amortize the resulting debt within the approved period of the energy performance contract. Based upon the anticipated savings and benefits to HASB and its residents, this waiver grants the HASB the 12-year payback period to allow up to a 20-year payback period, contingent on HUD's provisions to HASB.

HUD's provisions include additional information and technical activity requirements unique to the characteristics of the project and the PHA. The purpose of the provisions is to ensure success, minimizing risk to projected savings (used to amortize the loan) and to HUD. The PHA must comply with all of HUD's provisions for the waiver to be effective. They may include, but are not limited to information requirements, necessary for the local field office to monitor savings over the life of the loan and procurement requirements to ensure fair and open competition. The HUD provisions are also a direct response to the Office of Management and Budget (OMB) concern related to the higher risk levels associated with a 20-year versus the previous limit of 12 years. The Department through its provisions provides individual assessments and requirements of each project and waiver requesting an extension to 20-contract years to minimize risk and ensure that approval of the waiver is in the best interest of the PHA, HUD and the public.

Contact: Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4238, Washington, DC 20410–5000, telephone (202) 708–0744.

• *Regulation:* 24 CFR 990.185(a).

Project/Activity: The Lancaster City Housing Authority (LCHA), Lancaster, Pennsylvania. The LCHA is contracting to Energy Performance through a term longer than the stated 12-year maximum.

Nature of Requirement: HUD's regulation at 24 CFR 990.185(a) states that a contract pertaining to energy conservation measures shall not exceed a period of 12 years. However, on August 8, 2005, President Bush signed into law the Energy Policy Act of 2005. Public Law 109–58, Subtitle D—Public Housing, Section 151, (2)(B) amends Section 9(e)(2)(C) of the United States Housing Act of 1937 by adding a new paragraph (iii), which states ''Term of contract:—The total term of a contract shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating systems replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.''

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 20, 2007.

Reason Waived: The LCHA is undertaking a self-developed energy project, acting as an Energy Services company, and hired a qualified third party consultant to provide energy management expertise. LCHA anticipates that recommendations arising from its energy audit will incorporate a selection of energy conservation measures whose life cycle expectations and costs will exceed the 12-year regulatory limitation in 24 CFR 990.185(a). The LCHA anticipates that the selection of retrofits will be capable of generating adequate savings to amortize the resulting debt within the approved period of the energy performance contract. Based upon the anticipated savings and benefits to LCHA and its residents, the waiver granted the LCHA the 12-year payback period to allow up to a 20-year payback period, contingent on HUD's provisions to LCHA.

HUD's provisions include additional information and technical activity requirements unique to the characteristics of the project and the PHA. The purpose of the provisions is to ensure success, minimizing risk to projected savings (used to amortize the loan) and to HUD. The PHA must comply with all of HUD's provisions for

the waiver to be effective. They may include, but are not limited to information requirements, necessary for the local field office to monitor savings over the life of the loan and procurement requirements to ensure fair and open competition. The HUD provisions are also a direct response to the Office of Management and Budget (OMB) concern related to the higher risk levels associated with a 20-year versus the previous limit of 12 years. The Department through its provisions provides individual assessments and requirements of each project and waiver requesting an extension to 20-contract years to minimize risk and ensure that approval of the waiver is in the best interest of the PHA, HUD and the public.

Contact: Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4238, Washington, DC 20410–5000, telephone (202) 708–0744.

• *Regulation:* 24 CFR 990.185(a).

Project/Activity: The Housing Authority of the City of Upland (HACU), Upland, California. The HACU is contracting to Energy Performance through a term longer than the stated 12-year maximum.

Nature of Requirement: HUD's regulation at 24 CFR 990.185(a) states that a contract pertaining to energy conservation measures shall not exceed a period of 12 years. However, on August 8, 2005, President Bush signed into law the Energy Policy Act of 2005. Public Law 109–58, Subtitle D—Public Housing, Section 151, (2)(B) amends Section 9(e)(2)(C) of the United States Housing Act of 1937 by adding a new paragraph (iii), which states ''Term of contract:—The total term of a contract shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating systems replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.''

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 12, 2007.

Reason Waived: The HACU is undertaking a self-developed energy project, acting as an Energy Services company, and has hired a qualified third party consultant to provide energy management expertise. HACU anticipates that recommendations arising from its energy audit will incorporate a selection of energy conservation measures whose life cycle expectations and costs will exceed the 12-year regulatory limitation in 24 CFR 990.185(a). The HACU anticipates that the selection of retrofits will be capable of generating adequate savings to amortize the resulting debt within the approved period of the energy performance contract. Based upon the anticipated savings and benefits to HACU and its residents, this waiver grants the HACU the 12-year payback period to allow up to a 20-year payback period, contingent on HUD's provisions to HACU.

HUD's provisions include additional information and technical activity requirements unique to the characteristics of the project and the PHA. The purpose of the provisions is to ensure success, minimizing risk to projected savings (used to amortize the loan) and to HUD. The PHA must comply with all of HUD's provisions for the waiver to be effective. They may include, but not limited to information requirements, necessary for the local field office to monitor savings over the life of the loan and procurement requirement to ensure fair and open competition. The HUD provisions are also a direct response to the Office of Management and Budget (OMB) concern related to the higher risk levels associated with a 20-year versus the previous limit of 12 years. HUD through its provisions provides individual assessments and requirements of each project and waiver requesting an extension to 20-contract years to minimize risk and ensure that approval of the waiver is in the best interest of the PHA, HUD and the public.

Contact: Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4238, Washington, DC 20410–5000, telephone (202) 708–0744.

• *Regulation:* 24 CFR 990.185(a).

Project/Activity: The Lackawanna Housing Authority (LHA), Lackawanna, New York.

Nature of Requirement: HUD's regulation at 24 CFR 990.185(a) states that a contract pertaining to energy conservation measures shall not exceed a period of 12 years. However, on August 8, 2005, President Bush signed into law the Energy Policy Act of 2005. Public Law 109–58, Subtitle D—Public Housing, Section 151, (2)(B) amends Section 9(e)(2)(C) of the United States Housing Act of 1937 by adding a new paragraph (iii), which states ''Term of contract:—The total term of a contract shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating systems replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.''

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 12, 2007.

Reason Waived: The LHA is undertaking a self-developed energy project, acting as an Energy Services company, and has hired a qualified third party consultant to provide energy management expertise. LHA anticipates that recommendations arising from its energy audit will incorporate a selection of energy conservation measures whose life cycle expectations and costs will exceed the 12-year regulatory limitation in 24 CFR 990.185(a). The LHA anticipates that the selection of retrofits will be capable of generating adequate savings to amortize the resulting debt within the approved period of the energy performance contract. Based upon the anticipated savings and benefits to LHA and its residents, this waiver grants the LHA the 12-year payback period to allow up to a 20-year payback period, contingent on HUD's provisions to LHA.

HUD's provisions include additional information and technical activity requirements unique to the characteristics of the project and the PHA. The purpose of the provisions is to ensure success, minimizing risk to projected savings (used to amortize the loan) and to HUD. The PHA must comply with all of HUD's provisions for the waiver to be effective. They may include, but not limited to information requirements, necessary for the local field office to monitor savings over the life of the loan and procurement requirement to ensure fair and open competition. The HUD provisions are also a direct response to the Office of Management and Budget (OMB) concern related to the higher risk levels associated with a 20-year versus the previous limit of 12 years. The Department through its provisions provides individual assessments and requirements of each project and waiver requesting an extension to 20-contract years to minimize risk and ensure that approval of the waiver is in the best interest of the PHA, HUD and the public.

Contact: Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4238, Washington, DC 20410–5000, telephone (202) 708–0744.

• *Regulation:* 24 CFR 1000.336(d).

Project/Activity: The United Keetoowah Band requested a waiver of the § 1000.336(d) deadline for submitting a Census challenge in Fiscal Year (FY) 2008 to the Tribe's Indian Housing Block Grant (IHBG) formula data to enable the Tribe adequate time to collect data and prepare the proper documentation in accordance with Program requirements.

Nature of Requirement: Section 1000.336(d) of HUD's IHBG regulations requires that data and documentation supporting Census challenges be submitted to HUD by March 30, 2007, in order for it to be considered for FY 2008.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 30, 2007.

Reasons Waived: The final rule for revisions to the IHBG regulations (24 CFR part 1000) was published in the **Federal Register** on April 20, 2007, and established the March 30, 2007, deadline for submitting Census challenges for the upcoming FY. Therefore, the United Keetoowah Band did not have the opportunity to prepare a submission prior to the March 30, 2007 deadline, because that date had passed before the revised regulation was published. HUD determined that there was good cause to grant this waiver considering the importance of using the best available data to determine FY 2008 IHBG allocations, and the timing of the publication of the new regulation.

Contact: Deborah M. Lalancette, Director, Office of Grants Management, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 1670 Broadway Denver, CO 80202, telephone (303) 675–1600.

• *Regulation:* 24 CFR 1000.336(d).

Project/Activity: The Native Village of Eyak requested a waiver of the § 1000.336(d) deadline for submitting a Census challenge in Fiscal Year (FY) 2008 to the Tribe's Indian Housing Block Grant (IHBG) formula data to enable the Tribe adequate time to collect data and prepare the proper documentation in accordance with Program requirements.

Nature of Requirement: Section 1000.336(d) of HUD's IHBG regulations requires that data and documentation supporting Census challenges be submitted to HUD by March 30, 2007, in order for it to be considered for FY 2008.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: July 25, 2007.

Reasons Waived: The final rule for revisions to the IHBG regulations (24 CFR part 1000) was published in the **Federal Register** on April 20, 2007, and established the March 30, 2007, deadline for submitting Census challenges for the upcoming FY. Therefore, the Native Village of Eyak did not have the opportunity to prepare a submission prior to the March 30, 2007 deadline, because that date had passed before the revised regulation was published. HUD determined that there was good cause to grant this waiver considering the importance of using the best available data to determine FY 2008 IHBG allocations, and the timing of the publication of the new regulation.

Contact: Deborah M. Lalancette, Director, Office of Grants Management, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 1670 Broadway Denver, CO 80202, telephone (303) 675–1600.

• *Regulation:* 24 CFR 1000.336(d).

Project/Activity: The Lac du Flambeau Chippewa Housing Authority requested a waiver of the § 1000.336(d) deadline for submitting a Census challenge in Fiscal Year (FY) 2008 to the Tribe's Indian Housing Block Grant (IHBG) formula data to enable the Tribe adequate time to collect data and prepare the proper documentation in accordance with Program requirements.

Nature of Requirement: Section 1000.336(d) of HUD's IHBG regulations requires that data and documentation supporting Census challenges be submitted to HUD by March 30, 2007, in order for it to be considered for FY 2008.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 30, 2007.

Reasons Waived: The final rule for revisions to the IHBG regulations (24 CFR Part 1000) was published in the **Federal Register** on April 20, 2007, and established the March 30, 2007, deadline for submitting Census challenges for the upcoming FY. Therefore, the Lac du Flambeau Chippewa Housing Authority did not have the opportunity to prepare a submission prior to the March 30, 2007 deadline, because that date had passed before the revised regulation was published. HUD determined that there was good cause to grant this waiver considering the importance of using the best available data to determine FY 2008 IHBG allocations, and the timing of the publication of the new regulation.

Contact: Deborah M. Lalancette, Director, Office of Grants Management, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 1670 Broadway Denver, CO 80202, telephone (303) 675–1600.

• *Regulation:* 24 CFR 1000.336(d).

Project/Activity: The Colville Indian Housing Authority requested a waiver of the § 1000.336(d) deadline for submitting a Census challenge in Fiscal Year (FY) 2008 to the Tribe's Indian Housing Block Grant (IHBG) formula data to enable the Tribe adequate time to collect data and prepare the proper documentation in accordance with Program requirements.

Nature of Requirement: Section 1000.336(d) of HUD's IHBG regulations requires that data and documentation supporting Census challenges be submitted to HUD by March 30, 2007, in order for it to be considered for FY 2008.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 30, 2007.

Reasons Waived: The final rule for revisions to the IHBG regulations (24 CFR part 1000) was published in the **Federal Register** on April 20, 2007, and established the March 30, 2007, deadline for submitting Census challenges for the upcoming FY. Therefore, the Colville Indian Housing Authority did not have the opportunity to prepare a submission prior to the March 30, 2007 deadline, because that date had passed before the revised regulation was published. HUD determined that there was good cause to grant this waiver considering the importance of using the best available data to determine FY 2008 IHBG allocations, and the timing of the publication of the new regulation.

Contact: Deborah M. Lalancette, Director, Office of Grants Management, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 1670 Broadway Denver, CO 80202, telephone (303) 675–1600.

• *Regulation:* 24 CFR 1000.336(d).

Project/Activity: The Lower Sioux Indian Tribe requested a waiver of the § 1000.336(d) deadline for submitting a Census challenge in Fiscal Year (FY) 2008 to the Tribe's Indian Housing Block Grant (IHBG) formula data to enable the Tribe adequate time to collect data and prepare the proper documentation in accordance with Program requirements.

Nature of Requirement: Section 1000.336(d) of HUD's IHBG regulations requires that data and documentation supporting Census challenges be

submitted to HUD by March 30, 2007, in order for it to be considered for FY 2008.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 30, 2007.

Reasons Waived: The final rule for revisions to the IHBG regulations (24 CFR part 1000) was published in the **Federal Register** on April 20, 2007, and established the March 30, 2007, deadline for submitting Census challenges for the upcoming FY. Therefore, the Lower Sioux Indian Tribe did not have the opportunity to prepare a submission prior to the March 30, 2007 deadline, because that date had passed before the revised regulation was published. HUD determined that there was good cause to grant this waiver considering the importance of using the best available data to determine FY 2008 IHBG allocations, and the timing of the publication of the new regulation.

Contact: Deborah M. Lalancette, Director, Office of Grants Management, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 1670 Broadway Denver, CO 80202, telephone (303) 675–1600.

- *Regulation:* 24 CFR 1000.336(d).

Project/Activity: The Wiyot Tribe requested a waiver of the § 1000.336(d) deadline for submitting a Census challenge in Fiscal Year (FY) 2008 to the Tribe's Indian Housing Block Grant (IHBG) formula data to enable the Tribe adequate time to collect data and prepare the proper documentation in accordance with Program requirements.

Nature of Requirement: Section 1000.336(d) of HUD's IHBG regulations requires that data and documentation supporting Census challenges be submitted to HUD by March 30, 2007, in order for it to be considered for FY 2008.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: August 30, 2007.

Reasons Waived: The final rule for revisions to the IHBG regulations (24 CFR part 1000) was published in the **Federal Register** on April 20, 2007, and established the March 30, 2007, deadline for submitting Census challenges for the upcoming FY. Therefore, the Wiyot Tribe did not have the opportunity to prepare a submission prior to the March 30, 2007 deadline, because that date had passed before the revised regulation was published. HUD determined that there was good cause to grant this waiver considering the importance of using the best available data to determine FY 2008 IHBG allocations, and the timing of the publication of the new regulation.

Contact: Deborah M. Lalancette, Director, Office of Grants Management, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 1670 Broadway, Denver, CO 80202, telephone (303) 675–1600.

[FR Doc. E7–24778 Filed 12–21–07; 8:45 am]

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Federal Register

Wednesday,
December 26, 2007

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Arenaria ursina* (Bear Valley Sandwort), *Castilleja cinerea* (Ash-gray Indian Paintbrush), and *Eriogonum kennedyi* var. *austromontanum* (Southern Mountain Wild-Buckwheat); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU80

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Arenaria ursina* (Bear Valley Sandwort), *Castilleja cinerea* (Ash-gray Indian Paintbrush), and *Eriogonum kennedyi* var. *austromontanum* (Southern Mountain Wild-Buckwheat)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for *Arenaria ursina* (Bear Valley sandwort), *Castilleja cinerea* (Ash-gray Indian paintbrush), and *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild-buckwheat) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 1,769 acres (ac) (722 hectares (ha)) of land fall within the boundaries of the critical habitat designations for these three species. Approximately 1,412 ac (571 ha) of Federal and private land are being designated as critical habitat for *Arenaria ursina;* approximately 1,769 ac (722 ha) of Federal, State, and private land are being designated as critical habitat for *Castilleja cinerea;* and approximately 904 ac (366 ha) of Federal and private land are being designated as critical habitat for *Eriogonum kennedyi* var. *austromontanum.* All lands included in these final designations are in San Bernardino County, California. These final designations include an addition of a total of 258 ac (111 ha) from the total area included in the 2006 proposed designations for these species.

DATES: This rule becomes effective on January 25, 2008.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at 6010 Hidden Valley Road, Carlsbad, CA 92011 (telephone 760/431–9440). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339, 24 hours a day, 7 days a week. The final rule, economic analysis, and maps are available via the Internet at *http://www.fws.gov/carlsbad/* .

SUPPLEMENTARY INFORMATION:

Background

It is our intent to reiterate and discuss only those topics directly relevant to the development and designation of critical habitat or relevant information obtained since publication of the proposed critical habitat designations (71 FR 67712; November 22, 2006). This final rule addresses critical habitat for *Arenaria ursina* (Bear Valley sandwort), *Castilleja cinerea* (Ash-gray Indian paintbrush), and *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild-buckwheat) (collectively referred to as ''pebble plains plants''), because they largely occupy the same habitat, referred to as pebble plain habitat. For additional information on the taxonomy, description, biology, and ecology of each of these species, refer to the final rule listing them as threatened published in the **Federal Register** on September 14, 1998 (63 FR 49006) or the proposed critical habitat rule published in the **Federal Register** on November 22, 2006 (71 FR 67712).

Pebble Plain Habitat

No new substantial information pertaining to the ''Pebble Plain Habitat'' section in the proposed designation was received following publication of the 2006 proposed critical habitat designation for each species; therefore, please refer to the ''Background'' section of the proposed critical habitat designation published in the **Federal Register** on November 22, 2006 (71 FR 67712) for a discussion of pebble plain habitat.

Species Descriptions

No new substantial information pertaining to the ''Species Descriptions'' section in the proposed designation was received following our 2006 proposed critical habitat designation for each species; therefore, please refer to the ''Background'' section of the proposed critical habitat designation published in the **Federal Register** on November 22, 2006 (71 FR 67712) for a discussion of the species description of these three species.

Threats to Pebble Plains Habitat

No new substantial information pertaining to the ''Threats to Pebble Plains Habitat'' section in the proposed designation was received following the 2006 proposed critical habitat designation for each species; therefore, please refer to the ''Background'' section of the proposed critical habitat designation published in the **Federal Register** on November 22, 2006 (71 FR 67712) for a discussion of the threats to pebble plains habitat.

Previous Federal Actions

As discussed in the November 22, 2006, proposed rule (71 FR 67712), the Service agreed, as part of a settlement agreement, to submit to the **Federal Register** a proposed rule to designate critical habitat, if prudent, on or before November 9, 2006, and a final rule by November 9, 2007. We published a proposed critical habitat rule in the **Federal Register** on November 22, 2006 (71 FR 67712). We also published a notice of availability of the draft economic analysis of the November 22, 2006, proposed rule in the **Federal Register** on August 14, 2007 (72 FR 45407). This final rule completes our obligations under the April 14, 2005, settlement agreement regarding the subject species. For a discussion of additional previous Federal actions involving these three pebble plains plants, please see the listing rule (63 FR 49006; September 14, 1998) or the proposed critical habitat rule (71 FR 67712; November 22, 2006).

Summary of Comments and Recommendations

We requested comments from the public on the proposed designations of critical habitat for the pebble plains plants during two comment periods. The first comment period, associated with the publication of the proposed rule (71 FR 67712), opened on November 22, 2006, and closed on January 22, 2007. We did not receive any requests for a public hearing during this comment period. We also requested comments on the proposed rule and draft economic analysis (DEA) during a comment period that opened August 14, 2007 (72 FR 45407) and closed on September 13, 2007. We contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule during these two comment periods.

During the first comment period, we received five comment letters directly addressing the proposed critical habitat designations: three from peer reviewers, one from a Federal agency, and one from an organization. During the second comment period, we received no comment letters addressing the proposed critical habitat designations or the draft economic analysis. Comments received during both comment periods are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from four knowledgeable individuals with scientific expertise that included familiarity with the species, the

geographic region in which the species occurs, and conservation biology principles. We received responses from three of the four peer reviewers we requested comment from. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* One peer reviewer agreed with the proposed designations overall and stated that proposed critical habitat Units 1, 3, 5, and 9 essentially contain all of the pebble plains habitat for the subject taxa in those areas. However, this reviewer cited other pebble plains habitat occupied by one or more of the listed species that were overlooked by the designations.

Our Response: Many of the pebble plains listed by the peer reviewer as ''overlooked'' by the designations were also described (by the reviewer) as small, isolated pebble plains, within areas degraded by residential development. As discussed in the ''Criteria Used to Identify Critical Habitat'' section of the proposed rule, we worked closely with San Bernardino National Forest (SBNF) personnel with knowledge of pebble plains plants and habitats to identify critical habitat for each of the three listed pebble plains plants based on several criteria. Since the pebble plains identified by the reviewer and other pebble plains in these complexes were relatively small, isolated from other pebble plains, and/or degraded to some extent, they did not meet our criteria used to identify critical habitat for each species and therefore were not included in the proposed or these final designations (see ''Criteria Used To Identify Critical Habitat'' section below for a detailed discussion).

(2) *Comment:* One peer reviewer commented that proposed critical habitat Subunit 3A in Broom Flat [ppn. 311; ppn. = pebble plain number as identified in the USFS Pebble Plain Management Guide (USFS 2002)] is mapped such that, except for a sliver of an adjacent pebble plain (ppn. 274) supporting *Arenaria ursina* and *Eriogonum kennedyi* var. *austromontanum,* only *Castilleja cinerea* is captured.

Our Response: We appreciate the correction pertaining to pebble plain number 311 in proposed critical habitat Subunit 3A. We recognize that the great majority of Subunit 3A is occupied solely by *Castilleja cinerea* and have revised this final rule such that this subunit (ppn. 311) is designated as critical habitat only for *C. cinerea,* even though the other two listed plants occur in one small portion of this particular pebble plain (see ''Summary of Changes from the Proposed Rule'' and the ''Unit Descriptions'' sections below).

(3) *Comment:* One peer reviewer commented that pebble plains occupied by *Castilleja cinerea* located west of Wildhorse Meadow Road in the Sugarloaf Ridge complex should have been included in the proposed designation for *C. cinerea* because these areas represent a significant and distinctive population of this species, with shorter, maroon bracts, as opposed to *C. cinerea* in Big Bear and Holcomb Valley, which have broader, yellow-gold bracts. Another peer reviewer stated that two of the pebble plains identified in the previous peer reviewer's comment (ppn. 286 and 293) along Sugarloaf Ridge west of Wildhorse Meadow not included in the proposed designations support large and relatively undisturbed occurrences of *C. cinerea* at the highest known elevation and that such elevational extremes may be important for the conservation of the species where they represent genetic variation favorable to surviving long term environmental changes.

Our Response: We acknowledged in the proposed rule that the Sugarloaf Ridge complex contains occurrences of *Castilleja cinerea* that are morphologically distinct from occurrences in other complexes, and that these occurrences represent a unique portion of the range of environmental variability for these species and may be important for maintaining genetic diversity for the species. At the time of the proposed rule we believed that our proposal adequately represented the morphologically distinct form of *C. cinerea* within the Sugarloaf Ridge complex. Upon receipt of these peer reviewer comments, we reviewed the available information regarding the pebble plains in this area and determined that the two largest (of three) pebble plains west of Wildhorse Meadow Road Sugarloaf Ridge complex (ppn. 286 and 293) do, in fact, meet the definition of critical habitat for *C. cinerea* (see ''Summary of Changes from the Proposed Rule'' and the ''Unit Descriptions'' sections below). Including these two pebble plains in this designation increases the representation, resiliency, and redundancy of this morphologically distinct form of the species and the unique portion of the range of environmental variability for *C. cinerea.* We have, therefore designated these two pebble plains as critical habitat for *C. cinerea.* Furthermore, as commented on by a separate peer reviewer these two pebble plains support large and relatively undisturbed occurrences of *C. cinerea,* one (ppn 293) at the highest known elevation occupied by this species.

(4) *Comment:* One peer reviewer agreed with the description and characterization of each of the three listed pebble plains plants and their associated habitats. However, they suggested including Robinson, B.C. (1894) as the original description of *Arenaria ursina.* This reviewer also commented that proposed critical habitat Unit 3 (Gold Mountain) is described as being 88 acres (ac) (36 hectares (ha)) on page 67722 but 105 ac (42 ha) on page 67723 of the proposed rule.

Our Response: We appreciate the additional information. We have included Robinson (1894) in our administrative file for the designation of critical habitat for *Arenaria ursina.* Regarding the difference in area estimates given for proposed critical habitat Unit 3, the 88 acres (36 ha) discussed on page 67722 pertains to an early estimate of pebble plain habitat in the Gold Mountain complex (USFS 2002, pp. 32, 52). However, as discussed on page 67723 of the proposed rule, we used only the most recent and accurate information (SBNF 2004 Geographic Information System (GIS)) to delineate proposed critical habitat boundaries which indicates Unit 3 is 105 ac (42 ha).

(5) *Comment:* One peer reviewer provided additional information on threats, land-use designations, and why specific occurrences are essential to the conservation of the species for several pebble plains included in the proposed designations. This reviewer also stated that a well developed communication site on private land at Onyx Peak is within proposed Subunit 3B and that as a result, this area may lack the primary constituent elements (PCEs) required by the species.

Our Response: We appreciate the additional information provided on threats, land-use designations, and why specific occurrences are essential to the conservation of the species and have included this information in this final rule (please see the ''Unit Descriptions'' section). Regarding the communication site located within proposed Subunit 3B, as stated in the proposed rule, we tried to avoid including within the boundaries of the proposed critical habitat developed areas such as buildings, paved areas, and other structures that lack PCEs for the three listed species. However, the scale of the maps prepared may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat

boundaries shown on the maps of the proposed rule are excluded by text in this rule and are not considered to be critical habitat.

(6) *Comment:* One peer reviewer commented that the rule incorrectly states that *Arenaria ursina* and *Castilleja cinerea* were not known to occur at the time of listing on Sugarloaf Ridge. However, these occurrences have been known since the 1970's or earlier and fall within the following element occurrences in the California Natural Diversity Database (CNDDB) (*A. ursina* number 7 and *C. cinerea* numbers 4, 12, 13, and 14).

Our Response: We appreciate the correction and have revised this statement accordingly in this final rule (see the ''Criteria Used To Identify Critical Habitat'' and ''Unit Descriptions'' sections below).

(7) *Comment:* One peer reviewer suggested corrections and/or clarification of the following: (1) Our characterization of pebble plains habitat as ''dry meadow-like'' habitat, (2) references to Mojavean Desert scrub should be changed to Great Basin sagebrush, and (3) primary constituent element (PCE) 2 should be revised to clarify that the frost/heave process has more to do with excluding large/woody species from colonizing pebble plains than directly providing for the physiological requirements of the species.

Our Response: We responded to these comments in the following ways: (1) we characterized pebble plain habitat as ''dry meadow-like'' habitat to provide an additional description of this habitat type and to assist the public in visualizing what habitat comprised of ''treeless openings surrounded by woodland or forest'' looks like; (2) as noted by the reviewer, references to Mojavean Desert scrub in the proposed rule were based on the 2002 Pebble Plains Habitat Management Guide (Management Guide; USFS 2002). We have replaced references to this vegetation type throughout this final rule with ''Great Basin sagebrush'' as suggested; and (3) we revised the text of the PCE section and PCE 2 accordingly (see ''Primary Constituent Elements'' section below).

(8) *Comment:* One peer reviewer commented that relative to threats to the species outlined in the proposed rule, habitat loss through private land development remains the main cause of continued decline of these species while unauthorized motorized vehicle travel off of designated system routes continues to be the primary cause of pebble plain habitat degradation on U.S. Forest Service's (USFS) lands. This reviewer further stated that forest system road use and maintenance, mining activities, and dispersed recreation continue to have adverse ongoing effects to pebble plain habitat and the species it supports. However, the magnitude and severity of effects caused by these activities are relatively small compared to the effects of unauthorized motorized vehicle use.

Our Response: We appreciate the clarification and have revised the text of this final rule to emphasize that habitat loss is the primary threat to the three listed species on private land while unauthorized motorized vehicle travel off of designated system routes continues to be the primary threat to these species on Federal lands (see the ''Special Management Considerations or Protection'' section below).

(9) *Comment:* One peer reviewer commented that the proposed rule did not mention vegetation and fuels management, hazard tree removal, or wildfire suppression in the list of threats to pebble plains habitat. This reviewer commented that many pebble plains on USFS lands lie within the USFS Wildland-Urban Interface (WUI) defense zone and that unavoidable adverse impacts would be addressed through section 7 consultation.

Our Response: We appreciate the information and have included a discussion of vegetation and fuels management, hazard tree removal, and wildfire suppression activities as potential threats to these species' habitat in the WUI zone on USFS land in this final rule (see ''Special Management Considerations or Protection'' and ''Unit Descriptions'' sections below).

(10) *Comment:* One peer reviewer commented that the ''Special Management Considerations or Protection'' section fails to address the potential impacts to these three species from global climate change. Also, the ''Special Management Considerations or Protection'' section does not identify whether and how critical habitat could provide for long-term conservation for these species if climate change were to occur. This reviewer further stated that one reason that critical habitat could be viewed as a benefit to species' conservation is that the 11 identified units represent a range of habitat conditions for these species which could allow them to persist at least at some of the sites should conditions change toward one end of the gradient.

Our Response: We did not address the potential impacts of global climate change to these species in the proposed rule because we are not currently aware of any species-specific or geographic-specific information on this potential threat nor did the reviewer provide additional information on this threat regarding how it might impact these species or their habitat. However, as noted by the peer reviewer, we did include in the critical habitat designations pebble plain habitat representing a range of habitat conditions that could allow them to persist in the event of environmental change. For example, one of the criterions for areas proposed as critical habitat for *Castilleja cinerea* were areas containing unique habitat characteristics (see ''Criteria Used to Identify Critical Habitat'' section of the proposed rule). While not specifically identified as a criterion for inclusion in the proposed designations, areas containing *Arenaria ursina* or *Eriogonum kennedyi* var. *austromontanum* occurrences at the extremes of the species' geographic range (e.g., northernmost extent) or elevation range (highest or lowest elevation) were included in the proposed designations. We have revised the text to more clearly state the importance of conserving habitat representing a range of conditions that could allow these species to persist in the event of environmental change (see ''Criteria Used to Identify Critical Habitat'' section below).

(11) *Comment:* One peer reviewer and one public commenter stated that proposed Subunit 2B incorrectly describes the area proposed for designation as the former Snow Summit Ski Area, instead of the former Snow Forest Ski Area.

Our Response: We appreciate the correction and have replaced ''Snow Summit Ski Area'' with ''Snow Forest Ski Area'' in this final rule (see ''Unit Descriptions'' section below).

Public Comments

(12) *Comment:* One commenter stated strong support for designation of critical habitat for these species but expressed concern that the proposed rule fails to indicate why vast areas of pebble plain habitat where the species are documented to occur were not included in the proposed designations. The commenter requested justification as to why certain occurrences or areas were not included as proposed critical habitat, including: (a) specific extant occurrences that contain the PCEs, (b) specific occupied areas where only a small portion of the occurrence was included, and (c) specific occupied areas where most but not the entire known occurrence was included.

Our Response: The Act defines critical habitat as the specific areas within the geographical area occupied

by the species at the time it is listed on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species. We believe that our proposed and final designations accurately describe all areas meeting the definition of critical habitat for *Castilleja cinerea*, *Arenaria ursina* and *Eriogonum kennedyi* var. *austromontanum*. As discussed in the proposed rule, we worked closely with SBNF personnel with knowledge of pebble plains plants and habitats to identify critical habitat for each of the three listed pebble plains plants based on several criteria (see ''Criteria Used to Identify Critical Habitat'' section of the proposed rule and this final rule). The areas delineated as critical habitat: (1) Support large or well-defined pebble plains or basins relative to other pebble plains in the complex; (2) support pebble plains least disturbed by anthropogenic threats (such as unauthorized vehicle use) relative to other pebble plains in the complex; (3) support areas containing unique habitat characteristics (e.g., soil type) or representing occurrences at the extremes of the species' geographic (e.g., northernmost extent) or elevational range (e.g., highest or lowest elevation); and (4) support morphologically unique species occurrences. Application of these criteria captures the physical and biological features that are essential to the conservation of the species, as identified in the species' primary constituent elements (PCEs), in the appropriate quantity and spatial arrangement essential for the conservation of all three species. Thus, not all areas supporting the identified PCEs will meet the definition of critical habitat.

We recognize that our designations do not encompass all known occurrences of any of the three pebble plains plants as noted by the commenter. According to 2004 GIS data provided to the Service by the SBNF, the SBNF has mapped almost 300 individual pebble plains on and adjacent to the SBNF. Many of the 300 mapped pebble plains are small, isolated pebble plains that are degraded by surrounding residential development. We have determined that these small, isolated, degraded pebble plains are not essential to the conservation of the pebble plains plants and our criteria as described above did not capture these pebble plains. Although we are not designating all known occurrences of any of the three pebble plants, we believe that our criteria, and therefore the designations, are adequate to ensure the conservation of all three species throughout their extant ranges based on the best available information at this time. Species and plant communities that are protected across their ranges are expected to have lower likelihoods of extinction (Soule and Simberloff 1986; Scott et al 2001, pp. 1297–1300); our criteria identified multiple locations across the entire range of each species as essential habitat to prevent range collapse. Genetic variation in plants can result from the effects of population isolation and adaptation to locally distinct environments (Lesica and Allendorf 1995, pp. 754–757; Fraser 2000, pp. 49–51; Hamrick and Godt, pp. 291–295); our criteria identified populations that occur in unique habitats within the species' ranges, as well as habitats that support morphologically unique occurrences, in order to capture the range of environmental gradients in which these species are found. Conserving such areas aids in preserving the genetic variation that may result from adaptation to local environmental conditions, as documented in other plant species (e.g., see Hamrick and Godt pp. 299–301; Millar and Libby 1991 pp. 150, 152–155). Furthermore, locations that possess unique ecological characteristics represent the full range of environmental variability where the pebble plains plants have evolved, and therefore are likely to promote the adaptation of these species to different environmental conditions.

The commenter is incorrect in their characterization of our proposal and designations in stating that there are cases where we did not include an entire extent of an occupied pebble plain that we determined met the definition of critical habitat. In all cases we included the entire extent of any identified pebble plain in the proposed designations as delineated in the SBNF's 2004 GIS data provided to the Service by the SBNF.

(13) *Comment:* One commenter indicated that the proposed designations for each of the three species are flawed because they do not include unoccupied habitat essential for recovery and that without such designated critical habitat these species' chances of persisting and recovering are greatly diminished.

Our Response: In our proposed rule, we did not identify any additional areas outside the geographical area occupied by *Arenaria ursina*, *Eriogonum kennedyi* var. *austromontanum*, and *Castilleja cinerea* at the time they were listed as essential for the conservation of these species. The Act defines critical habitat as the specific areas within the geographical area occupied by the species at the time it is listed on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species. As discussed in response to comment 12, we believe that our proposed rule and these final designations of critical habitat meet the requirements of the Act and our proposed and final designations accurately describe all areas essential to the conservation of *C. cinerea, A. ursina* and *E. kennedyi* var. *austromontanum*. Therefore, consistent with 50 CFR 424.12(e), we are not designating any areas outside the geographical area presently occupied by these species as we believe that this designation is adequate to ensure the conservation of the species.

These designations include all habitat areas currently determined to be necessary for these species' recovery. Critical habitat designations do not signal that habitat outside the proposed designation is unimportant or may not contribute to a species' recovery. Areas outside the final critical habitat designations will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act, and regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act. Critical habitat designations based on the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if information available at the time of these planning efforts calls for a different outcome. We recognize that the threats faced by these species may change in the future, however we base our critical habitat designations on the information available at the time of the designation and do not speculate as to what areas may be found essential if better information became available or what areas may become essential over time. The commenter did not include any specific data supporting their statement that unoccupied areas are essential for the recovery of any of the

listed pebble plains plants and we are not aware of any studies or data that we did not consider. Should additional data become available concerning future threats to this species, we may revise this critical habitat designation if it is determined that the designation did not capture an area essential to the conservation of the species.

(14) *Comment:* The San Bernardino National Forest (SBNF) disagreed with our rationale for designating critical habitat on their lands due to concerns over ongoing unauthorized activities. They state that while they share our concerns and will continue to work to improve compliance with existing management direction within their budget capabilities, unauthorized activities are an enforcement issue that will not be improved by the designations of critical habitat.

Our Response: While we agree that the issue of unauthorized activities on USFS lands is an enforcement issue, we believe that the designations of critical habitat will benefit the three listed species in that it identifies those lands which are essential for the conservation of the species and can, if managed, provide for the conservation of each of the species.

(15) *Comment:* The SBNF commented that they have been proactive in contributing to both survival and recovery of these three listed species and have developed and implemented a Pebble Plain Habitat Management Guide (USFS 2002), which includes these three species, and are working closely with the Service on the development of a recovery plan. They further stated that they recently revised their Land Management Plan (LMP) to incorporate management direction that they believe provides sufficient protection and management for the pebble plain species and their habitat. They further stated that designations of critical habitat on SBNF lands would not provide any additional benefit to the conservation of the three listed species or their habitat since all site-specific projects proposed by the SBNF are subject to section 7(a)(2) consultation with the Service and that designation would unnecessarily add to their analysis burden by requiring SBNF to make a determination of effect regarding critical habitat when consulting under section 7 of the Act.

Our Response: As stated in the proposed rule, we acknowledge that the 2002 Management Guide (incorporated by reference into their revised LMP) was designed to provide management direction for the conservation of pebble plain habitat in the SBNF, to aid in recovery of the three federally-listed plants, and to improve conditions for Forest Sensitive species occurring in this habitat; the plan identifies the following management goals and actions necessary to reduce impacts to pebble plain habitat: protecting pebble plain habitat throughout its geographic range, reducing habitat loss and fragmentation, maintaining site viability, and encouraging compatible uses (USFS 2002, p. i). We appreciate and commend the efforts of the USFS to conserve federally listed species on their lands and recognize that the SBNF has completed many of the actions outlined in their 2002 Management Guide (USFS 2002) (incorporated by reference into their revised LMP) to avoid and minimize impacts to the three listed pebble plain species.

We have determined that Forest Service lands meet the definitions of critical habitat and are essential to the conservation of the three listed pebble plain species (see ''Criteria Used to Identify Critical Habitat'' and ''Unit Descriptions'' sections below). We acknowledge that the LMP will benefit the three listed pebble plain species and their habitat. The LMP contains general provisions for species conservation and suggests specific management and conservation actions that will benefit these species and their PCEs. Implementation of the LMP should address known threats to these species on Forest Service lands. As stated above, we appreciate and commend the efforts of USFS to conserve federally listed species on their lands. However, Federal agencies have an independent responsibility under section 7(a)(1) of the Act to use their programs in furtherance of the Act and to utilize their authorities to carry out programs for the conservation of endangered and threatened species. USFS' development and implementation of the LMP, and specifically the Pebble Plain Habitat Management Guide, is consistent with the agency's statutory obligation under section 7(a)(1) of the Act, and is not an appropriate basis for excluding essential habitat for the three listed pebble plain species on Forest Service lands from critical habitat designation.

The Secretary may exclude an area from critical habitat under section 4(b)(2) of the Act after taking into consideration the economic impact, the impact on national security and any other relevant impact if he determines that the benefits of such exclusion outweigh the benefits of specifying such area, unless he determines that the exclusion would result in the extinction of the species concerned. We have considered the request from USFS that we exclude their lands based on the burden that the critical habitat designation would add to their section 7(a)(2) consultation requirement for actions on their lands and the fact that they completed consultation under section 7(a)(2) of the Act on their LMP. The primary benefit of including an area within a critical habitat designation is the protection provided by section 7(a)(2) of the Act that directs Federal agencies to ensure that their actions do not result in the destruction or adverse modification of critical habitat. This benefit of designating an area as critical habitat is limited if the areas under consideration for designation occur on private lands for which there may not be a Federal nexus to invoke the protections of section 7(a)(2) of the Act. Federal lands by default have a Federal nexus and the intent of section 7 of the Act is to require Federal Agencies to consult on any action authorized, funded, or carried out by such agency to insure that the action will not jeopardize a listed species or destroy or adversely modify its critical habitat. Therefore, the benefits of inclusion of these areas are greater because they are Federal lands. We do not agree that any additional analysis required under section 7(a)(2) due to this critical habitat designation on Federal lands constitutes an undue burden for USFS such that the benefits of exclusion would outweigh the benefits of inclusion in this circumstance.

Under the Joint Counterpart Endangered Species Act Section 7 Consultation Regulations published in the **Federal Register** on December 8, 2003 (68 FR 68254), projects that support the National Fire Plan that the Forest Service determines are ''not likely to adversely affect'' any listed species or designated critical habitat do not require any additional consultation under the Act with the Service. Projects within the scope of the National Fire Plan include projects such as, prescribed fire, mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions. Therefore, projects such as restoration, revegetation, and removal of nonnative species conducted in support of the National Fire Plan that are not likely to adversely affect federally-listed species should not add to USFS' workload or cost burden by requiring them to conduct a separate analysis and make a determination of effect on critical habitat when consulting under section 7 of the Act.

Also, as part of our Section 7 consultation with the USFS on the LMP, the USFS has already consulted on various activities carried out on national forest lands including: roads and trail management; recreation management; special use permit administration; administrative infrastructure; fire and fuels management; livestock grazing and range management; minerals management; and law enforcement. In our 2005 biological opinion on the LMP, we determined that implementation of the plan was not likely to jeopardize the continued existence of the three listed pebble plain species. Since critical habitat has not been previously proposed or designated for any of these three species, it is anticipated that the consultation with the USFS regarding their current LMP will be reinitiated. However, because the USFS has already consulted with us on potential impacts to these species related to the activities outlined in the LMP, the USFS can supplement its analysis for those activities already analyzed in the LMP with the additional analysis required due to the designation of critical habitat. We do not believe that this additional analysis would place an undue burden on the USFS.

In conclusion, we are designating Forest Service lands that meet the definition of critical habitat for the three pebble plains plant species because we have determined that the exclusion of Forest Service lands is not appropriate in light of the USFS' independent obligation under section 7(a)(1) of the Act to utilize the agency's authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of the three pebble plains plants. Also, because of the agency's statutory obligations, the additional analysis under section 7(a)(2) of the Act as a result of designation of critical habitat on National Forest lands should not be considered a relevant impact under Section 4(b)(2) or constitute an undue burden for USFS.

Comments Related to the Draft Economic Analysis (DEA)

(16) *Comment:* One commenter stated that the Service should include all occupied habitat in the economic analysis and the final designations and that we should not rely on the flawed proposed designations as the bases for the economic analysis.

Our Response: As discussed in the ''Criteria Used to Identify Critical Habitat'' section below, we worked closely with SBNF personnel with knowledge of pebble plains plants and habitats to identify critical habitat for each of the three listed pebble plains plants based on several criteria. We do not agree that the proposed designations are flawed, and it was appropriate to base the draft economic analysis on the areas included in the proposed rule.

Summary of Changes From the Proposed Rule

The following changes to the proposed designations of critical habitat for these three species were made in this final designation:

- We revised the final designations to include information (e.g., occurrence data, threats, site-specific land use designations) received during the public comment periods (see ''Summary of Comments and Recommendations'' section above).
- We revised the final designations to further clarify the PCEs for each species (see ''Primary Constituent Elements'' section below).
- We renumbered the units/subunits defined in the proposed critical habitat designation to clarify the areas being designated for each species. To accomplish this, we assigned each species a unique identifier consisting of the first two letters of the genus and species names (i.e., ARUR, CACI, and ERKA). Each pebble plain that is being designated as critical habitat for an individual species was assigned a number that was then paired with the unique identifier for that species. The pebble plains being designated as critical habitat for an individual species are numbered consecutively (ARUR1, ARUR2, ARUR3, etc). Table 1 below outlines how the proposed critical habitat units/subunits have been revised in this final rule. As part of this revision, we also provide maps identifying critical habitat and boundary descriptions for each species separately in this final rule (see ''§ 17.96 Critical habitat—plants'' section below). The renumbering of the critical habitat units for each species did not result in any changes to the unit boundaries as identified in the proposed designation.
- We revised the designation of proposed critical habitat Subunit 3A such that this pebble plain (ppn. 311) is now being designated as critical habitat for *Castilleja cinerea* (CACI 5) only (see ''Table 1'' and the ''Unit Descriptions'' sections below). A small sliver of this unit supports *Arenaria ursina* and *Eriogonum kennedyi* var. *austromontanum*. This sliver represents a small area of overlap between pebble plains 311 and 274. Although pebble plain 274 supports populations of *A. ursina* and *E. kennedyi* var. *austromontanum*, we previously determined that pebble plain 274 is not essential to the conservation of these two species. Because of this, and the fact that the vast majority of proposed Subunit 3A is occupied only by *C. cinerea*, no part of this unit (now referred to as CACI 5) is designated as critical habitat for *Arenaria ursina* or *Eriogonum kennedyi* var. *austromontanum*. This represents a reduction from the proposed rule in the overall area designated as critical habitat for each of these two species by 58 ac (23 ha).
- We re-evaluated lands in proposed critical habitat Subunit 8A in the Sawmill pebble plain complex (ppn. 236) (now referred to as ARUA 13, CACI 17, and ERKA 11 in this final rule) based on recent aerial imagery and determined that we inadvertently included in the proposed designations an area that is currently developed for residential use. We subsequently removed an approximately 8 ac (3 ha) area of private land from proposed critical habitat Subunit 8A (ppn. 236) from these final designations because this area does not contain the PCEs required by these species. Therefore, critical habitat for all three species was reduced by approximately 8 ac (3 ha) in this subunit. Other than the removal of these lands and the removal of proposed Subunit 3A for *Arenaria ursina* and *Eriogonum kennedyi* var. *austromontanum* mentioned above, no other significant changes were made to the areas proposed as critical habitat for these two species (see Table 1 below).
- In response to peer reviewer comments, we have clarified that identifying areas supporting morphologically unique species occurrences is a relevant factor in applying our criteria for determining critical habitat. A re-evaluation of habitat supporting pebble plains species based on information received from peer reviewers and in consideration of this factor identified two pebble plains not proposed as critical habitat (ppn. 286 and 293) (now referred to as CACI 23 and CACI 24 respectively) within the Sugarloaf Ridge complex west of Wildhorse Meadow Road. These two areas further represent pebble plains with a significant and distinctive population of *C. cinerea*, with shorter, maroon bracts, as opposed to *C. cinerea* in the rest of its range in Big Bear and Holcomb Valley, which have broader, yellow-gold bracts. Furthermore, the pebble plain 293 represent a unique and higher elevational range than those in other complexes. These occurrences represent a unique portion of the range of environmental variability for this species and may be important for maintaining genetic diversity for the species. Therefore, we are including

CACI 23 (76 ac (31 ha)) and CACI 24 (190 ac (77 ha)) as critical habitat for *C. cinerea* only. This represents an increase from the proposed rule in the total amount of critical habitat designated from 1,511 ac (611 ha) to 1,769 ac (722 ha) (see Table 1 below).

• We are finalizing the taxonomic revision of the family for *Castilleja cinerea* from the Scrophulariaceae to Orobanchaceae (broomrape) family discussed in the proposed critical habitat rule. This final rule includes a change to the list of Endangered and Threatened Plants at 50 CFR 17.12(h) to reflect this taxonomic change. This taxonomic change was explained by Olmstead (2002, pp. 13–22) and is formally accepted here.

TABLE 1.—CHANGES IN UNIT/SUBUNIT NUMBERS AND AREA (ACRES (ac), HECTARES (ha)) BETWEEN 2006 PROPOSED CRITICAL HABITAT AND 2007 FINAL CRITICAL HABITAT FOR *Arenaria ursina, Castilleja cinerea,* AND *Eriogonum kennedyi* VAR. *austromontanum.* THE ABBREVIATION "PCH" REFERS TO THE 2006 PROPOSED CRITICAL HABITAT RULE (71 FR 67712) AND "FCH" REFERS TO THIS FINAL CRITICAL HABITAT RULE

[Area estimates reflect all land within critical habitat unit boundaries]

USFS Pebble plain No. (ppn)*	PCH Units or subunits	FCH Units for *A. ursina*	FCH Units for *C. cinerea*	FCH Units for *E. k.* var. *austromontanum*	PCH ac (ha)	FCH ac (ha)
100	1A	ARUR 1	CACI 1	ERKA 1	69 (28)	69 (28)
87	1B	ARUR 2	CACI 2	ERKA 2	229 (93)	229 (93)
248	2A	ARUR 3	CACI 3		21 (9)	21 (9)
254	2B	ARUR 4	CACI 4	ERKA 3	6 (2)	6 (2)
311	3A		CACI 5		58 (23)	58 (23)
285, 309	3B	ARUR 5	CACI 6		326 (132)	326 (132)
301	4A	ARUR 6	CACI 7	ERKA 4	15 (6)	15 (6)
302	4B	ARUR 7	CACI 8	ERKA 5	24 (10)	24 (10)
Juniper Point	4C		CACI 9		2 (1)	2 (1)
188	5A	ARUR 8	CACI 10	ERKA 6	62 (25)	62 (25)
192	5B	ARUR 9	CACI 11	ERKA 7	43 (17)	43 (17)
South Baldwin Meadow.	5C		CACI 12		0.3 (0.1)	0.3 (0.1)
98, 109	6A	ARUR 10	CACI 13	ERKA 8	28 (11)	28 (11)
153	6B	ARUR 11	CACI 14	ERKA 9	44 (18)	44 (18)
128	7A	ARUR 12	CACI 15	ERKA 10	320 (129)	320 (129)
168	7B		CACI 16		4 (2)	4 (2)
236	8A	ARUR 13	CACI 17	ERKA 11	44 (18)	36 (14)
224	8B	ARUR 14	CACI 18	ERKA 12	5 (2)	5 (2)
270	9		CACI 19		26 (10)	26 (10)
212	10	ARUR 15	CACI 20	ERKA 13	23 (9)	23 (9)
294	11A	ARUR 16	CACI 21		127 (51)	127 (51)
289	11B	ARUR 17	CACI 22		34 (14)	34 (14)
286			CACI 23		0 (0)	76 (31)
293			CACI 24		0 (0)	190 (77)
Totals	22	17	22	13	1,511 (611)	1,769 (722)

* USFS Pebble Plain Management Guide (2002).

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) Essential to the conservation of the species and

(II) Which may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the

geographical area occupied by the species at the time of listing must contain features that are essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Under the Act, we can designate areas outside the geographical area occupied by the species at the time it is listed as critical habitat only when we determine that those areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designations, will continue to be subject to conservation actions implemented by Federal agencies under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if information available at the time of these planning efforts calls for a different outcome.

Primary Constituent Elements (PCEs)

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we identify the physical or biological features essential to the conservation of the species based on its biological needs. We consider the physical or biological features that are essential to the conservation of the species to be the primary constituent elements laid out in the appropriate quantity and spatial arrangement for the conservation of the species (PCEs). These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific primary constituent elements required for *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* from the biological needs described in the Background section of the proposed rule (71 FR 67712; November 22, 2006). They include those habitat components essential for the biological needs of each species, including seed germination and seedling growth, flower production, pollination, fruit production and seed set, and genetic exchange.

Space for Individual and Population Growth and Normal Behavior; Food, Water, Air, Light, Minerals, or other Nutritional or Physiological Requirements

Arenaria ursina, Castilleja cinerea, and *Eriogonum kennedyi* var. *austromontanum* require pebble plains habitat in dry meadow-like openings within upper montane coniferous forest, pinyon-juniper woodlands, or Great Basin sagebrush at elevations between 5,900 to 9,800 feet (ft) (1,830 to 2,990 meters (m)) for individual and population growth (PCE 1).

These typically treeless openings are the result of a combination of soil and climatic factors that support an assemblage of plant species found only in the San Bernardino Mountains, California (USFS 2002, p. 12). Frost heaving and alternating wet and dry cycles force associated quartzite pebbles to the soil surface in areas of shallow clay deposits (PCE 2) to create the characteristic appearance of the pebble plains (Derby 1979, p. 61; Krantz 1983, p. 10; USFS 2002, p. 22). These soils have an extremely slow infiltration rate and, thus, have a high runoff potential (Neel and Barrows 1990, p. 8).

The establishment of tree species on pebble plains appears to be limited primarily by high clay content in the soil (Derby 1979, p. 74). However, the frost heave process that forces quartzite pebbles to the soil surface, creating the characteristic appearance of the pebble plains, also excludes large woody species from colonizing (Eliason 2006). Trees that become established alter the surrounding microhabitat by increasing leaf litter and shading and probably reducing temperature extremes (USFS 2002, p. 15). The increase in leaf litter under trees appears to reduce the densities of all three of the listed pebble plains plants and increase tree and shrub seedlings under the tree canopy (Derby 1979, p. 72). Pebble plain species flourish in their specific environment, but they cannot compete with other plant species adapted to shaded areas, or areas where heavy litter layers accumulate (USFS 2002, p. 15).

Pebble plains are typified by the presence of one or more of the following associated species: *Ivesia argyrocoma, Eriogonum kennedyi* var. *kennedyi, Allium parryi, Antennaria dimorpha, Arabis parishii, Astragalus purshii* var. *lectulus, Dudleya abramsii* var. *affinis, Echinocereus engelmannii, Erigeron aphanactis* var. *congestus, Eriogonum*

wrightii var. *subscaposum, Lewisia rediviva* var. *minor,* and *Mimulus purpureus.*

In addition to pebble plain habitat, *Castilleja cinerea* is also found in dry meadow margin areas that lack either *Arenaria ursina* and or *Eriogonum kennedyi* var. *austromontanum* and quartzite pebbles or cobbles. However, as a semi-parasitic perennial plant, this root-parasite requires host plant species found in pebble plain habitat (*E. kennedyi* var. *austromontanum*, *E. kennedyi.* var. *kennedyi,* and *E. wrightii* var. *subscaposumon*) and host plant species found in both pebble plain and non-pebble plain habitat (*Artemisia tridentata, A. nova,* and *E. wrightii* var. *subscaposumon*) for individual and population growth and for its nutritional and physiological requirements (PCE 3) (USFS 2002, p. 92).

Sites for Reproduction, Germination, Seed Dispersal, or Pollination

While pollination (via selfing, wind, or insect) is important for maintaining genetic diversity within a pebble plain (Duffield 1972, pp. 110–114; O'Brien 1979, pp. 67, 82, 97, 99; Freas and Murphy 1990, p. 6), limited research indicates that little genetic material is exchanged among pebble plains (Freas and Murphy 1990, pp. 6–8). According to Freas and Murphy (1990, p. 6), observed pollen transfer distances were less than 13 ft (4 m).

Primary Constituent Elements for Arenaria ursina, Eriogonum kennedyi var. austromontanum and Castilleja cinerea

Within the geographical area occupied by *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* at the time of listing, we must identify the PCEs that may require special management considerations or protection. All areas designated as critical habitat for each taxon are currently occupied, within the taxon's historical geographic range, and contain sufficient PCEs to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of each of the species and the requirements of the habitat to sustain their essential life history functions, we have determined that the PCEs for *Arenaria ursina* and *Eriogonum kennedyi* var. *austromontanum* are:

(1) Pebble plains in dry meadow-like openings within upper montane coniferous forest, pinyon-juniper woodlands, or Great Basin sagebrush in the San Bernardino Mountains of San Bernardino County, California; at elevations between 5,900 to 9,800 ft (1,830 to 2,990 m) that provide space for individual and population growth, reproduction and dispersal; and

(2) Seasonally wet clay, or sandy clay soils, generally containing quartzite pebbles, subject to natural hydrological processes that include water hydrating the soil and freezing in winter and drying in summer causing lifting and churning of included pebbles, that provide space for individual and population growth, reproduction and dispersal, adequate water, air, minerals, and other nutritional or physiological requirements to the species.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain its essential life history functions, we have determined that the PCEs for *Castelleja cinerea* are:

(1) Pebble plains in dry meadow-like openings, or non-pebble plain dry meadow margin areas, within upper montane coniferous forest, pinyon-juniper woodlands, or Great Basin sagebrush in the San Bernardino Mountains of San Bernardino County, California; at elevations between 5,900 to 9,800 ft (1,830 to 2,990 m) that provide space for individual and population growth, reproduction and dispersal;

(2) Seasonally wet clay, or sandy clay soils, generally containing quartzite pebbles, subject to natural hydrological processes that include water hydrating the soil and freezing in winter and drying in summer causing lifting and churning of included pebbles, or seasonally wet silt or saline clay soils in non-pebble plain dry meadow margin areas that provide space for individual and population growth, reproduction and dispersal, adequate water, air, minerals, and other nutritional or physiological requirements to the species; and

(3) The presence of one or more of its known host species, such as *Eriogonum kennedyi* var. *austromontanum, E. kennedyi.* var. *kennedyi,* and *E. wrightii* var. *subscaposumon* in pebble plain habitat and species such as *Artemisia tridentata, A. nova,* and *E. wrightii* var. *subscaposumon* in pebble plain and non-pebble plain meadow margin habitat that provide some of the physiological requirements for this species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and that may require special management considerations or protection.

As stated in the final listing rule, threats to all three listed pebble plains plants throughout their range include land development, off-highway vehicle (OHV) use off of designated routes, road maintenance activities, ground disturbance that affects surface hydrology, mining activities, recreational activities, and nonnative plant species (63 FR 49006; September 14, 1998). Pebble plain habitat is also threatened by vegetation and fuels management, hazard tree removal, and wildfire suppression activities (Eliason 2006). However, of the above threats, land development remains the primary cause of habitat loss on private lands; while on Federal lands, OHV use off of designated routes has historically been, and continues to be, the most significant threat to pebble plains habitat. Increasing residential populations adjacent to pebble plains habitat on private and Federal lands has also resulted in degradation of habitat, as dispersed recreation and unauthorized OHV use increases (Eliason 2006). Also, while forest system road use and maintenance, mining activities, and dispersed recreation continue to have adverse ongoing effects to pebble plain habitat and the species it supports, the magnitude and severity of effects caused by these activities are relatively small compared to the effects of unauthorized motorized vehicle use (Eliason 2006). The primary constituent elements for the listed pebble plains plants may require special management considerations or protection to minimize impacts associated with, (1) vehicle use and road maintenance; (2) recreational activities; and (3) the presence of nonnative species (63 FR 49006, September 14, 1998; USFS 2002, p. 17; USFS 2005, pp. 207, 249, 293).

All of the pebble plain complexes have some degree of impact associated with the USFS-authorized and unauthorized use of vehicles and associated road maintenance (USFS 2002, pp. 20, 25, 30–68). Vehicle use and road maintenance could introduce invasive, nonnative plants, increase the potential for unauthorized routes to develop (leading to the crushing and burying of individual plants and soil compaction), and cover individuals with dust and mud that can impair physiological functions (USFS 2002, p. 20; Service 2005, pp. 233, 238, 243).

Along with soil compaction, soil erosion resulting from vehicle use could significantly alter the soil composition required by the listed species (PCE 2). During the wet season, vehicle traffic

directly disturbs or destroys vegetation and creates deep ruts that change the hydrological patterns over the pebble plain (USFS 2002, p. 20). Vehicle traffic also increases breakdown in natural soil aggregates (structure) (Sadler, pers. comm. 1989 cited in USFS 2002, p. 22). Changes in the hydrological pattern associated with a pebble plain could alter the soil composition by allowing for erosion of clay sediments during rainfall events, leaving only large cobbles and pebbles (PCE 2). These changes to the soil morphology and composition could result in alterations to the vegetation structure and composition of the area, allowing for the invasion of native and nonnative plant species that could out-complete the listed species for space and resources and further alter the soil composition by increasing organic debris (PCEs 1, 2, and 3).

Vegetation and fuels management, hazard tree removal, and wildfire suppression activities may also threaten pebble plain habitat. Many pebble plains are located within the USFS' Wildland-Urban Interface (WUI) defense zone. The focus of the WUI zone is on community protection through fuels management activities (e.g., mechanical treatments, prescribed fire, construction of fuel breaks, and/or selective use of herbicides for management of fuelbreaks and defensible space) (USFS 2005). Ground disturbance associated with fire suppression activities could result in changes to the soil morphology and composition which could in turn lead to changes in the vegetation structure and composition of the area, allowing for the invasion of native and nonnative plant species that could out-complete the listed species for space and resources and further alter the soil composition by increasing organic debris (PCEs 1, 2, and 3).

The invasion of nonnative plant species can result in crowding, overshadowing, and altering fuel loads and hydrology (USFS 2002, p. 25). While fire has not been considered an important factor in shaping the pebble plain community, the establishment of an introduced species, such as cheatgrass (*Bromus tectorum*), might provide the fine fuels to allow fire to spread more readily and result in alterations to the composition and structure of the pebble plain community (USFS 2002, pp. 19–20). Pebble plain species flourish in their specific environment, but they cannot complete with other plant species adapted to shaded areas or sites where heavy litter layers accumulate (USFS 2002, p. 15). The invasion of nonnative species may alter the soil composition (PCE 2) or cause an increase in the amount of leaf litter, allowing for the eventual encroachment of adjacent native shrub and tree species into the pebble plain, and diminishing the habitat available to pebble plain obligate species and host species (PCEs 1 and 3). Derby (1979, p. 72) found lower densities of all three of the listed species in pebble plain areas where leaf litter was abundant under trees.

The USFS prepared the 2002 Management Guide (USFS 2002, p. i) as an update to the 1990 Pebble Plain Habitat Management Guide and Action Plan by Neal and Barrows. The 2002 Management Guide was designed to provide management direction for the conservation of pebble plain habitat in the SBNF, to aid in recovery of the three federally listed plants, and to improve conditions for Forest sensitive species occurring in this habitat. The 2002 Management Guide identifies the following management goals necessary to reduce impacts to pebble plain habitat—protecting pebble plain habitat throughout its geographic range, reducing habitat loss and fragmentation, maintaining site viability, and encouraging compatible uses (USFS 2002, p. i).

The USFS has completed many of the actions outlined in the plan to avoid and minimize impacts to the three listed pebble plain species including, but not limited to permanently closing some roads bisecting pebble plains, installing fencing or gates along some roads to prevent unauthorized access onto adjacent pebble plains, establishing alternate trails, adding law enforcement patrols, relocating special events out of pebble plain habitat, and posting of signs to keep vehicles out of sensitive habitat; however, ongoing unauthorized vehicle use is still occurring in all of the pebble plain complexes (USFS 2002, pp. 30–68). See the ''Unit Descriptions'' section for a discussion of the special management considerations or protection that may be needed for each unit being designated as critical habitat.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in determining areas that contain the features essential to the conservation of *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum.* Species and plant communities that are protected across their ranges are expected to have lower likelihoods of extinction (Soule and Simberloff 1986; Scott et al. 2001, pp. 1297–1300); therefore, essential habitat should include multiple locations across the entire range of the species to prevent range collapse and contribute to recovery of the species. Conserving habitat variability throughout the range of each species is important as it represents a large range of species diversity and genetic variability, the preservation of which is likely to ensure the conservation of those pebble plains, and the species within them, that are most likely to persist under future environmental conditions and contribute to species recovery. We included the range of plant communities, soil types, and elevational gradients in which *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* are found to preserve the genetic variation that may result from adaptation to local environmental conditions, as documented in other plant species (e.g., see Hamrick and Godt pp. 299–301; Millar and Libby 1991 pp. 150, 152–155). Locations that possess unique ecological characteristics are those that represent the full range of environmental variability where *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* have evolved, and therefore are likely to promote the adaptation of the species to different environmental conditions and contribute to species recovery. Finally, Ciano (1984, p. 14) examined species variability on pebble plains in relation to island biogeography theory and found that the number of species within a pebble plain increased with the size of the pebble plain and decreased as distance from other pebble plains increased; thus larger pebble plains located closer to other pebble plains had higher species diversity. Therefore, we included the larger pebble plains within a complex that were proximal to other relatively large pebble plains occupied by the listed species in order to capture areas with presumably higher overall pebble plain plant species diversity important for maintaining genetic variability. Over half (13 of 22) of the pebble plains being designated as critical habitat contain all three of the listed species.

For the purposes of this rule, within the geographical area occupied ''at the time of listing'' is defined as those occurrences or areas identified in the final listing rule (63 FR 49006; September 14, 1998) or those areas determined to be occupied at the time of listing according to occupancy data in our files (CNDDB 1997a, 1997b, 1997c) (see the ''Background'' section and Table 1 in the 2006 proposed rule for a

detailed discussion of occupancy (71 FR 67712; November 22, 2006). In the 2006 proposed rule, we stated that pebble plains in Sugarloaf Ridge were not occupied at the time of listing. However, a peer reviewer commented that that pebble plains in this complex have been occupied by *Arenaria ursina* and *Castilleja cinerea* since the 1970's or earlier (see Comment 6 above). Therefore, we consider all extant pebble plain complexes, and therefore all extant pebble plains, to have been occupied at the time of listing and to be currently occupied.

In determining the extent of lands necessary to ensure the conservation and persistence of this species, we worked with SBNF personnel with knowledge of pebble plains plants and habitats and identified pebble plains within each of the 12 occupied pebble plain complexes that met our criteria. Based on our review of the best available information regarding the conservation needs of these species, we applied the following criteria when analyzing pebble plains that were occupied at the time of listing to determine the specific areas on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection: (1) Areas containing the PCEs; (2) large or well-defined pebble plains or basins relative to other pebble plains in the complex; (3) pebble plains containing high quality habitat [least disturbed by anthropogenic threats (such as unauthorized vehicle use)] relative to other pebble plains in the complex; (4) areas containing unique habitat characteristics (e.g., soil type) or representing occurrences at the extremes of the species' geographic (e.g., northernmost extent) or elevational range (e.g., highest or lowest elevation); and (5) areas supporting morphologically unique species occurrences.

The above criteria identified at least two pebble plains in each pebble plain complex for inclusion in the designation. Application of these criteria captures the PCEs for these species in the appropriate quantity and spatial arrangement that comprises the physical and biological features that are essential to the conservation of the species. We have determined that the identified pebble plains support habitat throughout the range of each species and represent the range of habitat and environmental variability for each species. Furthermore, the identified pebble plains also capture morphologically distinct species occurrences and, although a genetic analysis of the pebble plains plants is not available, the criteria likely capture the species diversity and genetic variability of each of the listed pebble plains plants. The identified pebble plains, if managed for threats, are adequate to ensure the conservation of each of the listed pebble plains plants. Therefore, we did not identify any areas outside the geographical area occupied by each pebble plains species at the time of listing that are essential for the conservation of the species.

To delineate the critical habitat boundaries associated with habitat occupied by the listed species, we relied on GIS data provided by the SBNF. San Bernardino National Forest personnel mapped pebble plain and some non-pebble plain habitat on SBNF lands for the Management Guide (USFS 2002) using a combination of 1:10,000 air photos, 1:24,000 orthographic photos, 1:24,000 topographic maps, and ground-truthing with global positioning system (GPS) units (USFS 2002, p. 30). We also worked with SBNF personnel with species and habitat expertise to determine the status of pebble plains being considered for designation (habitat quality and land ownership).

When determining the critical habitat boundaries for this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack PCEs for *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum.* The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this critical habitat rule have been excluded by text in this final rule. Therefore, a Federal action involving these lands would not trigger section 7 consultation, with respect to critical habitat and the requirement of no adverse modification unless the specific action may affect adjacent critical habitat.

Critical Habitat Designation

We are designating as critical habitat approximately 1,412 ac (571 ha) of Federal and private land for *Arenaria ursina;* approximately 1,769 ac (722 ha) of Federal, State, and private land for *Castilleja cinerea;* and approximately 904 ac (366 ha) of Federal and private land for *Eriogonum kennedyi* var. *austromontanum.* Tables 2, 3, and 4 below provide the approximate area and landownership of each unit designated as critical habitat for *Arenaria ursina* (Table 2), *Castilleja cinerea* (Table 3), and *Eriogonum kennedyi* var. *austromontanum* (Table 4). Since these species often co-occur in the same pebble plains, the total area being designated as critical habitat for each species will not equal the total area being designated for all three species combined due to some areas being designated for more than a single species.

The critical habitat areas described below constitute our best assessment at this time of areas determined to be within the geographical area occupied at the time of listing by *Arenaria ursina* (Table 2), *Castilleja cinerea* (Table 3), and/or *Eriogonum kennedyi* var. *austromontanum* (Table 4) and that contain PCEs that may require special management considerations or protection.

TABLE 2.—FINAL CRITICAL HABITAT (ACRES (ac), HECTARES (ha)) AND LANDOWNERSHIP FOR *Arenaria ursina.*

[Area estimates reflect all land within critical habitat unit boundaries]

Units for *A. ursina*	USFS Pebble Plain No. (ppn.)*	Critical Habitat ac (ha)	Landowner
ARUR 1	100	69 (28)	USFS. [1]
ARUR 2	87	229 (93)	USFS.
ARUR 3	248	21 (9)	USFS.
ARUR 4	254	6 (2)	USFS.
ARUR 5	285, 309	326 (132)	USFS (255 ac (103 ha)). Private [2] (71 ac (29 ha)).
ARUR 6	301	15 (6)	USFS.
ARUR 7	302	24 (10)	USFS.

TABLE 2.—FINAL CRITICAL HABITAT (ACRES (ac), HECTARES (ha)) AND LANDOWNERSHIP FOR *Arenaria ursina*.—Continued

[Area estimates reflect all land within critical habitat unit boundaries]

Units for *A. ursina*	USFS Pebble Plain No. (ppn.)*	Critical Habitat ac (ha)	Landowner
ARUR 8	188	62 (25)	USFS.
ARUR 9	192	43 (17)	USFS.
ARUR 10	98, 109	28 (11)	USFS (22 ac (9 ha)). Private[3] (6 ac (2 ha)).
ARUR 11	153	44 (18)	USFS.
ARUR 12	128	320 (129)	USFS.
ARUR 13	**236	36 (14)	USFS (15 ac (6 ha)). Private (21 ac (8 ha)).
ARUR 14	224	5 (2)	Private.
ARUR 15	212	23 (9)	USFS.
ARUR 16	294	127 (51)	USFS.
ARUR 17	289	34 (14)	USFS.
17	Total	1,412 ac (571 ha).	

* The abbreviation "ppn." refers to the pebble plain number identified in the Management Guide (USFS 2002).
** The removal of 8 ac (3 ha) of private land from this unit represents an area change from the proposed designation.
[1] USFS = U.S. Forest Service (lands in the San Bernardino National Forest);
[2] Private = The Wildlands Conservancy.
[3] Private = The Boy Scouts of America.

TABLE 3.—FINAL CRITICAL HABITAT (ACRES (ac), HECTARES (ha)) AND LANDOWNERSHIP FOR *Castilleja cinerea*.

[Area estimates reflect all land within critical habitat unit boundaries]

Units for *C. cinerea*	USFS Pebble Plain No. (ppn.)*	Critical Habitat ac (ha)	Landowner
CACI 1	100	69 (28)	USFS[1]
CACI 2	87	229 (93)	USFS.
CACI 3	248	21 (9)	USFS.
CACI 4	254	6 (2)	USFS.
CACI 5	311	58 (23)	USFS.
CACI 6	285, 309	326 (132)	USFS (255 ac (103 ha)). Private[2] (71 ac (29 ha)).
CACI 7	301	15 (6)	USFS.
CACI 8	302	24 (10)	USFS.
CACI 9	Juniper Point	2 (1)	USFS.
CACI 10	188	62 (25)	USFS.
CACI 11	192	43 (17)	USFS.
CACI 12	South Baldwin Meadow	0.3 (0.1)	USFS.
CACI 13	98, 109	28 (11)	USFS (22 ac (9 ha)). Private[3] (6 ac (2 ha)).
CACI 14	153	44 (18)	USFS.
CACI 15	128	320 (129)	USFS.
CACI 16	168	4 (2)	CDFG.[4]
CACI 17	236**	36 (14)	USFS (15 ac (6 ha)). Private (21 ac (8 ha)).
CACI 18	224	5 (2)	Private.
CACI 19	270	26 (10)	USFS.
CACI 20	212	23 (9)	USFS.
CACI 21	294	127 (51)	USFS.
CACI 22	289	34 (14)	USFS.
CACI 23	286***	76 (31)	USFS.
CACI 24	293***	190 (77)	USFS.
24	Total	1,769 ac (722 ha).	

* The abbreviation "ppn." refers to the pebble plain number identified in the Management Guide (USFS 2002).
** The removal of 8 ac (3 ha) of private land from this unit represents an area change from the proposed designation.
*** The addition of this unit represents an area change from the proposed designation.
[1] USFS = U.S. Forest Service (lands in the San Bernardino National Forest);
[2] Private = The Wildlands Conservancy;
[3] Private = The Boy Scouts of America;
[4] CDFG = California Department of Fish and Game.

TABLE 4.—FINAL CRITICAL HABITAT (ACRES (ac), HECTARES (ha)) AND LANDOWNERSHIP FOR *Eriogonum kennedyi* VAR. *austromontanum*.

[Area estimates reflect all land within critical habitat unit boundaries.]

Units for *E. k.* var. *austromontanum*	USFS Pebble Plain Number (ppn.)*	Critical habitat ac (ha)	Landowner
ERKA 1	100	69 (28)	USFS.[1]
ERKA 2	87	229 (93)	USFS.
ERKA 3	254	6 (2)	USFS.
ERKA 4	301	15 (6)	USFS.
ERKA 5	302	24 (10)	USFS.
ERKA 6	188	62 (25)	USFS.
ERKA 7	192	43 (17)	USFS.
ERKA 8	98, 109	28 (11)	USFS (22 ac (9 ha)). Private[2] (6 ac (2 ha)).
ERKA 9	153	44 (18)	USFS.
ERKA 10	128	320 (129)	USFS.
ERKA 11	**236	36 (14)	USFS (15 ac (6 ha)). Private (21 ac (8 ha)).
ERKA 12	224	5 (2)	Private.
ERKA 13	212	23 (9)	USFS.
13	Total	904 ac (366 ha).	

* The abbreviation "ppn." refers to the pebble plain number identified in the Management Guide (USFS 2002).
** The removal of 8 ac (3 ha) of private land from this unit represents an area change from the proposed designation.
[1] USFS = U.S. Forest Service (lands in the San Bernardino National Forest); [2] Private = The Boy Scouts of America.

Unit Descriptions

Each of the three listed pebble plains species has a natural mosaic distribution among the various pebble plain complexes. The distribution of each plant may change locally over time but generally extends throughout a pebble plain complex in either an above-ground vegetative state or as part of the seed bank. The fact that, when they co-occur, these three plant taxa essentially occupy the same habitat is reflected here in the unit descriptions and the mapping of the critical habitat units. We present brief descriptions of all units below and reasons why they meet the definition of critical habitat for *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *Austromontanum.* Each unit is named with a unique identifier consisting of the first two letters of the genus and species names (e.g., ARUR, CACI, ERKA). Each pebble plain that is being designated as critical habitat for an individual species was assigned a number that was then paired with the unique identifier for that species. The pebble plains being designated as critical habitat for an individual species are numbered consecutively (ARUR1, ARUR2, ARUR3, etc). Units are grouped by pebble plain complexes (e.g., *Arrastre/Union Flat*) as identified in the USFS's 2002 Management Guide.

Arrastre/Union Flat

- *Arenaria ursina:* Units ARUR 1 and ARUR 2 (proposed critical habitat units 1A and 1B)
- *Castilleja cinerea:* Units CACI 1 and CACI 2 (proposed critical habitat units 1A and 1B)
- *Eriogonum kennedyi* var. *austromontanum:* Units ERKA 1 and ERKA 2 (proposed critical habitat units 1A and 1B)

The Arrastre/Union Flat pebble plain complex consists of 33 pebble plains of varying size that total approximately 419 ac (170 ha) of habitat, the majority of which are on the San Bernardino National Forest (SBNF) land (USFS 2002, pp. 32, 47; Engelhard 2007). Pebble plains in this complex have historically been, and continue to be, impacted by vehicle use related to woodcutting and camping activities not authorized by the USFS, potential future ground disturbance associated with existing mining claims (USFS 2002, p. 47, 48), and small-scale mining activity not authorized by the USFS (Eliason 2006). Pebble plains in this complex are also threatened by the invasion of nonnative cheatgrass (USFS 2002, pp. 47–48).

We are designating as critical habitat approximately 298 ac (121 ha) within this complex consisting of two pebble plains in the SBNF: pebble plain number 100 is 69 ac (28 ha) and pebble plain number 87 is 229 ac (93 ha) (Tables 2, 3, 4). Pebble plain number 100 (ARUR 1, CACI 1, and ERKA 1) was occupied by all three listed plants at the time of listing, and all three listed species continue to occur within these units. Pebble plain number 87 (ARUR 2, CACI 2, and ERKA 2) was also occupied by all three listed plants at the time of listing, and all three listed species continue to occur within these units. Both pebble plains contain the features essential to the conservation of the listed species; are large, well defined pebble plains; are within the northern most pebble plains in the designation; are within the geographic range occupied by the species at time of listing; and represent the least disturbed pebble plains in this complex. Pebble plain number 87 also supports the northernmost occurrences of all three listed species.

Both pebble plains are bisected by existing USFS roads. As outlined in the Management Guide (USFS 2002) and the USFS's Biological Assessment for the Revised Land Management Plans (LMP) (USFS 2005), the USFS has undertaken various actions to minimize impacts to pebble plains under its jurisdiction in this complex, including permanently closing roads, installing fencing along roads to prevent unauthorized access on the adjacent pebble plain, ripping (defacing) some roads to discourage vehicle trespass around fences, and posting signs to keep vehicles out of sensitive habitat. The LMP also recommends designation of an area encompassing most of this complex as a Research Natural Area, a designation which, if finalized, will carry a high degree of habitat protection under land management direction. Also, much of this complex is zoned in the LMP as Backcountry Non-motorized, reflecting the management intent to restrict current and future motorized use to existing transportation system roads

(USFS 2005). However, unauthorized vehicle use still occurs on the pebble plains in this complex (USFS 2002, pp. 48, 48a). Special management considerations or protection may be required to protect and maintain the PCEs supported by pebble plains 100 and 87 due to potential impacts of unauthorized vehicle use, dispersed recreation, mining, and invasive nonnative plant species (such as cheatgrass).

Big Bear Lake

- *Arenaria ursina:* Units ARUR 3 and ARUR 4 (proposed critical habitat units 2A and 2B)
- *Castilleja cinerea:* Units CACI 3 and CACI 4 (proposed critical habitat units 2A and 2B)
- *Eriogonum kennedyi* var. *austromontanum:* Unit ERKA 3 (proposed critical habitat unit 2B)

The Big Bear Lake pebble plain complex consists of a series of 39 pebble plains of varying sizes within and adjacent to the City of Big Bear Lake. This complex totals approximately 105 ac (42 ha) of habitat on private and SBNF lands (USFS 2002, pp. 31, 37; Engelhard 2007). Prior to residential development in Big Bear Valley and the construction of Big Bear Dam, pebble plain habitat was more widespread and more contiguous in this complex (USFS 2002, p. 38). Threats to pebble plain habitat on private lands include residential development and trampling from horses and hikers, and on USFS lands they include trampling, soil compaction, and unauthorized vehicle use (USFS 2002, p. 39). Pebble plains in this complex may also be threatened by the presence of invasive nonnative plant species (such as cheatgrass) that occur in other pebble plain complexes (USFS 2002, pp. 45, 47–48, 50, 56, 64).

We are designating as critical habitat approximately 28 ac (11 ha) within this complex consisting of two pebble plains in the SBNF: pebble plain number 248 is 21 ac (9 ha) and pebble plain number 254 is 6 ac (2 ha) (Tables 2, 3, 4). Pebble plain number 248 (ARUR 3, CACI 3) was occupied at the time of listing by *Arenaria ursina* and *Castilleja cinerea,* and both species continue to grow within this unit. This unit is not designated as critical habitat for *Eriogonum kennedyi* var. *austromontanum.* Pebble plain number 248 contains the features essential to the conservation of both species, is a relatively large and well defined pebble plain, represents the least disturbed pebble plains remaining in this complex, and is within the geographic range occupied by the species at time of listing. Pebble plain number 254 (ARUR 4, CACI 4, and ERKA 3) was occupied at the time of listing by all three listed species, and these species still occur within this unit. Pebble plain number 254 contains the features essential to the conservation of each of the three species, is a relatively large and well defined pebble plain, represents the least disturbed pebble plains remaining in this complex, and is within the geographic range occupied by the species at the time of listing.

Both pebble plains historically have been impacted by recreational activities (USFS 2002, pg. 38). Pebble plain number 248, in the Aspen Glen area, is bisected by a recreational trail, which is used by horses, hikers, and mountain bikers. Pebble plain number 254, in the former Snow Forest Ski Area, has historically been the site of annual bicycle races and is bisected by several classified and unclassified bicycle trails. Both units are zoned in the LMP as Developed Area Interface, reflecting the management intent to emphasize fuels and vegetation treatments associated with fire suppression (USFS 2005). USFS has undertaken various actions to minimize impacts to pebble plains under its jurisdiction in this complex, including installing fencing along trails to prevent further encroachment into the pebble plain, establishing alternate paths, installing gates and fencing to prevent motorized access to pebble plains, relocating annual bicycle races to other sites (USFS 2002, p. 39; USFS 2005, p. 208), and closing the Snow Forest Ski Area (USFS 2005, p. 250; Service 2005, p. 233). Special management considerations or protection may be required to protect and maintain the PCEs supported by both pebble plains due to potential impacts associated with fire suppression activities, unauthorized vehicle use, dispersed recreation, and invasive nonnative plant species (such as cheatgrass).

Broom Flat

- *Arenaria ursina:* Units ARUR 5 (proposed critical habitat unit 3B)
- *Castilleja cinerea:* Units CACI 5 and CACI 6 (proposed critical habitat units 3A and 3B)

The Broom Flat pebble plain complex consists of 23 pebble plains of varying size that total approximately 767 ac (310 ha) of habitat, the majority of which are in the SBNF (USFS 2002, pp. 33, 62; Engelhard 2007). Pebble plains in this complex have historically been impacted by unauthorized vehicle use and are now being impacted by the presence of invasive nonnative plant species (such as cheatgrass and common knotweed (*Polygonum arenastrum*)) (USFS 2002, p. 64).

We are designating as critical habitat approximately 384 ac (156 ha) within this complex consisting of three pebble plains on Federal (SBNF) and private lands (The Wildlands Conservancy): pebble plain number 311 is 58 ac (23 ha) and combined pebble plain numbers 285 and 309 total 326 ac (132 ha) (Tables 2, 3, 4). Pebble plain number 311 (CACI 5) was occupied at the time of listing and is currently occupied by *Castilleja cinerea.* Pebble plains 285 and 309 (ARUR 5, CACI 6) were occupied at the time of listing by *A. ursina* and *C. cinerea,* and both species still occur within this unit. Pebble plains 311, 285, and 309 contain the features essential to the conservation of each of the species for which they are being designated, are relatively large pebble plains representing the least disturbed pebble plains in this complex, and are within the eastern most pebble plain complex in these designations.

Pebble plains 311, 285, and 309 are bisected by existing USFS roads. Pebble plains 285 and 309 were impacted recently by a contingency fuel break (dozer line) that was constructed to fight the 2006 Millard/Sawtooth fire in the event the fire reached Onyx Ridge under emergency consultation with the Service. According to Eliason (2006), the line was successfully rehabilitated and recovery of the habitat is expected; however, constructed fuel breaks are more likely to be reopened in the event of future wildfires. The majority of this geographical area is zoned in the LMP as Backcountry Non-motorized, reflecting the management intent to restrict current and future motorized use to existing transportation system roads (USFS 2005).

USFS has undertaken various actions to minimize impacts to pebble plains under its jurisdiction in this complex, including permanently closing roads, installing fencing along roads to prevent unauthorized access on the adjacent pebble plain, ripping some roads to discourage vehicle trespass around fences, and posting signs to keep vehicles out of sensitive habitat; however, these barriers are in need of constant monitoring and repairs (USFS 2002, p. 64). Pebble plain number 311 may also be impacted by cattle trespass from the Rattlesnake grazing allotment and burro use associated with the Burro Herd Management Area (USFS 2002, p. 64). Special management considerations or protection may be required to protect and maintain the PCEs supported by the three pebble plains due to potential impacts associated with fire suppression activities, unauthorized vehicle use, and

invasive nonnative plant species (such as cheatgrass and common knotweed).

Fawnskin

- *Arenaria ursina:* Units ARUR 6 and ARUR 7 (proposed critical habitat units 4A and 4B)
- *Castilleja cinerea:* Units CACI 7, CACI 8, and CACI 9 (proposed critical habitat units 4A, 4B, and 4C)
- *Eriogonum kennedyi* var. *austromontanum:* Units ERKA 4 and ERKA 5 (proposed critical habitat units 4A and 4B)

The Fawnskin pebble plain complex consists of 15 pebble plains of varying sizes that total approximately 64 ac (26 ha) of habitat on private and SBNF lands (USFS 2002, pp. 32, 44; Engelhard 2007). Pebble plains in this complex have historically been and are currently being impacted by urban development, unauthorized vehicle use, and the presence of invasive nonnative species (such as cheatgrass) (USFS 2002, pp. 45).

We are designating as critical habitat approximately 41 ac (17 ha) within this complex consisting of two pebble plains and one non-pebble plain meadow margin area in the SBNF. Pebble plain number 301 is 15 ac (6 ha), pebble plain number 302 is 24 ac (10 ha), and Juniper Point is 2 ac (1 ha) (Tables 2, 3, 4). Pebble plain number 301 (ARUR 6, CACI 7, and ERKA 4) was occupied at the time of listing by all three listed species and these plants continue to occur within this pebble plain. Pebble plain number 302 (ARUR 7, CACI 8, and ERKA 5) was also occupied at the time of listing by all three listed species and these plants continue to occur within this pebble plain. Juniper Point (CACI 9) was occupied at the time of listing and is still occupied only by *Castilleja cinerea.* Juniper Point is being designated as critical habitat only for *C. cinerea.* Pebble plains 301 and 302 contain the features essential to the conservation of all three of the listed species, are within the geographic range occupied by the species at time of listing, and are relatively large and the least disturbed pebble plains remaining in this complex. Pebble plain 301 also supports the westernmost occurrences of *Arenaria ursina* and *Eriogonum kennedyi* var. *austromontanum.* Juniper Point contains the features essential to the conservation of *C. cinerea,* is within the geographic range occupied by the species at time of listing, and represents a unique habitat type (non-pebble plain meadow margin) for the species (Engelhard 2006), and may be important for maintaining genetic diversity for the species. Juniper Point is also one of the few occupied non-pebble plain meadow margin areas remaining that is relatively undisturbed.

Pebble plains 301 and 302 are bisected by several unclassified roads associated with existing USFS roads. Pebble plain 301 was impacted by construction of a contingency fuel break (dozer line) that was constructed to fight the 2003 Old Fire in the event the fire approached Big Bear Valley under emergency consultation with the Service. According to Eliason (2006), the line was successfully rehabilitated and recovery of the habitat is expected; however, constructed fuel breaks are more likely to be reopened in the event of future wildfires. Both pebble plains are zoned in the LMP as Developed Area Interface, reflecting the management intent to emphasize fuels and vegetation treatments associated with fire suppression (USFS 2005).

While USFS has undertaken various actions such as permanently closing roads and posting signs to keep vehicles out of sensitive habitat, barriers have been repeatedly breached over the past decade and unauthorized vehicle use along some of the unclassified roads still continues (USFS 2002, pp. 45–46). Juniper Point is within a fenced area adjacent to Big Bear Lake owned by the USFS. The area contains a paved trail for hiking and is across the street from the ranger station. Special management considerations or protection may be required to protect and maintain the PCEs supported by pebble plain 301, pebble plain 302, and Juniper Point due to potential impacts of fire suppression activities, unauthorized vehicle use, dispersed recreation, and invasive nonnative plant species (such as cheatgrass and common knotweed).

Gold Mountain

- *Arenaria ursina:* Units ARUA 8 and ARUA 9 (proposed critical habitat units 5A and 5B)
- *Castilleja cinerea:* Units CACI 10, CACI 11, and CACI 12 (proposed critical habitat units 5A, 5B, and 5C)
- *Eriogonum kennedyi var. austromontanum:* Units ERKA 6 and ERKA 7 (proposed critical habitat units 5A and 5B)

The Gold Mountain pebble plain complex consists of 18 pebble plains of varying sizes that total approximately 150 ac (61 ha) of habitat on private and SBNF lands (USFS 2002, pp. 32, 52; Engelhard 2007). Pebble plains in this complex have historically been impacted by USFS-authorized vehicle use and vehicle use associated with woodcutting and rock collecting not authorized by the USFS (USFS 2002, pg. 52). Pebble plains in this complex may also be threatened by the presence of invasive nonnative plant species (such as cheatgrass) that occur in other pebble plain complexes (USFS 2002, pp. 45, 47–48, 50, 56, 64).

We are designating as critical habitat approximately 105 ac (42 ha) of Federal land (SBNF) consisting of two pebble plains in this complex and one non-pebble plain meadow margin area adjacent to this complex. Pebble plain number 188 is 62 ac (25 ha), pebble plain number 192 is 43 ac (17 ha), and South Baldwin meadow is 0.3 ac (0.1 ha) (Tables 2, 3, 4). Pebble plain number 188 (ARUR 8, CACI 10, and ERKA 6) was occupied at the time of listing and is still occupied by all three listed species. Pebble plain number 192 (ARUR 9, CACI 11, and ERKA 7) was also occupied at the time of listing and these plants continue to occur within this pebble plain. While the non-pebble plain meadow margin habitat of South Baldwin meadow (CACI 12) was not identified in the final listing rule (63 FR 49006; September 14, 1998), it is currently occupied by *Castilleja cinerea* and is considered to have been occupied at the time of listing based on pre-listing occupancy records (CNDDB 1997b). South Baldwin meadow is being designated as critical habitat only for *C. cinerea.*

Pebble plains 188 and 192 contain the features essential to the conservation of each of the three listed species, are relatively large and well-defined pebble plains, represent the least disturbed pebble plains in this complex, and are within the geographic range occupied by the species at time of listing. South Baldwin Meadow contains the features essential to the conservation of *Castilleja cinerea,* is within the geographic range occupied by the species at time of listing, and represents a unique habitat type (non-pebble plain meadow margin) for the species, representing an area that may be important for maintaining genetic diversity for the species. South Baldwin Meadow is also one of the few occupied non-pebble plain meadow margin areas remaining that is relatively undisturbed and also supports other federally listed plant species (such as *Sidalcea pedata*).

Pebble plains 188 and 192 are bisected by Forest Road 3N69 and several unclassified roads. The majority of both pebble plains is zoned in the LMP as Critical Biological, reflecting the intent to manage these lands for the primary purpose of sensitive species conservation (USFS 2005). While USFS has undertaken various actions such as closing the area to woodcutting, permanently closing roads, and conducting area patrols, unauthorized vehicle use continues to impact these

pebble plains (USFS 2002, p. 53; Engelhard 2006). South Baldwin Meadow is threatened by occasional unauthorized access by equestrian and OHV use by adjacent private landowners (Engelhard 2006). Special management considerations or protection may be required to protect and maintain the PCEs supported by pebble plain 188, pebble plain 192, and South Baldwin Meadow due to potential impacts associated with unauthorized vehicle use, dispersed recreation, and invasive nonnative plant species (such as cheatgrass and common knotweed).

Holcomb Valley

- *Arenaria ursina:* Units ARUR 10 and ARUR 11 (proposed critical habitat units 6A and 6B)
- *Castilleja cinerea:* Units CACI 13 and CACI 14 (proposed critical habitat units 6A and 6B)
- *Eriogonum kennedyi* var. *austromontanum:* Units ERKA 8 and ERKA 9 (proposed critical habitat units 6A and 6B)

The Holcomb Valley pebble plain complex consists of 96 pebble plains of varying sizes that total approximately 466 ac (189 ha) of habitat primarily in the SBNF (USFS 2002, pp. 31, 40; Engelhard 2007). Pebble plains in this complex have historically been impacted by USFS-authorized and unauthorized vehicle use, previous silviculture treatments, campground development, dispersed recreation, and access or maintenance associated with an existing gas pipeline (USFS 2002, pp. 41–42). Pebble plains in this complex may also be threatened by the presence of invasive nonnative plant species (such as cheatgrass) that occur in other pebble plain complexes (USFS 2002, pp. 45, 47–48, 50, 56, 64).

We are designating as critical habitat approximately 72 ac (29 ha) within this complex consisting of three pebble plains on Federal (SBNF) and private (Boy Scouts of America (BSA)) land: Combined pebble plain numbers 98 and 109 total 28 ac (11 ha) and pebble plain number 153 is 44 ac (18 ha) (Tables 2, 3, 4). The majority of pebble plains 98 and 109 (ARUR 10, CACI 13, and ERKA 8) is in the SBNF, though a small portion occurs on private land owned by the BSA (Hitchcock Ranch). Pebble plain 153 (ARUR 11, CACI 14, and ERKA 9) is entirely within the SBNF. Pebble plains 98 and 109 (ARUR 10, CACI 13, and ERKA 8) were occupied at the time of listing and are still occupied by all three listed species. Pebble plain 153 was also occupied at the time of listing and these plaints continue to occur within this pebble plain. All three pebble plains contain the features essential to the conservation of each of the three listed species, are within the geographic range occupied by the species at time of listing, are among the northernmost pebble plains in these designations, are relatively large and well-defined pebble plains, and represent the least disturbed pebble plains in this complex.

Federal land in pebble plains 98 and 109 is zoned in the LMP as Backcountry Motorized, reflecting the management intent to restrict current and future motorized use to designated transportation system routes (USFS 2005). Pebble plain 153 is zoned in the LMP as Backcountry Non-motorized, Use-Restricted, reflecting the management intent to restrict current and future motorized use to administrative and permitted uses only (USFS 2005).

The USFS has undertaken various actions, such as decommissioning and rehabilitating certain roads, installing fencing along roads to prevent unauthorized access on the adjacent pebble plain, posting signs to keep vehicles out of sensitive habitat, relocating special events formerly in pebble plain habitat (such as the Mountain Man event), and discontinuing camping permits in certain areas to reduce the impact in these areas. However, pebble plains in the Holcomb Valley Complex continue to be impacted by unauthorized vehicle use (USFS 2002, p. 40). Special management considerations or protection may be required to protect and maintain the PCEs supported by pebble plain 98, pebble plain 109, and pebble plain 153 due to potential impacts associated with unauthorized vehicle use, dispersed recreation, and invasive nonnative plant species (such as cheatgrass and common knotweed).

North Baldwin Lake

- *Arenaria ursina:* Unit ARUR 12 (proposed critical habitat unit 7A)
- *Castilleja cinerea:* Units CACI 15 and CACI 16 (proposed critical habitat units 7A and 7B)
- *Eriogonum kennedyi* var. *austromontanum:* Unit ERKA 10 (proposed critical habitat unit 7A)

The North Baldwin Lake pebble plain complex consists of 12 pebble plains of varying sizes that totals approximately 532 ac (215 ha) of habitat primarily in the SBNF (USFS 2002, pp. 33, 54; Engelhard 2007). Pebble plains in this complex were historically, and continue to be, impacted by authorized and unauthorized vehicle use, mining activity, residential development, burros, and invasive nonnative plant species (such as cheatgrass and Lepidium perfoliatum (clasping pepperweed)) (USFS 2002, pg. 56)).

We are designating as critical habitat approximately 324 ac (131 ha) within this complex consisting of one pebble plain and one non-pebble plain meadow margin area on Federal (SBNF) and State (CDFG) lands: Pebble plain number 128 is 320 ac (129 ha) and pebble plain number 168 is 4 ac (2 ha) (Tables 2, 3, 4). Although pebble plain number 168 is actually a non-pebble plain meadow margin area, it was assigned a pebble plain number by USFS. All of pebble plain number 128 is in the SBNF and all of Pebble plain number 168 in the CDFG's Baldwin Ecological Reserve. Pebble plain number 128 (ARUR 12, CACI 15, and ERKA 10) was occupied at the time of listing and continues to be occupied by all three listed plants. While the non-pebble plains meadow margin habitat in pebble plain number 168 (CACI 16) was not identified in the listing rule, it is currently occupied by *Castilleja cinerea* and is considered to have been occupied at the time of listing based on pre-listing occupancy records (CNDDB 1997b).

Pebble plain number 128 contains the features essential to the conservation of each of the three of the listed species, is within the geographic range occupied by the species at time of listing, is a relatively large and well defined pebble plain in this complex, and represents one of the least disturbed pebble plains in this complex. This pebble plain also supports the lowest elevation occurrences of *Arenaria ursina* and *Castilleja cinerea*. Such elevational extremes may be important for the conservation of the species where they represent genetic variation favorable to surviving long-term environmental changes (Eliason 2006). Pebble plain number 168 contains the features essential to the conservation of *C. cinerea,* is within the geographic range occupied by the species at time of listing, represents a unique habitat type (non-pebble plain meadow margin habitat with alkali soils), and is the only area known to support this species on alkali soils. This occurrence represents a unique portion of the range of environmental variability for the species and may be important for maintaining genetic diversity of the species. This pebble plain is also one of the few occupied non-pebble plain meadow margin areas remaining that is relatively undisturbed. This area also supports other federally listed plant species (such as *Sidalcea pedata* and *Thelypodium stenopetalum*).

Pebble plain 128 is bisected by several unclassified roads associated with existing USFS roads and pebble plain

168 is adjacent to an existing road. The majority of pebble plain 128 is zoned in the LMP as Critical Biological, reflecting the intent to manage these lands for the primary purpose of sensitive species conservation (USFS 2005). All of pebble plain 168 is zoned in the LMP Developed Area Interface, reflecting the management intent to emphasize fuels and vegetation treatments associated with fire suppression (USFS 2005). USFS has undertaken various actions such as permanently closing roads, installing fencing along major roads adjacent to pebble plain habitat, and posting signs to keep vehicles out of sensitive habitat. However, authorized and unauthorized vehicle use continues to impact pebble plains in the North Baldwin Lake Complex (USFS 2002, p. 57). Special management considerations or protection may be required to protect and maintain the PCEs supported by pebble plains 128 and 168 due to potential impacts associated with unauthorized vehicle use, dispersed recreation, and invasive nonnative plant species (such as cheatgrass and common knotweed).

Sawmill

- *Arenaria ursina:* Units ARUR 13 and ARUR 14 (proposed critical habitat units 8A and 8B)
- *Castilleja cinerea:* Units CACI 17 and CACI 18 (proposed critical habitat units 8A and 8B)
- *Eriogonum kennedyi* var. *austromontanum:* Units ERKA 11 and ERKA 12 (proposed critical habitat units 8A and 8B)

The Sawmill pebble plain complex consists of 22 pebble plains of varying size that total approximately 420 ac (170 ha) of habitat on private and Federal land (SBNF) (2002, pp. 32, 49; Engelhard 2007). Pebble plains in this complex were historically, and continue to be, impacted by authorized and unauthorized vehicle use, residential development, and invasive nonnative plant species (such as cheatgrass) (USFS 2002, pp. 50).

We are designating as critical habitat approximately 41 ac (17 ha) within this complex consisting of two pebble plains on Federal (USFS) and private lands: Pebble plain number 236 (ARUR 13, CACI 17, ERKA 11) is 36 ac (14 ha) and the portion of pebble plain number 244 (ARUR 14, CACI 18, ERKA 12) being designated is 5 ac (2 ha) (Tables 2, 3, 4). About half of pebble plain number 236 is in the SBNF, while the other half is on private land. The area under private ownership is protected from development by a conservation easement established as part of the Moonridge residential development (Engelhard 2006). In 2002, the Natural Heritage Foundation, which held the conservation easement at that time, installed fencing and signs to keep unauthorized off-road vehicles out of the pebble plain (BEC, p. 14). However, we have no information on who currently holds the easement and if management is ongoing.

The portion of pebble plain number 244 being designated is entirely on private land within a fenced area protected from development by a conservation easement as mitigation for construction of the Big Bear High School. However, the easement has not been formerly recorded (BEC, p. 14) and we have no information on ongoing management occurring at this site. Pebble plain 236 (ERKA 11, ARUR 13, CACI 17) was occupied at the time of listing and continues to be occupied by all three listed species. The portion of pebble plain number 244 being designated (ERKA 12, ARUR 14, CACI 18) was also occupied at the time of listing and all three listed species continue to occur within this pebble plain. Both pebble plains contain the features essential to the conservation of each of the three listed species, are within the geographic range occupied by the species at time of listing, are relatively large and well-defined pebble plains, and represent the only pebble plains remaining in this complex that have not been destroyed or significantly degraded by residential development.

The northern portion of pebble plain 236 is bisected by a partially devegetated vehicle track that allows foot access to this fenced pebble plain, which is used heavily by local residents. Pebble plain 244 is bisected by several unclassified roads associated with woodcutting and dispersed recreation (USFS 2002, pp. 50–51). Federal land in the Sawmill unit is zoned in the LMP as Developed Area Interface, reflecting the management intent to emphasize fuels and vegetation treatments associated with fire suppression (USFS 2005). USFS has undertaken or participated in various actions, such as posting signs to keep hikers and vehicles out of sensitive habitat. However, authorized and unauthorized dispersed recreation and unauthorized vehicle use continues to impact pebble plains in the Sawmill Complex, including the northern portion of pebble plain 236 (USFS 2002, p. 51; Engelhard 2006). Special management considerations or protection may be required to protect and maintain the PCEs supported by pebble plains 236 and 244 due to potential impacts associated with fire suppression activities, unauthorized vehicle use, dispersed recreation, and invasive nonnative plant species (such as cheatgrass and common knotweed).

Snow Valley

- *Castilleja cinerea:* Unit CACI 19 (proposed critical habitat unit 9)

The Snow Valley pebble plain complex consists of 3 pebble plains of varying sizes that total approximately 33 ac (13 ha) of habitat in the SBNF (USFS 2002, pp. 30, 31; Engelhard 2007). Pebble plains in this complex were historically impacted by vehicle access, residential development, and heavy-use recreation (such as skiing or biking) (USFS 2002, p. 30). Pebble plains in this complex may also be threatened by the presence of invasive nonnative plant species (such as cheatgrass) that occur in other pebble plain complexes (USFS 2002, pp. 45, 47–48, 50, 56, 64).

We are designating as critical habitat approximately 26 ac (10 ha) within this complex consisting of one pebble plain within the SBNF: Pebble plain number 270 (Tables 2, 3, 4). Pebble plain number 270 (CACI 19) was occupied at the time of listing and is still occupied by *Castilleja cinerea*. This unit is being designated as critical habitat only for *C. cinerea*. Pebble plain 270 contains the features essential to the conservation of the species, is within the geographic range occupied by the species at time of listing, is within the western most pebble plain complex in these designations, represents a unique habitat type (pebble plain habitat with granitic soils), and supports the only known occurrence of this species on granitic soils. This occurrence represents a unique portion of the range of environmental variability for the species and may be important for maintaining genetic diversity for the species.

Pebble plain 270 borders Highway 18 and is within a heavy recreational use area. This pebble plain is zoned in the LMP as Developed Area Interface, reflecting the management intent to emphasize fuels and vegetation treatments associated with fire suppression (USFS 2005). USFS has undertaken or participated in various actions, such as posting signs to keep hikers out of sensitive habitat. However, dispersed recreation, and unauthorized vehicle use continues to impact pebble plains in the Snow Valley (USFS 2002, p. 51). Special management considerations or protection may be required to protect and maintain the PCEs supported by pebble plain 270 due to potential impacts associated with fire suppression activities, unauthorized vehicle use, dispersed recreation, and

invasive nonnative plant species (such as cheatgrass and common knotweed).

South Baldwin Ridge/Erwin Lake

- *Arenaria ursina:* Unit ARUR 15 (proposed critical habitat unit 10).
- *Castilleja cinerea:* Unit CACI 20 (proposed critical habitat unit 10).
- *Eriogonum kennedyi* var. *austromontanum:* Unit ERKA 13 (proposed critical habitat unit 10).

The South Baldwin Ridge/Erwin Lake pebble plain complex consists of 15 pebble plains of varying sizes that total approximately 95 ac (38 ha) of habitat on private and SBNF lands (USFS 2002, pp. 33, 49; Engelhard 2007). Pebble plains in this complex were historically, and continue to be, impacted by authorized and unauthorized vehicle use, residential development, and invasive nonnative plant species (such as cheatgrass) (USFS 2002, pg. 50).

We are designating as critical habitat approximately 23 ac (9 ha) within this complex consisting of one pebble plain in the SBNF: pebble plain number 212 (Tables 2, 3, 4). Pebble plain 212 (ERKA 13, ARUR 15, CACI 20) was occupied at the time of listing and still is occupied by all three listed plants. This pebble plain contains the features essential to the conservation of each of the three of the listed species, is within the geographic range occupied by the species at time of listing, is a relatively large and well-defined pebble plain, and is the only occupied pebble plain in this complex that has not been destroyed or significantly degraded due to residential development.

Pebble plain 272 is bisected by a partially devegetated vehicle track that allows foot access to this fenced pebble plain, which is used heavily by local residents (USFS 2002, pp. 50–51). This pebble plain is zoned in the LMP as Developed Area Interface, reflecting the management intent to emphasize fuels and vegetation treatments associated with fire suppression (USFS 2005). USFS has undertaken or participated in various actions such as posting signs to keep hikers out of sensitive habitat. However, dispersed recreation, and unauthorized vehicle use continue to impact pebble plains in the South Baldwin Ridge Complex (USFS 2002, p. 51). Special management considerations or protection may be required to protect and maintain the PCEs supported by pebble plain 272 due to potential impacts associated with fire suppression activities, unauthorized vehicle use, dispersed recreation, and invasive nonnative plant species (such as cheatgrass and common knotweed).

Sugarloaf Ridge

- *Arenaria ursina:* Units ARUR 16 and ARUR 17 (proposed critical habitat units 11A and 11B)
- *Castilleja cinerea:* Units CACI 21 and CACI 22 (proposed critical habitat units 11A and 11B), CACI 23 and CACI 24

The Sugarloaf Ridge pebble plain complex consists of 22 pebble plains of varying sizes that total approximately 617 ac (250 ha) of habitat in the SBNF (USFS 2002, pp. 33, 58; Engelhard 2007). Pebble plains in this complex were historically, and continue to be, impacted by authorized and unauthorized vehicle use and dispersed recreation (USFS 2002, p. 58). The ridgeline in this complex is at risk of future fuel break construction in direct or indirect response to wildfire suppression (Eliason 2006). Pebble plains in this complex may also be threatened by the presence of invasive nonnative plant species (such as cheatgrass) that occur in some of the other pebble plain complexes (USFS 2002, pp. 45, 47–48, 50, 56, 64).

We are designating as critical habitat approximately 427 ac (173 ha) within this complex consisting of four pebble plains within the SBNF: pebble plain number 294 is 127 ac (51 ha), pebble plain number 289 is 34 ac (14 ha), pebble plain number 286 is 76 ac (31 ha), and pebble plain number 293 is 190 ac (77 ha) (Tables 2, 3). Pebble plain 294 (ARUR 17, CACI 21) was occupied at the time of listing and is currently occupied by *Castilleja cinerea* and *Arenaria ursina.* Pebble plain 289 (ARUR 18, CACI 22) was also occupied at the time of listing and is currently occupied by *C. cinerea* and *A. ursina.* Pebble plains 286 (CACI 23) and 293 (CACI 24) were occupied at the time of listing and are currently occupied by *C. cinerea*. Pebble plains 294 and 289 are being designated as critical habitat for *A. ursina.* and *C. cinerea* only, while pebble plains 286 and 293 are being designated as critical habitat for *C. cinerea* only. Both pebble plains contain the features essential to the conservation of the species for which they are being designated, are within the geographic range occupied by the species at time of listing, are relatively large pebble plains, and represent the least disturbed pebble plains in this complex. In addition, the *A. ursina.* occurrence in the Sugarloaf Ridge complex is within the southern most pebble plain complex in these designations, is the highest elevation occurrence known for this species, and is considered disjunct from populations in other complexes. The *C. cinerea* occurrence in this complex is morphologically distinct from populations in other complexes (USFS 2002, p. 58; Bill 2006). Furthermore, the pebble plains occupied by *C. cinerea* west of Wildhorse Meadow Road represent a unique and higher elevational range than those in other complexes. These occurrences represent a unique portion of the range of environmental variability for these species and may be important for maintaining genetic diversity for the species.

Several unclassified roads occur in or adjacent to pebble plains 293, 294, 286 and 289 (USFS 2002, p. 59). All of pebble plain 294 and the majority of pebble plain 289 are zoned in the LMP as Backcountry Non-motorized, reflecting the management intent to restrict current and future motorized use to existing transportation system roads (USFS 2005). USFS has undertaken various actions such as posting signs to keep walkers and vehicles out of sensitive habitat within the Sugarloaf Ridge Complex overall. However, dispersed recreation and unauthorized vehicle use continues to impact pebble plains in the Sugarloaf Ridge Complex (USFS 2002, pp. 58–59). Special management considerations or protection may be required to protect and maintain the PCEs supported by pebble plains 293, 294, 286, and 289 due to potential impacts associated with fire suppression activities, unauthorized vehicle use, dispersed recreation, and invasive nonnative plant species (such as cheatgrass and common knotweed).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify designated critical habitat. Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (*see Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional

(or retain the current ability for the primary constituent elements to be functionally established) to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect *Arenaria ursina*, *Castilleja cinerea,* or *Eriogonum kennedyi* var. *austromontanum* or their designated critical habitat will require section 7(a)(2) consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10(a)(1)(B) of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are examples of agency actions that may be subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the primary constituent elements to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for *Arenaria ursina, Castilleja cinerea,* or *Eriogonum kennedyi* var. *austromontanum.* Generally, the conservation role of pebble plains plant critical habitat units is to support viable core populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for *Arenaria ursina, Castilleja cinerea,* or *Eriogonum kennedyi* var. *austromontanum* include, but are not limited to (please see the ''Special Management Considerations or Protection'' section for a more detailed discussion on the impacts of these actions to the listed species):

(1) Actions that result in ground disturbance to pebble plains. Such activities could include, but are not limited to: residential or recreational development, OHV activity, dispersed recreation, new road construction or widening, existing road maintenance, and grazing (such as cattle and burros). These activities could impact pebble plains by damaging or eliminating habitat, altering soil composition due to increased erosion, and allowing nonnative invasive plant species to invade. In addition, changes in the soil composition may lead to cascading changes in the vegetation composition, such as growth of shrub cover that decreases density or eliminates pebble plain species.

(2) Actions that result in alteration of the hydrological regime of the pebble plain habitat. Such activities could include residential or recreational development adjacent to pebble plains, OHV activity, dispersed recreation, new road construction or widening, and existing road maintenance. These activities could alter surface layers and hydrological regime in a manner that promotes loss of clay components of soil matrix necessary to support the growth and reproduction of the pebble plain species.

We consider all of the units designated as critical habitat to contain features essential to the conservation of *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum.* All units are within the geographic range of each species, respectively, and were occupied at the time of listing. Federal agencies already consult with us on activities in areas currently occupied by *A. ursina*, *C. cinerea,* and *E. kennedyi* var. *austromontanum* or if these species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of these species.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination,

the legislative history is clear that the Secretary has broad discretion regarding which factors to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we determine that the benefits of exclusion outweigh the benefits of inclusion, we can exclude the area only if such exclusion would not result in the extinction of the species.

We were not aware of any habitat conservation plans under development for *Arenaria ursina*, *Castilleja cinerea*, or *Eriogonum kennedyi* var. *austromontanum* on any lands included in these final designations. Also, the final designations do not include any Department of Defense lands, Tribal lands or trust resources. During the development of the proposed and final rules, we coordinated with SBNF staff to seek input on the appropriate areas to include in critical habitat that would be essential to *A. ursina*, *C. cinerea*, and *E. kennedyi* var. *austromontanum* on SBNF lands.

Areas Considered for Exclusion Under Section 4(b)(2) of the Act

At the request of the USFS we evaluated the appropriateness of excluding Forest Service lands from the final designation of critical habitat for the three pebble plains plants under section 4(b)(2) of the Act based on management provided for federally-listed species including the three pebble plains plants under the USFS Land Management Plan and Pebble Plains Management Guide. As discussed in more detail in our response to Comment 15 in the ''Public Comments'' section above, we have concluded that exclusion of Forest Service lands is not appropriate in light of the USFS's independent obligation under section 7(a)(1) of the Act to utilize the agency's authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of listed species. Further, the intent of section 7(a)(2) of the Act is to require Federal Agencies to consult on any action authorized, funded, or carried out by such agency to insure that the action will not jeopardize a listed species or destroy or adversely modify its critical habitat. Therefore the benefit of consultation under section 7(a)(2) of the Act is greatest on Federal lands. In light of the USFS's independent statutory obligations under the Act we do not believe exclusion of USFS lands from critical habitat designation under section 4(b)(2) is appropriate. Nor, because of the agency's statutory obligations, should the additional analysis under section 7(a)(2) of the Act as a result of designation of critical habitat on Forest Service lands be considered a relevant impact under Section 4(b)(2) or constitute an undue burden for USFS.

Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis based on the November 22, 2006, proposed rule (71 FR 67712).

Following the publication of the proposed critical habitat designations, we conducted an economic analysis to estimate the potential economic effect of the designations. The draft economic analysis (DEA) was made available for public review on August 14, 2007 (72 FR 45407). We accepted comments on the DEA until September 13, 2007. However, we did not receive any comments on the DEA during this comment period. A final analysis of the potential economic effects of the proposed designation was then developed, taking into consideration the public comments on the proposed critical habitat and any new information.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designations of critical habitat for the *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designations outweigh the benefits of including those areas in the designations. This economic analysis considers the economic efficiency effects that may result from the designations, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designations might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

Specifically, the August 2007 DEA examined the potential economic effects of actions relating to the conservation of *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*, including costs associated with sections 4, 7, and 10 of the Act, costs attributable to the designation of critical habitat and the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *A. ursina.*, *C. cinerea*, and *E. kennedyi* var. *austromontanum* in areas containing features essential to the conservation of the species. Finally, this analysis looked retrospectively at costs that have been incurred since the date *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* were listed as endangered and threatened (September 14, 1998; 63 FR 49006), and considered those costs that may occur in the 20 years following a designation of critical habitat.

The DEA is intended to quantify the economic impacts of all potential conservation efforts for the three pebble plains plants; some of these costs will likely be incurred regardless of whether critical habitat is designated. According to the DEA, activities associated with the conservation of the three listed pebble plains plants are likely to primarily impact unauthorized off-highway vehicle use; control of invasive, nonnative plants; and dispersed recreation. The DEA forecasted future costs associated with conservation efforts for the three pebble plains plants in the areas proposed for designation to be $1.95 million (undiscounted) over the next 20 years. The analysis quantified economic impacts associated with the conservation efforts on each affected entity—typically landowners or managers—associated with the following: (1) Vehicle use off designated routes; (2) the presence of nonnative

plant species; and (3) dispersed recreation activities.

The Service also completed a final economic analysis (FEA) of the proposed designations that updates the DEA by removing impacts that were not considered probable or likely to occur and by adding an estimate of the costs associated solely with the designations of critical habitat for the three pebble plains species (incremental impacts). The FEA estimates that the potential economic effects of actions relating to the conservation of *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to the designation of critical habitat will be $1.80 million (undiscounted) over the next 20 years. The present value of these impacts, applying a 3 percent discount rate, is $1.34 million; or $0.95 million, using a discount rate of 7 percent. This is a reduction from the impacts estimated in the DEA of about $0.15 million (undiscounted) over the next 20 years. The FEA also estimates total costs attributable solely to the designations of critical habitat for the three pebble plains plants (incremental costs) to be $3,593 (present value at a three percent discount rate). When critical habitat for these species is designated, it is anticipated that the consultation with the USFS regarding their current Land Management Plan will be reinitiated, resulting in administrative impacts to the USFS. After consideration of the impacts under section 4(b)(2) of the Act, we have not excluded any areas from the final critical habitat designations based on the identified economic impacts.

A copy of the final economic analysis with supporting documents is included in our supporting record and may be obtained by contacting Carlsbad Fish and Wildlife Office, (see **ADDRESSES** section) or for downloading from the Internet at *http://www.fws.gov/carlsbad/.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (E.O.) 12866, this document is a significant rule in that it may raise novel legal and policy issues, but will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. As explained above, we prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it in determining whether to exclude any area from critical habitat, as provided for under section 4(b)(2). If we determine that the benefits of excluding a particular area outweigh the benefits of specifying such area as part of the critical habitat, we may exclude the area unless we determine, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. Due to the tight timeline for publication in the **Federal Register,** the Office of Management and Budget (OMB) has not formally reviewed this rule.

Further, Executive Order 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Under Circular A–4, once an agency determines that the Federal regulatory action is appropriate, the agency must consider alternative regulatory approaches. Because the determination of critical habitat is a statutory requirement pursuant to the Act, we must evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. We believe that the evaluation of the inclusion or exclusion of particular areas, or a combination of both, constitutes our regulatory alternative analysis for designations.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by these designations, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or

permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7(a)(2) of the Act on activities they fund, permit, or implement that may affect *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

The U.S. Forest Service (USFS), the California Department of Fish and Game (CDFG), and the Boy Scouts of America (BSA) are not considered small entities by the Small Business Administration. They do not meet the criteria because the first two entities are governments serving more than 50,000 people, and the Boy Scouts of America is a civic or social organization having annual receipts greater than $6.5 million. The private landowners are unlikely to be business entities. Accordingly, the small business analysis contained in Appendix A of the draft economic analysis focuses on economic impacts of controlling unauthorized off-highway vehicles and nonnative plant species on land owned by The Wildlands Conservancy (TWC).

The TWC is a nonprofit, public benefit organization. It was unaware of the presence of the three listed species and their habitat on its land and, to date, has not undertaken actions specific to the conservation of the plants. Potential impacts to TWC of managing unauthorized off-road vehicle use and controlling invasive, nonnative plant species are based on cost-per-acre estimates from the USFS. Annualized impacts to TWC at a 3 percent discount rate are expected to be $4,504. However, since only one entity meeting the definition of a small business owns land within the area proposed as critical habitat, we certify that this regulation will not have a significant economic impact on a substantial number of small business entities. A regulatory flexibility analysis is not required. Please refer to our final economic analysis of the proposed critical habitat designations for a more detailed discussion of potential economic impacts.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'') on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule designating critical habitat for *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* is a significant regulatory action under E.O. 12866 in that it may raise novel legal and policy issues, based on the FEA, these designations of critical habitat do not impact supply, distribution, or use of energy; therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Takings

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* in a takings implications assessment. The takings implications assessment concludes that these designations of critical habitat for the three listed pebble plains species do not pose significant takings implications.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule will significantly or uniquely affect

small governments. The majority (92 percent) of the lands being designated as critical habitat are Federally-owned by the USFS, which does not qualify as a small government. Of the remaining 8 percent, 7 percent is privately-owned land and 1 percent is State land. Consequently, we do not believe that these critical habitat designations would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Federalism

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from appropriate State resource agencies in California in order to coordinate with them during the development of these final critical habitat designations; however, we did not receive comments or information from State agencies. Only 1 percent of the critical habitat designations for *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* are on State land, and, therefore, will have little impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat essential to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Arenaria ursina, Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum.*

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,'' we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have determined that there are no Tribal lands that meet the definition of critical habitat for *Arenaria ursina, Castilleja cinerea*, or *Eriogonum kennedyi* var. *austromontanum.* Therefore, we have not designated critical habitat for any of the three pebble plain plants on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is staff of the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.12(h), revise the entries for ''*Arenaria ursina*'', ''*Castilleja cinerea*'', and ''*Eriogonum kennedyi* var. *austromontanum*'' under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS:							
*	*	*	*	*	*		*
Arenaria ursina	Bear Valley sandwort.	U.S.A. (CA)	Caryophyllaceae	T	644	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Castilleja cinerea	Ash-gray Indian paintbrush.	U.S.A. (CA)	Orobanchaceae	T	644	17.96(a)	NA
*	*	*	*	*	*		*
Eriogonum kennedyi var. *austromontanum*.	Southern mountain wild-buckwheat.	U.S.A. (CA)	Polygonaceae	T	644	17.96(a)	NA
*	*	*	*	*	*		*

3. In § 17.96(a), as set forth below:

■ a. Add ''Family Caryophyllaceae'' and ''Family Orobanchaeae'' in alphabetical order to the family names;

■ b. Add a critical habitat entry for ''*Arenaria ursina*'' in alphabetical order under Family Caryophyllaceae;

■ c. Add a critical habitat entry for ''*Castilleja cinerea*'' in alphabetical order under Family Orobanchaeae; and

■ d. Add a critical habitat entry for ''*Eriogonum kennedyi* var. *austromontanum*'' in alphabetical order under Family Polygonaceae.

§ 17.96 Critical habitat—plants.

* * * * *

(a) *Flowering plants.*

* * * * *

Family Caryophyllaceae: *Arenaria ursina* (Bear Valley sandwort)

(1) Critical habitat units for *Arenaria ursina* are found in San Bernardino County, California.

(2) The primary constituent elements of critical habitat for Arenaria ursina are the habitat components that provide:

(i) Pebble plains in dry meadow-like openings within upper montane coniferous forest, pinyon-juniper woodlands, or Great Basin sagebrush in the San Bernardino Mountains of San Bernardino County, California; at elevations between 5,900 to 9,800 ft (1,830 to 2,990 m) that provide space for individual and population growth, reproduction and dispersal; and

(ii) Seasonally wet clay, or sandy clay soils, generally containing quartzite pebbles, subject to natural hydrological processes that include water hydrating the soil and freezing in winter and drying in summer causing lifting and churning of included pebbles, that provide space for individual and population growth, reproduction and dispersal, adequate water, air, minerals, and other nutritional or physiological requirements to the species.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) Critical habitat map units. Data layers defining map units were created on a base of USGS 1:24,0000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Index map (Map 1) follows:

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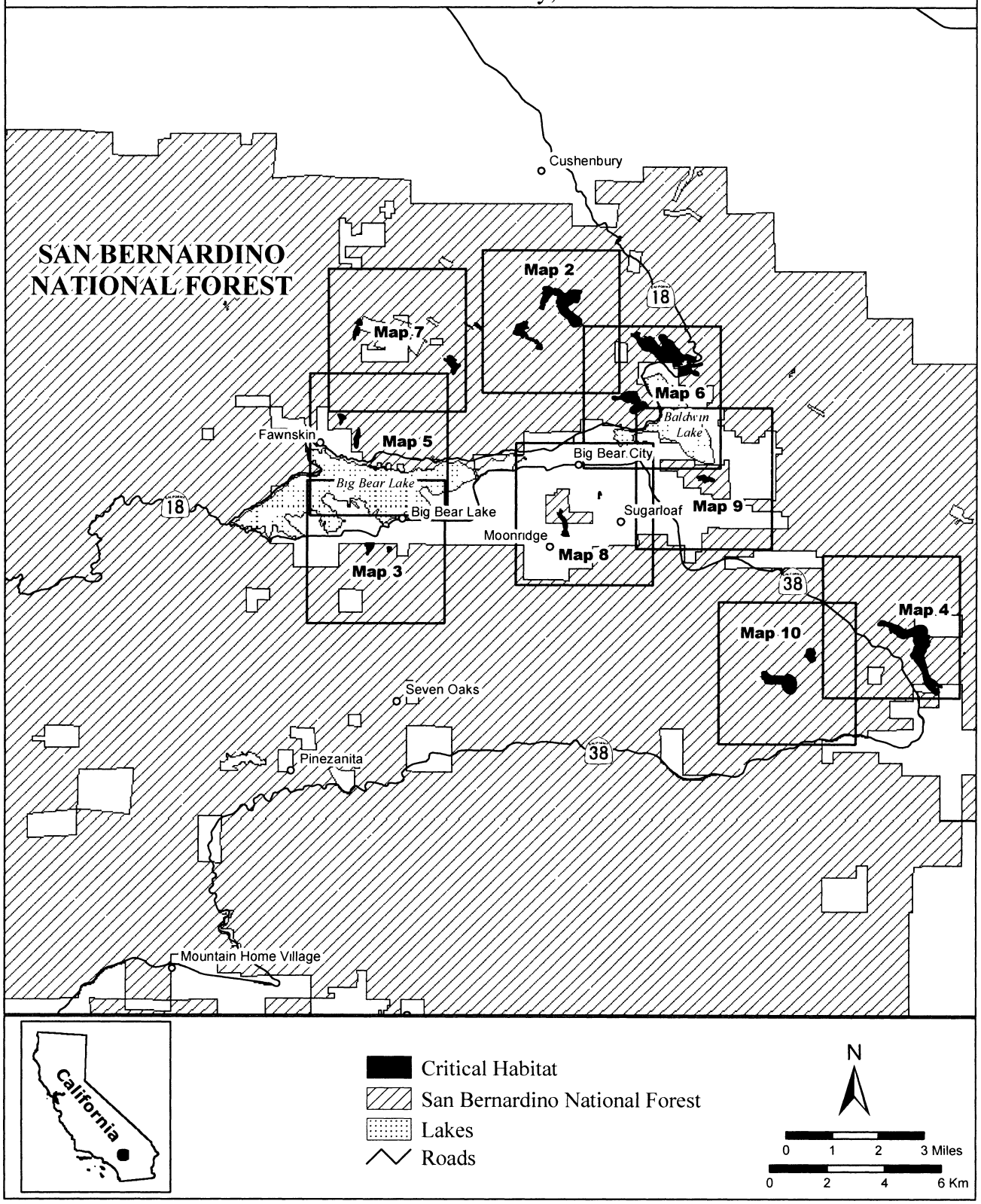
Map 1: Index
Critical Habitat for *Arenaria ursina* (Bear Valley sandwort)
San Bernardino County, California



BILLING CODE 4310–55–C

(6) Units ARUR 1 and ARUR 2. Arrastre/Union Flat, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear City.

(i) Unit ARUR 1. Land bounded by the following UTM NAD27 coordinates (E,N): 512434, 3795966; 512436, 3795961; 512446, 3795966; 512450, 3795966; 512469, 3795969; 512508, 3795965; 512533, 3795959; 512537, 3795959; 512539, 3795960; 512549, 3795964; 512560, 3795961; 512568, 3795954; 512573, 3795948; 512573, 3795936; 512571, 3795930; 512568, 3795927; 512565, 3795927; 512563, 3795927; 512563, 3795924; 512561, 3795914; 512556, 3795904; 512555, 3795903; 512554, 3795901; 512548, 3795879; 512535, 3795835; 512544, 3795791; 512546, 3795790; 512554, 3795787; 512568, 3795779; 512576, 3795774; 512582, 3795771; 512592, 3795764; 512595, 3795753; 512595, 3795747; 512591, 3795739; 512584, 3795732; 512581, 3795731; 512575, 3795727; 512569, 3795727; 512560, 3795728; 512552, 3795733; 512544, 3795739; 512542, 3795740; 512541, 3795739; 512540, 3795738; 512525, 3795717; 512469, 3795694; 512447, 3795680; 512445, 3795679; 512427, 3795653; 512428, 3795649; 512450, 3795617; 512476, 3795588; 512476, 3795588; 512504, 3795564; 512514, 3795552; 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(ii) Unit ARUR 2. Land bounded by the following UTM NAD27 coordinates (E,N): 513282, 3797202; 513312, 3797195; 513346, 3797179; 513347, 3797179; 513352, 3797178; 513378, 3797155; 513382, 3797151; 513404, 3797137; 513430, 3797126; 513434, 3797122; 513438, 3797119; 513475, 3797110; 513503, 3797106; 513500, 3797115; 513500, 3797124; 513510, 3797137; 513520, 3797137; 513532, 3797131; 513545, 3797124; 513554, 3797111; 513554, 3797108; 513567, 3797110; 513599, 3797116; 513650,

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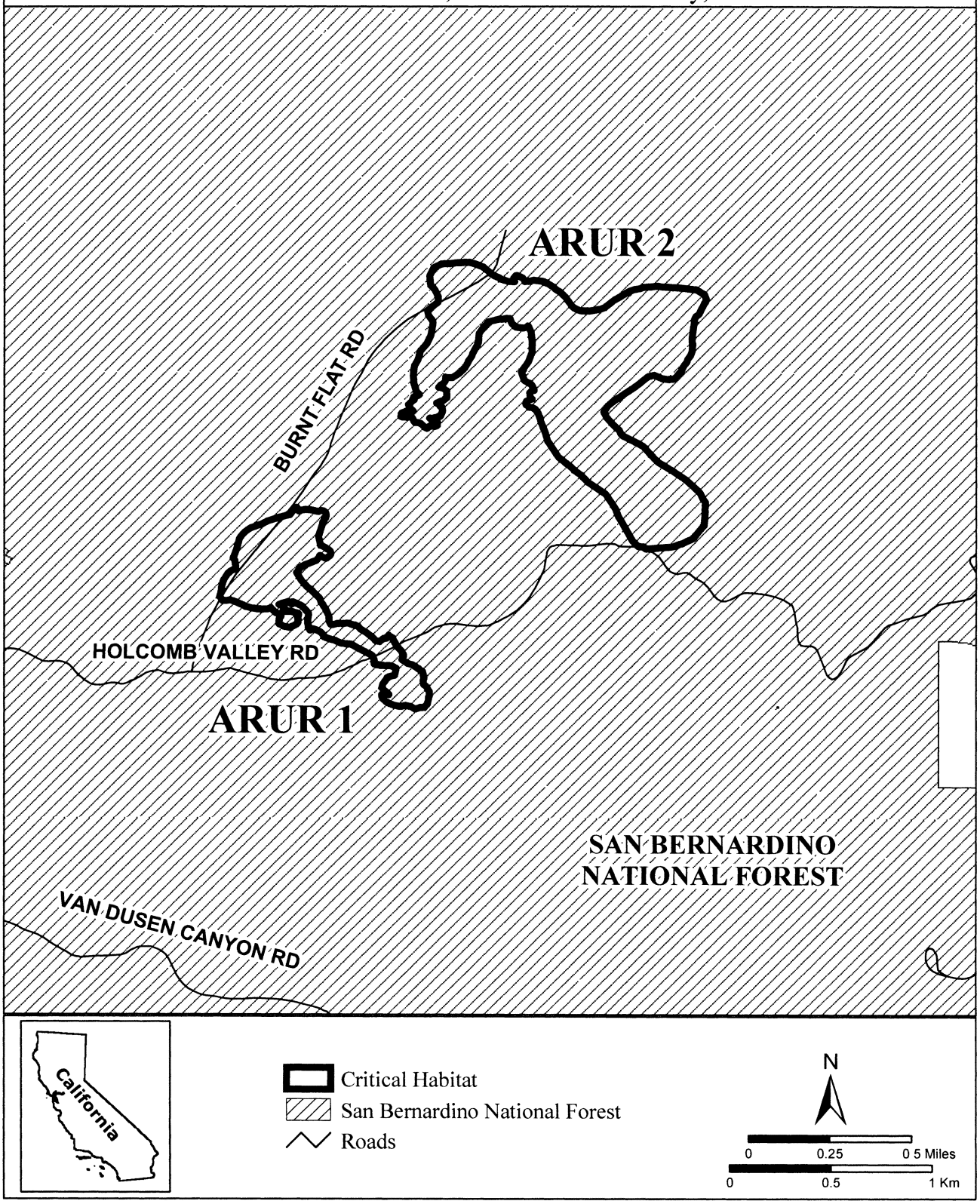
513110, 3796387; 513089, 3796387; 513085, 3796387; 513080, 3796383; 513075, 3796378; 513069, 3796376; 513065, 3796378; 513061, 3796380; 513038, 3796401; 513031, 3796403; 513022, 3796403; 513016, 3796403; 513010, 3796404; 513007, 3796408; 512998, 3796427; 512993, 3796432; 512984, 3796432; 512976, 3796431; 512967, 3796430; 512958, 3796430; 512948, 3796431; 512942, 3796435; 512942, 3796440; 512943, 3796447; 512947, 3796453; 512958, 3796458; 512968, 3796460; 512981, 3796461; 512990, 3796462; 512998, 3796461; 513002, 3796462; 513000, 3796463; 512996, 3796465; 512992, 3796472; 512986, 3796477; 512982, 3796485; 512977, 3796493; 512985, 3796499; 512986, 3796501; 512996, 3796509; 513006, 3796518; 513003, 3796519; 513001, 3796524; 513001, 3796528; 513003, 3796531; 513006, 3796533; 513013, 3796536; 513026, 3796540; 513031, 3796543; 513019, 3796558; 513004, 3796600; 513004, 3796623; 513001, 3796637; 513009, 3796690; 513024, 3796717; 513039, 3796763; 513070, 3796797; 513089, 3796843; 513096, 3796872; 513099, 3796901; 513095, 3796915; 513094, 3796917; 513076, 3796939; 513072, 3796962; 513087, 3796975; 513089, 3796980; 513123, 3797003; 513126, 3797015; 513126, 3797031; 513106, 3797069; 513087, 3797088; 513084, 3797137; 513096, 3797163; 513103, 3797175; 513141, 3797195; 513182, 3797197; 513184, 3797197; 513218, 3797201; 513240, 3797201; 513255, 3797202; 513282, 3797202.

(iii) Note: Map of Units ARUR 1 and ARUR 2 (Map 2) follows:

BILLING CODE 4310–55–P

Map 2
Critical Habitat for *Arenaria ursina* (Bear Valley sandwort)
Units ARUR 1 and ARUR 2, San Bernardino County, California



BILLING CODE 4310–55–C

(7) Units ARUR 3 and ARUR 4. Big Bear Lake, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear Lake.

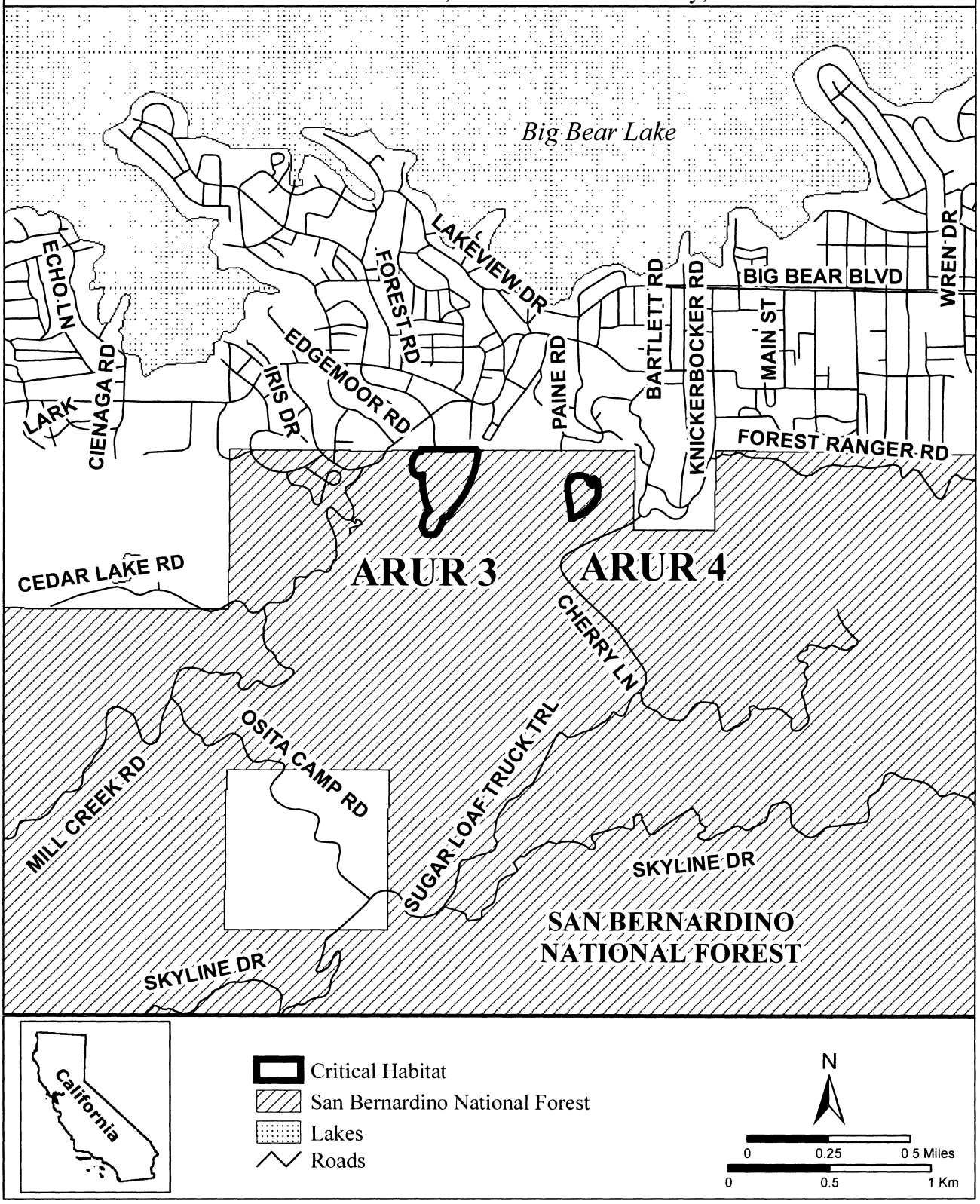
(i) Unit ARUR 3. Land bounded by the following UTM NAD27 coordinates (E,N): 506933, 3788172; 506933, 3788172; 507055, 3788172; 507058, 3788169; 507058, 3788169; 507166, 3788172; 507208, 3788170; 507213, 3788165; 507215, 3788157; 507213, 3788134; 507205, 3788104; 507197, 3788062; 507176, 3788009; 507151, 3787955; 507123, 3787915; 507111, 3787897; 507087, 3787865; 507069, 3787840; 507045, 3787831; 507043, 3787831; 507040, 3787820; 507041, 3787818; 507036, 3787807; 507036, 3787807; 507036, 3787806; 507036, 3787806; 507025, 3787783; 507009, 3787755; 507006, 3787754; 507000, 3787747; 506974, 3787747; 506974, 3787747; 506973, 3787747; 506968, 3787747; 506967, 3787748; 506954, 3787751; 506938, 3787779; 506942, 3787811; 506954, 3787842; 506966, 3787866; 506974, 3787869; 506956, 3787901; 506949, 3787935; 506941, 3787974; 506938, 3788020; 506941, 3788043; 506939, 3788042; 506926, 3788042; 506907, 3788042; 506901, 3788049; 506892, 3788058; 506885, 3788071; 506885, 3788093; 506888, 3788115; 506895, 3788135; 506911, 3788153; 506933, 3788160; 506933, 3788172.

(ii) Unit ARUR 4. Land bounded by the following UTM NAD27 coordinates (E,N): 507777, 3788001; 507780, 3787993; 507783, 3788009; 507791, 3788029; 507801, 3788015; 507806, 3788013; 507806, 3788005; 507811, 3787989; 507811, 3787973; 507811, 3787949; 507810, 3787946; 507810, 3787941; 507807, 3787932; 507806, 3787930; 507804, 3787929; 507803, 3787925; 507802, 3787925; 507790, 3787909; 507764, 3787877; 507732, 3787851; 507704, 3787839; 507688, 3787829; 507686, 3787828; 507682, 3787826; 507682, 3787827; 507678, 3787826; 507674, 3787876; 507666, 3787929; 507659, 3787975; 507659, 3788001; 507669, 3788023; 507682, 3788035; 507707, 3788042; 507729, 3788042; 507752, 3788036; 507767, 3788013; 507769, 3788006; 507777, 3788001.

(iii) Note: Map of Units ARUR 3 and ARUR 4 (Map 3) follows:

BILLING CODE 4310–55–P

Map 3
Critical Habitat for *Arenaria ursina* (Bear Valley sandwort)
Units ARUR 3 and ARUR 4, San Bernardino County, California



BILLING CODE 4310–55–C

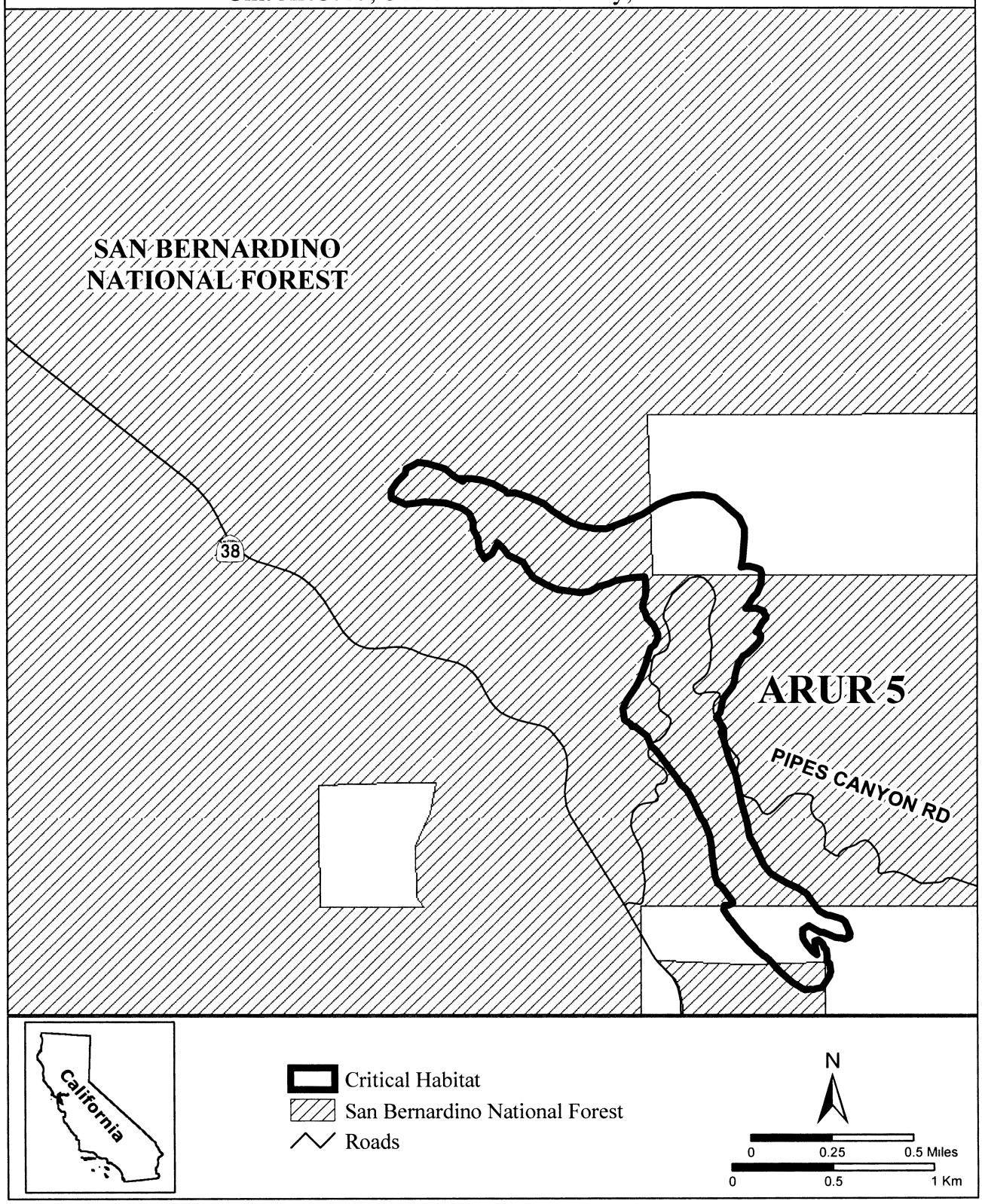
(8) Unit ARUR 5. Broom Flat, San Bernardino County, California.

(i) From USGS 1:24,000 quadrangle map Onyx Peak. Land bounded by the following UTM NAD27 coordinates (E,N): 525111, 3785431; 525155, 3785406; 525142, 3785419; 525199, 3785419; 525250, 3785412; 525307, 3785393; 525365, 3785362; 525378, 3785345; 525421, 3785349; 525497, 3785323; 525558, 3785296; 525600, 3785262; 525661, 3785220; 525706, 3785197; 525744, 3785182; 525813, 3785170; 525870, 3785170; 525950, 3785201; 526053, 3785243; 526125, 3785292; 526198, 3785323; 526247, 3785330; 526297, 3785338; 526358, 3785338; 526411, 3785327; 526457, 3785292; 526491, 3785262; 526529, 3785227; 526556, 3785170; 526556, 3785132; 526552, 3785079; 526548, 3785022; 526540, 3784978; 526562, 3784983; 526585, 3784983; 526610, 3784977; 526632, 3784967; 526642, 3784945; 526639, 3784907; 526632, 3784885; 526616, 3784847; 526604, 3784834; 526588, 3784815; 526575, 3784789; 526562, 3784774; 526617, 3784774; 526651, 3784759; 526651, 3784751; 526662, 3784735; 526662, 3784724; 526642, 3784701; 526625, 3784671; 526614, 3784655; 526626, 3784653; 526636, 3784634; 526632, 3784615; 526616, 3784593; 526604, 3784577; 526594, 3784567; 526582, 3784558; 526575, 3784548; 526562, 3784542; 526550, 3784535; 526547, 3784534; 526522, 3784488; 526509, 3784440; 526506, 3784412; 526495, 3784379; 526459, 3784332; 526457, 3784330; 526449, 3784321; 526434, 3784252; 526415, 3784229; 526418, 3784219; 526423, 3784219; 526430, 3784207; 526436, 3784191; 526442, 3784178; 526445, 3784162; 526439, 3784151; 526445, 3784130; 526476, 3784019; 526510, 3783943; 526522, 3783890; 526541, 3783795; 526567, 3783692; 526579, 3783627; 526606, 3783581; 526647, 3783490; 526680, 3783446; 526713, 3783425; 526764, 3783396; 526818, 3783371; 526861, 3783342; 526873, 3783324; 526876, 3783323; 526878, 3783320; 526913, 3783270; 526922, 3783257; 526963, 3783235; 526981, 3783233; 527032, 3783219; 527050, 3783204; 527064, 3783175; 527075, 3783143; 527071, 3783137; 527074, 3783128; 527051, 3783117; 527037, 3783121; 527006, 3783124; 526970, 3783139; 526945, 3783150; 526930, 3783150; 526898, 3783168; 526872, 3783183; 526869, 3783183; 526840, 3783163; 526840, 3783139; 526843, 3783117; 526861, 3783088; 526890, 3783052; 526911, 3783037; 526907, 3783059; 526904, 3783081; 526901, 3783107; 526917, 3783113; 526926, 3783107; 526939, 3783094; 526946, 3783072; 526955, 3783069; 526958, 3783062; 526961, 3783031; 526961, 3783008; 526960, 3783003; 526974, 3782994; 526978, 3782969; 526979, 3782968; 526979, 3782967; 526981, 3782954; 526976, 3782944; 526975, 3782934; 526937, 3782873; 526904, 3782868; 526894, 3782863; 526880, 3782865; 526853, 3782861; 526788, 3782899; 526724, 3782957; 526678, 3783010; 526653, 3783029; 526644, 3783034; 526634, 3783043; 526613, 3783059; 526600, 3783077; 526571, 3783103; 526524, 3783161; 526489, 3783206; 526476, 3783219; 526473, 3783226; 526448, 3783262; 526452, 3783284; 526470, 3783284; 526495, 3783297; 526493, 3783306; 526477, 3783327; 526441, 3783378; 526419, 3783393; 526408, 3783425; 526401, 3783469; 526394, 3783531; 526390, 3783585; 526381, 3783631; 526351, 3783704; 526339, 3783719; 526299, 3783803; 526269, 3783859; 526263, 3783867; 526261, 3783869; 526234, 3783893; 526221, 3783921; 526209, 3783936; 526113, 3784063; 526089, 3784082; 526072, 3784131; 526026, 3784168; 526012, 3784180; 525995, 3784180; 525987, 3784194; 525958, 3784212; 525951, 3784270; 525969, 3784310; 526016, 3784379; 526029, 3784402; 526038, 3784423; 526068, 3784501; 526071, 3784513; 526089, 3784575; 526109, 3784589; 526125, 3784624; 526125, 3784644; 526103, 3784691; 526089, 3784702; 526083, 3784713; 526072, 3784721; 526062, 3784751; 526049, 3784775; 526052, 3784781; 526049, 3784789; 526065, 3784836; 526067, 3784883; 526064, 3784909; 526060, 3784931; 525995, 3784927; 525944, 3784916; 525912, 3784910; 525882, 3784896; 525828, 3784881; 525786, 3784858; 525737, 3784850; 525710, 3784854; 525630, 3784865; 525573, 3784888; 525508, 3784927; 525478, 3784965; 525455, 3785003; 525382, 3785037; 525360, 3785067; 525328, 3785099; 525326, 3785095; 525301, 3785044; 525263, 3785019; 525238, 3785063; 525231, 3785120; 525206, 3785165; 525206, 3785203; 525187, 3785247; 525149, 3785273; 525072, 3785298; 524965, 3785304; 524926, 3785298; 524869, 3785292; 524799, 3785323; 524799, 3785362; 524831, 3785406; 524869, 3785444; 524876, 3785470; 524914, 3785489; 524933, 3785501; 524984, 3785495; 525022, 3785482; 525066, 3785470; 525111, 3785431.

(ii) Note: Map of Unit ARUR 5 (Map 4) follows:

BILLING CODE 4310–55–P

Map 4
Critical Habitat for *Arenaria ursina* (Bear Valley sandwort)
Unit ARUR 5, San Bernardino County, California



BILLING CODE 4310–55–C

(9) Unit ARUR 6 and ARUR 7. Fawnskin, San Bernardino County, California. From USGS 1:24,000 quadrangle map Fawnskin.

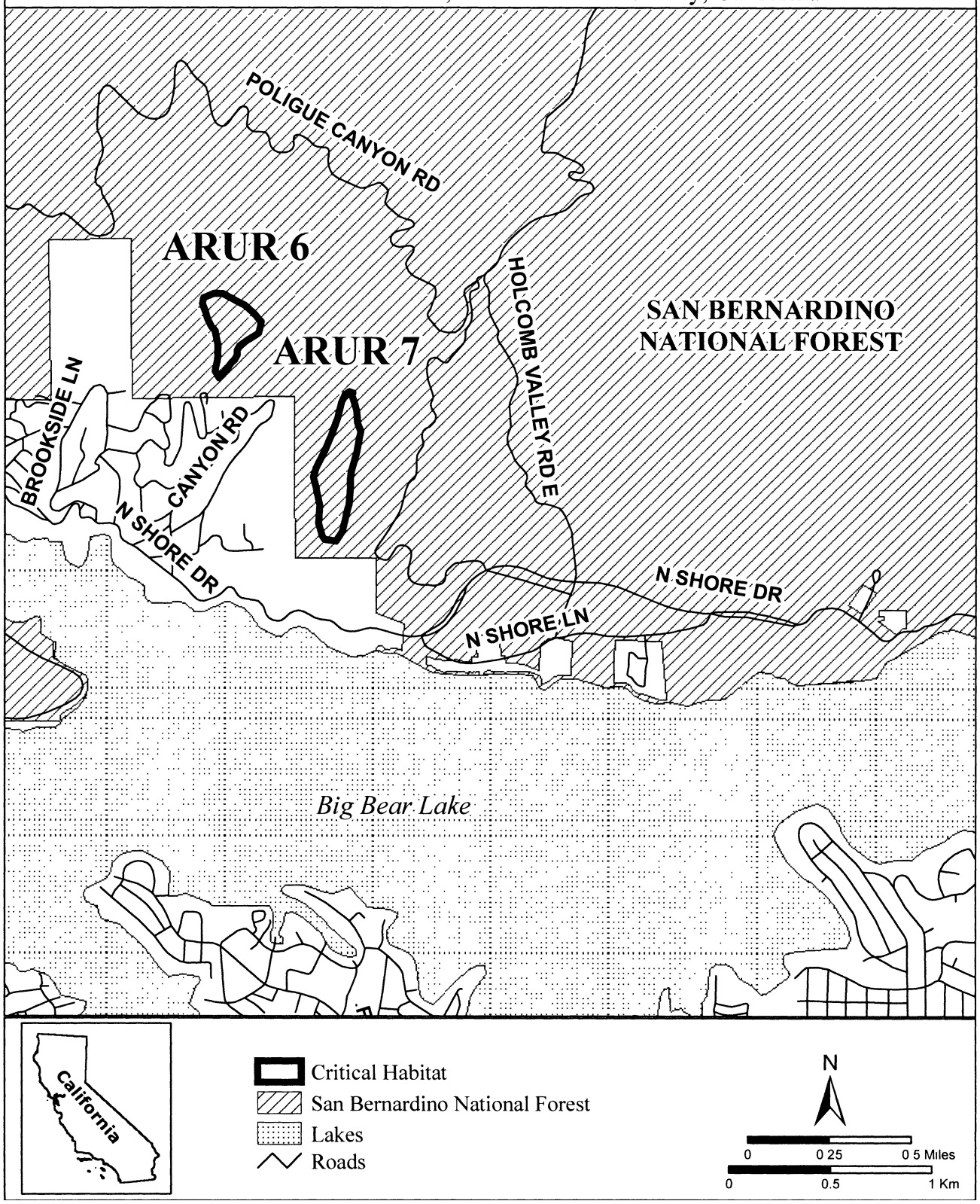
(i) Unit ARUR 6. Land bounded by the following UTM NAD27 coordinates (E,N): 506020, 3792309; 506020, 3792303; 506001, 3792335; 506014, 3792404; 506014, 3792468; 506001, 3792538; 505982, 3792557; 505963, 3792595; 505950, 3792639; 505937, 3792671; 505944, 3792703; 505994, 3792722; 506039, 3792722; 506109, 3792684; 506147, 3792665; 506191, 3792627; 506229, 3792582; 506217, 3792525; 506166, 3792493; 506121, 3792462; 506109, 3792442; 506109, 3792417; 506096, 3792392; 506077, 3792373; 506052, 3792335; 506020, 3792309.

(ii) Unit ARUR 7. Land bounded by the following UTM NAD27 coordinates (E,N): 506636, 3791541; 506604, 3791490; 506547, 3791496; 506534, 3791515; 506515, 3791579; 506522, 3791661; 506502, 3791757; 506490, 3791807; 506502, 3791852; 506547, 3791941; 506579, 3792017; 506610, 3792100; 506629, 3792182; 506649, 3792220; 506668, 3792233; 506687, 3792227; 506680, 3792214; 506693, 3792182; 506706, 3792138; 506712, 3792074; 506725, 3792036; 506706, 3791928; 506680, 3791846; 506674, 3791801; 506674, 3791744; 506668, 3791674; 506655, 3791623; 506636, 3791541.

(iii) Note: Map of Unit ARUR 6 and ARUR 7 (Map 5) follows:

BILLING CODE 4310–55–P

Map 5
Critical Habitat for *Arenaria ursina* (Bear Valley sandwort)
Units ARUR 6 and ARUR 7, San Bernardino County, California



BILLING CODE 4310–55–C

(10) Units ARUR 8, ARUR 9, and ARUR 12. Gold Mountain and North Baldwin Lake, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear City.

(i) Unit ARUR 8. Land bounded by the following UTM NAD27 coordinates (E,N): 516297, 3793523; 516342, 3793514; 516374, 3793491; 516405, 3793447; 516412, 3793390; 516424, 3793352; 516421, 3793333; 516437, 3793335; 516450, 3793331; 516463, 3793309; 516466, 3793281; 516465, 3793279; 516475, 3793268; 516469, 3793227; 516447, 3793207; 516421, 3793189; 516380, 3793166; 516345, 3793154; 516311, 3793139; 516272, 3793103; 516244, 3793081; 516215, 3793077; 516187, 3793090; 516206, 3793135; 516202, 3793144; 516207, 3793149; 516196, 3793141; 516172, 3793137; 516163, 3793137; 516157, 3793137; 516154, 3793135; 516147, 3793133; 516132, 3793125; 516128, 3793123; 516109, 3793112; 516096, 3793112; 516095, 3793112; 516081, 3793111; 516065, 3793105; 516045, 3793109; 516017, 3793126; 516016, 3793127; 516006, 3793132; 516003, 3793145; 515998, 3793153; 515995, 3793166; 515988, 3793165; 515980, 3793163; 515971, 3793161; 515961, 3793161; 515956, 3793162; 515943, 3793162; 515926, 3793178; 515919, 3793180; 515912, 3793182; 515905, 3793188; 515899, 3793193; 515893, 3793198; 515884, 3793209; 515881, 3793219; 515879, 3793220; 515793, 3793243; 515732, 3793233; 515685, 3793220; 515647, 3793211; 515577, 3793211; 515536, 3793230; 515507, 3793261; 515501, 3793303; 515501, 3793335; 515542, 3793357; 515586, 3793360; 515625, 3793357; 515666, 3793341; 515707, 3793335; 515761, 3793338; 515809, 3793354; 515828, 3793376; 515851, 3793399; 515851, 3793403; 515848, 3793408; 515845, 3793414; 515844, 3793417; 515842, 3793424; 515842, 3793431; 515843, 3793438; 515839, 3793448; 515845, 3793446; 515849, 3793444; 515856, 3793439; 515860, 3793433; 515872, 3793430; 515873, 3793429; 515879, 3793443; 515901, 3793468; 515904, 3793468; 515910, 3793468; 515917, 3793461; 515921, 3793461; 515935, 3793473; 515980, 3793495; 516015, 3793501; 516082, 3793514; 516132, 3793514; 516212, 3793520; 516262, 3793527; 516297, 3793523.

(ii) Unit ARUR 9. Land bounded by the following UTM NAD27 coordinates (E,N): 516768, 3792969; 516744, 3792965; 516720, 3792965; 516705, 3792961; 516685, 3792953; 516673, 3792949; 516652, 3792935; 516645, 3792926; 516642, 3792923; 516641, 3792918; 516633, 3792898; 516633, 3792891; 516633, 3792891; 516623, 3792868; 516621, 3792864; 516585, 3792863; 516581, 3792865; 516578, 3792862; 516562, 3792870; 516560, 3792871; 516556, 3792871; 516545, 3792873; 516540, 3792875; 516521, 3792875; 516510, 3792864; 516502, 3792855; 516496, 3792848; 516490, 3792840; 516477, 3792833; 516463, 3792824; 516461, 3792822; 516450, 3792804; 516447, 3792800; 516438, 3792788; 516423, 3792784; 516410, 3792780; 516377, 3792769; 516375, 3792768; 516364, 3792763; 516319, 3792740; 516318, 3792740; 516311, 3792737; 516304, 3792731; 516298, 3792731; 516283, 3792725; 516279, 3792728; 516271, 3792727; 516229, 3792731; 516176, 3792758; 516157, 3792773; 516130, 3792803; 516127, 3792815; 516119, 3792849; 516138, 3792891; 516157, 3792925; 516180, 3792952; 516203, 3792979; 516233, 3793009; 516268, 3793036; 516274, 3793041; 516275, 3793055; 516282, 3793087; 516298, 3793112; 516329, 3793125; 516364, 3793131; 516453, 3793154; 516520, 3793160; 516590, 3793166; 516610, 3793155; 516641, 3793150; 516668, 3793139; 516694, 3793116; 516717, 3793093; 516732, 3793074; 516748, 3793055; 516759, 3793039; 516770, 3793024; 516772, 3793012; 516775, 3793010; 516778, 3793004; 516778, 3793004; 516780, 3793001; 516784, 3792993; 516783, 3792989; 516783, 3792987; 516783, 3792987; 516783, 3792987; 516782, 3792985; 516780, 3792983; 516780, 3792981; 516777, 3792979; 516777, 3792978; 516775, 3792975; 516773, 3792971; 516772, 3792971; 516772, 3792971; 516771, 3792971; 516769, 3792970; 516768, 3792969.

(iii) Unit ARUR 12. Land bounded by the following UTM NAD27 coordinates (E,N): 516160, 3795525; 516163, 3795551; 516182, 3795563; 516194, 3795563; 516198, 3795566; 516240, 3795559; 516278, 3795551; 516308, 3795555; 516331, 3795578; 516396, 3795605; 516406, 3795603; 516415, 3795605; 516453, 3795601; 516491, 3795578; 516491, 3795574; 516491, 3795551; 516472, 3795525; 516466, 3795501; 516465, 3795486; 516468, 3795452; 516480, 3795422; 516486, 3795415; 516518, 3795399; 516552, 3795379; 516598, 3795380; 516649, 3795388; 516655, 3795391; 516654, 3795425; 516658, 3795442; 516685, 3795452; 516698, 3795449; 516708, 3795431; 516716, 3795406; 516765, 3795429; 516807, 3795448; 516810, 3795448; 516834, 3795456; 516857, 3795452; 516906, 3795429; 516933, 3795410; 516960, 3795383; 516971, 3795361; 516986, 3795334; 517009, 3795299; 517032, 3795262; 517063, 3795223; 517097, 3795181; 517110, 3795163; 517131, 3795140; 517165, 3795101; 517184, 3795090; 517207, 3795083; 517211, 3795082; 517269, 3795104; 517278, 3795133; 517272, 3795170; 517264, 3795193; 517230, 3795239; 517196, 3795288; 517154, 3795349; 517150, 3795370; 517146, 3795376; 517139, 3795399; 517141, 3795414; 517139, 3795425; 517146, 3795448; 517154, 3795471; 517211, 3795517; 517245, 3795521; 517314, 3795517; 517360, 3795509; 517381, 3795485; 517386, 3795479; 517388, 3795476; 517402, 3795460; 517413, 3795433; 517440, 3795387; 517460, 3795371; 517489, 3795353; 517506, 3795341; 517520, 3795334; 517584, 3795315; 517611, 3795292; 517653, 3795261; 517672, 3795219; 517699, 3795159; 517718, 3795115; 517749, 3795078; 517759, 3795070; 517786, 3795052; 517809, 3795029; 517840, 3794999; 517841, 3794997; 517851, 3794987; 517882, 3794923; 517908, 3794881; 517917, 3794871; 517939, 3794854; 517981, 3794819; 518023, 3794812; 518038, 3794812; 518095, 3794819; 518152, 3794816; 518155, 3794815; 518171, 3794816; 518202, 3794804; 518251, 3794778; 518339, 3794755; 518411, 3794732; 518461, 3794724; 518461, 3794713; 518457, 3794698; 518442, 3794683; 518439, 3794680; 518438, 3794679; 518415, 3794652; 518458, 3794642; 518462, 3794598; 518443, 3794587; 518438, 3794583; 518413, 3794573; 518371, 3794577; 518322, 3794586; 518279, 3794597; 518246, 3794608; 518230, 3794614; 518206, 3794614; 518133, 3794617; 518117, 3794619; 518097, 3794610; 518097, 3794615; 518097, 3794618; 518098, 3794621; 518069, 3794625; 518061, 3794625; 518045, 3794627; 518046, 3794602; 518045, 3794602; 518039, 3794605; 518034, 3794609; 518019, 3794610; 518017, 3794611; 518019, 3794605; 518019, 3794589; 518012, 3794567; 517993, 3794554; 517968, 3794567; 517946, 3794573; 517936, 3794560; 517920, 3794548; 517914, 3794549; 517917, 3794545; 517924, 3794535; 517931, 3794526; 517939, 3794516; 517948, 3794503; 517954, 3794493; 517959, 3794482; 517964, 3794473; 517964, 3794468; 517959, 3794461; 517950, 3794456; 517934, 3794458; 517923, 3794462; 517905, 3794469; 517892, 3794475; 517882, 3794478; 517869, 3794480; 517852, 3794480; 517859, 3794462; 517866, 3794439; 517889, 3794413; 517927, 3794397; 517988, 3794404; 518030, 3794416; 518087, 3794439; 518110, 3794450; 518141, 3794473; 518187, 3794489; 518187,

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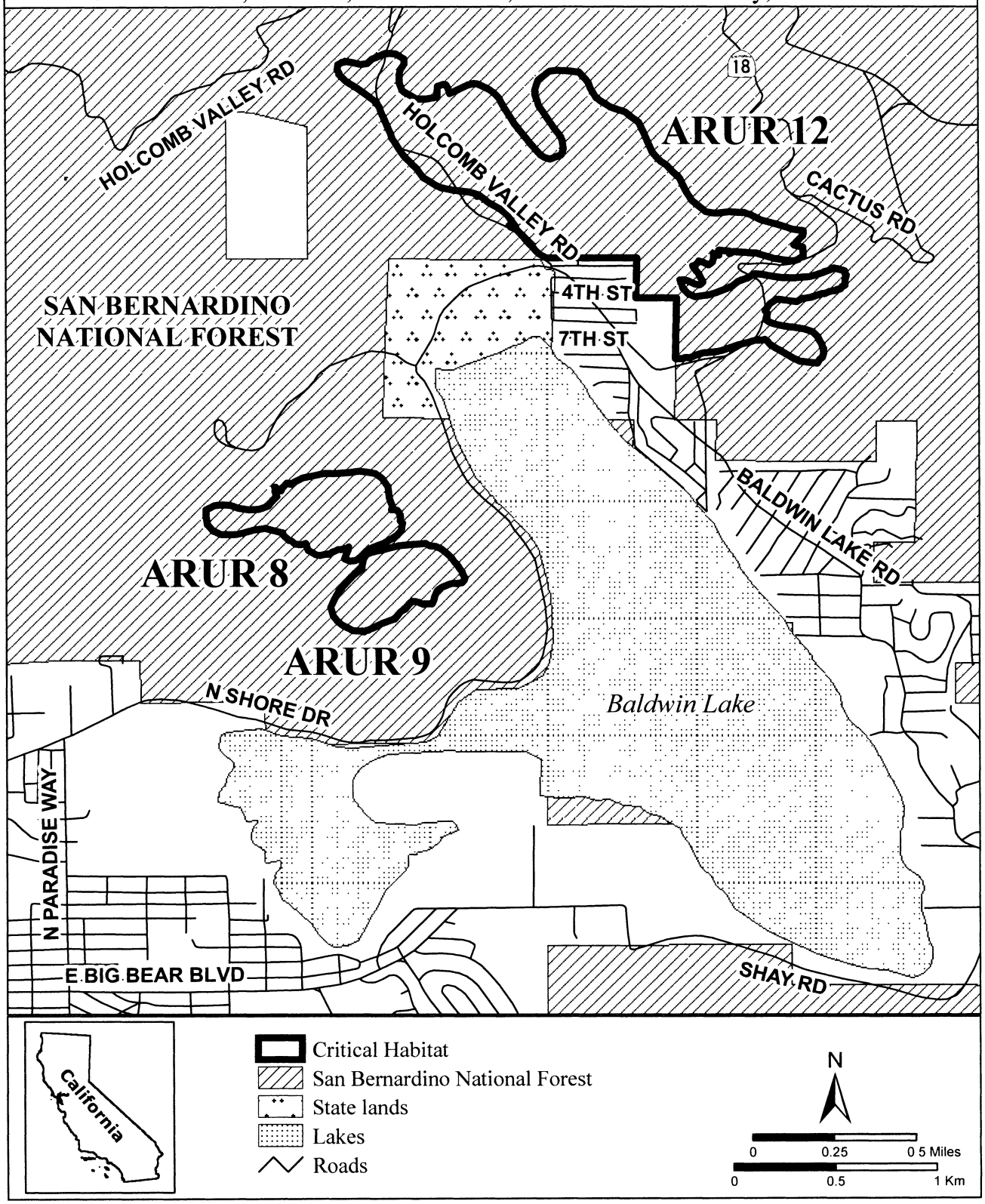
(iv) Note: Map of Unit ARUR 8, ARUR 9, and ARUR 12 (Map 6) follows:

BILLING CODE 4310–55–P

Map 6
Critical Habitat for *Arenaria ursina* (Bear Valley sandwort)
Units ARUR 8, ARUR 9, and ARUR 12, San Bernardino County, California



BILLING CODE 4310–55–C

(11) Units ARUR 10 and ARUR 11. Holcomb Valley, San Bernardino County, California. From USGS 1:24,000 quadrangle map Fawnskin.

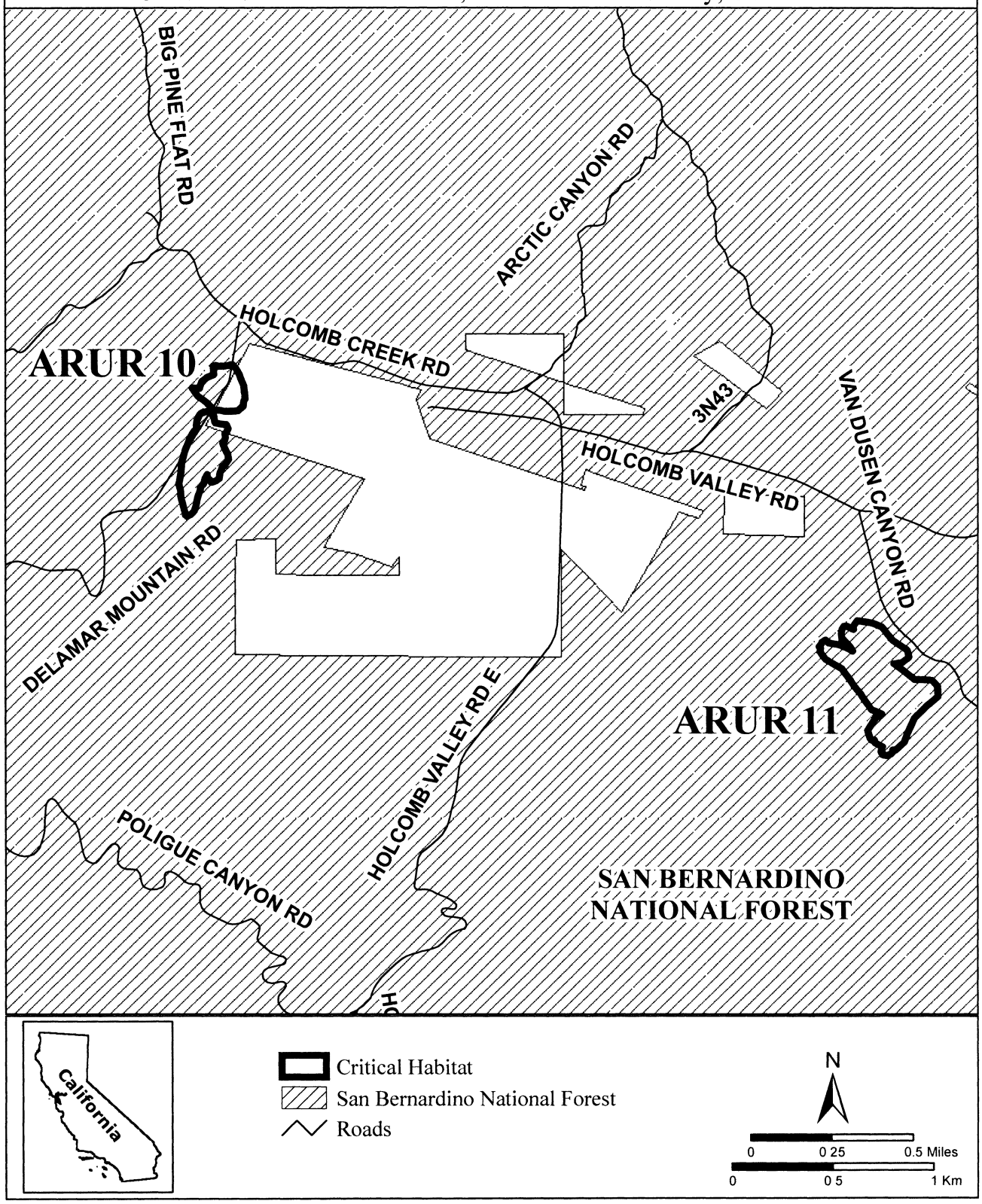
(i) Unit ARUR 10. Land bounded by the following UTM NAD27 coordinates (E,N): 506727, 3796049; 506738, 3796035; 506743, 3796031; 506761, 3796001; 506765, 3795985; 506767, 3795981; 506783, 3795942; 506785, 3795915; 506787, 3795910; 506790, 3795878; 506784, 3795872; 506782, 3795867; 506779, 3795843; 506773, 3795840; 506772, 3795835; 506767, 3795833; 506752, 3795821; 506730, 3795818; 506689, 3795818; 506663, 3795823; 506634, 3795825; 506624, 3795837; 506612, 3795847; 506606, 3795854; 506597, 3795862; 506571, 3795881; 506571, 3795883; 506557, 3795893; 506544, 3795910; 506529, 3795930; 506530, 3795930; 506528, 3795934; 506565, 3795933; 506565, 3795935; 506574, 3795964; 506600, 3795986; 506635, 3796001; 506633, 3796023; 506631, 3796041; 506632, 3796041; 506644, 3796045; 506663, 3796042; 506681, 3796042; 506707, 3796045; 506715, 3796049; 506727, 3796049. Land bounded by the following UTM NAD27 coordinates (E,N): 506666, 3795511; 506661, 3795481; 506647, 3795471; 506625, 3795463; 506622, 3795462; 506612, 3795476; 506604, 3795484; 506602, 3795500; 506591, 3795480; 506584, 3795455; 506569, 3795435; 506569, 3795428; 506562, 3795409; 506556, 3795389; 506547, 3795351; 506537, 3795317; 506532, 3795310; 506524, 3795303; 506512, 3795298; 506504, 3795291; 506495, 3795298; 506492, 3795307; 506487, 3795328; 506483, 3795347; 506477, 3795372; 506472, 3795393; 506470, 3795416; 506466, 3795433; 506463, 3795457; 506468, 3795488; 506472, 3795510; 506474, 3795533; 506477, 3795567; 506485, 3795593; 506494, 3795624; 506507, 3795657; 506517, 3795687; 506534, 3795715; 506555, 3795736; 506549, 3795747; 506552, 3795771; 506564, 3795799; 506572, 3795807; 506600, 3795819; 506616, 3795811; 506617, 3795807; 506620, 3795805; 506635, 3795794; 506639, 3795763; 506641, 3795759; 506670, 3795753; 506695, 3795750; 506705, 3795731; 506695, 3795712; 506690, 3795703; 506692, 3795687; 506687, 3795672; 506679, 3795655; 506689, 3795626; 506705, 3795598; 506708, 3795575; 506689, 3795550; 506677, 3795540; 506676, 3795537; 506666, 3795511.

(ii) Unit ARUR 11. Land bounded by the following UTM NAD27 coordinates (E,N): 509943, 3794740; 509997, 3794674; 510070, 3794623; 510076, 3794591; 510073, 3794585; 510044, 3794562; 510003, 3794556; 510054, 3794518; 510105, 3794477; 510124, 3794477; 510194, 3794473; 510219, 3794442; 510222, 3794391; 510168, 3794347; 510105, 3794283; 510067, 3794201; 510054, 3794162; 510013, 3794124; 509999, 3794124; 509999, 3794118; 509996, 3794110; 509991, 3794106; 509987, 3794102; 509981, 3794099; 509975, 3794097; 509968, 3794095; 509961, 3794096; 509955, 3794096; 509950, 3794098; 509946, 3794101; 509940, 3794109; 509940, 3794115; 509940, 3794122; 509943, 3794131; 509947, 3794139; 509911, 3794159; 509908, 3794173; 509894, 3794173; 509886, 3794181; 509874, 3794221; 509894, 3794256; 509914, 3794284; 509943, 3794302; 509943, 3794305; 509893, 3794327; 509858, 3794375; 509839, 3794404; 509807, 3794445; 509782, 3794480; 509747, 3794531; 509668, 3794579; 509639, 3794617; 509643, 3794633; 509635, 3794642; 509648, 3794660; 509649, 3794664; 509664, 3794674; 509668, 3794674; 509674, 3794667; 509680, 3794664; 509682, 3794659; 509737, 3794651; 509797, 3794623; 509800, 3794620; 509787, 3794641; 509771, 3794660; 509747, 3794684; 509743, 3794708; 509747, 3794731; 509755, 3794743; 509775, 3794743; 509791, 3794735; 509806, 3794729; 509803, 3794743; 509822, 3794772; 509902, 3794759; 509943, 3794740.

(iii) Note: Units ARUR 10 and ARUR 11 (Map 7) follows:

BILLING CODE 4310–55–P

Map 7
Critical Habitat for *Arenaria ursina* (Bear Valley sandwort)
Units ARUR 10 and ARUR 11, San Bernardino County, California



BILLING CODE 4310–55–C

(12) Units ARUR 13 and ARUR 14. Sawmill, San Bernardino County, California. From USGS 1:24,000 quadrangle maps Big Bear City and Moonridge.

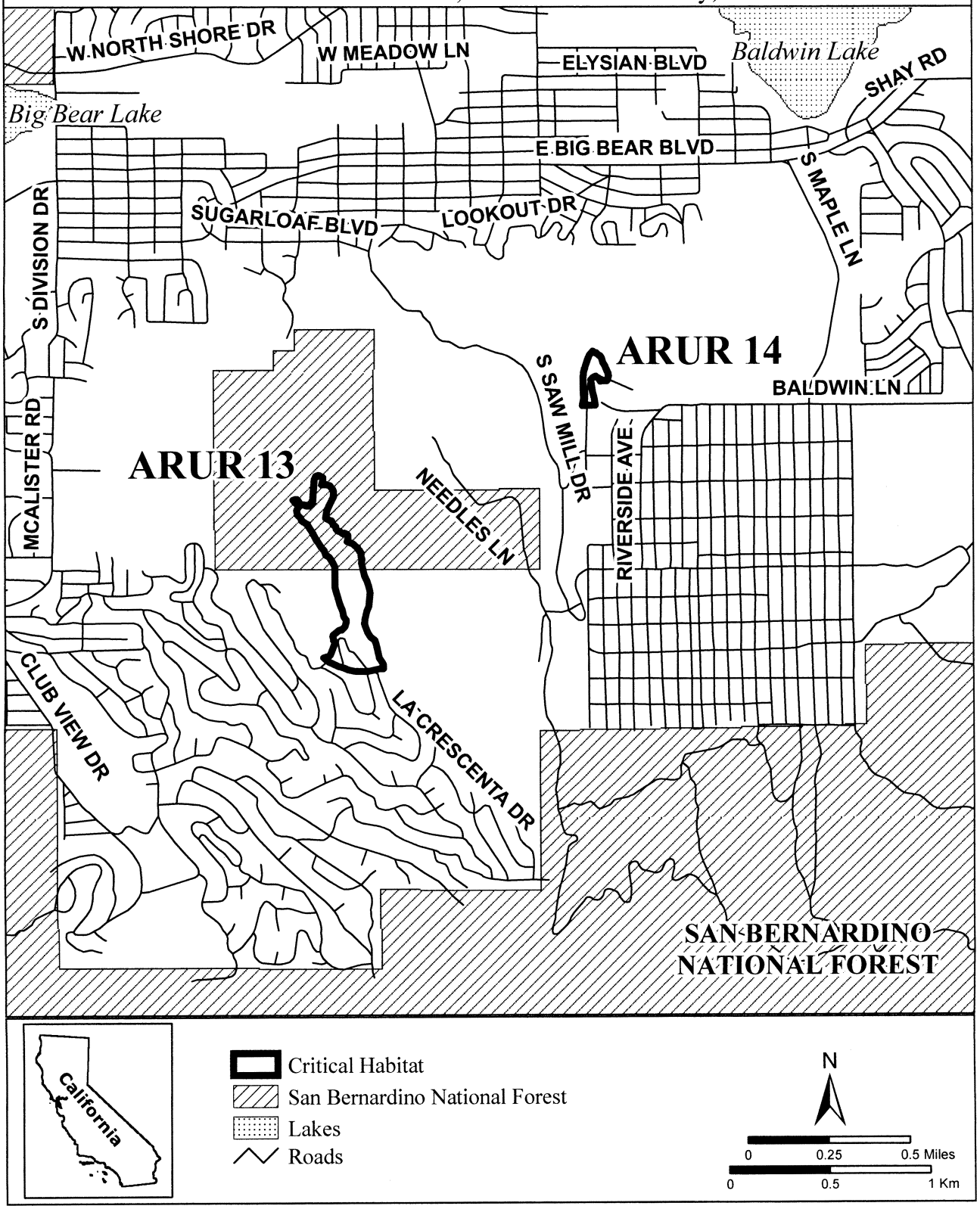
(i) Unit ARUR 13. Land bounded by the following UTM NAD27 coordinates (E,N): 514010, 3788419; 513955, 3788406; 513936, 3788404; 513891, 3788404; 513855, 3788412; 513831, 3788423; 513803, 3788431; 513777, 3788444; 513756, 3788453; 513744, 3788464; 513731, 3788473; 513761, 3788481; 513764, 3788488; 513768, 3788499; 513787, 3788551; 513781, 3788561; 513779, 3788566; 513777, 3788572; 513775, 3788579; 513777, 3788585; 513784, 3788591; 513809, 3788609; 513815, 3788611; 513820, 3788612; 513823, 3788612; 513837, 3788627; 513843, 3788649; 513843, 3788659; 513842, 3788660; 513830, 3788680; 513826, 3788709; 513821, 3788716; 513811, 3788742; 513789, 3788818; 513789, 3788865; 513789, 3788897; 513789, 3788923; 513776, 3788948; 513761, 3788973; 513742, 3788986; 513735, 3789005; 513719, 3789024; 513703, 3789050; 513697, 3789059; 513691, 3789069; 513678, 3789094; 513665, 3789113; 513653, 3789135; 513652, 3789137; 513648, 3789140; 513624, 3789156; 513620, 3789168; 513604, 3789184; 513600, 3789208; 513606, 3789220; 513606, 3789228; 513608, 3789229; 513581, 3789259; 513591, 3789262; 513601, 3789262; 513605, 3789257; 513608, 3789253; 513611, 3789247; 513621, 3789233; 513636, 3789235; 513645, 3789230; 513648, 3789234; 513652, 3789230; 513658, 3789229; 513662, 3789230; 513670, 3789236; 513674, 3789239; 513679, 3789244; 513686, 3789364; 513695, 3789377; 513704, 3789381; 513715, 3789379; 513719, 3789377; 513728, 3789372; 513730, 3789357; 513724, 3789335; 513743, 3789335; 513747, 3789335; 513763, 3789331; 513766, 3789326; 513772, 3789321; 513778, 3789313; 513781, 3789306; 513783, 3789303; 513783, 3789275; 513778, 3789268; 513778, 3789266; 513776, 3789263; 513753, 3789217; 513753, 3789214; 513750, 3789205; 513748, 3789194; 513745, 3789182; 513744, 3789171; 513744, 3789168; 513759, 3789161; 513765, 3789157; 513772, 3789154; 513780, 3789137; 513792, 3789126; 513793, 3789113; 513798, 3789111; 513804, 3789105; 513812, 3789102; 513826, 3789091; 513836, 3789093; 513846, 3789090; 513853, 3789083; 513854, 3789059; 513850, 3789053; 513878, 3789041; 513902, 3789017; 513905, 3789013; 513906, 3789010; 513913, 3789005; 513913, 3789001; 513918, 3788993; 513918, 3788973; 513923, 3788961; 513919, 3788942; 513926, 3788919; 513935, 3788882; 513948, 3788850; 513957, 3788824; 513964, 3788796; 513957, 3788729; 513945, 3788701; 513938, 3788672; 513935, 3788640; 513948, 3788599; 513964, 3788577; 513986, 3788561; 513992, 3788542; 513999, 3788507; 514008, 3788472; 514021, 3788448; 514027, 3788437; 514027, 3788419.

(ii) Unit ARUR 14. Land bounded by the following UTM NAD27 coordinates (E,N): 515023, 3789730; 515031, 3789764; 515027, 3789815; 515027, 3789875; 515029, 3789884; 515029, 3789895; 515034, 3789907; 515034, 3789909; 515035, 3789912; 515037, 3789923; 515053, 3789964; 515054, 3789966; 515058, 3789977; 515063, 3789983; 515066, 3789986; 515069, 3789988; 515077, 3789997; 515092, 3789990; 515094, 3789989; 515104, 3789979; 515113, 3789974; 515120, 3789962; 515128, 3789941; 515137, 3789925; 515140, 3789915; 515142, 3789911; 515153, 3789887; 515153, 3789881; 515156, 3789875; 515148, 3789851; 515132, 3789851; 515116, 3789851; 515113, 3789850; 515104, 3789865; 515098, 3789869; 515091, 3789873; 515089, 3789873; 515077, 3789867; 515066, 3789856; 515069, 3789834; 515073, 3789814; 515077, 3789790; 515085, 3789759; 515088, 3789732.

(iii) Note: Units ARUR 13 and ARUR 14 (Map 8) follows:

BILLING CODE 4310–55–P

Map 8
Critical Habitat for *Arenaria ursina* (Bear Valley sandwort)
Units ARUR 13 and ARUR 14, San Bernardino County, California



BILLING CODE 4310–55–C

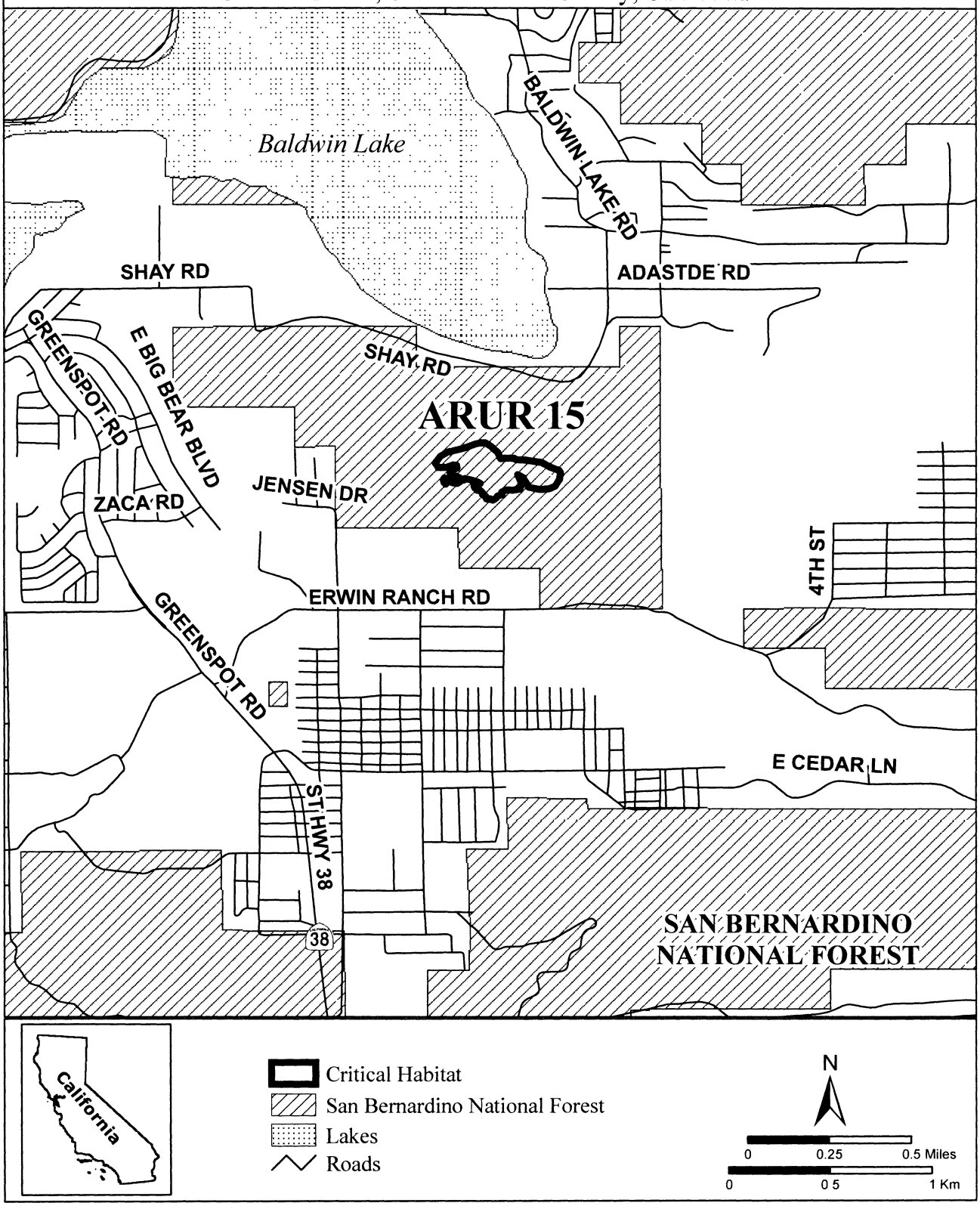
(13) Unit ARUR 15. South Baldwin Ridge/Erwin Lake, San Bernardino County, California.

(i) From USGS 1:24,000 quadrangle map Big Bear City. Land bounded by the following UTM NAD27 coordinates (E,N): 518798, 3790531; 518814, 3790499; 518836, 3790501; 518883, 3790501; 518891, 3790493; 518942, 3790490; 519022, 3790477; 519063, 3790455; 519104, 3790439; 519114, 3790429; 519108, 3790395; 519085, 3790359; 519057, 3790347; 519012, 3790344; 518955, 3790357; 518923, 3790404; 518900, 3790419; 518911, 3790389; 518923, 3790370; 518907, 3790346; 518876, 3790342; 518839, 3790342; 518822, 3790331; 518821, 3790331; 518820, 3790320; 518800, 3790313; 518797, 3790307; 518792, 3790302; 518776, 3790291; 518766, 3790295; 518764, 3790297; 518763, 3790296; 518744, 3790298; 518740, 3790308; 518737, 3790313; 518724, 3790318; 518725, 3790327; 518714, 3790333; 518716, 3790337; 518707, 3790343; 518699, 3790340; 518697, 3790342; 518695, 3790345; 518693, 3790346; 518691, 3790351; 518685, 3790353; 518683, 3790359; 518682, 3790364; 518683, 3790368; 518698, 3790377; 518704, 3790378; 518712, 3790375; 518707, 3790379; 518666, 3790392; 518637, 3790398; 518629, 3790391; 518618, 3790391; 518613, 3790387; 518613, 3790385; 518611, 3790382; 518605, 3790378; 518600, 3790374; 518591, 3790377; 518580, 3790376; 518568, 3790381; 518553, 3790380; 518545, 3790386; 518540, 3790382; 518541, 3790379; 518541, 3790375; 518542, 3790373; 518540, 3790371; 518538, 3790371; 518535, 3790374; 518533, 3790378; 518531, 3790382; 518530, 3790387; 518529, 3790392; 518530, 3790397; 518532, 3790400; 518536, 3790400; 518542, 3790399; 518550, 3790401; 518553, 3790401; 518563, 3790404; 518567, 3790405; 518568, 3790403; 518570, 3790401; 518574, 3790401; 518577, 3790399; 518583, 3790401; 518590, 3790403; 518596, 3790399; 518596, 3790397; 518597, 3790397; 518602, 3790395; 518604, 3790398; 518607, 3790400; 518609, 3790402; 518610, 3790404; 518602, 3790406; 518597, 3790409; 518586, 3790409; 518562, 3790429; 518582, 3790445; 518597, 3790453; 518595, 3790463; 518574, 3790467; 518561, 3790460; 518541, 3790453; 518503, 3790453; 518490, 3790477; 518517, 3790511; 518551, 3790531; 518632, 3790551; 518686, 3790571; 518720, 3790579; 518740, 3790579; 518764, 3790562; 518798, 3790531.

(ii) Note: Map of ARUR 15 (Map 9) follows:

BILLING CODE 4310–55–P

Map 9
Critical Habitat for *Arenaria ursina* (Bear Valley sandwort)
Unit ARUR 15, San Bernardino County, California



BILLING CODE 4310–55–C

(14) Units ARUR 16 and ARUR 17. Sugarloaf Ridge, San Bernardino County, California. From USGS 1:24,000 quadrangle map Moonridge.

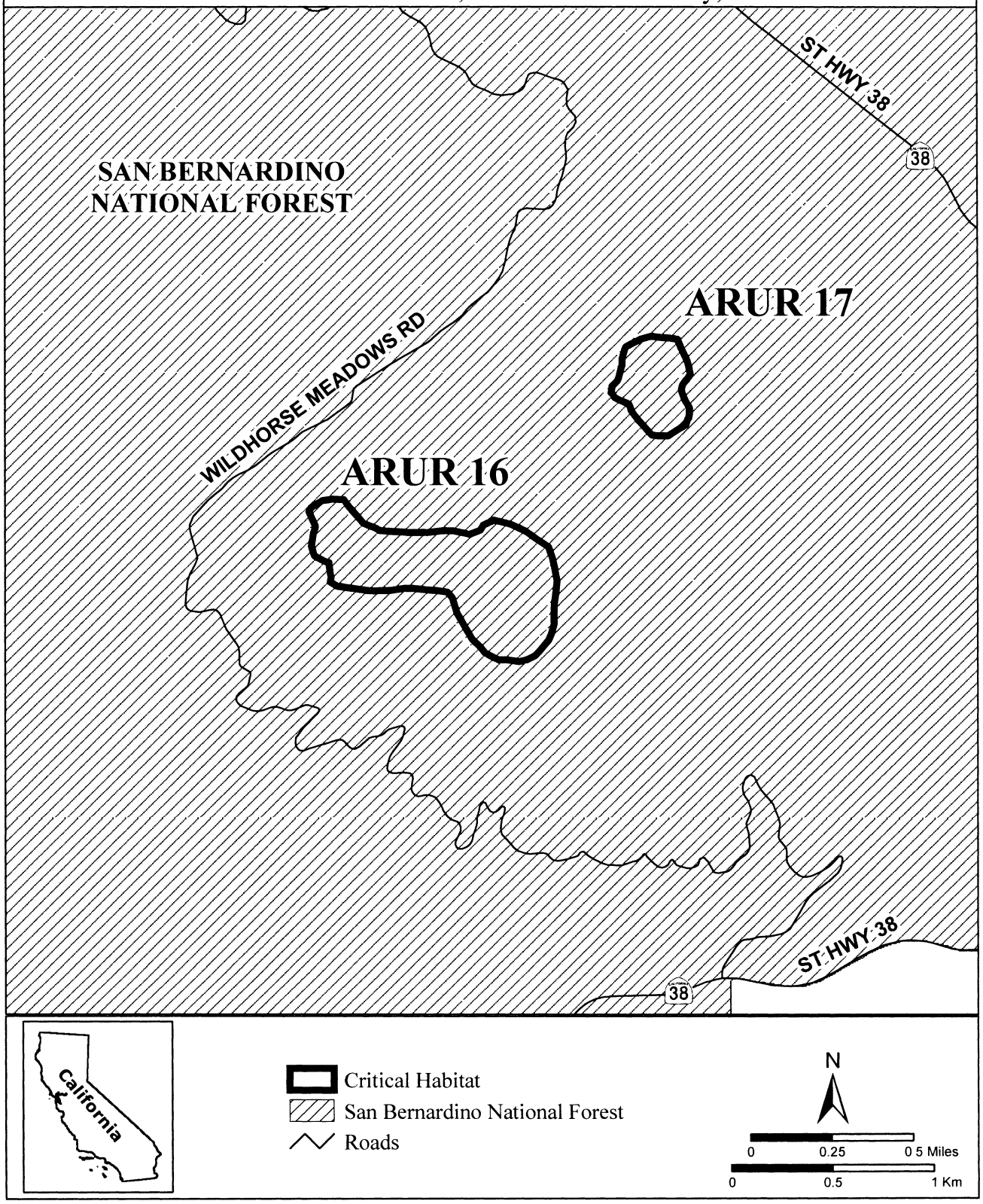
(i) Unit ARUR 16. Land bounded by the following UTM NAD27 coordinates (E,N): 521244, 3783525; 521340, 3783525; 521411, 3783533; 521470, 3783533; 521550, 3783517; 521601, 3783537; 521617, 3783561; 521669, 3783589; 521752, 3783569; 521824, 3783533; 521883, 3783493; 521939, 3783453; 521959, 3783406; 521971, 3783351; 521982, 3783287; 521975, 3783203; 521970, 3783181; 521967, 3783152; 521967, 3783101; 521967, 3783072; 521951, 3783015; 521939, 3782987; 521897, 3782936; 521875, 3782911; 521831, 3782891; 521793, 3782882; 521739, 3782888; 521694, 3782888; 521650, 3782911; 521624, 3782926; 521602, 3782955; 521561, 3782993; 521520, 3783066; 521485, 3783126; 521462, 3783203; 521440, 3783228; 521380, 3783237; 521323, 3783241; 521266, 3783247; 521228, 3783247; 521151, 3783237; 521075, 3783234; 521040, 3783237; 520939, 3783250; 520894, 3783257; 520859, 3783279; 520862, 3783301; 520856, 3783336; 520853, 3783371; 520852, 3783374; 520828, 3783382; 520780, 3783410; 520764, 3783453; 520776, 3783521; 520784, 3783549; 520784, 3783557; 520752, 3783628; 520764, 3783652; 520820, 3783684; 520867, 3783692; 520927, 3783688; 520955, 3783652; 520994, 3783605; 521022, 3783573; 521078, 3783549; 521109, 3783533; 521244, 3783525.

(ii) Unit ARUR 17. Land bounded by the following UTM NAD27 coordinates (E,N): 522459, 3784505; 522475, 3784502; 522490, 3784501; 522542, 3784497; 522570, 3784493; 522573, 3784489; 522582, 3784489; 522598, 3784448; 522601, 3784441; 522629, 3784382; 522640, 3784339; 522641, 3784335; 522641, 3784333; 522645, 3784318; 522637, 3784302; 522627, 3784289; 522625, 3784287; 522623, 3784285; 522621, 3784283; 522607, 3784265; 522602, 3784251; 522602, 3784227; 522613, 3784195; 522622, 3784177; 522637, 3784156; 522641, 3784144; 522640, 3784127; 522641, 3784116; 522638, 3784107; 522637, 3784097; 522633, 3784091; 522621, 3784064; 522586, 3784040; 522552, 3784021; 522534, 3784009; 522531, 3784009; 522530, 3784009; 522486, 3784009; 522455, 3784013; 522427, 3784044; 522387, 3784088; 522351, 3784135; 522347, 3784153; 522340, 3784168; 522292, 3784188; 522268, 3784200; 522258, 3784217; 522252, 3784223; 522256, 3784247; 522256, 3784255; 522280, 3784279; 522289, 3784297; 522292, 3784306; 522308, 3784366; 522308, 3784397; 522324, 3784449; 522327, 3784451; 522328, 3784454; 522339, 3784459; 522359, 3784473; 522403, 3784493; 522447, 3784505; 522455, 3784504; 522459, 3784505.

(iii) Note: Map of Units ARUR 16 and ARUR 17 (Map 10) follows:

BILLING CODE 4310–55–P

Map 10
Critical Habitat for *Arenaria ursina* (Bear Valley sandwort)
Units ARUR 16 and ARUR 17, San Bernardino County, California



BILLING CODE 4310–55–C

* * * * *

Family Orobanchaceae: *Castilleja cinerea* (Ash-Gray Indian Paintbrush)

(1) Critical habitat units for this species are found in San Bernardino County, California.

(2) The primary constituent elements of critical habitat for *Castilleja cinerea* are the habitat components that provide:

(i) Pebble plains in dry meadow-like openings, or non-pebble plain dry meadow margin areas, within upper montane coniferous forest, pinyon-juniper woodlands, or Great Basin sagebrush in the San Bernardino Mountains of San Bernardino County, California; at elevations between 5,900 to 9,800 ft (1,830 to 2,990 m) that provide space for individual and population growth, reproduction and dispersal;

(ii) Seasonally wet clay, or sandy clay soils, generally containing quartzite pebbles, subject to natural hydrological processes that include water hydrating the soil and freezing in winter and drying in summer causing lifting and churning of included pebbles, or seasonally wet silt or saline clay soils in non-pebble plain dry meadow margin areas that provide space for individual and population growth, reproduction and dispersal, adequate water, air, minerals, and other nutritional or physiological requirements to the species; and

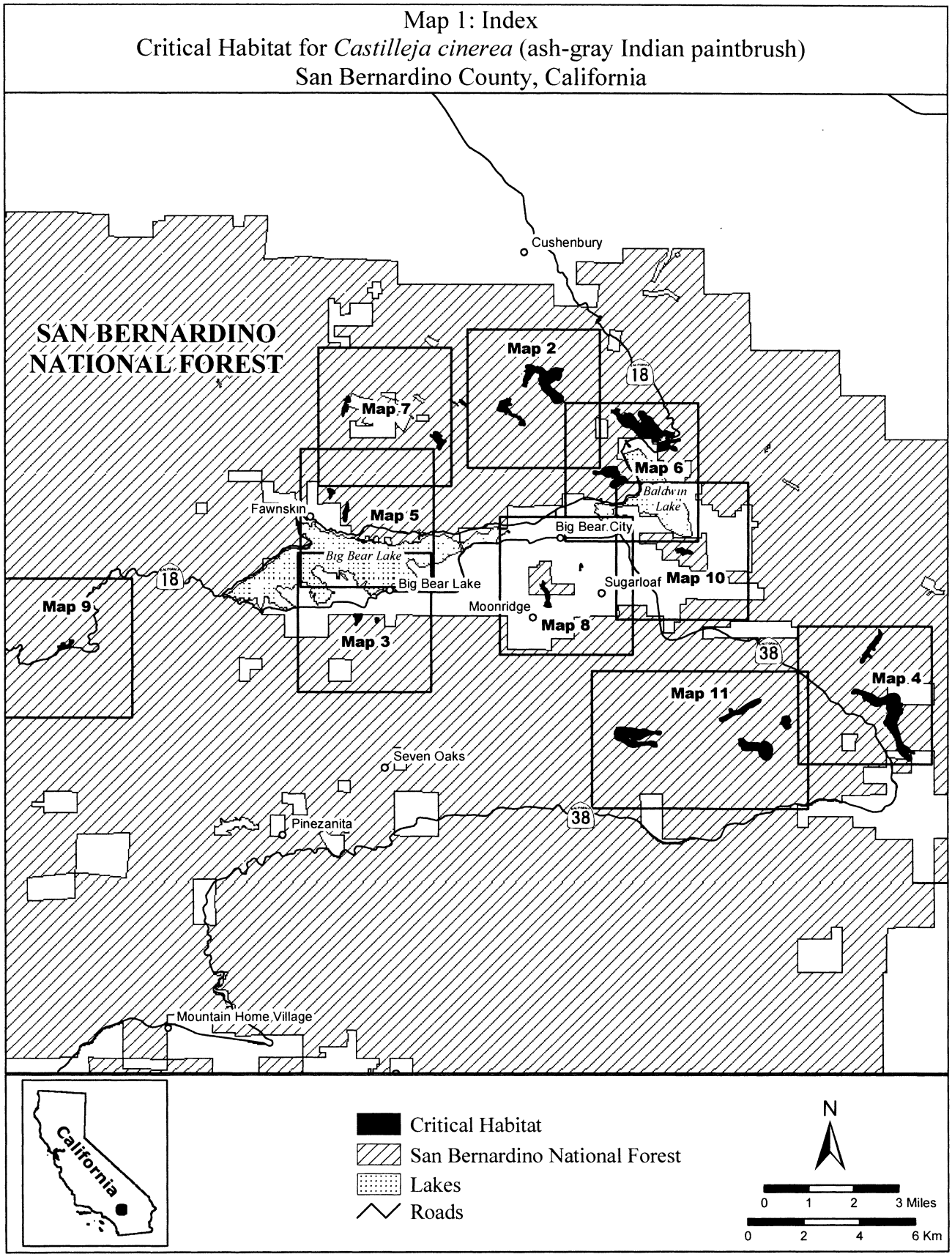
(iii) The presence of one or more of its known host species such as *Eriogonum kennedyi* var. *austromontanum, E. kennedyi.* var. *kennedyi,* and *E. wrightii* var. *subscaposumon* in pebble plain habitat and species such as *Artemisia tridentata, A. nova,* and *E. wrightii* var. *subscaposumon* in pebble plain and non-pebble plain meadow margin habitat that provide some of the physiological requirements for this species.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) Critical habitat map units. Data layers defining map units were created on a base of USGS 1:24,0000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Index map (Map 1) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(6) Units CACI 1 and CACI 2. Arrastre/Union Flat, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear City.

(i) Unit CACI 1. Land bounded by the following UTM NAD27 coordinates (E,N): 512434, 3795966; 512436, 3795961; 512446, 3795966; 512450, 3795966; 512469, 3795969; 512508, 3795965; 512533, 3795959; 512537, 3795959; 512539, 3795960; 512549, 3795964; 512560, 3795961; 512568, 3795954; 512573, 3795948; 512573, 3795936; 512571, 3795930; 512568, 3795927; 512565, 3795927; 512563, 3795927; 512563, 3795924; 512561, 3795914; 512556, 3795904; 512555, 3795903; 512554, 3795901; 512548, 3795879; 512535, 3795835; 512544, 3795791; 512546, 3795790; 512554, 3795787; 512568, 3795779; 512576, 3795774; 512582, 3795771; 512592, 3795764; 512595, 3795753; 512595, 3795747; 512591, 3795739; 512584, 3795732; 512581, 3795731; 512575, 3795727; 512569, 3795727; 512560, 3795728; 512552, 3795733; 512544, 3795739; 512542, 3795740; 512541, 3795739; 512540, 3795738; 512525, 3795717; 512469, 3795694; 512447, 3795680; 512445, 3795679; 512427, 3795653; 512428, 3795649; 512450, 3795617; 512476, 3795588; 512476, 3795588; 512504, 3795564; 512514, 3795552; 512541, 3795525; 512546, 3795509; 512548, 3795508; 512553, 3795501; 512554, 3795500; 512558, 3795490; 512566, 3795479; 512573, 3795468; 512584, 3795444; 512586, 3795433; 512588, 3795412; 512594, 3795398; 512601, 3795395; 512607, 3795395; 512627, 3795401; 512632, 3795400; 512641, 3795402; 512654, 3795400; 512675, 3795405; 512691, 3795401; 512699, 3795397; 512703, 3795397; 512707, 3795394; 512715, 3795393; 512718, 3795391; 512730, 3795388; 512740, 3795378; 512742, 3795374; 512746, 3795371; 512770, 3795357; 512806, 3795330; 512815, 3795317; 512837, 3795311; 512856, 3795327; 512872, 3795330; 512883, 3795343; 512886, 3795339; 512900, 3795331; 512905, 3795319; 512909, 3795312; 512913, 3795307; 512913, 3795306; 512913, 3795305; 512914, 3795303; 512920, 3795287; 512924, 3795286; 512935, 3795275; 512938, 3795270; 512944, 3795264; 512948, 3795258; 512953, 3795250; 512955, 3795245; 512954, 3795239; 512953, 3795233; 512949, 3795225; 512946, 3795221; 512949, 3795219; 512976, 3795203; 512998, 3795196; 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(ii) Unit CACI 2. Land bounded by the following UTM NAD27 coordinates (E,N): 513282, 3797202; 513312, 3797195; 513346, 3797179; 513347, 3797179; 513352, 3797178; 513378, 3797155; 513382, 3797151; 513404, 3797137; 513430, 3797126; 513434, 3797122; 513438, 3797119; 513475, 3797110; 513503, 3797106; 513500, 3797115; 513500, 3797124; 513510, 3797137; 513520, 3797137; 513532, 3797131; 513545, 3797124; 513554, 3797111; 513554, 3797108; 513567, 3797110; 513599, 3797116; 513650,

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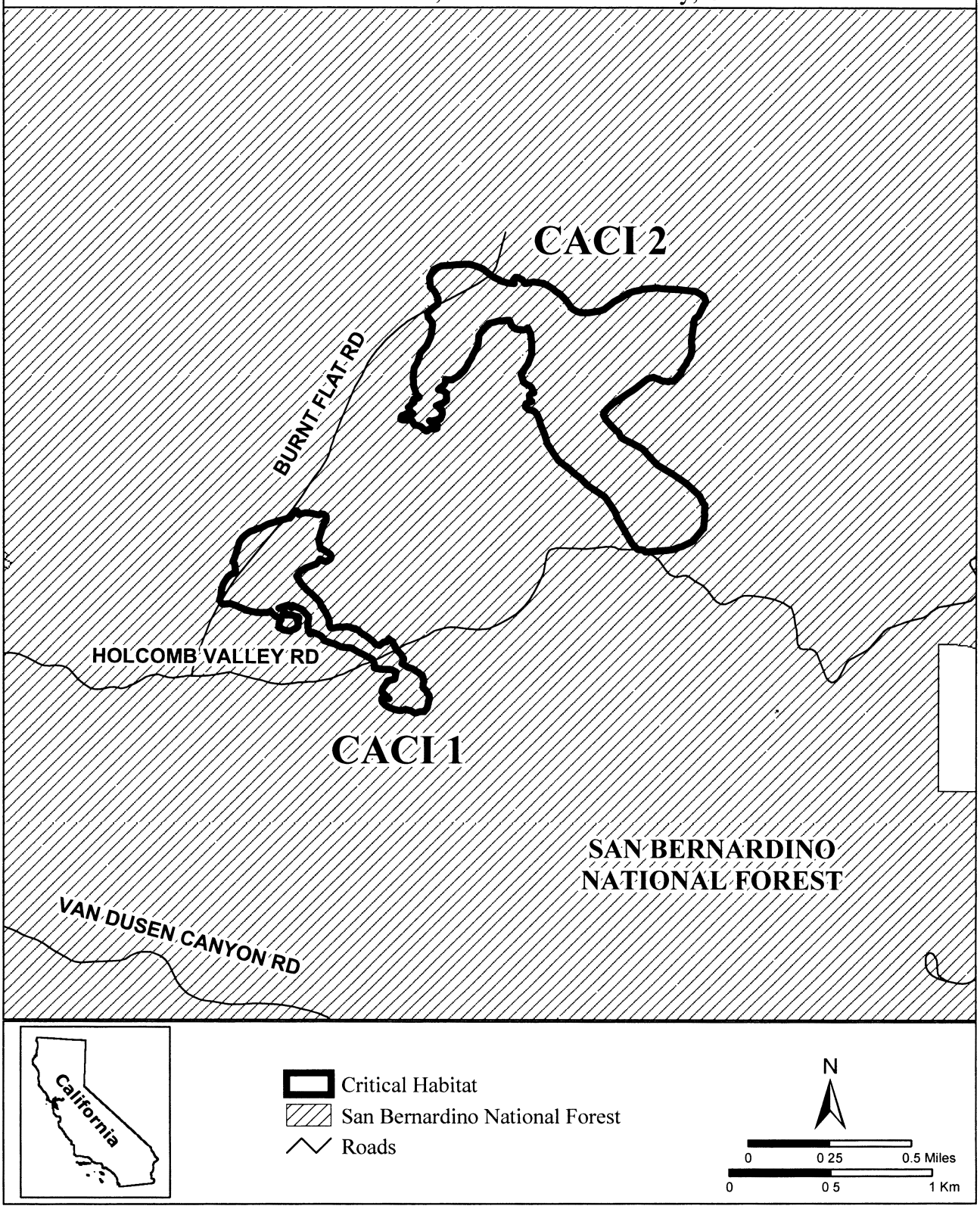
513110, 3796387; 513089, 3796387; 513085, 3796387; 513080, 3796383; 513075, 3796378; 513069, 3796376; 513065, 3796378; 513061, 3796380; 513038, 3796401; 513031, 3796403; 513022, 3796403; 513016, 3796403; 513010, 3796404; 513007, 3796408; 512998, 3796427; 512993, 3796432; 512984, 3796432; 512976, 3796431; 512967, 3796430; 512958, 3796430; 512948, 3796431; 512942, 3796435; 512942, 3796440; 512943, 3796447; 512947, 3796453; 512958, 3796458; 512968, 3796460; 512981, 3796461; 512990, 3796462; 512998, 3796461; 513002, 3796462; 513000, 3796463; 512996, 3796465; 512992, 3796472; 512986, 3796477; 512982, 3796485; 512977, 3796493; 512985, 3796499; 512986, 3796501; 512996, 3796509; 513006, 3796518; 513003, 3796519; 513001, 3796524; 513001, 3796528; 513003, 3796531; 513006, 3796533; 513013, 3796536; 513026, 3796540; 513031, 3796543; 513019, 3796558; 513004, 3796600; 513004, 3796623; 513001, 3796637; 513009, 3796690; 513024, 3796717; 513039, 3796763; 513070, 3796797; 513089, 3796843; 513096, 3796872; 513099, 3796901; 513095, 3796915; 513094, 3796917; 513076, 3796939; 513072, 3796962; 513087, 3796975; 513089, 3796980; 513123, 3797003; 513126, 3797015; 513126, 3797031; 513106, 3797069; 513087, 3797088; 513084, 3797137; 513096, 3797163; 513103, 3797175; 513141, 3797195; 513182, 3797197; 513184, 3797197; 513218, 3797201; 513240, 3797201; 513255, 3797202; 513282, 3797202.

(iii) Note: Map of Units CACI 1 and CACI 2 (Map 2) follows:

BILLING CODE 4310–55–P

Map 2
Critical Habitat for *Castilleja cinerea* (ash-gray Indian paintbrush)
Units CACI 1 and CACI 2, San Bernardino County, California



BILLING CODE 4310–55–C

(7) Units CACI 3 and CACI 4. Big Bear Lake, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear Lake.

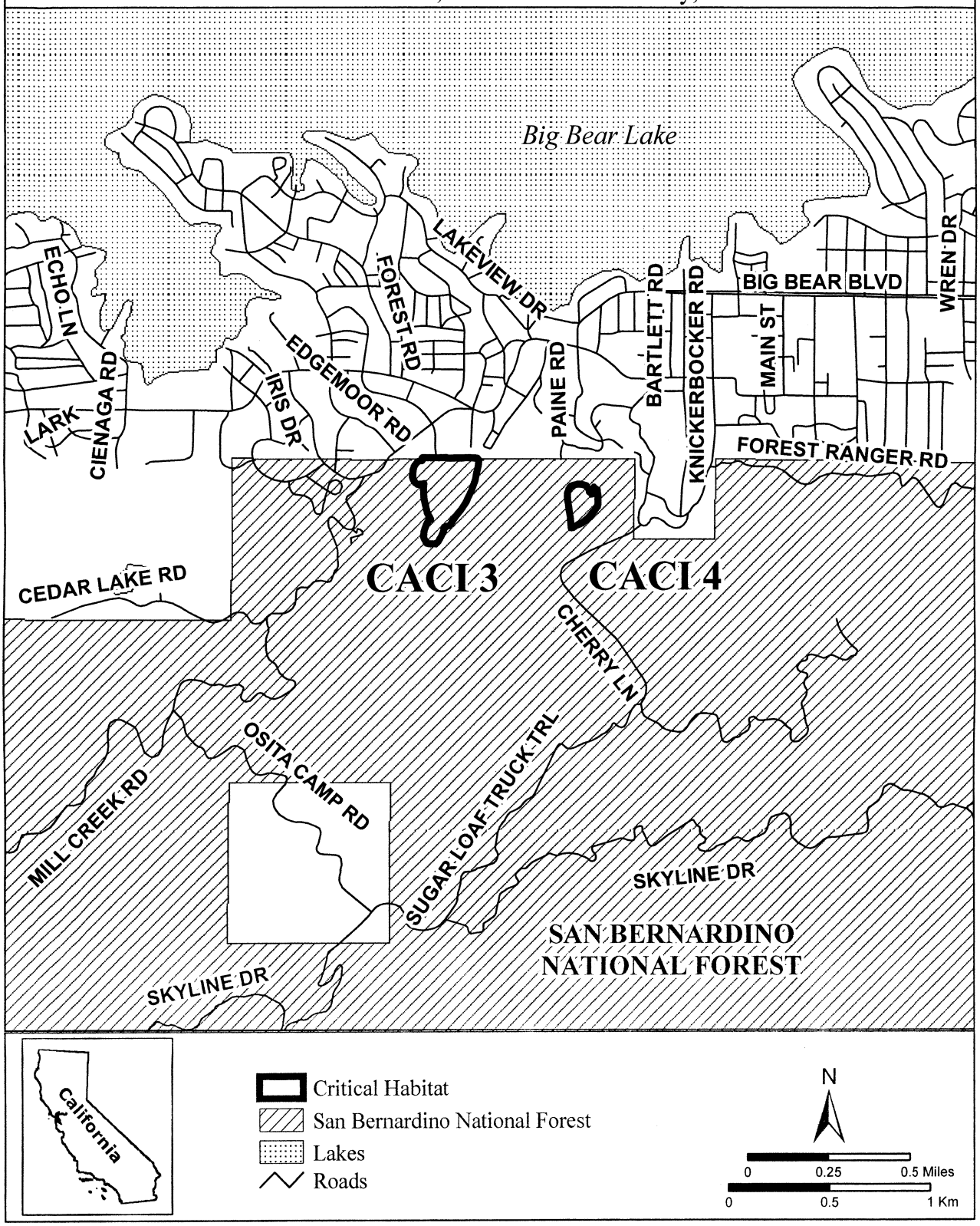
(i) Unit CACI 3. Land bounded by the following UTM NAD27 coordinates (E,N): 506933, 3788172; 506933, 3788172; 507055, 3788172; 507058, 3788169; 507058, 3788169; 507166, 3788172; 507208, 3788170; 507213, 3788165; 507215, 3788157; 507213, 3788134; 507205, 3788104; 507197, 3788062; 507176, 3788009; 507151, 3787955; 507123, 3787915; 507111, 3787897; 507087, 3787865; 507069, 3787840; 507045, 3787831; 507043, 3787831; 507040, 3787820; 507041, 3787818; 507036, 3787807; 507036, 3787807; 507036, 3787806; 507036, 3787806; 507025, 3787783; 507009, 3787755; 507006, 3787754; 507000, 3787747; 506974, 3787747; 506974, 3787747; 506973, 3787747; 506968, 3787747; 506967, 3787748; 506954, 3787751; 506938, 3787779; 506942, 3787811; 506954, 3787842; 506966, 3787866; 506974, 3787869; 506956, 3787901; 506949, 3787935; 506941, 3787974; 506938, 3788020; 506941, 3788043; 506939, 3788042; 506926, 3788042; 506907, 3788042; 506901, 3788049; 506892, 3788058; 506885, 3788071; 506885, 3788093; 506888, 3788115; 506895, 3788135; 506911, 3788153; 506933, 3788160; 506933, 3788172.

(ii) Unit CACI 4. Land bounded by the following UTM NAD27 coordinates (E,N): 507777, 3788001; 507780, 3787993; 507783, 3788009; 507791, 3788029; 507801, 3788015; 507806, 3788013; 507806, 3788005; 507811, 3787989; 507811, 3787973; 507811, 3787949; 507810, 3787946; 507810, 3787941; 507807, 3787932; 507806, 3787930; 507804, 3787929; 507803, 3787925; 507802, 3787925; 507790, 3787909; 507764, 3787877; 507732, 3787851; 507704, 3787839; 507688, 3787829; 507686, 3787828; 507682, 3787826; 507682, 3787827; 507678, 3787826; 507674, 3787876; 507666, 3787929; 507659, 3787975; 507659, 3788001; 507669, 3788023; 507682, 3788035; 507707, 3788042; 507729, 3788042; 507752, 3788036; 507767, 3788013; 507769, 3788006; 507777, 3788001.

(iii) Note: Map of Units CACI 3 and CACI 4 (Map 3) follows:

BILLING CODE 4310–55–P

Map 3
Critical Habitat for *Castilleja cinerea* (ash-gray Indian paintbrush)
Units CACI 3 and CACI 4, San Bernardino County, California



BILLING CODE 4310–55–C

(8) Units CACI 5 and CACI 6. Broom Flat, San Bernardino County, California. From USGS 1:24,000 quadrangle map Onyx Peak.

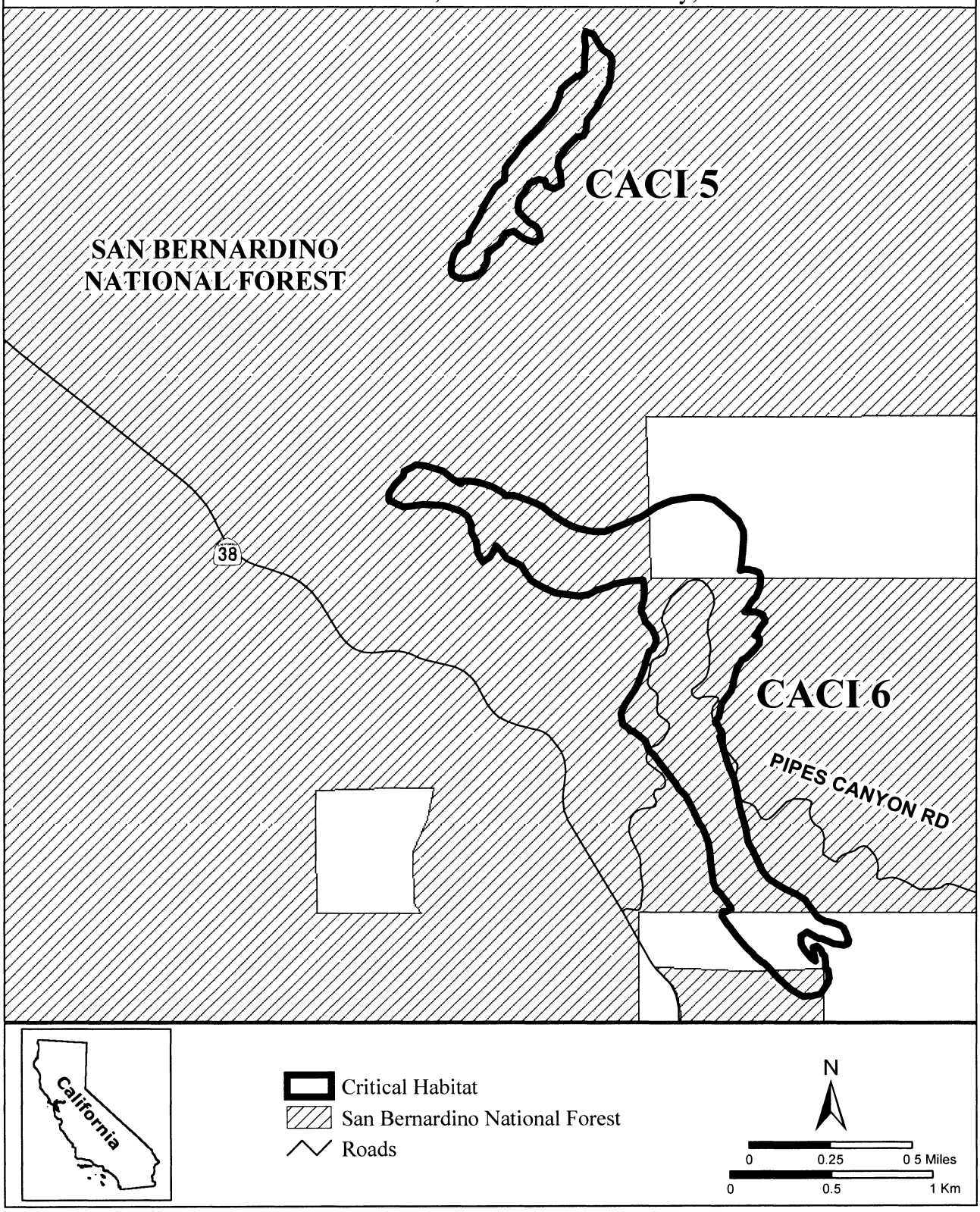
(i) Unit CACI 5. Land bounded by the following UTM NAD27 coordinates (E,N): 525644, 3786958; 525650, 3786943; 525657, 3786886; 525619, 3786867; 525580, 3786879; 525577, 3786894; 525574, 3786905; 525542, 3786911; 525498, 3786892; 525473, 3786847; 525450, 3786817; 525440, 3786790; 525442, 3786753; 525491, 3786702; 525528, 3786682; 525545, 3786658; 525552, 3786616; 525518, 3786601; 525472, 3786618; 525418, 3786655; 525374, 3786645; 525352, 3786596; 525312, 3786569; 525288, 3786552; 525285, 3786508; 525261, 3786459; 525229, 3786435; 525185, 3786425; 525148, 3786423; 525114, 3786442; 525107, 3786462; 525112, 3786503; 525121, 3786543; 525151, 3786587; 525190, 3786606; 525202, 3786658; 525246, 3786724; 525278, 3786795; 525327, 3786873; 525374, 3786910; 525377, 3786968; 525396, 3786994; 525428, 3787032; 525469, 3787091; 525533, 3787152; 525580, 3787209; 525619, 3787254; 525644, 3787311; 525657, 3787355; 525688, 3787387; 525733, 3787419; 525746, 3787419; 525771, 3787444; 525771, 3787508; 525777, 3787565; 525771, 3787616; 525777, 3787641; 525815, 3787629; 525834, 3787597; 525860, 3787552; 525898, 3787527; 525911, 3787495; 525904, 3787457; 525904, 3787425; 525892, 3787368; 525860, 3787324; 525828, 3787260; 525784, 3787203; 525777, 3787152; 525765, 3787127; 525733, 3787121; 525688, 3787076; 525644, 3787019; 525638, 3786974; 525644, 3786958.

(ii) Unit CACI 6. Land bounded by the following UTM NAD27 coordinates (E,N): 525111, 3785431; 525155, 3785406; 525142, 3785419; 525199, 3785419; 525250, 3785412; 525307, 3785393; 525365, 3785362; 525378, 3785345; 525421, 3785349; 525497, 3785323; 525558, 3785296; 525600, 3785262; 525661, 3785220; 525706, 3785197; 525744, 3785182; 525813, 3785170; 525870, 3785170; 525950, 3785201; 526053, 3785243; 526125, 3785292; 526198, 3785323; 526247, 3785330; 526297, 3785338; 526358, 3785338; 526411, 3785327; 526457, 3785292; 526491, 3785262; 526529, 3785227; 526556, 3785170; 526556, 3785132; 526552, 3785079; 526548, 3785022; 526540, 3784978; 526562, 3784983; 526585, 3784983; 526610, 3784977; 526632, 3784967; 526642, 3784945; 526639, 3784907; 526632, 3784885; 526616, 3784847; 526604, 3784834; 526588, 3784815; 526575, 3784789; 526562, 3784774; 526617, 3784774; 526651, 3784759; 526651, 3784751; 526662, 3784735; 526662, 3784724; 526642, 3784701; 526625, 3784671; 526614, 3784655; 526626, 3784653; 526636, 3784634; 526632, 3784615; 526616, 3784593; 526604, 3784577; 526594, 3784567; 526582, 3784558; 526575, 3784548; 526562, 3784542; 526550, 3784535; 526547, 3784534; 526522, 3784488; 526509, 3784440; 526506, 3784412; 526495, 3784379; 526459, 3784332; 526457, 3784330; 526449, 3784321; 526434, 3784252; 526415, 3784229; 526418, 3784219; 526423, 3784219; 526430, 3784207; 526436, 3784191; 526442, 3784178; 526445, 3784162; 526439, 3784151; 526445, 3784130; 526476, 3784019; 526510, 3783943; 526522, 3783890; 526541, 3783795; 526567, 3783692; 526579, 3783627; 526606, 3783581; 526647, 3783490; 526680, 3783446; 526713, 3783425; 526764, 3783396; 526818, 3783371; 526861, 3783342; 526873, 3783324; 526876, 3783323; 526878, 3783320; 526913, 3783270; 526922, 3783257; 526963, 3783235; 526981, 3783233; 527032, 3783219; 527050, 3783204; 527064, 3783175; 527075, 3783143; 527071, 3783137; 527074, 3783128; 527051, 3783117; 527037, 3783121; 527006, 3783124; 526970, 3783139; 526945, 3783150; 526930, 3783150; 526898, 3783168; 526872, 3783183; 526869, 3783183; 526840, 3783163; 526840, 3783139; 526843, 3783117; 526861, 3783088; 526890, 3783052; 526911, 3783037; 526907, 3783059; 526904, 3783081; 526901, 3783107; 526917, 3783113; 526926, 3783107; 526939, 3783094; 526946, 3783072; 526955, 3783069; 526958, 3783062; 526961, 3783031; 526961, 3783008; 526960, 3783003; 526974, 3782994; 526978, 3782969; 526979, 3782968; 526979, 3782967; 526981, 3782954; 526976, 3782944; 526975, 3782934; 526937, 3782873; 526904, 3782868; 526894, 3782863; 526880, 3782865; 526853, 3782861; 526788, 3782899; 526724, 3782957; 526678, 3783010; 526653, 3783029; 526644, 3783034; 526634, 3783043; 526613, 3783059; 526600, 3783077; 526571, 3783103; 526524, 3783161; 526489, 3783206; 526476, 3783219; 526473, 3783226; 526448, 3783262; 526452, 3783284; 526470, 3783284; 526495, 3783297; 526493, 3783306; 526477, 3783327; 526441, 3783378; 526419, 3783393; 526408, 3783425; 526401, 3783469; 526394, 3783531; 526390, 3783585; 526381, 3783631; 526351, 3783704; 526339, 3783719; 526299, 3783803; 526269, 3783859; 526263, 3783867; 526261, 3783869; 526234, 3783893; 526221, 3783921; 526209, 3783936; 526113, 3784063; 526089, 3784082; 526072, 3784131; 526026, 3784168; 526012, 3784180; 525995, 3784180; 525987, 3784194; 525958, 3784212; 525951, 3784270; 525969, 3784310; 526016, 3784379; 526029, 3784402; 526038, 3784423; 526068, 3784501; 526071, 3784513; 526089, 3784575; 526109, 3784589; 526125, 3784624; 526125, 3784644; 526103, 3784691; 526089, 3784702; 526083, 3784713; 526072, 3784721; 526062, 3784751; 526049, 3784775; 526052, 3784781; 526049, 3784789; 526065, 3784836; 526067, 3784883; 526064, 3784909; 526060, 3784931; 525995, 3784927; 525944, 3784916; 525912, 3784910; 525882, 3784896; 525828, 3784881; 525786, 3784858; 525737, 3784850; 525710, 3784854; 525630, 3784865; 525573, 3784888; 525508, 3784927; 525478, 3784965; 525455, 3785003; 525382, 3785037; 525360, 3785067; 525328, 3785099; 525326, 3785095; 525301, 3785044; 525263, 3785019; 525238, 3785063; 525231, 3785120; 525206, 3785165; 525206, 3785203; 525187, 3785247; 525149, 3785273; 525072, 3785298; 524965, 3785304; 524926, 3785298; 524869, 3785292; 524799, 3785323; 524799, 3785362; 524831, 3785406; 524869, 3785444; 524876, 3785470; 524914, 3785489; 524933, 3785501; 524984, 3785495; 525022, 3785482; 525066, 3785470; 525111, 3785431.

(iii) Note: Map of Units CACI 5 and CACI 6 (Map 4) follows:

BILLING CODE 4310–55–P

Map 4
Critical Habitat for *Castilleja cinerea* (ash-gray Indian paintbrush)
Units CACI 5 and CACI 6, San Bernardino County, California



BILLING CODE 4310–55–C

(9) Units CACI 7, CACI 8, CACI 9. Fawnskin, San Bernardino County, California. From USGS 1:24,000 quadrangle map Fawnskin.

(i) Unit CACI 7. Land bounded by the following UTM NAD27 coordinates (E,N): 506020, 3792309; 506020, 3792303; 506001, 3792335; 506014, 3792404; 506014, 3792468; 506001, 3792538; 505982, 3792557; 505963, 3792595; 505950, 3792639; 505937, 3792671; 505944, 3792703; 505994, 3792722; 506039, 3792722; 506109, 3792684; 506147, 3792665; 506191, 3792627; 506229, 3792582; 506217, 3792525; 506166, 3792493; 506121, 3792462; 506109, 3792442; 506109, 3792417; 506096, 3792392; 506077, 3792373; 506052, 3792335; 506020, 3792309.

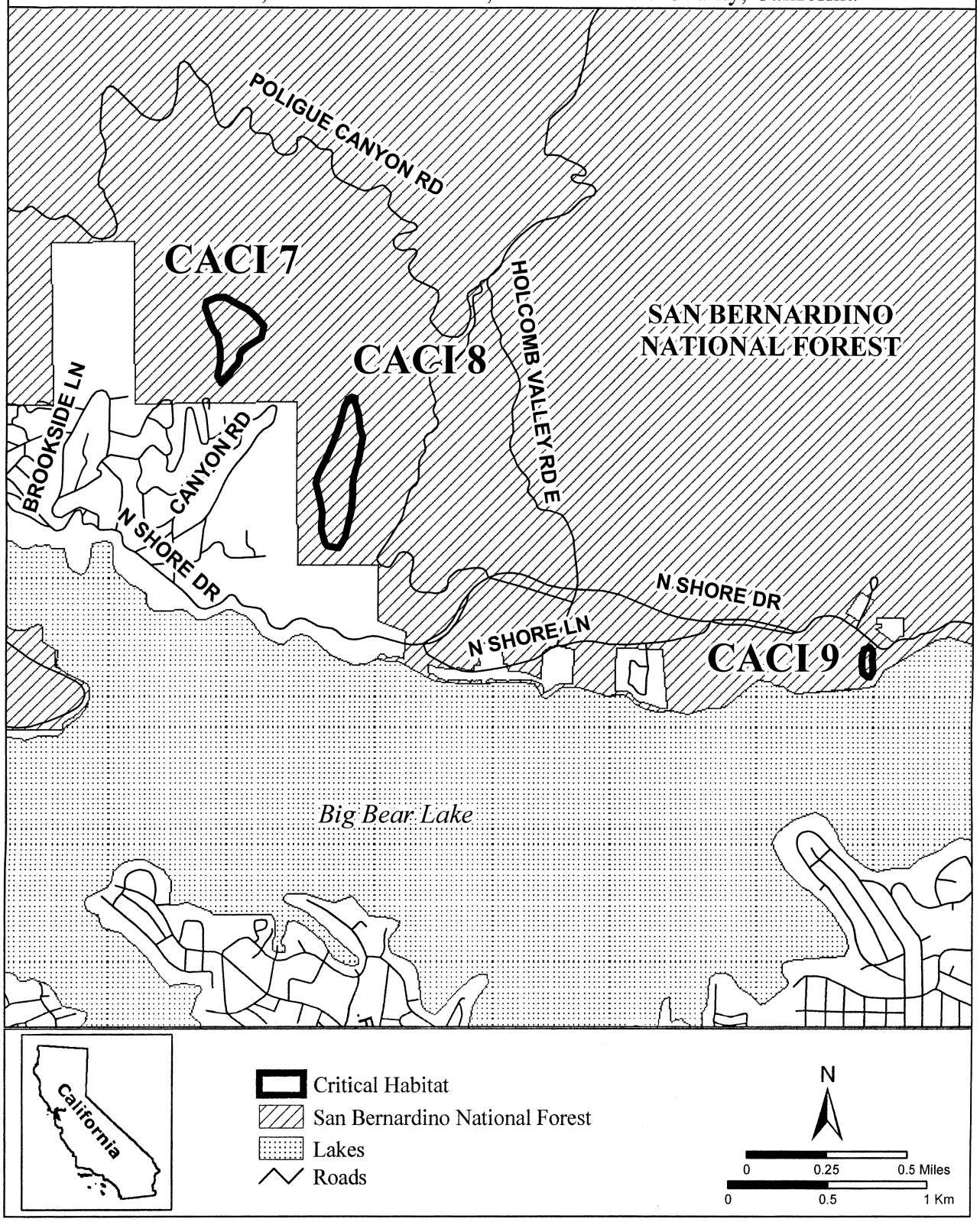
(ii) Unit CACI 8. Land bounded by the following UTM NAD27 coordinates (E,N): 506636, 3791541; 506604, 3791490; 506547, 3791496; 506534, 3791515; 506515, 3791579; 506522, 3791661; 506502, 3791757; 506490, 3791807; 506502, 3791852; 506547, 3791941; 506579, 3792017; 506610, 3792100; 506629, 3792182; 506649, 3792220; 506668, 3792233; 506687, 3792227; 506680, 3792214; 506693, 3792182; 506706, 3792138; 506712, 3792074; 506725, 3792036; 506706, 3791928; 506680, 3791846; 506674, 3791801; 506674, 3791744; 506668, 3791674; 506655, 3791623; 506636, 3791541.

(iii) Unit CACI 9. Land bounded by the following UTM NAD27 coordinates (E,N): 509277, 3790880; 509264, 3790854; 509248, 3790857; 509229, 3790873; 509223, 3790908; 509223, 3790943; 509226, 3790972; 509232, 3790991; 509261, 3791003; 509273, 3790988; 509277, 3790969; 509273, 3790943; 509277, 3790908; 509277, 3790880.

(iv) Note: Map of Units CACI 7, CACI 8, CACI 9 (Map 5) follows:

BILLING CODE 4310–55–P

Map 5
Critical Habitat for *Castilleja cinerea* (ash-gray Indian paintbrush)
Units CACI 7, CACI 8 and CACI 9, San Bernardino County, California



BILLING CODE 4310–55–C

(10) Units CACI 10, CACI 11, CACI 12, CACI 15, and CACI 16. Gold Mountain and North Baldwin Lake, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear City.

(i) Unit CACI 10. Land bounded by the following UTM NAD27 coordinates (E,N): 516297, 3793523; 516342, 3793514; 516374, 3793491; 516405, 3793447; 516412, 3793390; 516424, 3793352; 516421, 3793333; 516437, 3793335; 516450, 3793331; 516463, 3793309; 516466, 3793281; 516465, 3793279; 516475, 3793268; 516469, 3793227; 516447, 3793207; 516421, 3793189; 516380, 3793166; 516345, 3793154; 516311, 3793139; 516272, 3793103; 516244, 3793081; 516215, 3793077; 516187, 3793090; 516206, 3793135; 516202, 3793144; 516207, 3793149; 516196, 3793141; 516172, 3793137; 516163, 3793137; 516157, 3793137; 516154, 3793135; 516147, 3793133; 516132, 3793125; 516128, 3793123; 516109, 3793112; 516096, 3793112; 516095, 3793112; 516081, 3793111; 516065, 3793105; 516045, 3793109; 516017, 3793126; 516016, 3793127; 516006, 3793132; 516003, 3793145; 515998, 3793153; 515995, 3793166; 515988, 3793165; 515980, 3793163; 515971, 3793161; 515961, 3793161; 515956, 3793162; 515943, 3793162; 515926, 3793178; 515919, 3793180; 515912, 3793182; 515905, 3793188; 515899, 3793193; 515893, 3793198; 515884, 3793209; 515881, 3793219; 515879, 3793220; 515793, 3793243; 515732, 3793233; 515685, 3793220; 515647, 3793211; 515577, 3793211; 515536, 3793230; 515507, 3793261; 515501, 3793303; 515501, 3793335; 515542, 3793357; 515586, 3793360; 515625, 3793357; 515666, 3793341; 515707, 3793335; 515761, 3793338; 515809, 3793354; 515828, 3793376; 515851, 3793399; 515851, 3793403; 515848, 3793408; 515845, 3793414; 515844, 3793417; 515842, 3793424; 515842, 3793431; 515843, 3793438; 515839, 3793448; 515845, 3793446; 515849, 3793444; 515856, 3793439; 515860, 3793433; 515872, 3793430; 515873, 3793429; 515879, 3793443; 515901, 3793468; 515904, 3793468; 515910, 3793468; 515917, 3793461; 515921, 3793461; 515935, 3793473; 515980, 3793495; 516015, 3793501; 516082, 3793514; 516132, 3793514; 516212, 3793520; 516262, 3793527; 516297, 3793523.

(ii) Unit CACI 11. Land bounded by the following UTM NAD27 coordinates (E,N): 516768, 3792969; 516744, 3792965; 516720, 3792965; 516705, 3792961; 516685, 3792953; 516673, 3792949; 516652, 3792935; 516645, 3792926; 516642, 3792923; 516641, 3792918; 516633, 3792898; 516633, 3792891; 516633, 3792891; 516623, 3792868; 516621, 3792864; 516585, 3792863; 516581, 3792865; 516578, 3792862; 516562, 3792870; 516560, 3792871; 516556, 3792871; 516545, 3792873; 516540, 3792875; 516521, 3792875; 516510, 3792864; 516502, 3792855; 516496, 3792848; 516490, 3792840; 516477, 3792833; 516463, 3792824; 516461, 3792822; 516450, 3792804; 516447, 3792800; 516438, 3792788; 516423, 3792784; 516410, 3792780; 516377, 3792769; 516375, 3792768; 516364, 3792763; 516319, 3792740; 516318, 3792740; 516311, 3792737; 516304, 3792731; 516298, 3792731; 516283, 3792725; 516279, 3792728; 516271, 3792727; 516229, 3792731; 516176, 3792758; 516157, 3792773; 516130, 3792803; 516127, 3792815; 516119, 3792849; 516138, 3792891; 516157, 3792925; 516180, 3792952; 516203, 3792979; 516233, 3793009; 516268, 3793036; 516274, 3793041; 516275, 3793055; 516282, 3793087; 516298, 3793112; 516329, 3793125; 516364, 3793131; 516453, 3793154; 516520, 3793160; 516590, 3793166; 516610, 3793155; 516641, 3793150; 516668, 3793139; 516694, 3793116; 516717, 3793093; 516732, 3793074; 516748, 3793055; 516759, 3793039; 516770, 3793024; 516772, 3793012; 516775, 3793010; 516778, 3793004; 516778, 3793004; 516780, 3793001; 516784, 3792993; 516783, 3792989; 516783, 3792987; 516783, 3792987; 516783, 3792987; 516782, 3792985; 516780, 3792983; 516780, 3792981; 516777, 3792979; 516777, 3792978; 516775, 3792975; 516773, 3792971; 516772, 3792971; 516772, 3792971; 516771, 3792971; 516769, 3792970; 516768, 3792969.

(iii) Unit CACI 12. Land bounded by the following UTM NAD27 coordinates (E,N): 517804, 3791769; 517801, 3791754; 517782, 3791754; 517766, 3791765; 517766, 3791780; 517774, 3791792; 517782, 3791796; 517804, 3791792; 517804, 3791769.

(iv) Unit CACI 15. Land bounded by the following UTM NAD27 coordinates (E,N): 516160, 3795525; 516163, 3795551; 516182, 3795563; 516194, 3795563; 516198, 3795566; 516240, 3795559; 516278, 3795551; 516308, 3795555; 516331, 3795578; 516396, 3795605; 516406, 3795603; 516415, 3795605; 516453, 3795601; 516491, 3795578; 516491, 3795574; 516491, 3795551; 516472, 3795525; 516466, 3795501; 516465, 3795486; 516468, 3795452; 516480, 3795422; 516486, 3795415; 516518, 3795399; 516552, 3795379; 516598, 3795380; 516649, 3795388; 516655, 3795391; 516654, 3795425; 516658, 3795442; 516685, 3795452; 516698, 3795449; 516708, 3795431; 516716, 3795406; 516765, 3795429; 516807, 3795448; 516810, 3795448; 516834, 3795456; 516857, 3795452; 516906, 3795429; 516933, 3795410; 516960, 3795383; 516971, 3795361; 516986, 3795334; 517009, 3795299; 517032, 3795262; 517063, 3795223; 517097, 3795181; 517110, 3795163; 517131, 3795140; 517165, 3795101; 517184, 3795090; 517207, 3795083; 517211, 3795082; 517269, 3795104; 517278, 3795133; 517272, 3795170; 517264, 3795193; 517230, 3795239; 517196, 3795288; 517154, 3795349; 517150, 3795370; 517146, 3795376; 517139, 3795399; 517141, 3795414; 517139, 3795425; 517146, 3795448; 517154, 3795471; 517211, 3795517; 517245, 3795521; 517314, 3795517; 517360, 3795509; 517381, 3795485; 517386, 3795479; 517388, 3795476; 517402, 3795460; 517413, 3795433; 517440, 3795387; 517460, 3795371; 517489, 3795353; 517506, 3795341; 517520, 3795334; 517584, 3795315; 517611, 3795292; 517653, 3795261; 517672, 3795219; 517699, 3795159; 517718, 3795115; 517749, 3795078; 517759, 3795070; 517786, 3795052; 517809, 3795029; 517840, 3794999; 517841, 3794997; 517851, 3794987; 517882, 3794923; 517908, 3794881; 517917, 3794871; 517939, 3794854; 517981, 3794819; 518023, 3794812; 518038, 3794812; 518095, 3794819; 518152, 3794816; 518155, 3794815; 518171, 3794816; 518202, 3794804; 518251, 3794778; 518339, 3794755; 518411, 3794732; 518461, 3794724; 518461, 3794713; 518457, 3794698; 518442, 3794683; 518439, 3794680; 518438, 3794679; 518415, 3794652; 518458, 3794642; 518462, 3794598; 518443, 3794587; 518438, 3794583; 518413, 3794573; 518371, 3794577; 518322, 3794586; 518279, 3794597; 518246, 3794608; 518230, 3794614; 518206, 3794614; 518133, 3794617; 518117, 3794619; 518097, 3794610; 518097, 3794615; 518097, 3794618; 518098, 3794621; 518069, 3794625; 518061, 3794625; 518045, 3794627; 518046, 3794602; 518045, 3794602; 518039, 3794605; 518034, 3794609; 518019, 3794610; 518017, 3794611; 518019, 3794605; 518019, 3794589; 518012, 3794567; 517993, 3794554; 517968, 3794567; 517946, 3794573; 517936, 3794560; 517920, 3794548; 517914, 3794549; 517917, 3794545; 517924, 3794535; 517931, 3794526; 517939, 3794516; 517948, 3794503; 517954, 3794493; 517959, 3794482; 517964, 3794473; 517964, 3794468; 517959, 3794461; 517950, 3794456; 517934, 3794458; 517923, 3794462; 517905, 3794469; 517892,

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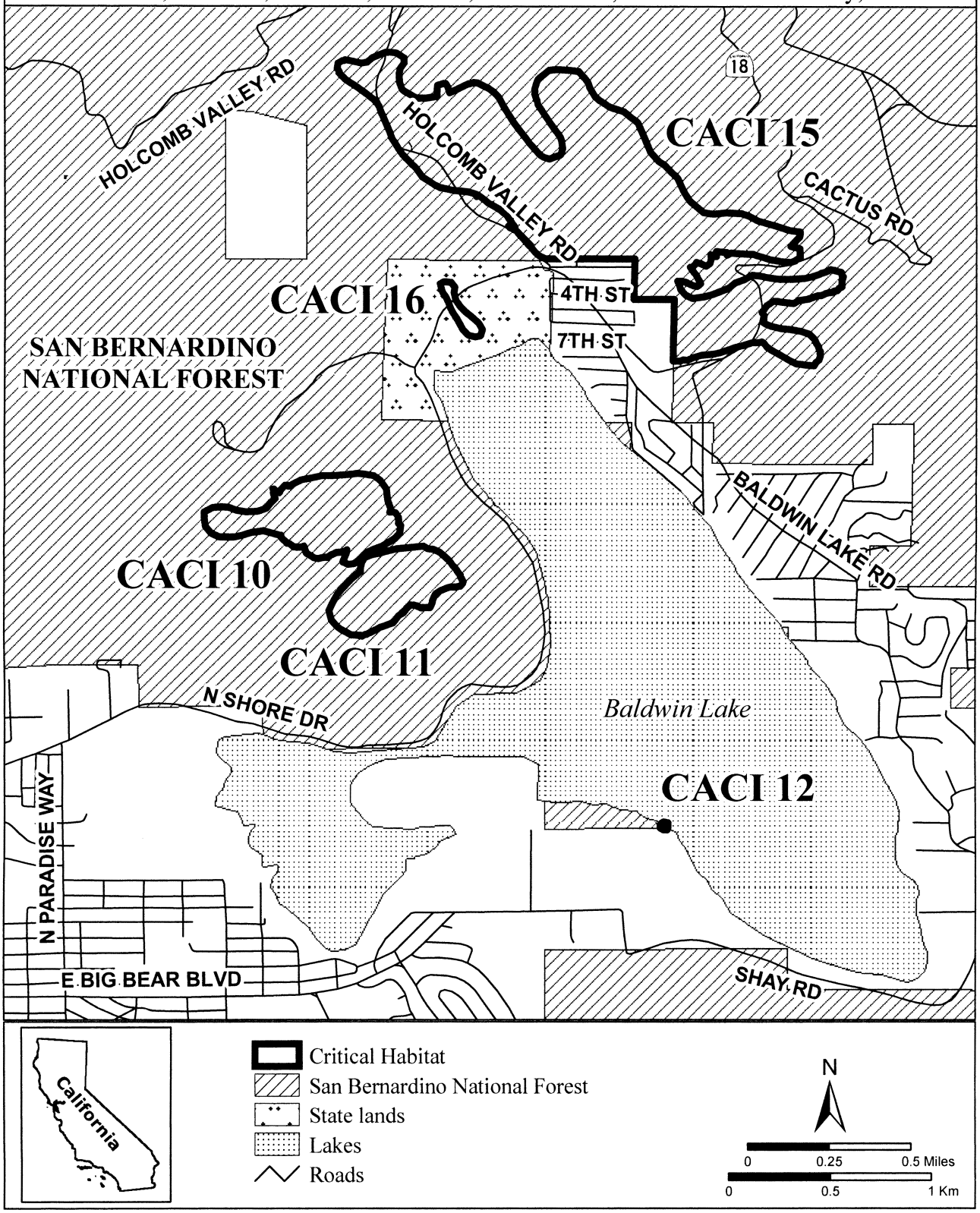
(v) Unit CACI 16. Land bounded by the following UTM NAD27 coordinates (E,N): 516869, 3794211; 516844, 3794205; 516809, 3794214; 516783, 3794239; 516764, 3794271; 516749, 3794300; 516733, 3794325; 516720, 3794347; 516710, 3794376; 516695, 3794405; 516682, 3794424; 516672, 3794449; 516669, 3794465; 516688, 3794475; 516723, 3794471; 516742, 3794449; 516739, 3794421; 516745, 3794385; 516771, 3794351; 516793, 3794329; 516822, 3794306; 516860, 3794275; 516879, 3794243; 516869, 3794211.

(vi) Note: Map of Units CACI 10, CACI 11, CACI 12, CACI 15, and CACI 16 (Map 6) follows:

BILLING CODE 4310–55–P

Map 6
Critical Habitat for *Castilleja cinerea* (ash-gray Indian paintbrush)
Units CACI 10, CACI 11, CACI 12, CACI 15, and CACI 16, San Bernardino County, California



BILLING CODE 4310–55–C

(11) Units CACI 13 and CACI 14. Holcomb Valley, San Bernardino County, California. From USGS 1:24,000 quadrangle map Fawnskin.

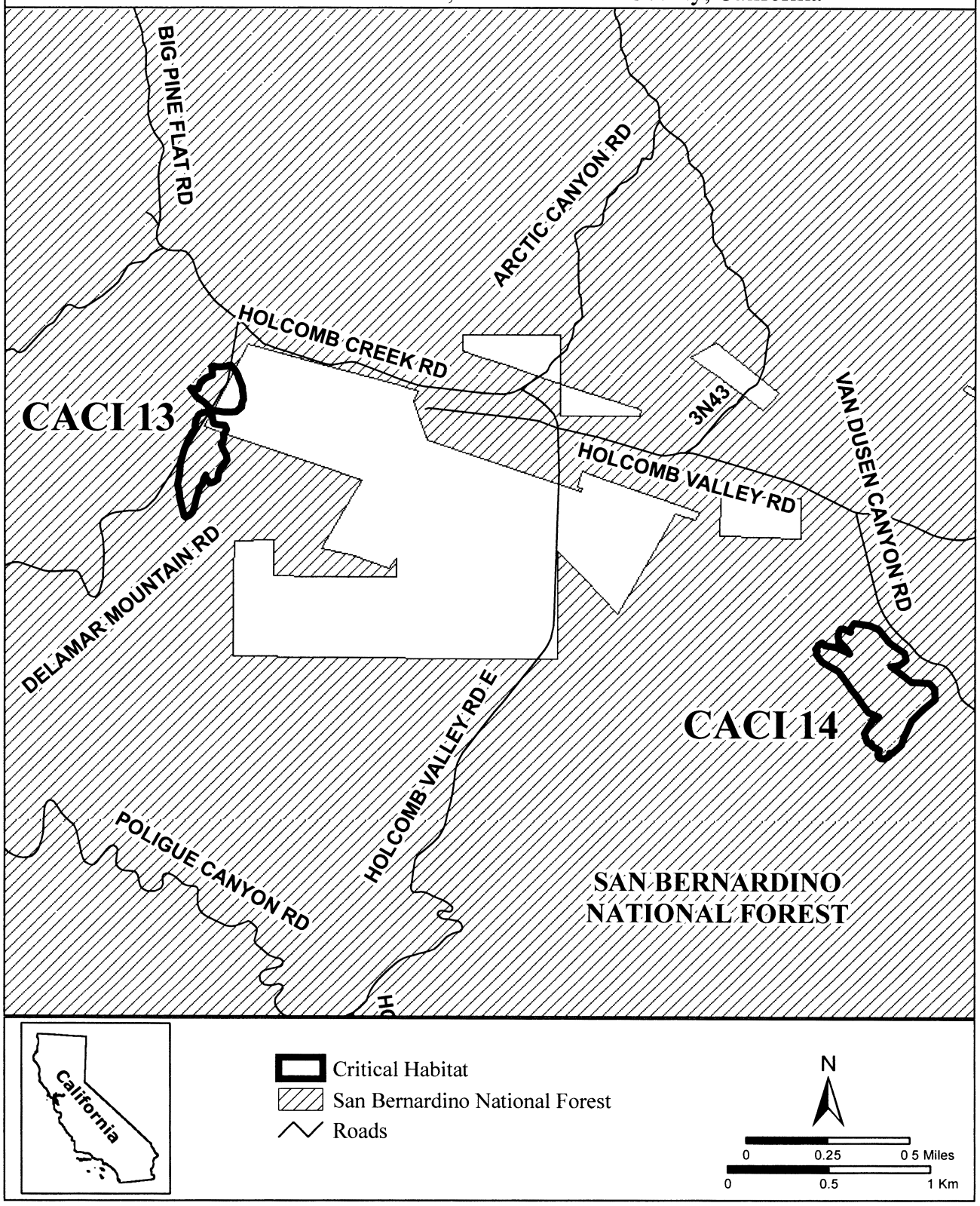
(i) Unit CACI 13. Land bounded by the following UTM NAD27 coordinates (E,N): 506727, 3796049; 506738, 3796035; 506743, 3796031; 506761, 3796001; 506765, 3795985; 506767, 3795981; 506783, 3795942; 506785, 3795915; 506787, 3795910; 506790, 3795878; 506784, 3795872; 506782, 3795867; 506779, 3795843; 506773, 3795840; 506772, 3795835; 506767, 3795833; 506752, 3795821; 506730, 3795818; 506689, 3795818; 506663, 3795823; 506634, 3795825; 506624, 3795837; 506612, 3795847; 506606, 3795854; 506597, 3795862; 506571, 3795881; 506571, 3795883; 506557, 3795893; 506544, 3795910; 506529, 3795930; 506530, 3795930; 506528, 3795934; 506565, 3795933; 506565, 3795935; 506574, 3795964; 506600, 3795986; 506635, 3796001; 506633, 3796023; 506631, 3796041; 506632, 3796041; 506644, 3796045; 506663, 3796042; 506681, 3796042; 506707, 3796045; 506715, 3796049; 506727, 3796049. Land bounded by the following UTM NAD27 coordinates (E,N): 506666, 3795511; 506661, 3795481; 506647, 3795471; 506625, 3795463; 506622, 3795462; 506612, 3795476; 506604, 3795484; 506602, 3795500; 506591, 3795480; 506584, 3795455; 506569, 3795435; 506569, 3795428; 506562, 3795409; 506556, 3795389; 506547, 3795351; 506537, 3795317; 506532, 3795310; 506524, 3795303; 506512, 3795298; 506504, 3795291; 506495, 3795298; 506492, 3795307; 506487, 3795328; 506483, 3795347; 506477, 3795372; 506472, 3795393; 506470, 3795416; 506466, 3795433; 506463, 3795457; 506468, 3795488; 506472, 3795510; 506474, 3795533; 506477, 3795567; 506485, 3795593; 506494, 3795624; 506507, 3795657; 506517, 3795687; 506534, 3795715; 506555, 3795736; 506549, 3795747; 506552, 3795771; 506564, 3795799; 506572, 3795807; 506600, 3795819; 506616, 3795811; 506617, 3795807; 506620, 3795805; 506635, 3795794; 506639, 3795763; 506641, 3795759; 506670, 3795753; 506695, 3795750; 506705, 3795731; 506695, 3795712; 506690, 3795703; 506692, 3795687; 506687, 3795672; 506679, 3795655; 506689, 3795626; 506705, 3795598; 506708, 3795575; 506689, 3795550; 506677, 3795540; 506676, 3795537; 506666, 3795511.

(ii) Unit CACI 14. Land bounded by the following UTM NAD27 coordinates (E,N): 509943, 3794740; 509997, 3794674; 510070, 3794623; 510076, 3794591; 510073, 3794585; 510044, 3794562; 510003, 3794556; 510054, 3794518; 510105, 3794477; 510124, 3794477; 510194, 3794473; 510219, 3794442; 510222, 3794391; 510168, 3794347; 510105, 3794283; 510067, 3794201; 510054, 3794162; 510013, 3794124; 509999, 3794124; 509999, 3794118; 509996, 3794110; 509991, 3794106; 509987, 3794102; 509981, 3794099; 509975, 3794097; 509968, 3794095; 509961, 3794096; 509955, 3794096; 509950, 3794098; 509946, 3794101; 509940, 3794109; 509940, 3794115; 509940, 3794122; 509943, 3794131; 509947, 3794139; 509911, 3794159; 509908, 3794173; 509894, 3794173; 509886, 3794181; 509874, 3794221; 509894, 3794256; 509914, 3794284; 509943, 3794302; 509943, 3794305; 509893, 3794327; 509858, 3794375; 509839, 3794404; 509807, 3794445; 509782, 3794480; 509747, 3794531; 509668, 3794579; 509639, 3794617; 509643, 3794633; 509635, 3794642; 509648, 3794660; 509649, 3794664; 509664, 3794674; 509668, 3794674; 509674, 3794667; 509680, 3794664; 509682, 3794659; 509737, 3794651; 509797, 3794623; 509800, 3794620; 509787, 3794641; 509771, 3794660; 509747, 3794684; 509743, 3794708; 509747, 3794731; 509755, 3794743; 509775, 3794743; 509791, 3794735; 509806, 3794729; 509803, 3794743; 509822, 3794772; 509902, 3794759; 509943, 3794740.

(iii) Note: Units CACI 13 and CACI 14 (Map 7) follows:

BILLING CODE 4310–55–P

Map 7
Critical Habitat for *Castilleja cinerea* (ash-gray Indian paintbrush)
Units CACI 13 and CACI 14, San Bernardino County, California



BILLING CODE 4310–55–C

(12) Units CACI 17 and CACI 18. Sawmill, San Bernardino County, California. From USGS 1:24,000 quadrangle maps Big Bear City and Moonridge.

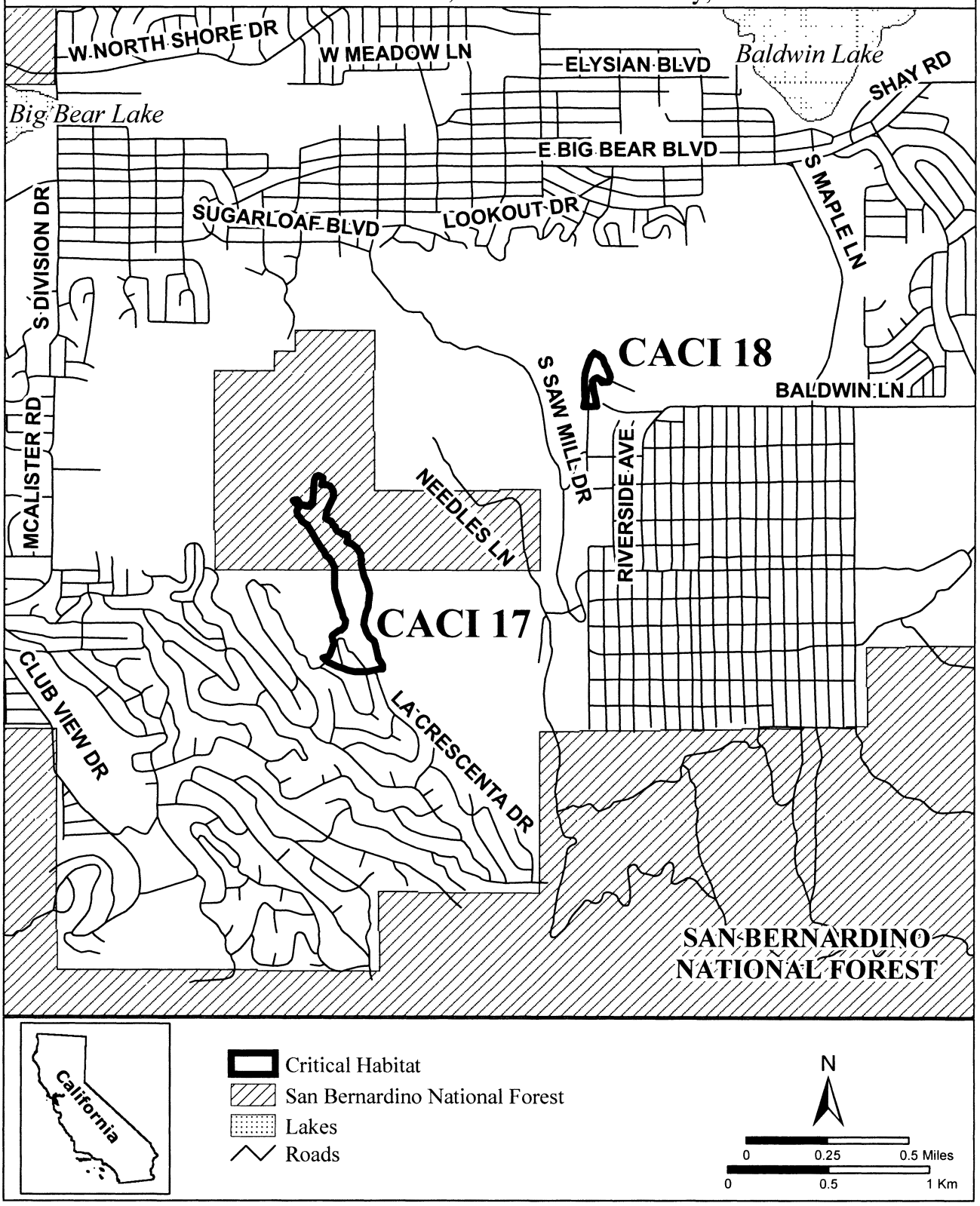
(i) Unit CACI 17. Land bounded by the following UTM NAD27 coordinates (E,N): 514010,3788419; 513955,3788406; 513936,3788404; 513891,3788404; 513855,3788412; 513831,3788423; 513803,3788431; 513777,3788444; 513756,3788453; 513744,3788464; 513731,3788473; 513761,3788481; 513764,3788488; 513768,3788499; 513787,3788551; 513781,3788561; 513779,3788566; 513777,3788572; 513775,3788579; 513777,3788585; 513784,3788591; 513809,3788609; 513815,3788611; 513820,3788612; 513823,3788612; 513837,3788627; 513843,3788649; 513843,3788659; 513842,3788660; 513830,3788680; 513826,3788709; 513821,3788716; 513811,3788742; 513789,3788818; 513789,3788865; 513789,3788897; 513789,3788923; 513776,3788948; 513761,3788973; 513742,3788986; 513735,3789005; 513719,3789024; 513703,3789050; 513697,3789059; 513691,3789069; 513678,3789094; 513665,3789113; 513653,3789135; 513652,3789137; 513648,3789140; 513624,3789156; 513620,3789168; 513604,3789184; 513600,3789208; 513606,3789220; 513606,3789228; 513608,3789229; 513581,3789259; 513591,3789262; 513601,3789262; 513605,3789257; 513608,3789253; 513611,3789247; 513621,3789233; 513636,3789235; 513645,3789230; 513648,3789234; 513652,3789230; 513658,3789229; 513662,3789230; 513670,3789236; 513674,3789239; 513679,3789244; 513686,3789364; 513695,3789377; 513704,3789381; 513715,3789379; 513719,3789377; 513728,3789372; 513730,3789357; 513724,3789335; 513743,3789335; 513747,3789335; 513763,3789331; 513766,3789326; 513772,3789321; 513778,3789313; 513781,3789306; 513783,3789303; 513783,3789275; 513778,3789268; 513778,3789266; 513776,3789263; 513753,3789217; 513753,3789214; 513750,3789205; 513748,3789194; 513745,3789182; 513744,3789171; 513744,3789168; 513759,3789161; 513765,3789157; 513772,3789154; 513780,3789137; 513792,3789126; 513793,3789113; 513798,3789111; 513804,3789105; 513812,3789102; 513826,3789091; 513836,3789093; 513846,3789090; 513853,3789083; 513854,3789059; 513850,3789053; 513878,3789041; 513902,3789017; 513905,3789013; 513906,3789010; 513913,3789005; 513913,3789001; 513918,3788993; 513918,3788973; 513923,3788961; 513919,3788942; 513926,3788919; 513935,3788882; 513948,3788850; 513957,3788824; 513964,3788796; 513957,3788729; 513945,3788701; 513938,3788672; 513935,3788640; 513948,3788599; 513964,3788577; 513986,3788561; 513992,3788542; 513999,3788507; 514008,3788472; 514021,3788448; 514027,3788437; 514027,3788419.

(ii) Unit CACI 18. Land bounded by the following UTM NAD27 coordinates (E,N): 515023,3789730; 515031,3789764; 515027,3789815; 515027,3789875; 515029,3789884; 515029,3789895; 515034,3789907; 515034,3789909; 515035,3789912; 515037,3789923; 515053,3789964; 515054,3789966; 515058,3789977; 515063,3789983; 515066,3789986; 515069,3789988; 515077,3789997; 515092,3789990; 515094,3789989; 515104,3789979; 515113,3789974; 515120,3789962; 515128,3789941; 515137,3789925; 515140,3789915; 515142,3789911; 515153,3789887; 515153,3789881; 515156,3789875; 515148,3789851; 515132,3789851; 515116,3789851; 515113,3789850; 515104,3789865; 515098,3789869; 515091,3789873; 515089,3789873; 515077,3789867; 515066,3789856; 515069,3789834; 515073,3789814; 515077,3789790; 515085,3789759; 515088,3789732.

(iii) Note: Units CACI 17 and CACI 18 (Map 8) follows:

BILLING CODE 4310–55–P

Map 8
Critical Habitat for *Castilleja cinerea* (ash-gray Indian paintbrush)
Units CACI 17 and CACI 18, San Bernardino County, California



BILLING CODE 4310–55–C

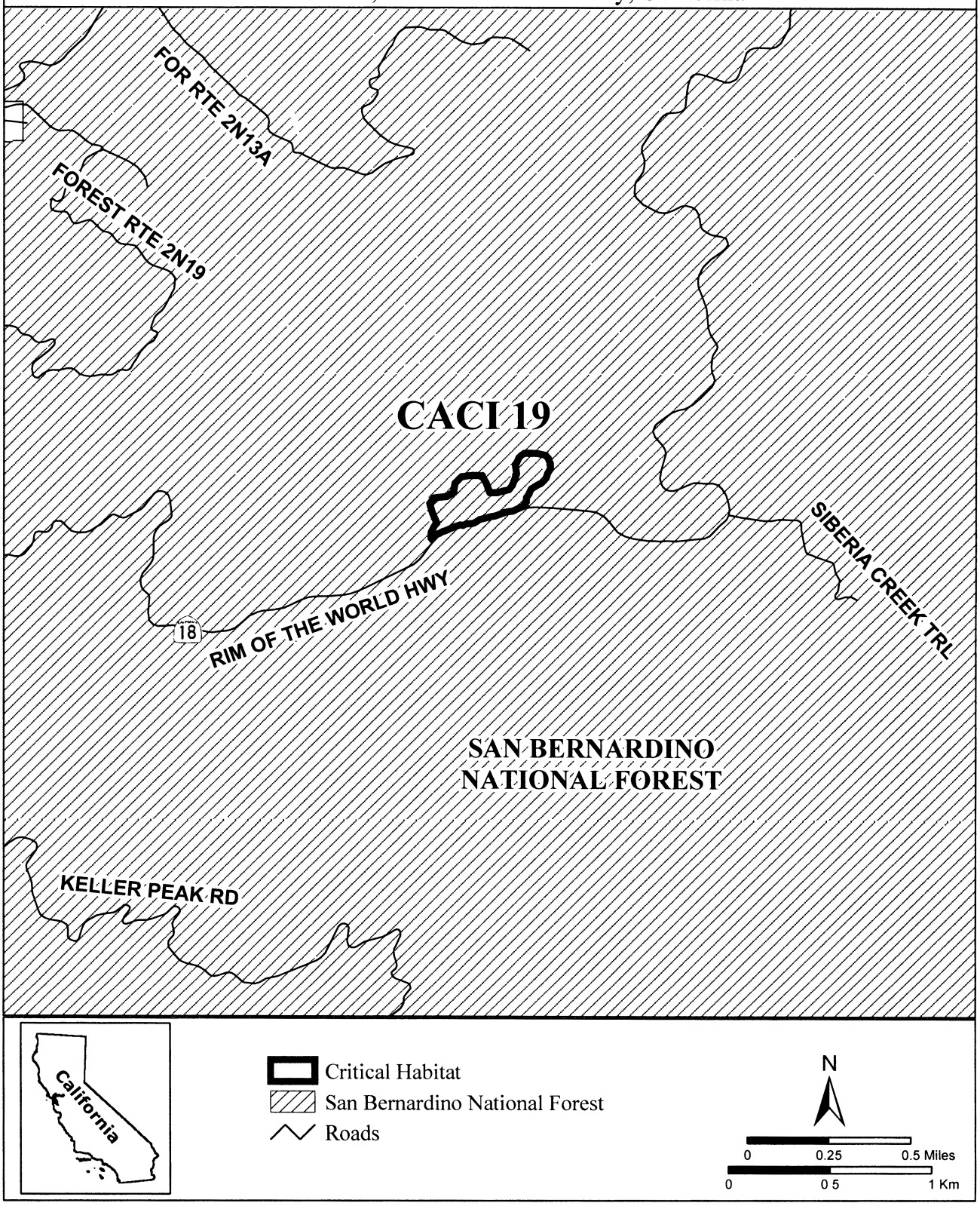
(13) Unit CACI 19. Snow Valley, San Bernardino County, California.

(i) From USGS 1:24,000 quadrangle map Keller Peak. Land bounded by the following UTM NAD27 coordinates (E,N): 496377, 3786874; 496368, 3786876; 496360, 3786876; 496349, 3786874; 496333, 3786868; 496319, 3786861; 496300, 3786853; 496289, 3786849; 496273, 3786842; 496263, 3786836; 496249, 3786830; 496241, 3786825; 496236, 3786822; 496232, 3786816; 496224, 3786804; 496222, 3786803; 496219, 3786810; 496219, 3786838; 496219, 3786840; 496235, 3786873; 496248, 3786886; 496226, 3786935; 496210, 3786983; 496232, 3787012; 496268, 3787015; 496296, 3787018; 496331, 3787041; 496338, 3787085; 496370, 3787117; 496411, 3787124; 496459, 3787124; 496464, 3787118; 496465, 3787118; 496473, 3787122; 496473, 3787120; 496476, 3787110; 496481, 3787104; 496484, 3787099; 496484, 3787098; 496484, 3787098; 496483, 3787098; 496491, 3787088; 496498, 3787069; 496500, 3787067; 496500, 3787063; 496510, 3787038; 496549, 3787038; 496559, 3787041; 496606, 3787054; 496622, 3787073; 496644, 3787133; 496638, 3787175; 496638, 3787175; 496642, 3787184; 496654, 3787213; 496666, 3787223; 496682, 3787235; 496743, 3787235; 496787, 3787226; 496797, 3787213; 496800, 3787210; 496805, 3787196; 496809, 3787184; 496809, 3787184; 496809, 3787184; 496809, 3787159; 496809, 3787159; 496809, 3787159; 496799, 3787139; 496797, 3787133; 496790, 3787111; 496782, 3787102; 496768, 3787086; 496758, 3787082; 496746, 3787076; 496717, 3787057; 496713, 3787050; 496708, 3787041; 496704, 3787032; 496701, 3787025; 496692, 3787013; 496692, 3786994; 496692, 3786994; 496692, 3786994; 496689, 3786987; 496685, 3786978; 496673, 3786968; 496644, 3786956; 496622, 3786946; 496609, 3786944; 496584, 3786940; 496568, 3786934; 496552, 3786927; 496533, 3786923; 496511, 3786917; 496479, 3786910; 496460, 3786905; 496449, 3786898; 496428, 3786886; 496404, 3786884; 496393, 3786883; 496376, 3786876; 496377, 3786875; 496376, 3786875; 496377, 3786874.

(ii) Note: Map of Unit CACI 19 (Map 9) follows:

BILLING CODE 4310–55–P

Map 9
Critical Habitat for *Castilleja cinerea* (ash-gray Indian paintbrush)
Unit CACI 19, San Bernardino County, California



BILLING CODE 4310–55–C

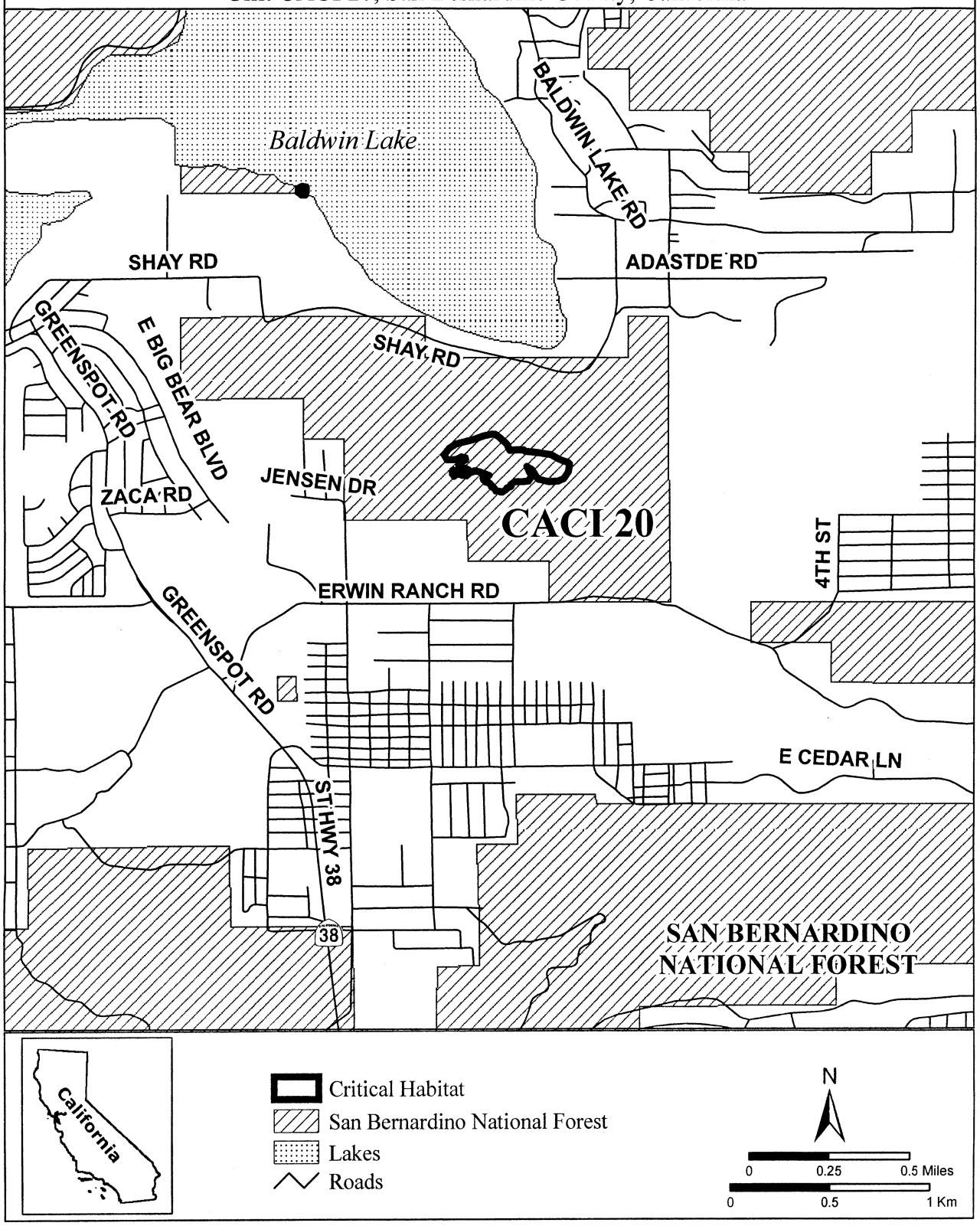
(14) Unit CACI 20: South Baldwin Ridge/Erwin Lake, San Bernardino County, California.

(i) From USGS 1:24,000 quadrangle map Big Bear City. Land bounded by the following UTM NAD27 coordinates (E,N): 518798, 3790531; 518814, 3790499; 518836, 3790501; 518883, 3790501; 518891, 3790493; 518942, 3790490; 519022, 3790477; 519063, 3790455; 519104, 3790439; 519114, 3790429; 519108, 3790395; 519085, 3790359; 519057, 3790347; 519012, 3790344; 518955, 3790357; 518923, 3790404; 518900, 3790419; 518911, 3790389; 518923, 3790370; 518907, 3790346; 518876, 3790342; 518839, 3790342; 518822, 3790331; 518821, 3790331; 518820, 3790320; 518800, 3790313; 518797, 3790307; 518792, 3790302; 518776, 3790291; 518766, 3790295; 518764, 3790297; 518763, 3790296; 518744, 3790298; 518740, 3790308; 518737, 3790313; 518724, 3790318; 518725, 3790327; 518714, 3790333; 518716, 3790337; 518707, 3790343; 518699, 3790340; 518697, 3790342; 518695, 3790345; 518693, 3790346; 518691, 3790351; 518685, 3790353; 518683, 3790359; 518682, 3790364; 518683, 3790368; 518698, 3790377; 518704, 3790378; 518712, 3790375; 518707, 3790379; 518666, 3790392; 518637, 3790398; 518629, 3790391; 518618, 3790391; 518613, 3790387; 518613, 3790385; 518611, 3790382; 518605, 3790378; 518600, 3790374; 518591, 3790377; 518580, 3790376; 518568, 3790381; 518553, 3790380; 518545, 3790386; 518540, 3790382; 518541, 3790379; 518541, 3790375; 518542, 3790373; 518540, 3790371; 518538, 3790371; 518535, 3790374; 518533, 3790378; 518531, 3790382; 518530, 3790387; 518529, 3790392; 518530, 3790397; 518532, 3790400; 518536, 3790400; 518542, 3790399; 518550, 3790401; 518553, 3790401; 518563, 3790404; 518567, 3790405; 518568, 3790403; 518570, 3790401; 518574, 3790401; 518577, 3790399; 518583, 3790401; 518590, 3790403; 518596, 3790399; 518596, 3790397; 518597, 3790397; 518602, 3790395; 518604, 3790398; 518607, 3790400; 518609, 3790402; 518610, 3790404; 518602, 3790406; 518597, 3790409; 518586, 3790409; 518562, 3790429; 518582, 3790445; 518597, 3790453; 518595, 3790463; 518574, 3790467; 518561, 3790460; 518541, 3790453; 518503, 3790453; 518490, 3790477; 518517, 3790511; 518551, 3790531; 518632, 3790551; 518686, 3790571; 518720, 3790579; 518740, 3790579; 518764, 3790562; 518798, 3790531.

(ii) Note: Map of Unit CACI 20 (Map 10) follows:

BILLING CODE 4310–55–P

Map 10
Critical Habitat for *Castilleja cinerea* (ash-gray Indian paintbrush)
Unit CACI 20, San Bernardino County, California



BILLING CODE 4310–55–C

(15) Units CACI 21, CACI 22, CACI 23, and CACI 24. Sugarloaf Ridge, San Bernardino County, California. From USGS 1:24,000 quadrangle map Moonridge.

(i) Unit CACI 21. Land bounded by the following UTM NAD27 coordinates (E,N): 521244, 3783525; 521340, 3783525; 521411, 3783533; 521470, 3783533; 521550, 3783517; 521601, 3783537; 521617, 3783561; 521669, 3783589; 521752, 3783569; 521824, 3783533; 521883, 3783493; 521939, 3783453; 521959, 3783406; 521971, 3783351; 521982, 3783287; 521975, 3783203; 521970, 3783181; 521967, 3783152; 521967, 3783101; 521967, 3783072; 521951, 3783015; 521939, 3782987; 521897, 3782936; 521875, 3782911; 521831, 3782891; 521793, 3782882; 521739, 3782888; 521694, 3782888; 521650, 3782911; 521624, 3782926; 521602, 3782955; 521561, 3782993; 521520, 3783066; 521485, 3783126; 521462, 3783203; 521440, 3783228; 521380, 3783237; 521323, 3783241; 521266, 3783247; 521228, 3783247; 521151, 3783237; 521075, 3783234; 521040, 3783237; 520939, 3783250; 520894, 3783257; 520859, 3783279; 520862, 3783301; 520856, 3783336; 520853, 3783371; 520852, 3783374; 520828, 3783382; 520780, 3783410; 520764, 3783453; 520776, 3783521; 520784, 3783549; 520784, 3783557; 520752, 3783628; 520764, 3783652; 520820, 3783684; 520867, 3783692; 520927, 3783688; 520955, 3783652; 520994, 3783605; 521022, 3783573; 521078, 3783549; 521109, 3783533; 521244, 3783525.

(ii) Unit CACI 22. Land bounded by the following UTM NAD27 coordinates (E,N): 522459, 3784505; 522475, 3784502; 522490, 3784501; 522542, 3784497; 522570, 3784493; 522573, 3784489; 522582, 3784489; 522598, 3784448; 522601, 3784441; 522629, 3784382; 522640, 3784339; 522641, 3784335; 522641, 3784333; 522645, 3784318; 522637, 3784302; 522627, 3784289; 522625, 3784287; 522623, 3784285; 522621, 3784283; 522607, 3784265; 522602, 3784251; 522602, 3784227; 522613, 3784195; 522622, 3784177; 522637, 3784156; 522641, 3784144; 522640, 3784127; 522641, 3784116; 522638, 3784107; 522637, 3784097; 522633, 3784091; 522621, 3784064; 522586, 3784040; 522552, 3784021; 522534, 3784009; 522531, 3784009; 522530, 3784009; 522486, 3784009; 522455, 3784013; 522427, 3784044; 522387, 3784088; 522351, 3784135; 522347, 3784153; 522340, 3784168; 522292, 3784188; 522268, 3784200; 522258, 3784217; 522252, 3784223; 522256, 3784247; 522256, 3784255; 522280, 3784279; 522289, 3784297; 522292, 3784306; 522308, 3784366; 522308, 3784397; 522324, 3784449; 522327, 3784451; 522328, 3784454; 522339, 3784459; 522359, 3784473; 522403, 3784493; 522447, 3784505; 522455, 3784504; 522459, 3784505.

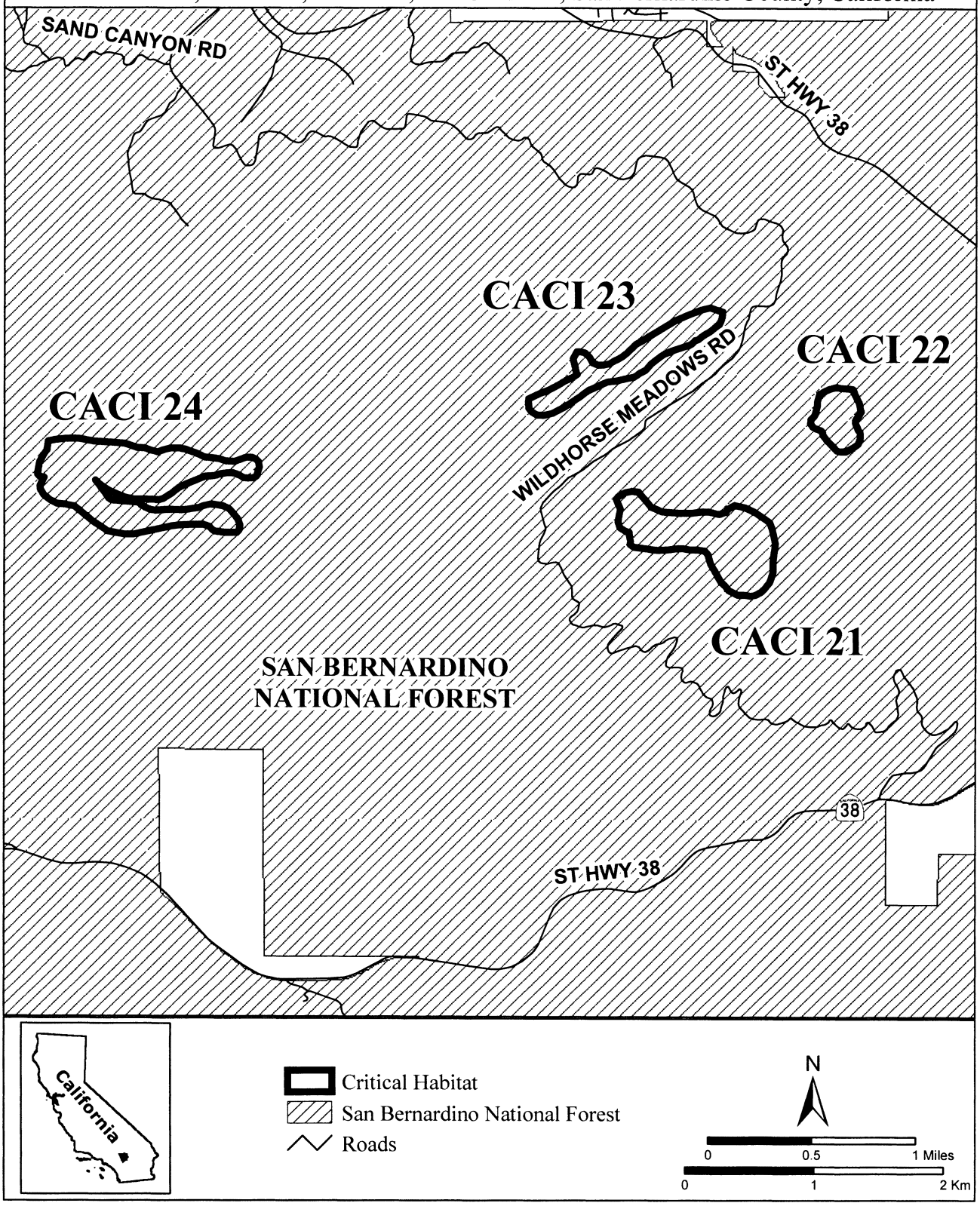
(iii) Unit CACI 23. Land bounded by the following UTM NAD27 coordinates (E,N): 520411,3784723; 520439,3784779; 520470,3784779; 520502,3784771; 520538,3784739; 520562,3784696; 520609,3784676; 520645,3784676; 520697,3784688; 520728,3784708; 520764,3784723; 520800,3784743; 520828,3784767; 520907,3784843; 520958,3784871; 521014,3784906; 521212,3785025; 521336,3785081; 521415,3785109; 521478,3785125; 521574,3785093; 521570,3785053; 521558,3785013; 521546,3784989; 521510,3784966; 521474,3784938; 521427,3784910; 521387,3784878; 521359,3784871; 521340,3784847; 521320,3784835; 521244,3784811; 521185,3784791; 521125,3784767; 521082,3784735; 521022,3784688; 520978,3784640; 520939,3784617; 520887,3784581; 520804,3784565; 520748,3784553; 520677,3784545; 520625,3784521; 520558,3784489; 520534,3784481; 520470,3784434; 520423,3784402; 520347,3784351; 520252,3784299; 520181,3784283; 520133,3784287; 520089,3784311; 520070,3784339; 520070,3784355; 520066,3784390; 520070,3784414; 520105,3784434; 520153,3784454; 520220,3784481; 520300,3784521; 520351,3784553; 520415,3784581; 520447,3784605; 520439,3784609.

(iv) Unit CACI 24. Land bounded by the following UTM NAD27 coordinates (E,N): 517371, 3784019; 517390, 3784013; 517415, 3784010; 517438, 3784001; 517485, 3783985; 517527, 3783965; 517558, 3783950; 517676, 3783937; 517720, 3783921; 517790, 3783918; 517806, 3783924; 517835, 3783934; 517876, 3783950; 517923, 3783950; 517955, 3783934; 517974, 3783915; 517981, 3783877; 517965, 3783829; 517958, 3783803; 517936, 3783791; 517892, 3783788; 517860, 3783791; 517828, 3783810; 517781, 3783829; 517733, 3783829; 517682, 3783823; 517650, 3783810; 517625, 3783803; 517562, 3783801; 517460, 3783759; 517419, 3783743; 517362, 3783715; 517311, 3783673; 517266, 3783645; 517241, 3783629; 517206, 3783619; 517082, 3783623; 517019, 3783623; 516949, 3783635; 516831, 3783683; 516774, 3783718; 516730, 3783753; 516714, 3783769; 516775, 3783688; 516815, 3783632; 516827, 3783624; 516851, 3783612; 517045, 3783597; 517061, 3783581; 517097, 3783561; 517145, 3783541; 517172, 3783537; 517224, 3783541; 517295, 3783545; 517379, 3783541; 517418, 3783545; 517482, 3783553; 517510, 3783557; 517553, 3783577; 517597, 3783585; 517641, 3783581; 517700, 3783573; 517744, 3783553; 517784, 3783513; 517815, 3783469; 517831, 3783422; 517823, 3783386; 517807, 3783366; 517716, 3783366; 517637, 3783374; 517621, 3783386; 517593, 3783410; 517549, 3783426; 517454, 3783426; 517371, 3783422; 517295, 3783414; 517220, 3783398; 517121, 3783374; 517006, 3783351; 516938, 3783351; 516803, 3783374; 516779, 3783394; 516684, 3783457; 516601, 3783525; 516549, 3783565; 516517, 3783573; 516486, 3783581; 516418, 3783589; 516363, 3783616; 516311, 3783656; 516287, 3783696; 516283, 3783727; 516314, 3783792; 516279, 3783801; 516266, 3783813; 516272, 3783857; 516282, 3783911; 516311, 3783965; 516339, 3784003; 516349, 3784073; 516399, 3784083; 516485, 3784093; 516580, 3784093; 516692, 3784073; 516796, 3784067; 516857, 3784064; 516946, 3784055; 517041, 3784023; 517095, 3784019; 517149, 3784001; 517196, 3783991; 517241, 3784007; 517295, 3784019.

(v) Note: Map of Units CACI 21, CACI 22, CACI 23, and CACI 24 (Map 11) follows:

BILLING CODE 4310–55–P

Map 11
Critical Habitat for *Castilleja cinerea* (ash-gray Indian paintbrush)
Units CACI 21, CACI 22, CACI 23, and CACI 24, San Bernardino County, California



BILLING CODE 4310–55–C

* * * * *

Family Polygonaceae: *Eriogonum kennedyi* var. *austromontanum* (Southern mountain wild-buckwheat)

(1) Critical habitat units for this species are found in San Bernardino County, California.

(2) The primary constituent elements of critical habitat for *Eriogonum kennedyi* var. *austromontanum* are the habitat components that provide:

(i) Pebble plains in dry meadow-like openings within upper montane coniferous forest, pinyon-juniper woodlands, or Great Basin sagebrush in the San Bernardino Mountains of San Bernardino County, California; at elevations between 5,900 to 9,800 ft (1,830 to 2,990 m) that provide space for individual and population growth, reproduction and dispersal; and

(ii) Seasonally wet clay, or sandy clay soils, generally containing quartzite pebbles, subject to natural hydrological processes that include water hydrating the soil and freezing in winter and drying in summer causing lifting and churning of included pebbles, that provide space for individual and population growth, reproduction and dispersal, adequate water, air, minerals, and other nutritional or physiological requirements to the species.

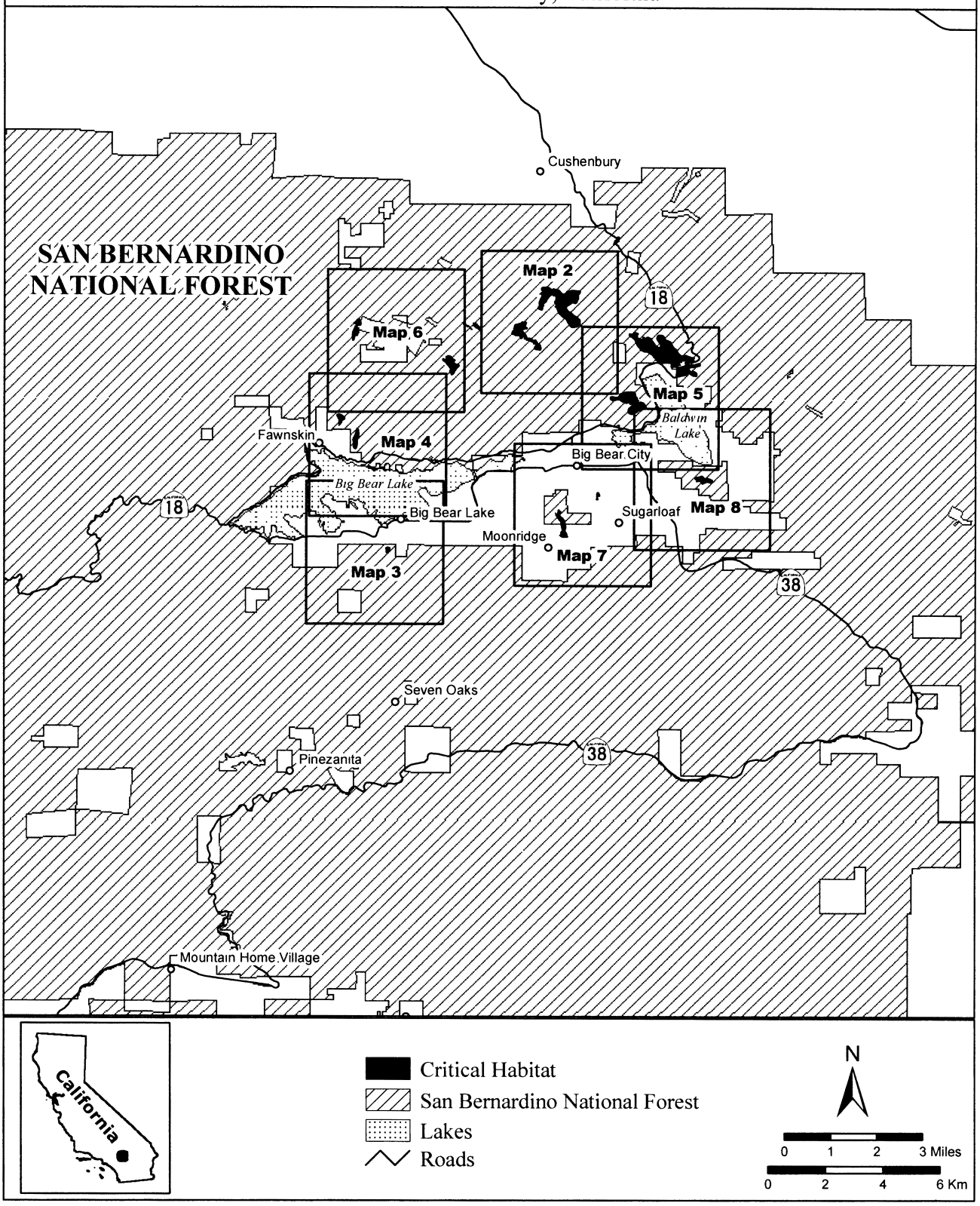
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) Critical habitat map units. Data layers defining map units were created on a base of USGS 1:24,0000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Index map (Map 1) follows:

BILLING CODE 4310–55–P

Map 1: Index
Critical Habitat for *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild-buckwheat)
San Bernardino County, California



BILLING CODE 4310–55–C

(6) Units ERKA 1 and ERKA 2. Arrastre/Union Flat, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear City.

(i) Unit ERKA 1. Land bounded by the following UTM NAD27 coordinates (E,N): 512434, 3795966; 512436, 3795961; 512446, 3795966; 512450, 3795966; 512469, 3795969; 512508, 3795965; 512533, 3795959; 512537, 3795959; 512539, 3795960; 512549, 3795964; 512560, 3795961; 512568, 3795954; 512573, 3795948; 512573, 3795936; 512571, 3795930; 512568, 3795927; 512565, 3795927; 512563, 3795927; 512563, 3795924; 512561, 3795914; 512556, 3795904; 512555, 3795903; 512554, 3795901; 512548, 3795879; 512535, 3795835; 512544, 3795791; 512546, 3795790; 512554, 3795787; 512568, 3795779; 512576, 3795774; 512582, 3795771; 512592, 3795764; 512595, 3795753; 512595, 3795747; 512591, 3795739; 512584, 3795732; 512581, 3795731; 512575, 3795727; 512569, 3795727; 512560, 3795728; 512552, 3795733; 512544, 3795739; 512542, 3795740; 512541, 3795739; 512540, 3795738; 512525, 3795717; 512469, 3795694; 512447, 3795680; 512445, 3795679; 512427, 3795653; 512428, 3795649; 512450, 3795617; 512476, 3795588; 512476, 3795588; 512504, 3795564; 512514, 3795552; 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(ii) Unit ERKA 2. Land bounded by the following UTM NAD27 coordinates (E,N): 513282, 3797202; 513312, 3797195; 513346, 3797179; 513347, 3797179; 513352, 3797178; 513378, 3797155; 513382, 3797151; 513404, 3797137; 513430, 3797126; 513434, 3797122; 513438, 3797119; 513475, 3797110; 513503, 3797106; 513500, 3797115; 513500, 3797124; 513510, 3797137; 513520, 3797137; 513532, 3797131; 513545, 3797124; 513554, 3797111; 513554, 3797108; 513567, 3797110; 513599, 3797116; 513650,

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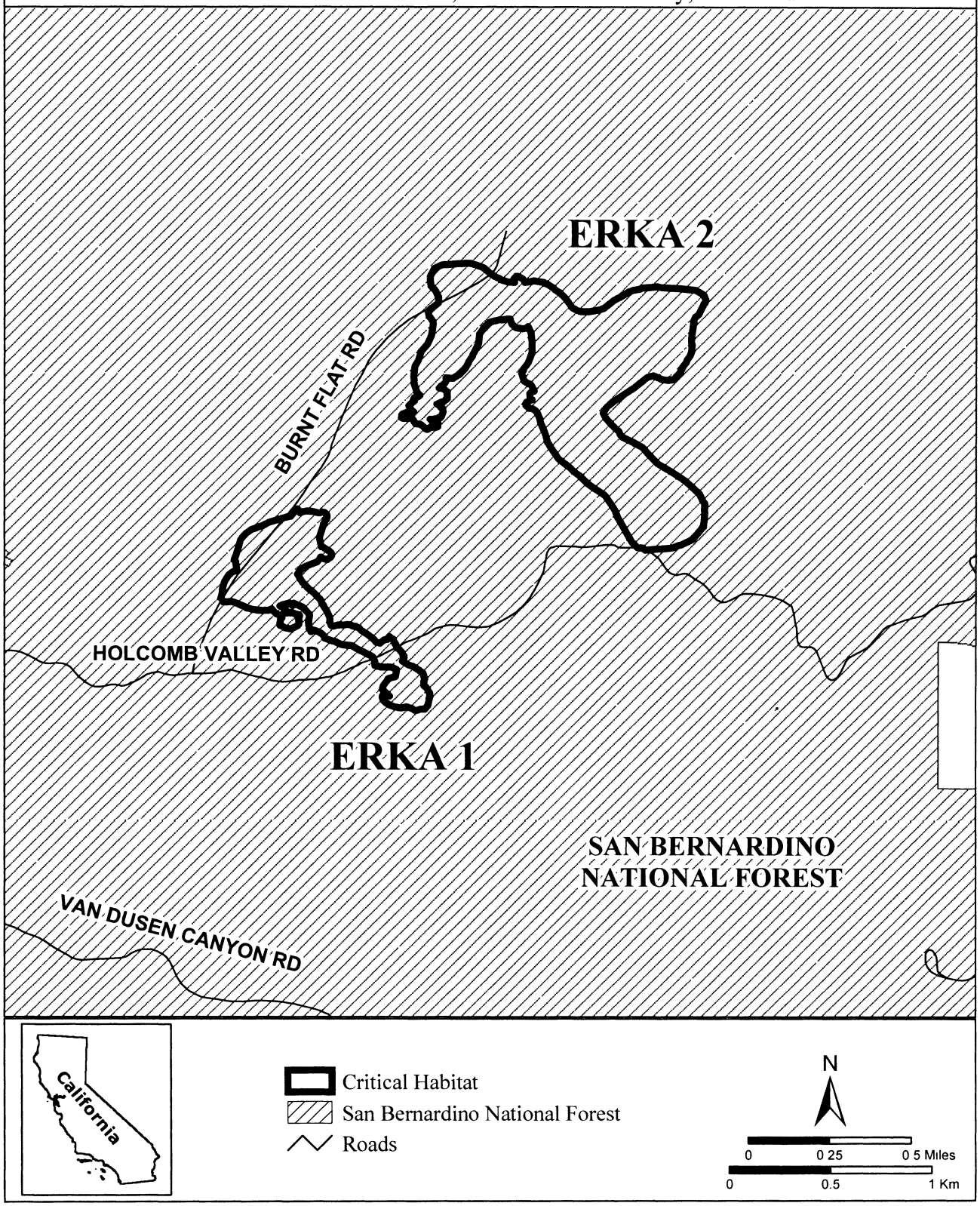
(iii) Note: Map of Units ERKA 1 and ERKA 2 (Map 2) follows:

BILLING CODE 4310–55–P

Map 2
Critical Habitat for *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild-buckwheat)
Units ERKA 1 and ERKA 2, San Bernardino County, California



BILLING CODE 4310–55–C

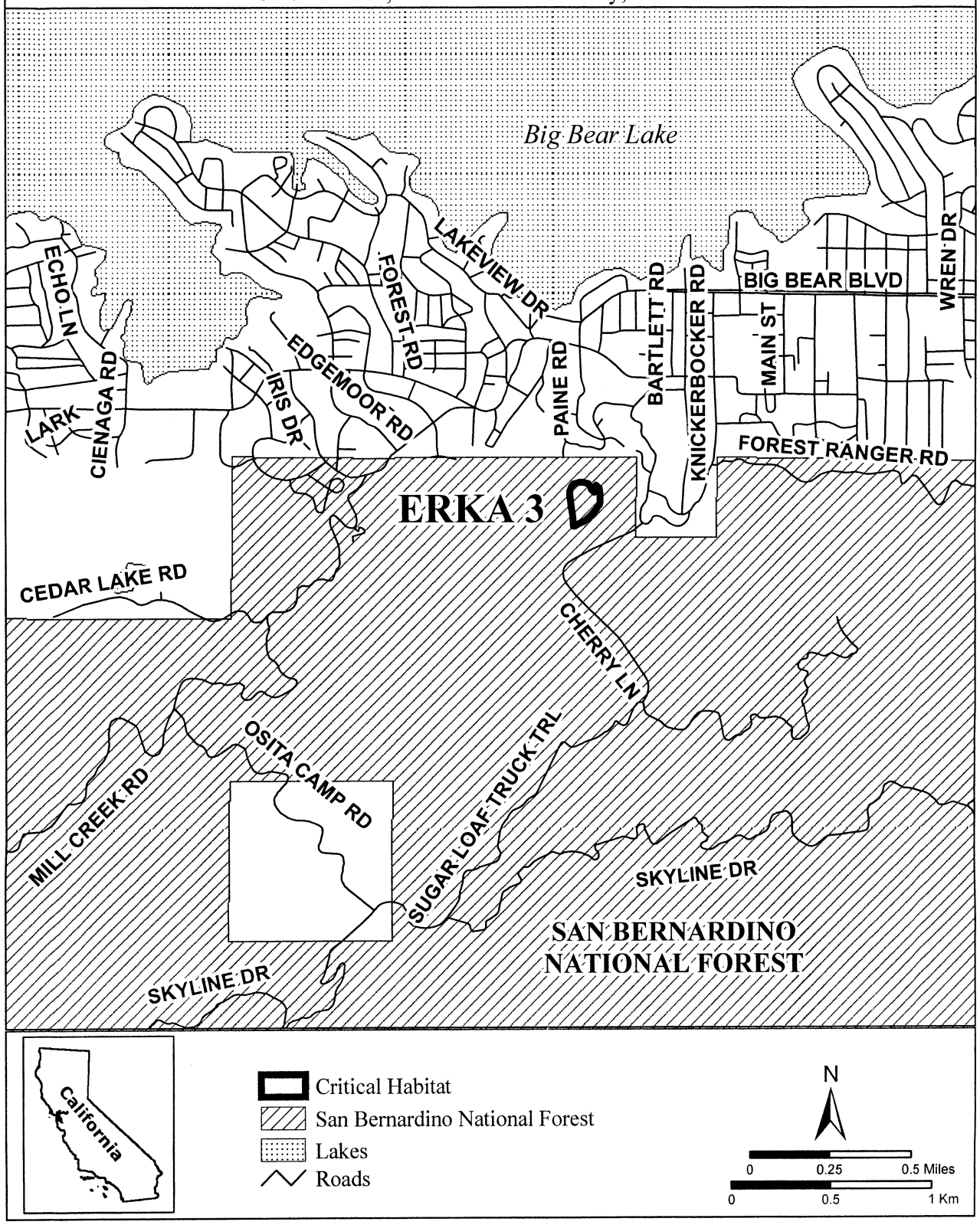
(7) Unit ERKA 3, Big Bear Lake, San Bernardino County, California.

(i) From USGS 1:24,000 quadrangle map Big Bear Lake. Land bounded by the following UTM NAD27 coordinates (E,N): 507777, 3788001; 507780, 3787993; 507783, 3788009; 507791, 3788029; 507801, 3788015; 507806, 3788013; 507806, 3788005; 507811, 3787989; 507811, 3787973; 507811, 3787949; 507810, 3787946; 507810, 3787941; 507807, 3787932; 507806, 3787930; 507804, 3787929; 507803, 3787925; 507802, 3787925; 507790, 3787909; 507764, 3787877; 507732, 3787851; 507704, 3787839; 507688, 3787829; 507686, 3787828; 507682, 3787826; 507682, 3787827; 507678, 3787826; 507674, 3787876; 507666, 3787929; 507659, 3787975; 507659, 3788001; 507669, 3788023; 507682, 3788035; 507707, 3788042; 507729, 3788042; 507752, 3788036; 507767, 3788013; 507769, 3788006; 507777, 3788001.

(ii) Note: Map of Unit ERKA 3 (Map 3) follows:

BILLING CODE 4310–55–P

Map 3
Critical Habitat for *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild-buckwheat)
Unit ERKA 3, San Bernardino County, California



BILLING CODE 4310–55–C

(8) Units ERKA 4 and ERKA 5. Fawnskin, San Bernardino County, California. From USGS 1:24,000 quadrangle map Fawnskin.

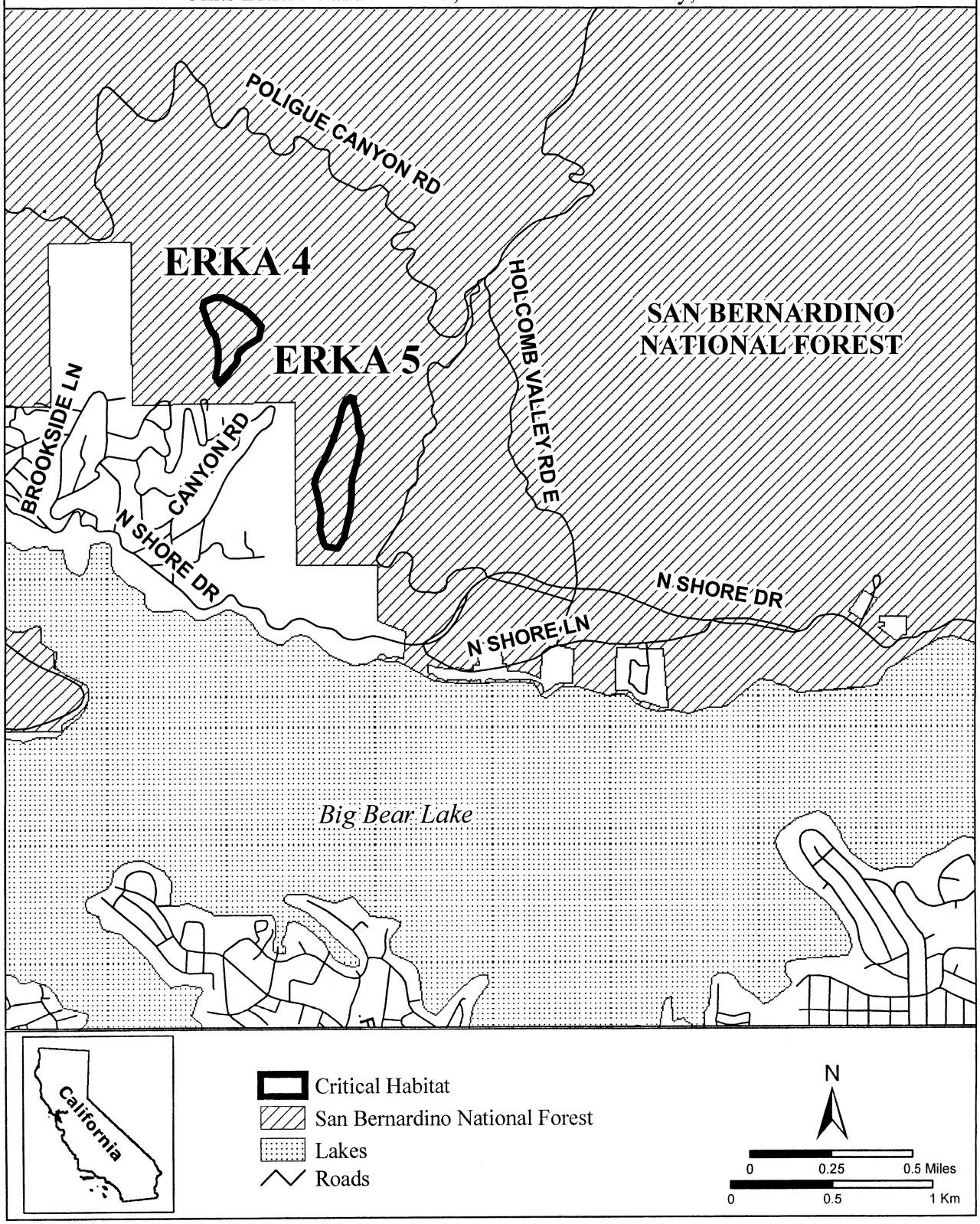
(i) Unit ERKA 4. Land bounded by the following UTM NAD27 coordinates (E,N): 506020, 3792309; 506020, 3792303; 506001, 3792335; 506014, 3792404; 506014, 3792468; 506001, 3792538; 505982, 3792557; 505963, 3792595; 505950, 3792639; 505937, 3792671; 505944, 3792703; 505994, 3792722; 506039, 3792722; 506109, 3792684; 506147, 3792665; 506191, 3792627; 506229, 3792582; 506217, 3792525; 506166, 3792493; 506121, 3792462; 506109, 3792442; 506109, 3792417; 506096, 3792392; 506077, 3792373; 506052, 3792335; 506020, 3792309.

(ii) Unit ERKA 5. Land bounded by the following UTM NAD27 coordinates (E,N): 506636, 3791541; 506604, 3791490; 506547, 3791496; 506534, 3791515; 506515, 3791579; 506522, 3791661; 506502, 3791757; 506490, 3791807; 506502, 3791852; 506547, 3791941; 506579, 3792017; 506610, 3792100; 506629, 3792182; 506649, 3792220; 506668, 3792233; 506687, 3792227; 506680, 3792214; 506693, 3792182; 506706, 3792138; 506712, 3792074; 506725, 3792036; 506706, 3791928; 506680, 3791846; 506674, 3791801; 506674, 3791744; 506668, 3791674; 506655, 3791623; 506636, 3791541.

(iii) Note: Map of Units ERKA 4 and ERKA 5 (Map 4) follows:

BILLING CODE 4310–55–P

Map 4
Critical Habitat for *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild-buckwheat)
Units ERKA 4 and ERKA 5, San Bernardino County, California



BILLING CODE 4310–55–C

(9) Units ERKA 6, ERKA 7, and ERKA 10. Gold Mountain and North Baldwin Lake, San Bernardino County, California. From USGS 1:24,000 quadrangle map Big Bear City.

(i) Unit ERKA 6. Land bounded by the following UTM NAD27 coordinates (E,N): 516297, 3793523; 516342, 3793514; 516374, 3793491; 516405, 3793447; 516412, 3793390; 516424, 3793352; 516421, 3793333; 516437, 3793335; 516450, 3793331; 516463, 3793309; 516466, 3793281; 516465, 3793279; 516475, 3793268; 516469, 3793227; 516447, 3793207; 516421, 3793189; 516380, 3793166; 516345, 3793154; 516311, 3793139; 516272, 3793103; 516244, 3793081; 516215, 3793077; 516187, 3793090; 516206, 3793135; 516202, 3793144; 516207, 3793149; 516196, 3793141; 516172, 3793137; 516163, 3793137; 516157, 3793137; 516154, 3793135; 516147, 3793133; 516132, 3793125; 516128, 3793123; 516109, 3793112; 516096, 3793112; 516095, 3793112; 516081, 3793111; 516065, 3793105; 516045, 3793109; 516017, 3793126; 516016, 3793127; 516006, 3793132; 516003, 3793145; 515998, 3793153; 515995, 3793166; 515988, 3793165; 515980, 3793163; 515971, 3793161; 515961, 3793161; 515956, 3793162; 515943, 3793162; 515926, 3793178; 515919, 3793180; 515912, 3793182; 515905, 3793188; 515899, 3793193; 515893, 3793198; 515884, 3793209; 515881, 3793219; 515879, 3793220; 515793, 3793243; 515732, 3793233; 515685, 3793220; 515647, 3793211; 515577, 3793211; 515536, 3793230; 515507, 3793261; 515501, 3793303; 515501, 3793335; 515542, 3793357; 515586, 3793360; 515625, 3793357; 515666, 3793341; 515707, 3793335; 515761, 3793338; 515809, 3793354; 515828, 3793376; 515851, 3793399; 515851, 3793403; 515848, 3793408; 515845, 3793414; 515844, 3793417; 515842, 3793424; 515842, 3793431; 515843, 3793438; 515839, 3793448; 515845, 3793446; 515849, 3793444; 515856, 3793439; 515860, 3793433; 515872, 3793430; 515873, 3793429; 515879, 3793443; 515901, 3793468; 515904, 3793468; 515910, 3793468; 515917, 3793461; 515921, 3793461; 515935, 3793473; 515980, 3793495; 516015, 3793501; 516082, 3793514; 516132, 3793514; 516212, 3793520; 516262, 3793527; 516297, 3793523.

(ii) Unit ERKA 7. Land bounded by the following UTM NAD27 coordinates (E,N): 516768, 3792969; 516744, 3792965; 516720, 3792965; 516705, 3792961; 516685, 3792953; 516673, 3792949; 516652, 3792935; 516645, 3792926; 516642, 3792923; 516641, 3792918; 516633, 3792898; 516633, 3792891; 516633, 3792891; 516623, 3792868; 516621, 3792864; 516585, 3792863; 516581, 3792865; 516578, 3792862; 516562, 3792870; 516560, 3792871; 516556, 3792871; 516545, 3792873; 516540, 3792875; 516521, 3792875; 516510, 3792864; 516502, 3792855; 516496, 3792848; 516490, 3792840; 516477, 3792833; 516463, 3792824; 516461, 3792822; 516450, 3792804; 516447, 3792800; 516438, 3792788; 516423, 3792784; 516410, 3792780; 516377, 3792769; 516375, 3792768; 516364, 3792763; 516319, 3792740; 516318, 3792740; 516311, 3792737; 516304, 3792731; 516298, 3792731; 516283, 3792725; 516279, 3792728; 516271, 3792727; 516229, 3792731; 516176, 3792758; 516157, 3792773; 516130, 3792803; 516127, 3792815; 516119, 3792849; 516138, 3792891; 516157, 3792925; 516180, 3792952; 516203, 3792979; 516233, 3793009; 516268, 3793036; 516274, 3793041; 516275, 3793055; 516282, 3793087; 516298, 3793112; 516329, 3793125; 516364, 3793131; 516453, 3793154; 516520, 3793160; 516590, 3793166; 516610, 3793155; 516641, 3793150; 516668, 3793139; 516694, 3793116; 516717, 3793093; 516732, 3793074; 516748, 3793055; 516759, 3793039; 516770, 3793024; 516772, 3793012; 516775, 3793010; 516778, 3793004; 516778, 3793004; 516780, 3793001; 516784, 3792993; 516783, 3792989; 516783, 3792987; 516783, 3792987; 516783, 3792987; 516782, 3792985; 516780, 3792983; 516780, 3792981; 516777, 3792979; 516777, 3792978; 516775, 3792975; 516773, 3792971; 516772, 3792971; 516772, 3792971; 516771, 3792971; 516769, 3792970; 516768, 3792969.

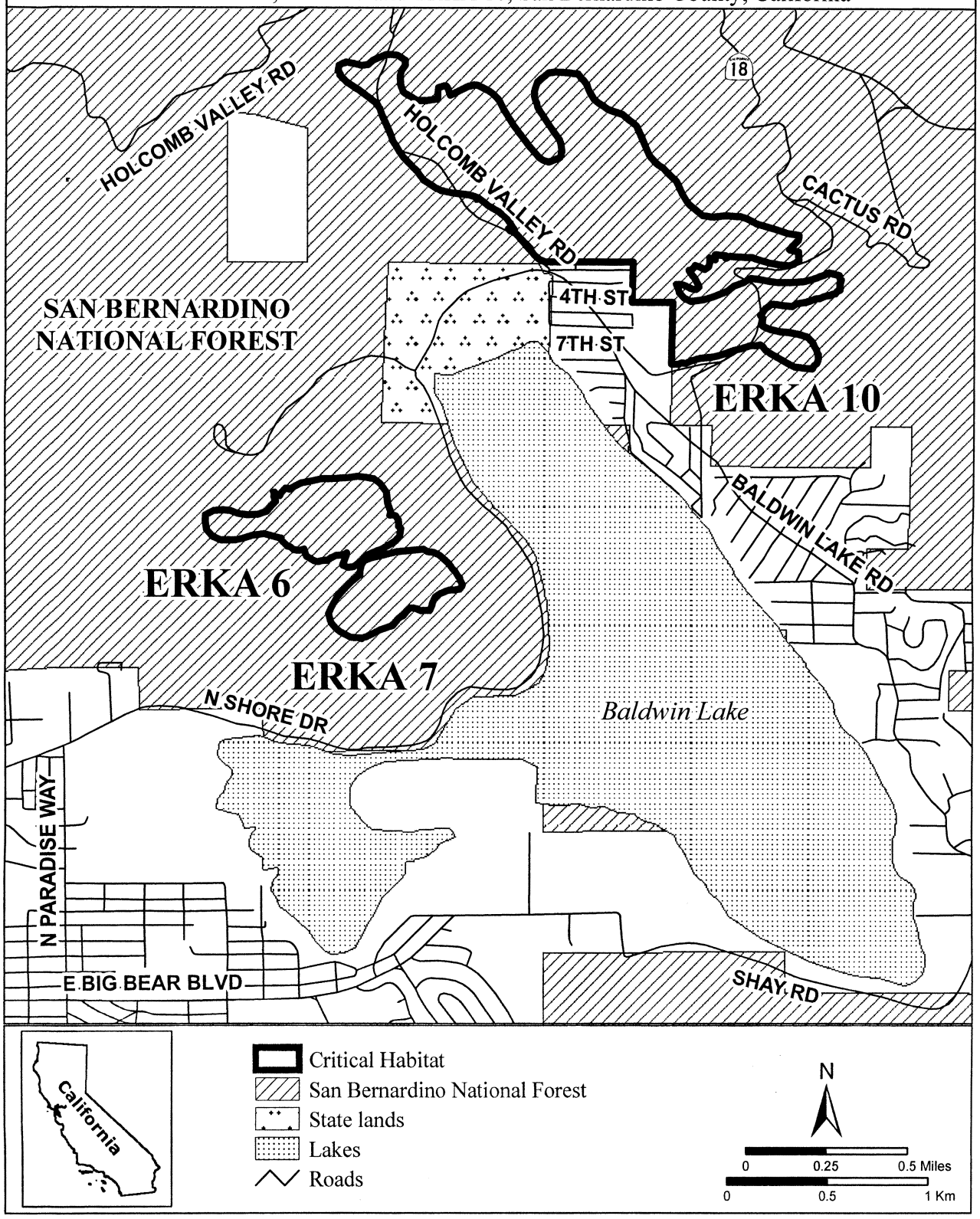
(iii) Unit ERKA 10. Land bounded by the following UTM NAD27 coordinates (E,N): 516160, 3795525; 516163, 3795551; 516182, 3795563; 516194, 3795563; 516198, 3795566; 516240, 3795559; 516278, 3795551; 516308, 3795555; 516331, 3795578; 516396, 3795605; 516406, 3795603; 516415, 3795605; 516453, 3795601; 516491, 3795578; 516491, 3795574; 516491, 3795551; 516472, 3795525; 516466, 3795501; 516465, 3795486; 516468, 3795452; 516480, 3795422; 516486, 3795415; 516518, 3795399; 516552, 3795379; 516598, 3795380; 516649, 3795388; 516655, 3795391; 516654, 3795425; 516658, 3795442; 516685, 3795452; 516698, 3795449; 516708, 3795431; 516716, 3795406; 516765, 3795429; 516807, 3795448; 516810, 3795448; 516834, 3795456; 516857, 3795452; 516906, 3795429; 516933, 3795410; 516960, 3795383; 516971, 3795361; 516986, 3795334; 517009, 3795299; 517032, 3795262; 517063, 3795223; 517097, 3795181; 517110, 3795163; 517131, 3795140; 517165, 3795101; 517184, 3795090; 517207, 3795083; 517211, 3795082; 517269, 3795104; 517278, 3795133; 517272, 3795170; 517264, 3795193; 517230, 3795239; 517196, 3795288; 517154, 3795349; 517150, 3795370; 517146, 3795376; 517139, 3795399; 517141, 3795414; 517139, 3795425; 517146, 3795448; 517154, 3795471; 517211, 3795517; 517245, 3795521; 517314, 3795517; 517360, 3795509; 517381, 3795485; 517386, 3795479; 517388, 3795476; 517402, 3795460; 517413, 3795433; 517440, 3795387; 517460, 3795371; 517489, 3795353; 517506, 3795341; 517520, 3795334; 517584, 3795315; 517611, 3795292; 517653, 3795261; 517672, 3795219; 517699, 3795159; 517718, 3795115; 517749, 3795078; 517759, 3795070; 517786, 3795052; 517809, 3795029; 517840, 3794999; 517841, 3794997; 517851, 3794987; 517882, 3794923; 517908, 3794881; 517917, 3794871; 517939, 3794854; 517981, 3794819; 518023, 3794812; 518038, 3794812; 518095, 3794819; 518152, 3794816; 518155, 3794815; 518171, 3794816; 518202, 3794804; 518251, 3794778; 518339, 3794755; 518411, 3794732; 518461, 3794724; 518461, 3794713; 518457, 3794698; 518442, 3794683; 518439, 3794680; 518438, 3794679; 518415, 3794652; 518458, 3794642; 518462, 3794598; 518443, 3794587; 518438, 3794583; 518413, 3794573; 518371, 3794577; 518322, 3794586; 518279, 3794597; 518246, 3794608; 518230, 3794614; 518206, 3794614; 518133, 3794617; 518117, 3794619; 518097, 3794610; 518097, 3794615; 518097, 3794618; 518098, 3794621; 518069, 3794625; 518061, 3794625; 518045, 3794627; 518046, 3794602; 518045, 3794602; 518039, 3794605; 518034, 3794609; 518019, 3794610; 518017, 3794611; 518019, 3794605; 518019, 3794589; 518012, 3794567; 517993, 3794554; 517968, 3794567; 517946, 3794573; 517936, 3794560; 517920, 3794548; 517914, 3794549; 517917, 3794545; 517924, 3794535; 517931, 3794526; 517939, 3794516; 517948, 3794503; 517954, 3794493; 517959, 3794482; 517964, 3794473; 517964, 3794468; 517959, 3794461; 517950, 3794456; 517934, 3794458; 517923, 3794462; 517905, 3794469; 517892, 3794475; 517882, 3794478; 517869, 3794480; 517852, 3794480; 517859, 3794462; 517866, 3794439; 517889, 3794413; 517927, 3794397; 517988, 3794404; 518030, 3794416; 518087, 3794439; 518110, 3794450; 518141, 3794473; 518187, 3794489; 518187,

3794490; 518222, 3794509; 518263, 3794506; 518311, 3794497; 518358, 3794490; 518419, 3794490; 518476, 3794493; 518481, 3794494; 518521, 3794504; 518558, 3794517; 518564, 3794521; 518569, 3794521; 518583, 3794526; 518586, 3794527; 518612, 3794538; 518617, 3794537; 518631, 3794533; 518632, 3794534; 518633, 3794533; 518663, 3794526; 518666, 3794509; 518673, 3794503; 518666, 3794484; 518666, 3794453; 518652, 3794447; 518644, 3794435; 518627, 3794432; 518620, 3794430; 518617, 3794427; 518602, 3794424; 518587, 3794421; 518565, 3794411; 518549, 3794409; 518508, 3794396; 518507, 3794395; 518505, 3794395; 518499, 3794393; 518457, 3794385; 518453, 3794385; 518428, 3794373; 518387, 3794376; 518358, 3794379; 518338, 3794383; 518327, 3794381; 518297, 3794362; 518273, 3794328; 518272, 3794325; 518277, 3794321; 518281, 3794312; 518281, 3794302; 518281, 3794291; 518279, 3794282; 518279, 3794278; 518293, 3794271; 518316, 3794259; 518369, 3794248; 518415, 3794244; 518426, 3794242; 518442, 3794241; 518455, 3794236; 518468, 3794233; 518507, 3794221; 518533, 3794195; 518541, 3794175; 518552, 3794157; 518554, 3794145; 518560, 3794134; 518558, 3794126; 518560, 3794115; 518552, 3794092; 518539, 3794081; 518529, 3794065; 518480, 3794069; 518474, 3794071; 518446, 3794073; 518407, 3794092; 518373, 3794111; 518312, 3794145; 518305, 3794152; 518297, 3794157; 518280, 3794177; 518270, 3794183; 518251, 3794179; 518221, 3794179; 518175, 3794164; 518142, 3794157; 518099, 3794141; 518065, 3794130; 518030, 3794122; 517965, 3794115; 517927, 3794103; 517901, 3794092; 517878, 3794093; 517863, 3794088; 517830, 3794088; 517836, 3794390; 517634, 3794390; 517639, 3794589; 517192, 3794589; 517160, 3794606; 517141, 3794622; 517130, 3794635; 517123, 3794641; 517120, 3794653; 517119, 3794657; 517112, 3794663; 517070, 3794705; 517068, 3794708; 517063, 3794711; 517052, 3794723; 517046, 3794727; 517042, 3794731; 517041, 3794732; 517036, 3794736; 517030, 3794739; 517025, 3794739; 517020, 3794742; 517019, 3794742; 517014, 3794745; 517009, 3794751; 517014, 3794755; 517025, 3794753; 517041, 3794746; 517040, 3794749; 516998, 3794804; 516956, 3794839; 516952, 3794841; 516906, 3794865; 516883, 3794884; 516856, 3794905; 516851, 3794907; 516849, 3794897; 516839, 3794910; 516811, 3794919; 516735, 3794926; 516686, 3794937; 516674, 3794938; 516657, 3794947; 516643, 3794953; 516613, 3794973; 516582, 3794991; 516573, 3795005; 516567, 3795010; 516548, 3795037; 516525, 3795059; 516522, 3795063; 516487, 3795098; 516483, 3795101; 516472, 3795119; 516461, 3795136; 516443, 3795164; 516430, 3795185; 516420, 3795212; 516419, 3795216; 516396, 3795265; 516377, 3795311; 516365, 3795341; 516346, 3795368; 516304, 3795399; 516259, 3795433; 516198, 3795471; 516175, 3795494; 516167, 3795501; 516168, 3795507; 516160, 3795525.

(iv) Note: Map of Units ERKA 6, ERKA 7, and ERKA 10 (Map 5) follows:

BILLING CODE 4310–55–P

Map 5
Critical Habitat for *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild-buckwheat)
Units ERKA 6, ERKA 7 and ERKA 10, San Bernardino County, California



BILLING CODE 4310–55–C

(10) Units ERKA 8 and ERKA 9. Holcomb Valley, San Bernardino County, California. From USGS 1:24,000 quadrangle map Fawnskin.

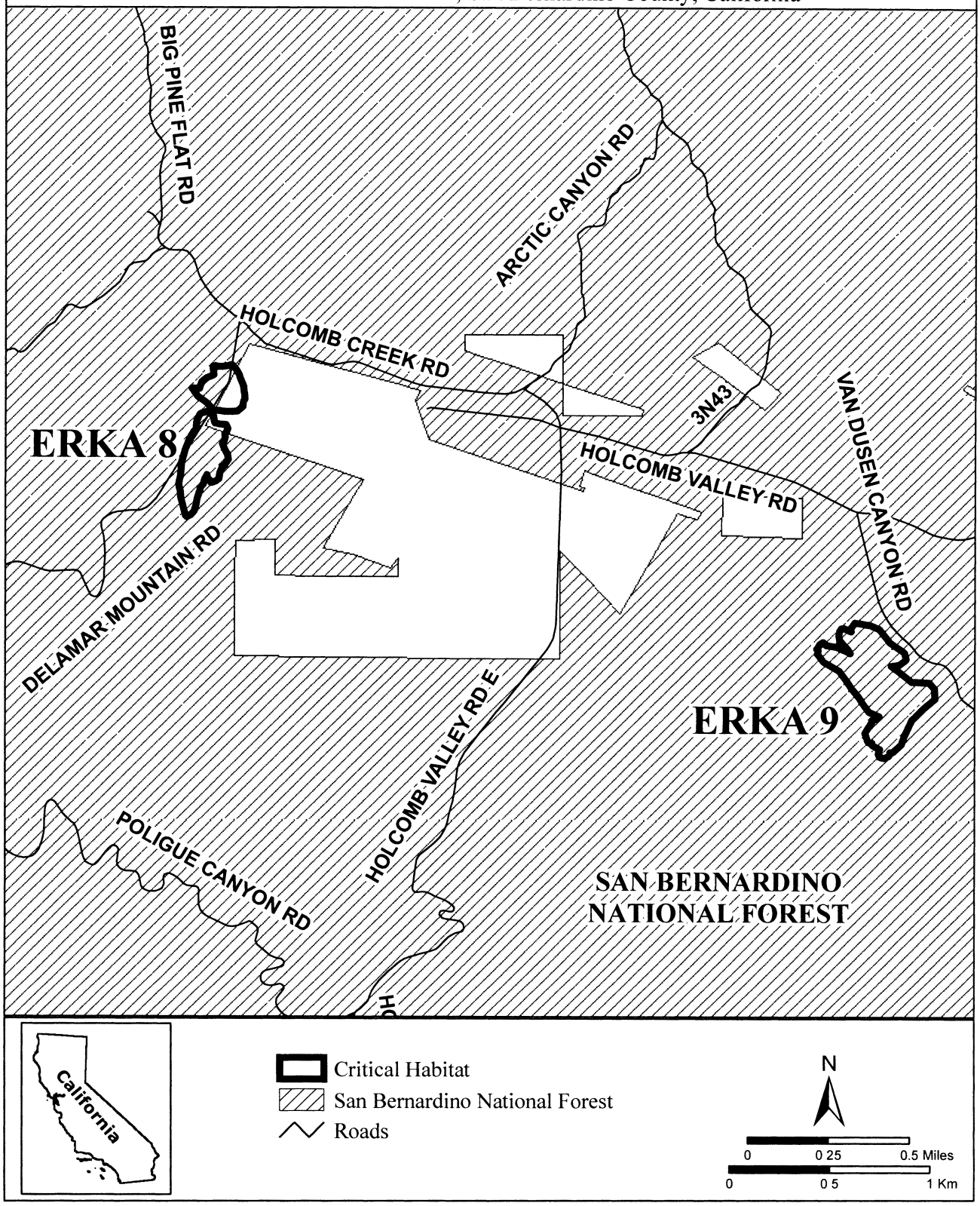
(i) Unit ERKA 8. Land bounded by the following UTM NAD27 coordinates (E,N): 506727, 3796049; 506738, 3796035; 506743, 3796031; 506761, 3796001; 506765, 3795985; 506767, 3795981; 506783, 3795942; 506785, 3795915; 506787, 3795910; 506790, 3795878; 506784, 3795872; 506782, 3795867; 506779, 3795843; 506773, 3795840; 506772, 3795835; 506767, 3795833; 506752, 3795821; 506730, 3795818; 506689, 3795818; 506663, 3795823; 506634, 3795825; 506624, 3795837; 506612, 3795847; 506606, 3795854; 506597, 3795862; 506571, 3795881; 506571, 3795883; 506557, 3795893; 506544, 3795910; 506529, 3795930; 506530, 3795930; 506528, 3795934; 506565, 3795933; 506565, 3795935; 506574, 3795964; 506600, 3795986; 506635, 3796001; 506633, 3796023; 506631, 3796041; 506632, 3796041; 506644, 3796045; 506663, 3796042; 506681, 3796042; 506707, 3796045; 506715, 3796049; 506727, 3796049. Land bounded by the following UTM NAD27 coordinates (E,N): 506666, 3795511; 506661, 3795481; 506647, 3795471; 506625, 3795463; 506622, 3795462; 506612, 3795476; 506604, 3795484; 506602, 3795500; 506591, 3795480; 506584, 3795455; 506569, 3795435; 506569, 3795428; 506562, 3795409; 506556, 3795389; 506547, 3795351; 506537, 3795317; 506532, 3795310; 506524, 3795303; 506512, 3795298; 506504, 3795291; 506495, 3795298; 506492, 3795307; 506487, 3795328; 506483, 3795347; 506477, 3795372; 506472, 3795393; 506470, 3795416; 506466, 3795433; 506463, 3795457; 506468, 3795488; 506472, 3795510; 506474, 3795533; 506477, 3795567; 506485, 3795593; 506494, 3795624; 506507, 3795657; 506517, 3795687; 506534, 3795715; 506555, 3795736; 506549, 3795747; 506552, 3795771; 506564, 3795799; 506572, 3795807; 506600, 3795819; 506616, 3795811; 506617, 3795807; 506620, 3795805; 506635, 3795794; 506639, 3795763; 506641, 3795759; 506670, 3795753; 506695, 3795750; 506705, 3795731; 506695, 3795712; 506690, 3795703; 506692, 3795687; 506687, 3795672; 506679, 3795655; 506689, 3795626; 506705, 3795598; 506708, 3795575; 506689, 3795550; 506677, 3795540; 506676, 3795537; 506666, 3795511.

(ii) Unit ERKA 9. Land bounded by the following UTM NAD27 coordinates (E,N): 509943, 3794740; 509997, 3794674; 510070, 3794623; 510076, 3794591; 510073, 3794585; 510044, 3794562; 510003, 3794556; 510054, 3794518; 510105, 3794477; 510124, 3794477; 510194, 3794473; 510219, 3794442; 510222, 3794391; 510168, 3794347; 510105, 3794283; 510067, 3794201; 510054, 3794162; 510013, 3794124; 509999, 3794124; 509999, 3794118; 509996, 3794110; 509991, 3794106; 509987, 3794102; 509981, 3794099; 509975, 3794097; 509968, 3794095; 509961, 3794096; 509955, 3794096; 509950, 3794098; 509946, 3794101; 509940, 3794109; 509940, 3794115; 509940, 3794122; 509943, 3794131; 509947, 3794139; 509911, 3794159; 509908, 3794173; 509894, 3794173; 509886, 3794181; 509874, 3794221; 509894, 3794256; 509914, 3794284; 509943, 3794302; 509943, 3794305; 509893, 3794327; 509858, 3794375; 509839, 3794404; 509807, 3794445; 509782, 3794480; 509747, 3794531; 509668, 3794579; 509639, 3794617; 509643, 3794633; 509635, 3794642; 509648, 3794660; 509649, 3794664; 509664, 3794674; 509668, 3794674; 509674, 3794667; 509680, 3794664; 509682, 3794659; 509737, 3794651; 509797, 3794623; 509800, 3794620; 509787, 3794641; 509771, 3794660; 509747, 3794684; 509743, 3794708; 509747, 3794731; 509755, 3794743; 509775, 3794743; 509791, 3794735; 509806, 3794729; 509803, 3794743; 509822, 3794772; 509902, 3794759; 509943, 3794740.

(iii) Note: Units ERKA 8 and ERKA 9 (Map 6) follows:

BILLING CODE 4310–55–P

Map 6
Critical Habitat for *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild-buckwheat)
Units ERKA 8 and ERKA 9, San Bernardino County, California



BILLING CODE 4310–55–C

(11) Units ERKA 11 and ERKA 12. Sawmill, San Bernardino County, California. From USGS 1:24, 000 quadrangle maps Big Bear City and Moonridge.

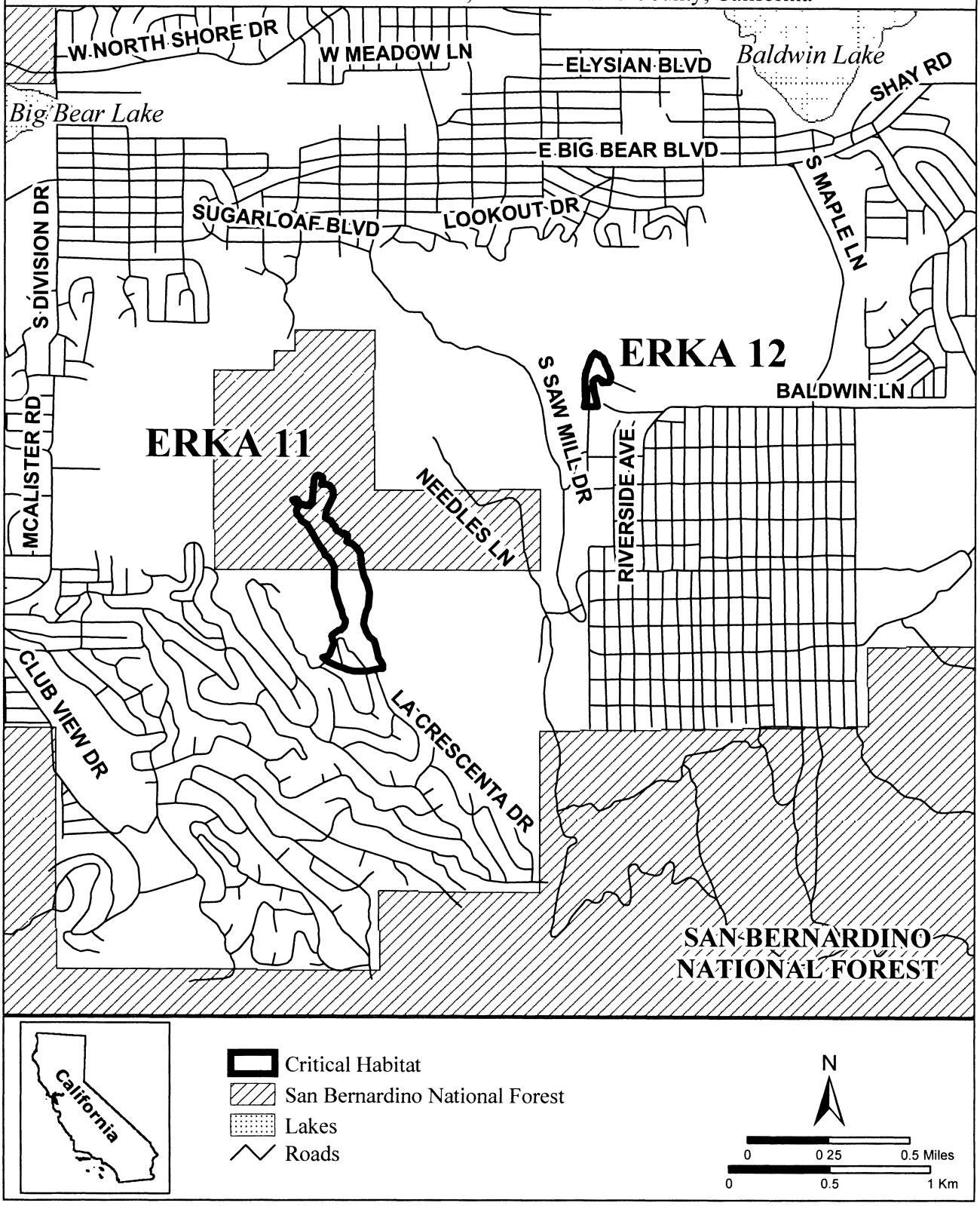
(i) Unit ARUR 13. Land bounded by the following UTM NAD27 coordinates (E,N): 514010, 3788419; 513955, 3788406; 513936, 3788404; 513891, 3788404; 513855, 3788412; 513831, 3788423; 513803, 3788431; 513777, 3788444; 513756, 3788453; 513744, 3788464; 513731, 3788473; 513761, 3788481; 513764, 3788488; 513768, 3788499; 513787, 3788551; 513781, 3788561; 513779, 3788566; 513777, 3788572; 513775, 3788579; 513777, 3788585; 513784, 3788591; 513809, 3788609; 513815, 3788611; 513820, 3788612; 513823, 3788612; 513837, 3788627; 513843, 3788649; 513843, 3788659; 513842, 3788660; 513830, 3788680; 513826, 3788709; 513821, 3788716; 513811, 3788742; 513789, 3788818; 513789, 3788865; 513789, 3788897; 513789, 3788923; 513776, 3788948; 513761, 3788973; 513742, 3788986; 513735, 3789005; 513719, 3789024; 513703, 3789050; 513697, 3789059; 513691, 3789069; 513678, 3789094; 513665, 3789113; 513653, 3789135; 513652, 3789137; 513648, 3789140; 513624, 3789156; 513620, 3789168; 513604, 3789184; 513600, 3789208; 513606, 3789220; 513606, 3789228; 513608, 3789229; 513581, 3789259; 513591, 3789262; 513601, 3789262; 513605, 3789257; 513608, 3789253; 513611, 3789247; 513621, 3789233; 513636, 3789235; 513645, 3789230; 513648, 3789234; 513652, 3789230; 513658, 3789229; 513662, 3789230; 513670, 3789236; 513674, 3789239; 513679, 3789244; 513686, 3789364; 513695, 3789377; 513704, 3789381; 513715, 3789379; 513719, 3789377; 513728, 3789372; 513730, 3789357; 513724, 3789335; 513743, 3789335; 513747, 3789335; 513763, 3789331; 513766, 3789326; 513772, 3789321; 513778, 3789313; 513781, 3789306; 513783, 3789303; 513783, 3789275; 513778, 3789268; 513778, 3789266; 513776, 3789263; 513753, 3789217; 513753, 3789214; 513750, 3789205; 513748, 3789194; 513745, 3789182; 513744, 3789171; 513744, 3789168; 513759, 3789161; 513765, 3789157; 513772, 3789154; 513780, 3789137; 513792, 3789126; 513793, 3789113; 513798, 3789111; 513804, 3789105; 513812, 3789102; 513826, 3789091; 513836, 3789093; 513846, 3789090; 513853, 3789083; 513854, 3789059; 513850, 3789053; 513878, 3789041; 513902, 3789017; 513905, 3789013; 513906, 3789010; 513913, 3789005; 513913, 3789001; 513918, 3788993; 513918, 3788973; 513923, 3788961; 513919, 3788942; 513926, 3788919; 513935, 3788882; 513948, 3788850; 513957, 3788824; 513964, 3788796; 513957, 3788729; 513945, 3788701; 513938, 3788672; 513935, 3788640; 513948, 3788599; 513964, 3788577; 513986, 3788561; 513992, 3788542; 513999, 3788507; 514008, 3788472; 514021, 3788448; 514027, 3788437; 514027, 3788419.

(ii) Unit ARUR 14. Land bounded by the following UTM NAD27 coordinates (E,N): 515023, 3789730; 515031, 3789764; 515027, 3789815; 515027, 3789875; 515029, 3789884; 515029, 3789895; 515034, 3789907; 515034, 3789909; 515035, 3789912; 515037, 3789923; 515053, 3789964; 515054, 3789966; 515058, 3789977; 515063, 3789983; 515066, 3789986; 515069, 3789988; 515077, 3789997; 515092, 3789990; 515094, 3789989; 515104, 3789979; 515113, 3789974; 515120, 3789962; 515128, 3789941; 515137, 3789925; 515140, 3789915; 515142, 3789911; 515153, 3789887; 515153, 3789881; 515156, 3789875; 515148, 3789851; 515132, 3789851; 515116, 3789851; 515113, 3789850; 515104, 3789865; 515098, 3789869; 515091, 3789873; 515089, 3789873; 515077, 3789867; 515066, 3789856; 515069, 3789834; 515073, 3789814; 515077, 3789790; 515085, 3789759; 515088, 3789732.

(iii) Note: Units ERKA 11 and ERKA 12 (Map 7) follows:

BILLING CODE 4310–55–P

Map 7
Critical Habitat for *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild-buckwheat)
Units ERKA 11 and ERKA 12, San Bernardino County, California



BILLING CODE 4310–55–C

(12) Unit ERKA 13. South Baldwin Ridge/Erwin Lake, San Bernardino County, California.

(i) From USGS 1:24,000 quadrangle map Big Bear City. Land bounded by the following UTM NAD27 coordinates (E,N): 518798, 3790531; 518814, 3790499; 518836, 3790501; 518883, 3790501; 518891, 3790493; 518942, 3790490; 519022, 3790477; 519063, 3790455; 519104, 3790439; 519114, 3790429; 519108, 3790395; 519085, 3790359; 519057, 3790347; 519012, 3790344; 518955, 3790357; 518923, 3790404; 518900, 3790419; 518911, 3790389; 518923, 3790370; 518907, 3790346; 518876, 3790342; 518839, 3790342; 518822, 3790331; 518821, 3790331; 518820, 3790320; 518800, 3790313; 518797, 3790307; 518792, 3790302; 518776, 3790291; 518766, 3790295; 518764, 3790297; 518763, 3790296; 518744, 3790298; 518740, 3790308; 518737, 3790313; 518724, 3790318; 518725, 3790327; 518714, 3790333; 518716, 3790337; 518707, 3790343; 518699, 3790340; 518697, 3790342; 518695, 3790345; 518693, 3790346; 518691, 3790351; 518685, 3790353; 518683, 3790359; 518682, 3790364; 518683, 3790368; 518698, 3790377; 518704, 3790378; 518712, 3790375; 518707, 3790379; 518666, 3790392; 518637, 3790398; 518629, 3790391; 518618, 3790391; 518613, 3790387; 518613, 3790385; 518611, 3790382; 518605, 3790378; 518600, 3790374; 518591, 3790377; 518580, 3790376; 518568, 3790381; 518553, 3790380; 518545, 3790386; 518540, 3790382; 518541, 3790379; 518541, 3790375; 518542, 3790373; 518540, 3790371; 518538, 3790371; 518535, 3790374; 518533, 3790378; 518531, 3790382; 518530, 3790387; 518529, 3790392; 518530, 3790397; 518532, 3790400; 518536, 3790400; 518542, 3790399; 518550, 3790401; 518553, 3790401; 518563, 3790404; 518567, 3790405; 518568, 3790403; 518570, 3790401; 518574, 3790401; 518577, 3790399; 518583, 3790401; 518590, 3790403; 518596, 3790399; 518596, 3790397; 518597, 3790397; 518602, 3790395; 518604, 3790398; 518607, 3790400; 518609, 3790402; 518610, 3790404; 518602, 3790406; 518597, 3790409; 518586, 3790409; 518562, 3790429; 518582, 3790445; 518597, 3790453; 518595, 3790463; 518574, 3790467; 518561, 3790460; 518541, 3790453; 518503, 3790453; 518490, 3790477; 518517, 3790511; 518551, 3790531; 518632, 3790551; 518686, 3790571; 518720, 3790579; 518740, 3790579; 518764, 3790562; 518798, 3790531.

(ii) Note: Map of Unit ERKA 13 (Map 8) follows:

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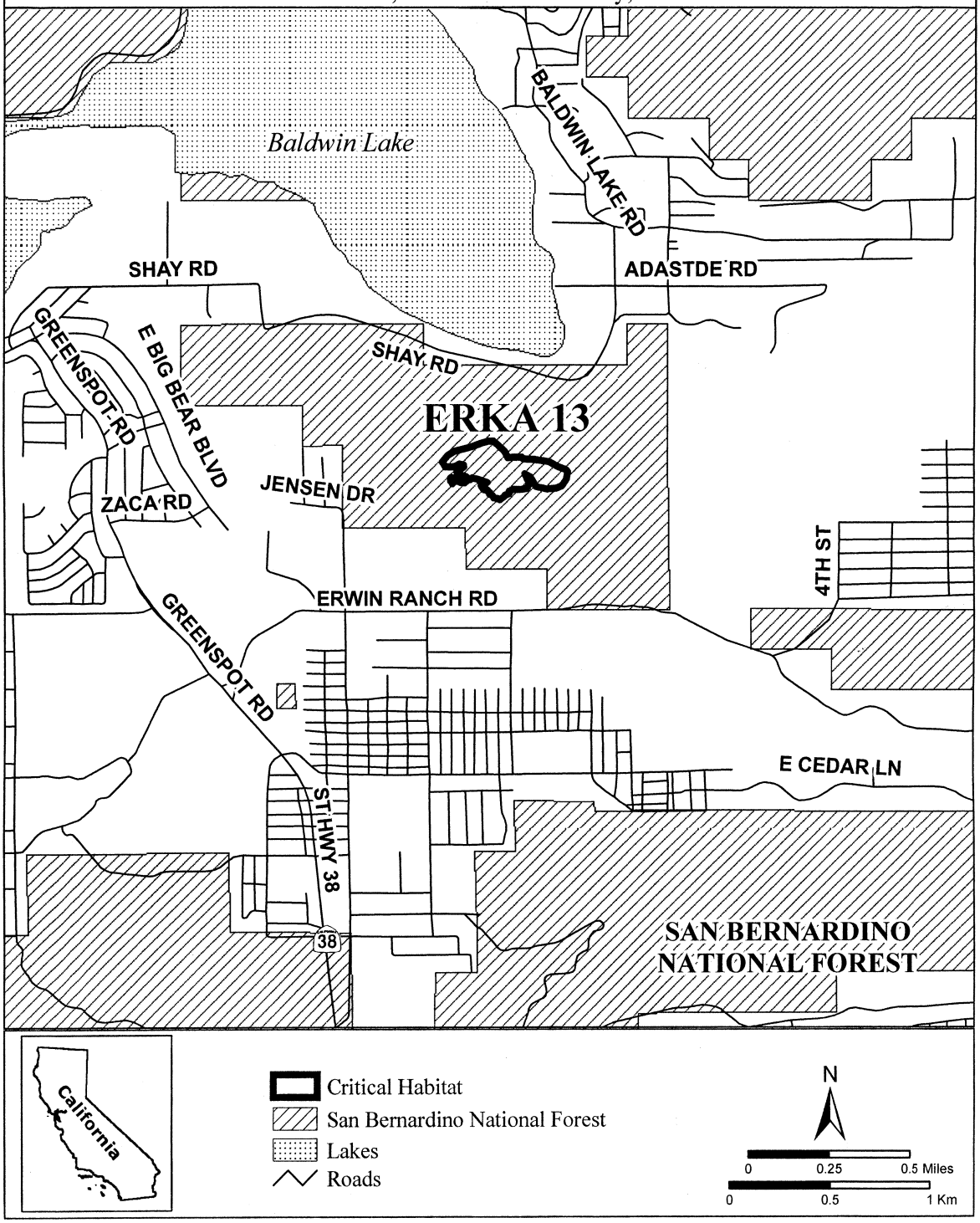
Map 8
Critical Habitat for *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild-buckwheat)
Unit ERKA 13, San Bernardino County, California



* * * * *

Dated: December 7, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–6137 Filed 12–21–07; 8:45 am]

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Federal Register

Wednesday,
December 26, 2007

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Area Sources: Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2006–0424; EPA–HQ–OAR–2006–0360; EPA–HQ–OAR–2006–0940; FRL–8508–5]

National Emission Standards for Hazardous Air Pollutants for Area Sources: Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing national emission standards for the Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing area source categories. Each of these three final emissions standards reflects the generally available control technology or management practices used by sources within the respective area source category.

DATES: This final rule is effective on December 26, 2007. The incorporation by reference of certain publications listed in this rule are approved by the Director of the Federal Register as of December 26, 2007.

ADDRESSES: EPA has established dockets for this action under Docket ID No. EPA–HQ–OAR–2006–0424 (for Clay Ceramics Manufacturing), Docket ID No. EPA–HQ–OAR–2006–0360 (for Glass Manufacturing), and Docket ID No. EPA–HQ–OAR–2006–0940 (for Secondary Nonferrous Metals Processing). All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about the final rule for Clay Ceramics Manufacturing, contact Mr. Bill Neuffer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Metals and Minerals Group (D243–02), Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–5435; *fax number:* (919) 541–3207; *e-mail address: Neuffer.Bill@epa.gov.* For questions about the final rule for Glass Manufacturing or Secondary Nonferrous Metals Processing, contact Ms. Susan Fairchild, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Metals and Minerals Group (D243–02), Research Triangle Park, NC 27711, *telephone number:* (919) 541–5167, *fax number:* (919) 541–3207, *e-mail address: Fairchild.Susan@epa.gov.*

SUPPLEMENTARY INFORMATION: The supplementary information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document?
C. Judicial Review
II. Background Information for Final Area Source Standards
III. Summary of Final Rules and Changes Since Proposal
A. Area Source NESHAP for Clay Ceramics Manufacturing
B. Area Source NESHAP for Glass Manufacturing
C. Area Source NESHAP for Secondary Nonferrous Metals Processing
IV. Exemption of Certain Area Source Categories From Title V Permitting Requirements
V. Summary of Comments and Responses
A. Area Source NESHAP for Clay Ceramics Manufacturing
B. Area Source NESHAP for Glass Manufacturing
C. Area Source NESHAP for Secondary Nonferrous Metals Processing
D. Area Source NESHAP—General
VI. Impacts of the Final Area Source Standards
A. Glass Manufacturing
B. Clay Ceramics Manufacturing
C. Secondary Nonferrous Metals Processing
VII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by these final standards include:

Category (Industry)	NAICS code [1]	Examples of regulated entities
Clay Ceramics Manufacturing	327122 327111 327112	Area source facilities that manufacture ceramic wall and floor tile, vitreous plumbing fixtures, sanitaryware, vitreous china tableware and kitchenware, and/or pottery.
Glass Manufacturing	327211 327212 327213	Area source facilities that manufacture flat glass, glass containers, and other pressed and blown glass and glassware.
Secondary Nonferrous Metals Processing	331492 331423	Area source brass and bronze ingot making, secondary magnesium processing, or secondary zinc processing plants that melt post-consumer nonferrous metal scrap to make products, including bars, ingots, and blocks, or metal powders.[2]

[1] North American Industry Classification System.

[2] The Secondary Nonferrous Metals Processing area source category was originally established under SIC code 3341, a broader classification which included brass and bronze ingot makers. The corresponding NAICS code for brass and bronze ingot makers is 331423.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11435 of subpart RRRRRR (national emissions standards for hazardous air pollutants (NESHAP) for Clay Ceramics Manufacturing Area Sources), 40 CFR 63.11448 of subpart SSSSSS (NESHAP for Glass Manufacturing Area Sources), and 40 CFR 63.11462 of subpart TTTTTT (NESHAP for Secondary Nonferrous Metals Processing). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA Regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of the final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rules is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 25, 2008. Under section 307(d)(7)(B) of the CAA, only an objection to these final rules that was raised with reasonable specificity during the period for public comment can be raised during judicial review. This section also provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Moreover, under section 307(d)(7)(B) of the CAA, only an objection to these final rules that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

II. Background Information for Final Area Source Standards

Section 112(k)(3)(B) of the CAA requires EPA to identify at least 30 hazardous air pollutants (HAP) which, as the result of emissions from area sources,[a] pose the greatest threat to public health in urban areas. Consistent with this provision, in 1999, in the Integrated Urban Air Toxics Strategy, EPA identified the 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''urban HAP.'' *See* 64 FR 38706, 38715–716, July 19, 1999. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. EPA listed the source categories that account for 90 percent of the urban HAP emissions in the Integrated Urban Air Toxics Strategy.[b] Sierra Club sued EPA, alleging a failure to complete standards for the source categories listed pursuant to CAA section 112(c)(3) and 112(k)(3)(B) within the timeframe specified by the statute. *See Sierra Club* v. *Johnson,* No. 01–1537, (D.D.C.). On March 31, 2006, the court issued an order requiring EPA to promulgate standards under CAA section 112(d) for those area source categories listed pursuant to CAA section 112(c)(3) and 112(k)(3)(B).

Among other things, the court order, as amended on October 15, 2007, requires that EPA complete standards for 9 area source categories by December 15, 2007. On September 20, 2007 (72 FR 53838), we proposed NESHAP for the following three listed area source categories: (1) Clay Ceramics Manufacturing; (2) Glass Manufacturing; and (3) Secondary Nonferrous Metals Processing as part of our effort to meet the December 15, 2007 deadline. The standards for the other categories are being issued in separate actions.

Under CAA section 112(d)(5), the Administrator may, in lieu of standards requiring maximum achievable control technology (MACT) under section 112(d)(2), elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.'' Under section 112(d)(5), the Administrator has the discretion to use generally available control technology or management practices (GACT) in lieu of MACT. As explained in the proposed NESHAP, we are setting standards for these three source categories pursuant to section 112(d)(5). *See* 72 FR 53840, September 20, 2007.

III. Summary of Final Rules and Changes Since Proposal

This section summarizes the final rules and identifies changes since proposal. For changes that were made as a result of public comments, we have provided detailed explanations of the changes and the rationale for the changes in the responses to comments in section V of this preamble.

A. Area Source NESHAP for Clay Ceramics Manufacturing

1. Applicability and Compliance Dates

The only substantive changes to the Clay Ceramics rule made since proposal are clarifications of applicability. There was an error in the wording of the applicable compliance dates, and we have revised the rule since proposal to clarify that an affected source is existing if construction or reconstruction was commenced on or before September 20, 2007, and an affected source is new if construction or reconstruction was commenced after September 20, 2007. These clarifications of existing and new source are consistent with the definitions specified in § 63.2.

The final standards apply to any new or existing affected source at a clay ceramics manufacturing facility that is an area source and uses more than 45 megagrams per year (Mg/yr) (50 tons per year (tpy)) of clay. The affected source are all kilns that fire glazed ceramic

[a] An area source is a stationary source of HAP emissions that is not a major source. A major source is a stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

[b] Since its publication in the Integrated Urban Air Toxics Strategy in 1999, the area source category list has undergone several amendments.

ware and all atomized spray glaze operations located at such a facility.

The owner or operator of an existing affected source must comply with the standards by December 26, 2007. The owner or operator of a new affected source is required to comply with the standards by December 26, 2007 or upon startup, whichever is later.

2. Standards

The Clay Products Manufacturing area source category (which included clay ceramics manufacturing) was listed for regulation under section 112(c)(3) for its contribution of the following urban HAP: chromium, lead, manganese, and nickel. No changes have been made since proposal to the standards for clay ceramics manufacturing facilities.

For each kiln firing glazed ceramic ware, the final standards require the facility owner or operator to maintain the kiln peak temperature below 1540°C (2800°F) and either use natural gas, or an equivalent clean-burning fuel, as the kiln fuel. The facility owner or operator has the option of using an electric-powered kiln.

The requirements for atomized spray glaze operations at clay ceramic manufacturing area source facilities differ depending on whether a facility has annual wet glaze usage above or below 227 Mg/yr (250 tpy). Consequently, we are requiring that the facility owner or operator maintain annual wet glaze usage records in order to document whether they are above or below 227 Mg/yr (250 tpy) wet glaze usage.

For each atomized spray glaze operation located at a clay ceramics manufacturing facility that uses more than 227 Mg/yr (250 tpy) of wet glaze(s), the final standards require the facility owner or operator to have an air pollution control device (APCD) on their glazing operations and operate and maintain the control device according to the equipment manufacturer's specifications. As a pollution prevention alternative to this requirement, we are also providing the option to use glazes containing less than 0.1 (weight) percent clay ceramics metal HAP for those facilities above the threshold, which is expected to provide emissions reductions equivalent or greater than those obtained using particulate matter (PM) controls.

For each atomized spray glaze operation located at a clay ceramics manufacturing facility that uses 227 Mg/yr (250 tpy) or less of wet glaze(s), the final standards require the facility owner or operator to employ waste minimization practices in their glazing operations. In the preamble to the proposed rule, we acknowledged that some of these smaller facilities operate their atomized spray glaze operations with APCDs or use glazes containing less than 0.1 (weight) percent clay ceramics metal HAP. These alternative compliance options achieve reductions in metal HAP emissions that are at least equivalent to the metal HAP reductions from the waste minimization practices. Therefore, the final rule includes the use of glazes containing less than 0.1 (weight) percent clay ceramics metal HAP or an APCD as alternative compliance options for the waste minimization practices.

3. Compliance Requirements

No changes have been made since proposal to the compliance requirements for clay ceramics manufacturing facilities.

Initial compliance demonstration requirements. The owner or operator is required to include a compliance certification for the standards in their Notification of Compliance Status. For any wet spray glaze operations controlled with an APCD, an initial inspection of the control equipment must be conducted within 60 days of the compliance date and the results of the inspection included in the Notification of Compliance Status.

Monitoring requirements. For each kiln firing glazed ceramic ware, the final standards require the owner or operator to conduct a check of the kiln peak firing temperature on a daily basis. If the peak firing temperature exceeds 1540°C (2800°F), the owner or operator must take corrective action according to the facility's standard operating procedures.

For all sources that operate an APCD for their atomized spray glaze operations, we are requiring daily and weekly visual APCD inspections, daily EPA Method 22 visible emissions (VE) tests (40 CFR part 60, appendix A–7), or an EPA-approved alternative monitoring program to ensure that the APCD is kept in a satisfactory state of maintenance and repair and continues to operate effectively.

The owner or operator is allowed to use existing operating permit documentation to meet the monitoring requirements, provided it includes the necessary monitoring records (*e.g.*, the date, place, and time of the monitoring; the person conducting the monitoring; the monitoring technique or method; the operating conditions during monitoring; and the monitoring results).

Notification and recordkeeping requirements. We are requiring that affected sources submit Initial Notifications and Notifications of Compliance Status according to the part 63 General Provisions. Facilities must submit the notifications by April 24, 2008.

B. Area Source NESHAP for Glass Manufacturing

1. Summary of Changes Since Proposal

Applicability

We have revised the applicability criteria of the rule in § 63.11448 to clarify that periodic or pot furnaces are not part of the source category. The final rule applies only to glass manufacturing plants that operate continuous furnaces and use one or more of the glass manufacturing metal HAP as raw materials.

In light of the changes made to the applicability criteria in § 63.11448, we added a new paragraph to § 63.11449(a)(1), which states that, to be an affected source, the furnace must be a continuous furnace. We added a definition of ''continuous furnace'' to § 63.11459 to further clarify how affected furnace is defined. We made an additional revision to § 63.11449(a) to clarify that, consistent with the proposed rule, to be an affected source, a furnace must produce least 45 Mg/yr (50 tpy) of glass that contains one or more of the glass manufacturing metal HAP as raw materials. In the proposed rule, it was unclear whether a furnace that is used to produce more than 45 Mg/yr (50 tpy) of glass, but less than 45 Mg/yr (50 tpy) of glass containing metal HAP as raw materials, would be an affected source. The revision clarifies that such a furnace would not be an affected furnace. Finally, we inserted a new paragraph § 63.11449(b) to clarify that furnaces that are used exclusively for research and development (R&D) are not part of the source category and are therefore not subject to regulation under this final rule. We also added a definition for ''research and development process unit'' to § 63.11459.

In addition, we identified an error in the wording of the applicable compliance dates, and we have revised § 63.11449 since proposal to clarify that an affected source is existing if construction or reconstruction was commenced on or before September 20, 2007, and an affected source is new if construction or reconstruction was commenced after September 20, 2007. These clarifications of existing and new source are consistent with the definitions specified in § 63.2. Finally, we added a paragraph to the regulation to clarify that affected facilities must obtain a title V permit.

Performance Test Requirements

We revised § 63.11452(a) by adding paragraph (a)(3), which addresses the situation in which a facility operates affected furnaces that are identical. The new paragraph allows the owner or operator to demonstrate compliance for all such identical furnaces by testing only one of the furnaces. The additional paragraph specifies the criteria for determining if one furnace is identical to another and the conditions under which the furnace must be tested.

Under § 63.11452(b), we deleted paragraph (b)(2), which was redundant and renumbered the remaining paragraphs accordingly. We revised § 63.11452(b)(8), which formerly was paragraph (b)(9), to state that sampling ports for performance testing are to be located at the outlet to the furnace control device or in the furnace stack. The proposed rule was unclear regarding the exact location for emission testing. We added an alternative test method to Methods 3, 3A, and 3B for gas molecular weight analysis. We reorganized the paragraphs that address testing for PM or metal HAP to clarify which procedures to follow to determine compliance with the PM emission limit and which procedures to follow to determine compliance with the metal HAP emission limit. We also revised the definition of the metal HAP mass emission rate in Equation 2, which is signified as the variable ''ERM''. This variable specifies which metals are to be included in the analysis of the emission samples that are collected during testing. The revised text clarifies that ERM represents the combined mass emission rates for only those glass manufacturing metal HAP that are added as raw materials in the batch formulation.

Monitoring and Continuous Compliance Requirements

We revised the monitoring requirements by adding paragraph § 63.11454(a)(7), which specifies that the required monitoring must be performed any time the affected furnace is producing glass that is charged with one or more of the glass manufacturing metal HAP. Monitoring also must be performed during all transition phases from glass containing metal HAP to glass that does not contain metal HAP (i.e., until all HAP-containing glass has left the furnace melter). These transition phases encompass the period that begins when the plant stops charging the metal HAP as raw materials and ends when the furnace is producing a saleable product that does not contain the glass manufacturing metal HAP as raw materials.

We revised § 63.11455(c) to clarify that the continuous compliance requirements apply whenever the affected furnace is producing glass that contains one or more of the glass manufacturing metal HAP, including any transition phases from metal HAP-containing glass to glass that does not contain the metal HAP. We also revised paragraph § 63.11455(c) to clarify the monitoring requirements for existing furnaces versus the monitoring requirements for new furnaces. We further revised § 63.11455 by adding paragraph (e) to clarify the continuous compliance requirements for affected furnaces that can meet the emission limits without the use of a control device. In such cases, the only requirements for demonstrating continuous compliance is to meet the applicable recordkeeping requirements specified in § 63.11457.

Notifications

We have revised § 63.11456 to simplify the section and clarify that the deadline for submitting the Initial Notification is 120 days after the furnace becomes subject to the rule, regardless of whether the furnace is existing or new.

Definitions

We have revised several of the definitions specified in § 63.11459 and added a number of new definitions to the section. We revised the definition of cullet to clarify that cullet is not considered a raw material when determining if a furnace is an affected source. We revised the definition of a glass melting furnace, which is defined in the final rule as the process unit in which raw materials are charged and melted at high temperature to produce molten glass. The previous definition included the raw material charging system and other appendages to the furnace. However, the revised definition is consistent with the procedures for testing furnaces to demonstrate compliance. We revised the definition of particulate matter by replacing the modifier ''total'' with ''filterable.'' This revision makes the definition consistent with the test methods specified for demonstrating compliance with the PM emission limit. Finally, we revised the definition of raw material to clarify that it excludes cullet and material that is recycled from the furnace control device.

To clarify the applicability requirements in §§ 63.11448 and 63.11449, we added the definition of continuous furnace. To clarify the performance testing requirements, we have added a definition for furnace stack. We also added a definition for identical furnaces, which pertains to the performance testing requirements for a facility that operates more than one identical furnace. Finally, we added a definition for research and development process unit. This definition was needed to clarify in § 63.11449(b) that furnaces used strictly for R&D are not subject to regulation under this final rule. Glass manufacturing furnaces used only for R&D were not part of the 1990 inventory and are not part of the listed source category.

Implementation and Enforcement Authority

We deleted paragraph § 63.11460(c), which was redundant. We also added a new paragraph (b)(2) to clarify that EPA retains the authority for approving alternative test methods.

2. Summary of Final Rule

Applicability and Compliance Dates

This NESHAP applies to any glass manufacturing plant that is an area source of HAP emissions and operates one or more continuous furnaces which produce at least 45 Mg/yr (50 tpy) of glass per furnace by melting a mixture of raw materials that includes compounds of one or more of the glass manufacturing metal HAP. The rule does not apply to periodic furnaces or furnaces that are used strictly for research and development.

The compliance date for existing sources is December 28, 2009. However, owners or operators of affected sources may request an extension of one additional year to comply with the rule, as allowed under section 112(i)(3)(B) of the CAA and under § 63.6(i)(4)(A), if the additional time is needed to install emission controls. The compliance date for new sources is December 26, 2007 or the startup date for the source, whichever is later. The compliance date for facilities with no affected sources as of December 26, 2007 and which later change processes or increase production and trigger applicability of the rule, is 2 years following the date on which the facility made the process changes or increased production and thereby became subject to the NESHAP.

Standards

The Glass Manufacturing area source category was listed for regulation under section 112(c)(3) for its contribution of the following urban HAP: arsenic, cadmium, chromium, lead, manganese, and nickel. The glass manufacturing final rule requires each new or existing affected furnace to comply with a PM

emission limit of 0.1 gram per kilogram (g/kg) (0.2 pound per ton (lb/ton)) of glass produced or an equivalent metal HAP emission limit of 0.01 g/kg (0.02 lb/ton) of glass produced.

Performance Testing

This final rule requires an initial one-time performance test on each affected furnace unless the furnace had been tested during the previous 5 years, and the previous test demonstrated compliance with the emission limits in this rule using the same test methods and procedures specified in this rule. This final rule requires testing using EPA Methods 5 or 17 (for PM emissions) or EPA Method 29 (for metal HAP emissions) in 40 CFR part 60, appendix A. This final rule also allows the owner or operator of affected identical furnaces to test only one of the furnaces if certain conditions are met.

Monitoring

The owner or operator of an existing affected glass furnace that is controlled with an electrostatic precipitator (ESP) must monitor the secondary voltage and secondary electrical current to each field of the ESP continuously and record the results at least once every 8 hours. The owner or operator of a new affected furnace equipped with an ESP must install and operate one or more continuous parameter monitoring systems to continuously measure and record the secondary voltage and secondary electrical current to each field of the ESP. Either of these parameters dropping below established levels provides an indication that the electrical power to the ESP field in question has decreased, and collection efficiency may have decreased accordingly.

Owners or operators of an existing affected glass furnace that is controlled with a fabric filter must monitor the fabric filter inlet temperature continuously and record the results at least once every 8 hours. The owner or operator of a new affected furnace that is equipped with a fabric filter must install and operate a bag leak detector.

As an alternative to monitoring ESP secondary voltage and electrical current or fabric filter inlet temperature, owners or operators of affected furnaces equipped with either of these control devices have the option of requesting alternative monitoring, as allowed under § 63.8(f). The alternative monitoring request must include a description of the monitoring device or monitoring method to be used; instrument location; inspection procedures; quality assurance and quality control measures; the parameters to be monitored; and the frequency with which the operating parameter values would be measured and recorded. The owner or operator of an affected furnace that is equipped with a control device other than an ESP or fabric filter, or that uses other methods to reduce emissions, must submit a request for alternative monitoring, as described in § 63.8(f).

Control Device Inspections

The owner or operator of an affected furnace must conduct initial and periodic inspections of the furnace control device. For fabric filters, the final rule requires annual inspections of the ductwork, housing, and fabric filter interior. For electrostatic precipitators, this final rule requires annual inspections of the ductwork, hopper, and housing, and inspections of the ESP interior every 2 years.

Notification and Recordkeeping

Owners and operators of all affected glass manufacturing plants that operate at least one continuous furnace that produces at least 45 Mg/yr (50 tpy) of glass using any of the glass manufacturing metal HAP as raw materials must submit an Initial Notification, as required under § 63.9(b). Any facility with an affected source also must submit a Notification of Compliance Status, as specified in § 63.9(h).

Owners and operators of glass manufacturing facilities are required to keep records of all notifications, as well as supporting documentation for the notifications. In addition, they must keep records of performance tests; parameter monitoring data; monitoring system audits and evaluations; operation and maintenance of control devices and monitoring systems; control device inspections; and glass manufacturing batch formulation and production.

C. Area Source NESHAP for Secondary Nonferrous Metals Processing

1. Applicability and Compliance Dates

There was an error in the wording of the applicable compliance dates, and we have revised the rule since proposal to clarify that an affected source is existing if construction or reconstruction was commenced on or before September 20, 2007, and an affected source is new if construction or reconstruction was commenced after September 20, 2007. These clarifications of existing and new sources are consistent with the definitions specified in § 63.2.

The final standards apply to any new or existing affected source at an area source secondary nonferrous metals processing facility. The affected source includes all crushing or screening operations at a secondary zinc processing facility and all furnace melting operations located at a secondary nonferrous metals processing facility.

The owner or operator of an existing affected source must comply with the standards by December 26, 2007. The owner or operator of a new affected source is required to comply with the standards by December 26, 2007, or upon initial startup, whichever is later.

2. Standards

The Secondary Nonferrous Metals Processing area source category was listed for regulation under section 112(c)(3) for its contribution of the following urban HAP: arsenic, chromium, lead, manganese, and nickel. We proposed to require the use of a fabric filter or baghouse that achieves a PM control efficiency of 99 percent for existing sources and 99.5 percent for new sources. Since our proposal, we learned that a facility had insufficient inlet ductwork to conduct a performance test for determining collection efficiency. The facility requested that we add an alternate emission limit expressed as an outlet concentration limit to the final standards.

As we noted in the proposed rule, the 10 existing facilities reported using baghouses on crushing or screening operations at secondary zinc facilities and on furnace melting operations at all facilities and that such baghouses performed at a PM collection efficiency of at least 99 percent or achieved an outlet PM concentration not exceeding 0.050 grams per dry standard cubic meter (g/dscm) (0.022 grains per dry standard cubic foot (gr/dscf)) where collection efficiency was not reported. Based on available outlet concentration data from ICR responses in the proposal docket and consideration of baghouse performance at similar sources, we have determined that limiting outlet PM concentrations to 0.034 g/dscm (0.015 gr/dscf) and 0.023 g/dscm (0.010 gr/dscf) would control PM and metal HAP emissions at levels that are equivalent to the levels of control from using a baghouse with a control efficiency of 99 and 99.5 percent, respectively. Because both the proposed control efficiency standards and the equivalent outlet concentration limits reflect the GACT levels of control, we have revised the proposed standards to include the outlet concentration limits as alternatives to the control efficiency standards.

The final standards require the owner or operator of an existing affected source

to route the emissions from the affected source through a fabric filter or baghouse that achieves a control efficiency of at least 99.0 percent or an outlet PM concentration limit of 0.034 g/dscm (0.015 gr/dscf). The owner or operator of a new affected source must route the emissions from the affected source through a fabric filter or baghouse that achieves a control efficiency of at least 99.5 percent or an outlet PM concentration limit of 0.023 g/dscm (0.010 gr/dscf).

3. Compliance Requirements

Performance test requirements. The owner or operator of any existing or new affected source must conduct a one-time initial performance test on the affected source. However, a new performance test is not required for existing affected sources that were tested within the past 5 years of the compliance date if the test was conducted using the same procedures specified in the standards and either no process changes had been made since the test, or the owner or operator demonstrates that the results of the performance test, with or without adjustments, reliably demonstrated compliance despite process changes. The tests for new and existing affected sources are to be conducted using EPA Method 5 in 40 CFR part 60, appendix A–3 or EPA Method 17 in 40 CFR part 60, appendix A–6.

Initial control device inspection. The owner or operator of each existing and new affected source is required to conduct an initial inspection of each baghouse. The owner or operator must visually inspect the system ductwork and baghouse unit for leaks and inspect the inside of each baghouse for structural integrity and fabric filter condition. The owner or operator must record the results of the inspection and any maintenance action taken.

For each installed baghouse which is in operation during the 60 days after the compliance date, the owner or operator must conduct the initial inspection no later than 60 days after the applicable compliance date. For an installed baghouse which is not in operation during the 60 days after the compliance date, the owner or operator is required to conduct an initial inspection prior to startup of the baghouse. An initial inspection of the internal components of a baghouse is not required if an inspection has been performed within the past 12 months.

Monitoring requirements. For existing affected sources, the owner or operator must conduct either daily visible emission (VE) tests using EPA Method 22 (40 CFR part 60, appendix A–7) or weekly visual inspections of the baghouse system ductwork for leaks, as well as annual inspections of the interior of the baghouse to determine its structural integrity and to determine the condition of the fabric filter. For new affected sources, the owner or operator must operate and maintain a bag leak detection system for each baghouse used to comply with the standards. The final standards require the owner or operator to keep records of the date, place, and time of the monitoring; the person conducting the monitoring; the monitoring technique or method; the operating conditions during monitoring; and the monitoring results.

Notification and recordkeeping requirements. The owner or operator of an affected source must submit an Initial Notification and Notification of Compliance Status. The Notification of Compliance status must include, among other information, the results from the one-time initial performance test and certifications of compliance for the standards. We proposed to require facilities to submit both notifications no later than 120 days after the applicable compliance date regardless of whether they were required to conduct a performance test. Since our proposal, we discovered that, although we had intended to allow sources 180 days from the compliance date to conduct the initial performance test and an additional 60 days to submit the results of the performance test, the proposed rule implicitly shortened that time frame by 120 days because it required that the Notification of Compliance status include the performance test results and be submitted within 120 days of the compliance date. Therefore, to afford sources the full time to conduct the performance test and submit the results of the testing, we have revised our proposal in this final rule to require that sources required to do performance testing submit the Notification of Compliance Status before the close of business of the 60th day following the completion of a performance test.

IV. Exemption of Certain Area Source Categories From Title V Permitting Requirements

We did not receive any comments on our proposal to exempt facilities in the Clay Ceramics and Secondary Nonferrous Metals Processing area source categories from title V permitting requirements. Therefore, this final rule does not require facilities in these source categories to obtain an operating permit under 40 CFR part 70 or part 71.

The proposed Glass Manufacturing Area Source NESHAP would have required affected facilities to obtain title V permits. Although we received public comments requesting that we exempt the Glass Manufacturing Area Source Category from title V, we are finalizing the approach in the proposed rule and are not exempting the source category from title V. The reasons for this decision are summarized in this notice in the Summary of Comments and Responses section for the Area Source NESHAP for Glass Manufacturing.

V. Summary of Comments and Responses

A. Area Source NESHAP for Clay Ceramics Manufacturing

Comment: One commenter noted that the intent of the CAA, as it relates to the Area Source Program, was to bring about reductions in HAP emissions from area sources. The commenter expressed disappointment that some of the rules proposed under the Area Source Program (e.g., Clay Ceramics Manufacturing) will not result in emissions reductions and recommended that future area source rules incorporate provisions that will provide additional public health protection from the effects of HAP emissions from area sources.

Response: As previously explained, we have determined that GACT for the Clay Ceramics Manufacturing area source category is (1) maintaining the peak firing temperatures of kilns firing glaze ceramic ware below 1540 °C (2800 °F), (2) implementing the equipment requirement (wet control systems for PM emissions) for glaze spray booths at facilities with wet glaze usage above 227 Mg/yr (250 tpy), and (3) implementing the waste minimization practices for glaze spray booths at facilities with wet glaze usage at or below 227 Mg/yr (250 tpy). The use of PM controls and waste minimization practices has been shown to be very effective in controlling PM and metal HAP emissions from this area source category. Keeping kiln peak firing temperatures below the volatilization temperatures of the clay ceramics metal HAP in the spray glazes would also be effective in preventing volatilization of the clay ceramics metal HAP.

The commenter does not challenge any aspect of EPA's proposed GACT determination for this area source category. Instead, the commenter makes a blanket assertion that EPA is not acting consistently with the purposes of the area source provisions in the CAA (i.e., sections 112(c)(3) and 112(k)(3)(B)), because it is not requiring emission reductions beyond the level that is currently being achieved from this well-controlled source category. In support of this assertion, the commenter compares the requirements in the proposed rule to

the area source category's current emission and control status. Such a comparison is flawed and irrelevant.

Congress promulgated the relevant CAA area source provisions in 1990 in light of the level of area source HAP emissions at that time. Congress directed EPA to identify not less than 30 HAP which, as a result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas, and to list sufficient area source categories to ensure that sources representing 90 percent of the 30 listed HAP are subject to regulation. As explained in the Integrated Urban Air Toxics Strategy, EPA based its listing decisions on the baseline National Toxics Inventory (NTI) that the Agency compiled for purposes of implementing its air toxics program after the 1990 CAA Amendments (64 FR 38706, 38711, n.10). The baseline NTI reflected HAP emissions from clay manufacturing area sources in 1990. Thus, contrary to the commenter's suggestion, the relevant emission level for comparison is the emission level reflected in our baseline NTI, not the current emission level.

Furthermore, in promulgating the area source provisions in the CAA, Congress did not require EPA to issue area source standards that must achieve a specific level of emission reduction. Rather, Congress authorized EPA to issue standards under section 112(d)(5) for area sources that reflect GACT for the source category. To qualify as being generally available, a GACT standard would most likely be an existing control technology or management practice. Thus, it is not surprising that the GACT standard being finalized today codifies the existing effective HAP control approach being used by sources in the category. For the reasons stated above, this final rule is consistent with sections 112(c)(3), 112(k)(3)(B), and 112(d)(5).

B. Area Source NESHAP for Glass Manufacturing

1. Definition of Source Category

Comment: Three commenters from companies that make stained glass commented that they own small facilities that operate, with one exception, small periodic furnaces (pot furnaces) that are charged with small amounts of the glass manufacturing metal HAP. They claim that their furnaces would be subject to the emission standards because they use the metal HAP and exceed the 45 Mg/yr (50 tpy) threshold. However, these companies allege that the costs of installing controls on their furnaces could put them out of business. One commenter stated that some artisans and schools also would be subject to the proposed rule based on the applicability criteria. Two of the commenters suggested that the rule exempt small businesses due to the burden that would result from complying with the proposed requirements. One commenter stated that the rule was based on an analysis of the glass manufacturing industry using data on large continuous furnaces that did not account differences in the manufacturing process and emissions associated with stained glass manufacturing. The commenter stated that the rule should exempt periodic furnaces.

Response: After reviewing the emissions inventory in support of the listing decisions made pursuant to sections 112(c)(3) and 112(k) and available information, we have concluded that the glass manufacturing area source category was listed based on emissions from relatively large manufacturing plants that operated continuous glass furnaces. Periodic furnaces were not included in the inventory.

The 45 Mg/yr (50 tpy) threshold that was proposed was meant to define the source category to include only these large manufacturers, but did not properly reflect this criterion. Therefore, we have revised § 63.11448 to specify that periodic or pot furnaces are not subject to the final Glass Manufacturing Area Source NESHAP. We believe this revision will address most of the concerns of the stained glass manufacturing sector as well as other sectors and organizations, such as artisans, schools, studios, and other small facilities that produce glass using periodic furnaces.

Comment: One commenter stated that flat glass should be excluded from the area source category for several reasons. According to the commenter, flat glass was not identified in the Integrated Urban Air Toxics Strategy as a source category for regulation. Therefore, the commenter suggests that EPA cannot regulate the flat glass industry under an area source standard. The commenter added that the administrative record refers only to pressed and blown glass, which has different Standard Industrial Classification (SIC) and North American Industrial Classification System (NAICS) codes than does flat glass manufacturing. The commenter also stated that the administrative record lacks evidence that flat glass manufacturers emit significant quantities of Urban HAP. The commenter pointed out that the Arsenic NESHAP does not apply to flat glass manufacturing for this same reason. Finally, the commenter stated that the proposed rule would not require any flat glass manufacturing plants to install or operate emission control devices.

Response: As explained in the **Federal Register** Notice announcing the Integrated Urban Air Toxics Strategy (64 FR 38707, July 19, 1999), the process of listing area source categories for regulation would be an iterative ongoing approach that would be refined and modified as we obtained better data on emissions. Furthermore, as indicated in section 112(e)(4) of the CAA, the listing of a particular source category is not considered final agency action until we issue emission standards for that source category. Therefore, the source category listing is not necessarily limited only to those sources initially identified by the listing. We considered this authority in light of the legislative history regarding glass manufacturing. The flat glass industry sector has always been part of the glass manufacturing industry, as evidenced by environmental statutes including the glass New Source Performance Standard (NSPS), the Arsenic NESHAP, as well as numerous State rules nationwide. Our study of the glass manufacturing industry includes container glass, pressed and blown glass, and flat glass sectors; these are generally similar with respect to the types of raw materials used and furnaces used to melt those raw materials.

Regarding the comment that the administrative record lacks evidence that flat glass manufacturers emit significant quantities of Urban HAP, we point out that the record does show that some flat glass plants emit some of the glass manufacturing metal HAP. Because several flat glass manufacturers do use the glass manufacturing metal HAP in their formulations, and emit metal HAP as a result, because the raw materials and the melting process are the focal points of the proposed Glass Manufacturing Area Source NESHAP, and because of evidence in the legislative history, we determined that it was appropriate to include flat glass within the area source category.

Based on our knowledge of the flat glass industry, the commenter is correct that no existing flat glass plants would have to install additional controls to comply with this final rule. However, there are existing flat glass plants that use the metal HAP as raw materials and will be subject to the other requirements of this final rule. Our data indicate these plants currently meet the emission limits and keep detailed records. Therefore, their additional burden as a result of this final rule is only related to notifications, which we believe are

justified. The notification requirements apply only if the plant uses one or more of the glass manufacturing metal HAP as raw materials; if the plant does not use any of the glass manufacturing metal HAP, this final rule does not apply. In the event that other flat glass manufacturers decide to change their current glass formulations to include metal HAPs, it is appropriate that those flat glass plants be subject to this final rule. Even in such an instance, an existing facility that changed their formulation such that it became subject to the requirements of the rule would have 2 years following the formulation change to comply with this final rule. For these reasons, we have concluded that inclusion of flat glass manufacturers in the Glass Manufacturing Area Source Category is warranted.

Comment: One commenter requested clarification that the proposed rule applies only to area sources and not major sources of HAP emissions.

Response: As specified in § 63.11448, the Glass Manufacturing Area Source NESHAP applies only to area sources of the glass manufacturing metal HAP.

2. Definition of Affected Source

Comment: Two commenters stated that, although the 45 Mg/yr (50 tpy) furnace threshold was meant to exclude small manufacturers, the proposed threshold is less than the amounts that some stained glass manufacturers, glass studios, and schools produce. The commenters believe that a higher threshold level is warranted to ensure that the small facilities that were meant to be excluded would not be subject to this final rule.

Response: Although we considered revising the definition of affected source in response to the commenters' concerns, we have no data to indicate a specific higher threshold and why that threshold would be more appropriate than the 45 Mg/yr (50 tpy) level specified in the proposed rule. However, based on our review of the comments received on the proposed rule and the available data, we have decided to clarify that this final rule only applies to continuous furnaces and not to periodic furnaces. We believe this clarification ameliorates the commenters' concerns regarding the production threshold. In this final rule, we have revised § 63.11448 to apply only to facilities that use continuous furnaces to produce glass.

Comment: Two commenters expressed concern with the definition of affected source (i.e., furnace). Both commenters stated that the definition in the proposed rule, which was adopted from 40 CFR 60, subpart CC, Standards of Performance for Glass Manufacturing Plants (Glass NSPS), defines furnace to include the ''raw material charging system'' and ''appendages for conditioning and transferring molten glass to forming machines.'' One commenter pointed out that, in the proposed rule, compliance is demonstrated by testing the furnace stack. However, emissions from the ''charging system'' or ''appendages'' are not generally ducted to the furnace stack. The commenter stated that furnace was defined as it was in the NSPS to clarify what constitutes a modification; the definition was not meant to identify emission points or where stack testing should be performed. The other commenter explained that one of the company's plants adds colored frit to the molten glass in the forehearth, which is one of the ''appendages'' referenced in the definition of furnace. The commenter pointed out that emissions from the forehearth are not ducted to the furnace stack. Since the GACT analysis for glass furnaces was based on emissions from furnace stacks, the proposed emission limits should not apply to emissions from forehearths.

Response: In developing the proposed rule, we determined GACT for this source category based on technology used to reduce emissions from glass melting furnace stacks. Glass furnace stacks generally exhaust emissions from the furnace melter, which is the part of the furnace where raw materials are charged and melted. Although furnace stacks may also exhaust emissions from other parts of, or appendages to, the furnace, it was our intent to regulate emissions from the furnace melter. This is consistent with our understanding of the emissions profile of glass manufacturing raw materials; that is, metal HAP are emitted from glass furnaces upon the initial melting step. Later remelting of glass, such as cullet and frit, does not re-emit the metal HAP once the glass has been formed or vitrified.

To clarify this requirement, we have revised § 63.11459 of this final rule to redefine the glass melting furnace as the ''* * * process unit in which raw materials are charged and melted at high temperature to produce molten glass.'' In addition, we have added to § 63.11459 a definition of furnace stack as the conduit or conveyance through which emissions from the furnace melter are released to the atmosphere. We also have revised § 63.11452 in this final rule to clarify that compliance with the emission limits is determined by testing the furnace stack.

Comment: One commenter requested that the rule exempt furnaces that are used strictly for R&D.

Response: We agree with the commenter that this final rule should clarify that sources that are used exclusively for R&D purposes are not regulated by this rule because these sources were not part of the inventory. Therefore, we have added a provision to § 63.11449 that clarifies that such furnaces are not covered by this final rule. We also have added to § 63.11459 of this final rule a definition for research and development process units.

Comment: Three commenters stated that the rule should specify a *de minimis* level for metal HAP usage, below which plants would have no requirements. Two of the commenters suggested setting annual *de minimis* levels for each regulated HAP, below which the rule limit would not apply.

Response: With respect to the use of the glass manufacturing metal HAP in relatively small amounts, the proposed 0.01 g/kg (0.02 lb/ton) metal HAP emission limit should address the commenters' concerns. If metal HAP are added to the batch in very small amounts, compliance with the HAP emission limit could be achieved without having to install a control device on the affected furnace.

It is appropriate under the area source program that glass manufacturers using large amounts of metal HAP in their furnaces install controls to reduce those emissions. Therefore, we have concluded that if would not be appropriate to develop de minimis levels for metal HAP usage.

Comment: One commenter stated that the rule does not define reconstruction as it pertains to reconstructed sources. The commenter suggested that the NSPS definition of reconstruction be adopted or incorporated by reference.

Response: Although the proposed rule did not define reconstruction, § 63.11472 states that the definitions specified in the CAA and § 63.2 of the General Provisions to part 63 also apply to the proposed rule. This is the definition of reconstruction that applies to all part 63 standards. Therefore, we believe it is the appropriate definition for the Glass Manufacturing Area Source NESHAP.

Comment: One commenter addressed the applicability of the proposed rule for furnaces that are used both for making glass that does not contain metal HAP and glass that contains metal HAP. The commenter asked if the 45 Mg/yr (50 tpy) threshold that defines an affected source is based only on the amount of HAP-containing glass produced or on the total amount of glass produced, even

if the amount of HAP-containing glass was less than 45 Mg/yr (50 tpy).

Response: It was our intent for the rule to apply to furnaces that produce at least 45 Mg/yr (50 tpy) of glass that contains one or more of the glass manufacturing metal HAP as raw materials. Therefore, a furnace that produces more than 45 Mg/yr (50 tpy) of glass would not be subject to this final rule if the amount of HAP-containing glass produced in the furnace were less than 45 Mg/yr (50 tpy). We have revised the definition of affected source in § 63.11449 to clarify that a source is an affected source only if it produces at least 45 Mg/yr (50 tpy) of glass that contains one or more of the metal HAP as raw materials.

3. Regulated Pollutants

Comment: One commenter stated that the rule should not regulate arsenic because arsenic emissions are already regulated under the Glass Arsenic NESHAP. The commenter believes that the requirements for both rules will create overlapping and sometimes conflicting requirements. The commenter added that the reporting and recordkeeping burden for a second rule to regulate the same pollutant would be excessive.

Response: The listing of glass manufacturing as an area source category was based in part on arsenic, which was identified in the section 112(k) inventory as one of the HAP emitted by glass manufacturing facilities. Therefore, we are required under sections 112(c)(3) and (d) of the CAA to regulate emissions of arsenic from glass manufacturing plants that are area sources of HAP based on GACT for the glass manufacturing industry.

With respect to the burden associated with complying with both rules, we have tried to minimize the burden associated with the Glass Manufacturing Area Source NESHAP. This final rule will require affected plants to submit an Initial Notification and a Notification of Compliance Status, but will require no additional reporting. Furthermore, the recordkeeping requirements are similar for both the proposed rule and the Glass Arsenic NESHAP. Therefore, we disagree that the reporting and recordkeeping burden associated with complying with both rules will be excessive. With respect to monitoring, the Glass Area Source NESHAP allows affected sources to request approval of alternative monitoring, which likely would result in no changes to the monitoring that is currently performed to comply with the Glass Arsenic NESHAP. In terms of testing, the Glass Area Source NESHAP requires only a one-time test and includes a provision for using data from a previous emission test conducted within the last 5 years, if the test demonstrates compliance with the emission limits specified in the Glass Area Source NESHAP.

4. Title V Permitting

Comment: Two commenters addressed EPA's decision to not exempt the Glass Manufacturing Area Source Category from title V permitting. Both commenters disagreed with the statement in the preamble to the proposed rule that all of the facilities that would be affected by the proposed rule are already subject to title V. One commenter stated that at least one of the company's facilities, which is not subject to title V, would be subject to the proposed rule. The commenter also stated that EPA's reasons for exempting the Clay Ceramics Manufacturing and Secondary Nonferrous Metals Processing Source Categories from title V permitting also apply to the Glass Manufacturing Source Category. The other commenter stated that the company operates two plants that are not currently subject to title V, each with a furnace that would be subject to the proposed rule. Although both furnaces are scheduled for shutdown, the company may reconsider this decision to shut them down if market conditions change. The same commenter stated that it is possible that there are other non-title V facilities that would be subject to the proposed rule, and that it appears it was EPA's intent for the proposed rule to not cause additional facilities to become subject to title V. Both commenters requested that the proposed rule provide title V exemptions for facilities that are not currently subject to title V permitting.

Response: Section 502(a) of the CAA requires sources subject to regulation under section 112 of the CAA to obtain a permit to operate. However, Section 502(a) authorizes the Administrator, in his discretion, to ''promulgate regulations to exempt one or more source categories (in whole or in part) from the requirement of (title V) if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories * * *.'' EPA promulgated a rule interpreting section 502(a) and therein stated that EPA may only exempt a category from title V permitting if we find compliance to be ''impracticable, infeasible, or unnecessarily burdensome'' and we determine that exempting the category would not adversely affect public health, welfare, or the environment (see 70 FR 75,320, 75,323 (Dec. 19, 2005)). Nowhere in the rule did we establish a presumption in favor of exempting sources from title V permitting, and the statute leaves such determinations to the discretion of the Administrator.

The commenters have identified three glass manufacturer area source plants that are currently not subject to the operating permit requirements of CAA title V, which renders incorrect our assertion at proposal that all glass manufacturers that would be subject to this final rule were already subject to title V requirements. Notwithstanding this error, comments and other information in the record for this rulemaking do not demonstrate that compliance with title V permitting would be impracticable, infeasible, or unnecessarily burdensome for the sources in this category. Other than these two comments, we did not receive information during the comment period indicating that there are other sources that will be subject to this rule that do not have title V permits already. In this case, more than 80 percent of the sources in the category have title V permits, and of the 3 facilities that do not have such permits, the affected furnaces at two of those facilities are currently scheduled for shutdown. Based on these facts, it is not readily apparent why it would be impracticable, infeasible, or unnecessarily burdensome for sources in this category to comply with the title V requirements.

The two commenters that opposed our decision to not exempt the Glass Manufacturing Area Source Category from title V permitting did not identify their plants in question, did not explain how those plants differed in any way from other plants in this category that currently hold a title V permit, and did not explain how those differences would be relevant to the criteria for an exemption from title V.

For example, one commenter supported its request for exempting its two plants from title V by stating a desire for flexibility in the event that one or more of the affected furnaces at the plants actually do not shut down. (As noted above, the commenter's current plan is to shut down the affected furnaces at these two facilities.) Source flexibility, while important, is not a factor EPA considers in determining whether to exempt a source from title V permitting requirements.

The second commenter seeking a title V exemption for the glass manufacturing source category asserted that the reasons for exempting the other two source categories addressed in today's notice (Clay Ceramics Manufacturing and Secondary Non-ferrous Metals

Processing area sources) applied equally to this category. The commenter, however, offered no information substantiating this assertion, and we cannot dismiss obvious differences between the glass manufacturing source category and the source categories which received a title V exemption. These differences include whether most of the category already has a title V permit and whether most of the category is composed of small businesses that would incur economic hardship were title V requirements imposed on them.

The decision to exempt a source category is made on a case-by-case basis according to the facts of the industry. According to information we have collected on the glass manufacturing area source category, we conclude, in the absence of contrary information, that a title V exemption for this area source category is not warranted. Therefore, in light of the lack of information supporting an exemption of this source category from the title V requirements, we have not exempted the Glass Manufacturing Area Source Category from title V under today's rule.

5. Emission Limits

Comment: One commenter stated that, although emissions from glass furnaces vary by the type of glass produced, the proposed emission limits do not account for the relationship between PM emissions and glass type. The commenter noted that the Glass NSPS accounts for these differences by specifying different PM emission limits depending on the glass formulation and fuel type. The commenter explained that the differences in PM emissions result from differences in the volatilization rate of the constituents of the glass recipe. The commenter suggested that the proposed rule adopt the NSPS emission limits to account for these differences and to avoid confusion.

Response: While the Glass NSPS does regulate glass manufacturing furnaces for emissions of PM, the purpose of the proposed area source NESHAP is to address metal HAP emissions from continuous glass manufacturing furnaces.

Section 112(d)(5) of the CAA requires us to develop emission limits to reduce HAP emissions from area sources based on GACT. For the Glass Manufacturing Area Source Category, we determined GACT to be the level of control achieved by an ESP. In developing the PM emission limit for the proposed rule, our approach was to consider all of the available data on ESP-controlled PM emissions from glass manufacturing furnaces. Those data do not indicate that the variations in PM emissions due to glass formulation that are reflected in the emission limits of the Glass NSPS are appropriate for this rule. For example, the NSPS emission limits (in the format of PM emission factors) are higher for pressed and blown glass formulations than for container or flat glass formulations. However, the data used in developing the proposed PM emission limit do not indicate that controlled PM emissions from pressed and blown glass furnaces are higher than PM emissions from container or flat glass furnaces. In fact, the data with the lowest emission factors are from controlled pressed and blown glass furnaces. Although there are several possible explanations for this discrepancy, we point out that the NSPS emission limits are based on data from the 1970s and may not be representative of current glass manufacturing furnace PM emissions and control device performance. In conclusion, we developed the proposed PM emission limit based on the best available data, and because those data do not indicate variations in controlled PM levels due to glass formulation, we are not adopting the NSPS emission limits or differentiating by glass formulation, as suggested by the commenter.

Comment: One commenter pointed out that many existing glass furnaces comply with the Glass NSPS using modified processes without having to install emission controls. The commenter urged EPA to consider incorporating in this final rule the alternate emission limits for modified processes established in the NSPS. The commenter explained that the cost to retrofit a glass furnace with a control device is prohibitive, particularly in view of the amount of metal HAP reduced by such controls.

Response: The Glass NSPS defines modified process as "* * * any technique designed to minimize emissions without the use of add-on pollution controls." Thus, even though the regulated pollutant for the Glass NSPS is PM, the term "modified process" can apply to emissions of any pollutant. Several glass manufacturing furnaces subject to the NSPS have used this provision for meeting the less stringent PM emission limits for modified processes by installing controls or process modifications to reduce emissions of other pollutants, such as nitrogen oxides (NO_X). However, under Section 112(d) of the CAA, we are required to establish area source standards specifically for emissions of the Urban HAP. Furthermore, we are required to base those emission standards on GACT. As noted above, we determined GACT for this source category based on the level of control achieved by an ESP in controlling metal HAP emissions, and for controlling PM emissions as a surrogate for metal HAP emissions.

We understand that the costs of installing an ESP or equivalent control device on a glass furnace can be high. For example, we estimate the capital costs for installing a control device on a typical container furnace to be $800,000. However, our economic analysis of the industry indicates that the compliance costs for this final rule would be no more than 1 percent of sales, which we do not consider to be prohibitive. Although the metal HAP emissions reductions from an affected facility may be relatively low in terms of control costs, we note that, for facilities that use very small amounts of metal HAP in their glass formulations, the 0.01 g/kg (0.02 lb/ton) metal HAP emission limit can be met without having to install a control device. Finally, in addition to reductions in HAP emissions, the Glass Manufacturing Area Source NESHAP also will achieve significant reductions in fine PM emissions and will result in significant health benefits as a result of those reductions.

Comment: One commenter stated that the proposed rule should incorporate factors to account for emissions during periods of low production, similar to the "zero production rate" factors specified in the Glass NSPS. The commenter reasoned that, without these factors, there will be confusion. Although the PM emission limit in the proposed rule (0.1 g/kg (0.2 lb/ton)) is the same as the NSPS limit for container glass furnaces and for soda lime and lead pressed and blown glass furnaces, the NSPS includes the zero production rate factor, whereas the proposed rule does not incorporate such a factor.

Response: We appreciate the need to avoid confusion and to promote clarity in rulemaking, and we are sensitive to the need to implement the rule with easily understood materials and clear instruction. To that end, EPA currently plans to provide implementation guidance to minimize confusion that may be caused by the applicability of three Federal air pollution regulations that apply to this industry sector: the Arsenic NESHAP, the Glass NSPS, and this Area Source NESHAP. However, we have concluded that it would not be appropriate to incorporate one or more zero production rate factors in the final rule as suggested by the commenter. As specified in § 63.11452(b)(4), compliance with the emission limits in the proposed rule must be determined

through emission testing when the furnace is operating at maximum production rate. Therefore, emission levels when the furnace is operating at low production rates are not relevant with respect to compliance with the emission limits. If the rule were to require demonstrating compliance with the emission limits on a continuous basis, such as by using a continuous emissions monitoring system, it could be argued that there is reason to incorporate a zero production rate factor. In such a case, the emission factor would likely increase as production approached zero, and at zero production, the emission factor would be undefined. However, that is not the case for the proposed rule, which requires parameter monitoring and recordkeeping to demonstrate continuous compliance. Finally, it should be noted that the proposed emission limits were developed from data that did not account for zero production rate emissions. Furthermore, specifying an emission limit without zero production rate factors is consistent with other NESHAP.

Comment: One commenter questioned whether the proposed emission limits were based on data exclusively from large furnaces. The commenter explained that, when emissions are normalized for production, as is the case for the proposed emission factor format, they may not be representative of emissions from small furnaces if the limits are based on data from large furnaces. The commenter stated that, since the rule is likely to apply to small furnaces, the proposed limits should account for the higher emission factors characteristic of smaller furnaces. The commenter's company operates a small furnace that would be subject to the rule, as proposed, but would not be able to meet the proposed emission limit, even though the furnace is exhausted to a fabric filter. The commenter stated that a control efficiency of 99.91 percent would be needed for the furnace to meet the proposed limit. The commenter suggested including a correction factor for small furnaces, such as the zero production rate factors specified in the Glass NSPS, to account for this difference in emission levels between large and small furnaces.

Response: In developing the emission limits for the proposed rule, we reviewed all available emission test data on controlled furnaces, which included the results of tests on a wide range of furnace sizes or production rates. Because the production data for many of the furnaces were claimed as confidential business information, we cannot release the actual production rates to the public. However, we can provide information on the range of the data. The production data for the furnaces used to develop for the PM emission limit ranged from less than 0.9 megagram per hour (Mg/hr) (1 ton per hour (tph)) to just under 27 Mg/hr (30 tph). Of the 19 data points used, 3 data points were for furnaces with production rates of less than 0.9 Mg/hr (1 tph) and 9 data points were for furnaces with production rates less than 4.5 Mg/hr (5 tph). To develop the metal HAP emission limit, the furnace production rates ranged from less than 0.9 Mg/hr (1 tph) to just under 23 Mg/hr (25 tph). Of the 15 data points used, the production rates for 2 furnaces were less than 0.9 Mg/hr (1 tph), and the rates for 9 furnaces were less than 4.5 Mg/hr (5 tph). Although the commenter did not specify the actual production rate for the furnace in question, furnaces with production rates less than 4.5 Mg/hr (5 tph) would most likely be considered small and furnaces with production rates less than 0.9 Mg/hr (1 tph) would certainly be considered small. Therefore, we disagree with the commenter's assumption that only data from large furnaces were used to develop the proposed emission limits.

Although the commenter's suggestion about including a zero production rate factor would reduce the stringency of the standard for small furnaces, we do not believe such a factor is needed for the reasons described in the previous paragraph. Furthermore, as discussed in our response to the previous comment, we do not believe a zero production rate factor is relevant for an emission limit that must be demonstrated by testing when the source is operating at the maximum production rate.

Comment: One commenter stated that the process of manufacturing glass tableware is significantly different from container glass due to the need for higher quality requirements. The raw material formulations differ, and tableware furnaces operate at higher temperatures with longer residence times. Tableware furnaces also are smaller. The commenter stated that the South Coast Air Quality Management District uses an emission factor for tableware furnaces that is nearly five times the factor used for container glass furnaces.

Response: We acknowledge that PM emissions from glass furnaces can vary as a function of the type of glass produced. We also recognize that glass tableware manufacturing is generally classified as a type of pressed and blown glass rather than container glass, and PM emission factors for pressed and blown glass furnaces typically are greater than PM emission factors for container glass furnaces. When determining GACT for the proposed rule, we used all the available data on emissions of PM and metal HAP from furnaces controlled with ESP. Most of the data used in developing the proposed emission factors were from emission tests on pressed and blown glass furnaces. Therefore, we believe those emission limits are generally representative of the emission levels that can be achieved by an ESP-controlled furnace manufacturing pressed and blown glass. We also point out that the NESHAP specifies a metal HAP emission limit which may be more appropriate for specific furnaces that have unusually high PM emissions.

Commenter: One commenter noted that the proposed GACT does not take into consideration the unique nature of the stained glass industry, which generally uses small periodic furnaces rather than large continuous furnaces to produce glass. The commenter believes stained glass manufacturing should be a separate subcategory with GACT defined in terms of the practices and emission reduction methods followed by stained glass manufacturers.

Response: Although we conducted an extensive information gathering effort to compile data for developing the proposed NESHAP, we had little data on the stained glass sector and no basis for identifying stained glass as a separate subcategory of the glass manufacturing industry. We agree with the commenter that GACT for stained glass, if identified as a subcategory, should be based on methods and practices used by that sector to reduce metal HAP emissions. Although we still do not have the data to warrant creating a separate subcategory for stained glass, we have revised § 63.11448 of the rule to clarify that the rule applies to continuous furnaces and not to periodic furnaces. In doing so, we believe we have addressed the commenter's concerns.

6. Compliance Dates

Comment: One commenter stated that most glass manufacturing furnaces are rebuilt every 10 to 15 years. The commenter suggested that the compliance date for an existing furnace should coincide with the next rebuild planned for that furnace. Otherwise, affected facilities would have to install controls ''on the fly,'' and doing so would interrupt glass production by forcing the facility to shut down affected furnaces for long periods. These shutdowns would result in significant costs to the affected facilities. The commenter pointed out that these costs

were not accounted for in the estimated cost effectiveness and impacts for the proposed rule.

Response: Section 112(i) of the CAA specifies that NESHAP require compliance ''* * * as expeditiously as practicable, but in no event later than three years after the effective date* * *'' of the standard. Since we had no information indicating this would be the case for the glass manufacturing industry, we proposed a compliance date of 2 years after promulgation of this final rule, which is consistent with the compliance date for other NESHAP. We believe this provision should allow adequate time for affected sources to install the controls needed to comply with this final rule. However, in the event that 2 years in not adequate, § 63.6(i)(3) of the General Provisions to part 63 allows owners or operators of affected facilities to request a 1-year extension of the compliance date if they can demonstrate that they need the additional time to install controls.

Comment: One commenter noted that additional time is needed for reconstructed furnaces to install controls. The company is rebuilding several furnaces in 2008, which would make them reconstructed furnaces. The compliance date for reconstructed sources would be the startup date (sometime in 2008), but it will take additional time to design, receive, and install a control device on the reconstructed furnaces.

Response: The General Provisions to 40 CFR part 63 define ''new source'' to include reconstructed sources, and for sources subject to 40 CFR part 63 standards, the compliance date for new sources is dictated by § 63.6(b) of the General Provisions to part 63. That is, new sources must be in compliance on the effective date of the rule or upon startup, whichever is later. Based on the limited facts submitted by the commenter, it is unclear if the subject furnaces would be considered existing furnaces or new furnaces. The General Provisions to part 63 define ''commenced'' as it relates to reconstruction as entering ''* * * into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.'' The commenter should evaluate the facts of its particular situations in light of the definitions incorporated into this final rule.

7. Other Compliance Requirements

Comment: One commenter identified an issue concerning furnaces that are used both for making glass that does not contain metal HAP and for making glass that contains metal HAP. The commenter requested clarification of the compliance requirements when the affected furnace is not producing glass that contains metal HAP.

Response: We agree with the commenter that additional clarification is needed on furnaces that are used to produce HAP-containing glass and non-HAP glass. Our intent was that the emission limits and other compliance requirements would apply when the affected furnace is producing glass that contains one or more of the glass manufacturing metal HAP. We have revised § 63.11454 to clarify that the monitoring requirements apply only during times when any of the glass manufacturing metal HAP are used in the glass being produced. We also have revised § 63.11455 to clarify that the continuous compliance requirements apply under the same conditions. However, owners and operators must still keep the applicable records specified in § 63.11457, including records of production data, during any period when an affected furnace is operated, regardless of the batch formulation used.

Comment: One commenter stated that the rule is unclear on the continuous compliance requirements for existing sources, particularly for sources that meet the metal HAP emission limit without having to install a control device.

Response: We agree with the commenter that additional clarification is needed regarding continuous compliance requirements for affected furnaces that meet the emission limit without the use of an emission control device. We have revised § 63.11455 of this final rule to clarify how owners or operators of affected sources must demonstrate continuous compliance. For the specific case cited by the commenter, the only continuous compliance requirement would be the recordkeeping requirements specified in § 63.11457.

Comment: One commenter stated that, even if a plant could meet the emission limit without installing a control device, the reporting and recordkeeping requirements of the rule are unnecessarily burdensome.

Response: We disagree that the reporting and recordkeeping requirements of the proposed rule are overly burdensome. This final rule will require affected plants to submit an Initial Notification and a Notification of Compliance Status, but will require no reporting. As for the recordkeeping requirements, the proposed rule incorporates the basic requirements specified in the General Provisions to part 63, and our understanding is that most facilities routinely maintain these records.

8. Emission Testing

Comment: Two commenters requested clarification of how emissions are tested and analyzed to show compliance with the proposed metal HAP emission limit. Both pointed out that the test method (Method 29) quantifies a wide range of metals, including metals that are not urban HAP and urban HAP metals that may not have been charged to the furnace as raw materials but could be present as contaminants in charge materials or fuels. The commenters stated that the rule should specify that emissions should be analyzed only for the metal HAP that are intentionally added to the batch as raw materials.

Response: We agree with the commenters that the testing requirements specified in the proposed rule need further clarification regarding how the sampled emissions are analyzed. We have revised § 63.11452 in this final rule to clarify Equation 2, which is used to determine compliance with the metal HAP emission limit. We have defined the variable ''ERM'' in this final rule as the sum of the mass emission rates for the glass manufacturing metal HAP that are charged to the furnace as raw materials. We believe this revision addresses the commenters' concern.

Comment: One commenter noted the definition of PM in the rule is ambiguous and could be interpreted to include filterable PM and condensible PM. Because the rule requires testing by Methods 5 or 17, and both of those methods measure filterable PM, the rule needs to clarify that the proposed PM emission limit refers to filterable PM. The commenter suggested that removing the word ''total'' from the definition would eliminate this ambiguity.

Response: We agree with the commenter and have revised the definition of PM in § 63.11458 by replacing the phrase ''total particulate emissions'' with ''filterable particulate emissions.'' This revised definition is consistent with the test methods (Methods 5 and 17) that are specified for determining compliance.

Comment: One commenter operates several identical furnaces that would be subject to the proposed rule. The commenter requested that the rule require testing on only one such furnace rather than on all of them.

Response: We agree with the commenter that it should not be necessary to test multiple identical furnaces to demonstrate that all of the furnaces meet the emission limit. To

address this issue, we revised § 63.11452(a) by adding paragraph (a)(3), which specifies conditions under which testing of a single furnace would be allowed as the compliance demonstration for other identical furnaces. Specifically, the owner or operator must certify that the furnaces that are not tested are identical in design to the furnace that is tested, including manufacturer, dimensions, production capacity, charging method, operating temperature, fuel type, burner configuration, and exhaust system configuration and design. Furthermore, the compliance test must be performed while the furnace is producing the glass formulation with the greatest potential to emit the glass manufacturing metal HAP, and the owner or operator must provide documentation that demonstrates why the tested glass formulation has the greatest potential to emit metal HAP.

9. Other Issues

Comment: Two commenters requested clarification of the definition of raw material. The commenters stated it was not clear if cullet is considered a raw material, and they suggested revising the definition to exclude cullet. One of the commenters suggested adding the phrase ''excluding glass manufacturing metal HAP that are introduced as cullet, trace constituents, or contaminants of other substances'' to §§ 63.11448 and 63.11449(a)(1) to clarify what is considered a raw material. The other commenter suggested revising the definition of raw material to exclude material captured by control devices and recycled into the process.

Response: We agree with the commenters that the proposed rule is not clear on whether or not cullet is considered a raw material. We also agree that material that is captured in a furnace control device and recycled should not be considered a raw material. We have revised the definition of raw material to state that cullet and material captured by the furnace control device are excluded. However, this definition does not exclude material collected from other sources, such as from fabric filters that are used to control emissions from raw material handling or transporting, because, while pre-vitrified materials do not re-emit metal HAP when remelted, baghouse fines from raw material handling and transporting have not been previously vitrified.

Comment: One commenter stated that the rule is unclear as to the notification requirements for furnaces that, at the time of promulgation, were not subject, but later became subject due to increased production or changes in glass formulation.

Response: To address the commenter's concern, we have revised § 63.11456(a) to indicate that the Initial Notification is due 120 days after the furnace becomes subject to this final rule due to increased production or changes in glass formulation. We also have revised § 63.11456(a) to specify deadlines for submitting the Notification of Compliance Status.

C. Area Source NESHAP for Secondary Nonferrous Metals Processing

Comment: One commenter noted that the intent of the CAA, as it relates to the Area Source Program, was to bring about reductions in HAP emissions from area sources. The commenter expressed disappointment that some of the rules proposed under the Area Source Program (*e.g.*, Secondary Nonferrous Metals Processing) will not result in emissions reductions and recommended that future area source rules incorporate provisions that will provide additional public health protection from the effects of HAP emissions from area sources.

Response: As previously explained, we have determined that GACT for the Secondary Nonferrous Metals Processing area source category is the use of a baghouse or fabric filter that achieves a control efficiency of 99 percent for existing sources and 99.5 percent for new sources.[c] The use of baghouses and fabric filters has been shown to be very effective in controlling PM and metal HAP emissions from this area source category. The commenter does not challenge any aspect of EPA's proposed GACT determination for this area source category. Instead, the commenter makes a blanket assertion that EPA is not acting consistently with the purposes of the area source provisions in the CAA (*i.e.*, sections 112(c)(3) and 112(k)(3)(B)), because it is not requiring emission reductions beyond the level that is currently being achieved from this well-controlled source category. In support of this assertion, the commenter compares the requirements in the proposed rule to the area source category's current emission and control status. Such a comparison is flawed and irrelevant.

Congress promulgated the relevant CAA area source provisions in 1990 in light of the level of area source HAP emissions at that time. Congress directed EPA to identify not less than 30 HAP which, as a result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas, and to list sufficient area source categories to ensure that sources representing 90 percent of the 30 listed HAP are subject to regulation. As explained in the *Integrated Urban Air Toxics Strategy,* EPA based its listing decisions on the baseline NTI that the Agency compiled for purposes of implementing its air toxics program after the 1990 CAA Amendments. 64 FR 38706, 38711, n. 10. The baseline NTI reflected HAP emissions from glass manufacturing area sources in 1990. Thus, contrary to the commenter's suggestion, the relevant emission level for comparison is the emission level reflected in our baseline NTI, not the current emission level.

Based on EPA's baseline NTI, emissions of urban metal HAP from this area source category have been reduced from approximately 25 Mg/yr (28 tpy) to less than 0.9 Mg/yr (1 tpy) since 1990. Furthermore, in promulgating the area source provisions in the CAA, Congress did not require EPA to issue area source standards that must achieve a specific level of emission reduction. Rather, Congress authorized EPA to issue standards under section 112(d)(5) for area sources, and those standards are to reflect GACT for the source category. To qualify as being generally available, a GACT standard would most likely be an existing control technology or management practice. Thus, it is not surprising that the GACT standard being finalized today codifies the existing effective HAP control approach being used by sources in the category. For the reasons stated above, this final rule is consistent with sections 112(c)(3), 112(k)(3)(B), and 112(d)(5).

D. Area Source NESHAP—General

Comment: A commenter expressed his ''understanding that Congress only gave EPA [the authority] to establish requirements for new * * * [sic] major sources under the MACT and NSPS standards, and not new area sources.'' The commenter further claimed that new area sources are the ''jurisdiction'' of State and local authorities. The commenter also expressed the policy objection ''that to allow EPA to establish new and modified source requirements is tantamount to overriding the authority given the States and locals for establishing Best Available Control Technology (BACT) through their new source review programs.'' The commenter further questioned which standard would apply to a new area source if EPA established GACT requirements on a new source, and

[c] As previously explained, we have determined that outlet concentration limits of 0.034 g/dscm (0.015 gr/dscf) and 0.023 g/dscm (0.010 gr/dscf) reflect the GACT levels of control for existing and new secondary nonferrous processing area sources, respectively.

these requirements were to differ from BACT requirements in the NSR permit for the source.

Response: The comment above raises issues of EPA's authority for establishing GACT for new area sources and the appropriateness of potentially ''overriding'' locally-made BACT determinations for such sources. As generally discussed in the background section of this final rule, section 112 explicitly requires that EPA list categories of major sources, 42 U.S.C. 7412(c)(1), and area sources if those area sources meet the listing criteria in 42 U.S.C. 7412(c)(3). Furthermore, the statute requires EPA to promulgate emission standards for all listed categories whether the category is composed of major sources of HAP or area sources and directs that these standards address new as well as existing sources (42 U.S.C. 7412(d) & 7412(f)(2)). For area sources, Congress has provided EPA the option to promulgate GACT in lieu of MACT standards (42 U.S.C. 7412(d)(5)). In establishing timeframes for compliance for ''any emission standard, limitation or regulation promulgated under this section [*i.e.*, section 112],'' Congress allowed for different compliance dates for new and existing sources (42 U.S.C. 112(i)(3). This provision reinforces Congress's intent that standards under section 112, including the required area source standards, address both new and existing sources. Therefore, the commenter's understanding of EPA's authority does not reflect these express provisions of the statute. Based on these statutory provisions, EPA disagrees with the commenter's position that EPA lacks authority to establish GACT for new area sources.

Regarding the appropriateness of what the commenter calls ''overriding'' the authority to set BACT and BACT limits, we agree that there is a theoretical possibility inherent in the statute to have a GACT standard differ in stringency with a BACT limit in a permit. Initially, we note that BACT is triggered by the emission of different pollutants than those regulated under section 112 (see 42 U.S.C. 7412(b)(6)). The applicability provisions differ, and a major source under one program may or may not be a minor or area source under the other. Nevertheless, in many circumstances, a BACT limit targeting one pollutant may also, in effect, limit HAP emissions, and a HAP limit may incidentally limit a pollutant to which BACT would apply. It is a requirement for the owner or operator of a stationary source to comply with all air pollution control obligations that apply to the source under the CAA. To the extent that these obligations conflict and cannot be met simultaneously, the statute and EPA's regulations provide several mechanisms for resolving conflicts (*e.g.*, provisions for developing alternate control and monitoring requirements, delegation mechanisms that allow States and local agencies to develop approvable alternate standards, etc.).

Comment: One commenter recommended that EPA provide State and local agencies with sufficient additional grants so that they may participate in the implementation of additional area source rules. According to the commenter, Federal grants currently fall far short of what is needed to support State and local agencies in carrying out their existing responsibilities, and budget requests for the last two years have called for additional cuts. The commenter claimed that, without additional funding, some State and local air agencies may not be able to adopt and enforce additional area source rules. The commenter further stated that, even for permitting authorities that do not adopt these area source rules, it is possible that these rules will increase their work loads and resource needs. The commenter stated that, for example, synthetic minor permits (or Federally Enforceable State Operating Permits) will need to incorporate all applicable requirements, including area source standards. Noting that the title V permit fee funds are not available for these efforts, the commenter asserted that many State and local air agencies do not have sufficient resources for these responsibilities.

Response: State and local air programs are an important and integral part of the regulatory scheme under the CAA. As always, EPA recognizes the efforts of State and local agencies in taking delegations to implement and enforce CAA requirements, including the area source standards under section 112. We understand the importance of adequate resources for State and local agencies to run these programs; however, we do not believe that this issue can be addressed through this rulemaking.

EPA today is promulgating standards for the Secondary Nonferrous Metals Processing, Glass Manufacturing, and Clay Ceramics Manufacturing area source categories that reflect the practices currently in use by sources in these area source categories, and these standards represent what constitutes GACT for these categories under section 112(d)(5). GACT standards are technology-based standards. The level of State and local resources needed to implement these rules is not a factor that we consider in determining what constitutes GACT under section 112(d)(5). Moreover, we note that the commenter did not challenge our proposed determination to exempt from title V the Secondary Nonferrous Metals Processing or Clay Ceramics Manufacturing area source categories.

Although the resource issue cannot be resolved through this rulemaking for the reason stated above, EPA remains committed to working with State and local agencies to implement this final rule. State and local agencies that receive grants for continuing air programs under CAA section 105 should work with their project officer to determine what resources are necessary to implement and enforce the area source standards. EPA will continue to provide the resources appropriated for section 105 grants consistent with the statute and the allotment formula developed pursuant to the statute.

VI. Impacts of the Final Area Source Standards

A. Glass Manufacturing

1. Air Quality Impacts

For the three sources that will be required to install emission controls to meet the emission limits specified in this final rule, we estimate nationwide emissions of the glass manufacturing metal HAP to be 26.2 Mg/yr (28.9 tpy). We estimate that this final rule will reduce nationwide emissions of the glass manufacturing metal HAP by about 25.6 Mg/yr (28.2 tpy). This final rule will also reduce emissions of PM by 377 Mg/yr (415 tpy). These estimates are based on the assumption that an ESP will be installed on one pressed and blown glass furnace, and that fabric filters will be installed on two pressed and blown glass furnaces.

We project that, during the first three years of the standard, nine new furnaces will be constructed and that all nine furnaces will be in the container glass sector. Because none of these new furnaces are expected to use any of the glass manufacturing metal HAP as raw materials, we project that none of the nine new furnaces will be affected by this final rule. Therefore, we estimate that this final rule will have no air quality impacts on new sources.

Indirect or secondary air impacts of this final rule will result from the increased electricity usage associated with the operation of control devices. Assuming that plants will purchase electricity from a power plant, we estimate that the final standards will increase secondary emissions of criteria pollutants, including PM, sulfur dioxide (SO_2), NO_X, and carbon monoxide (CO)

from power plants. For the three existing sources that will be required to install emission controls, this final rule will increase secondary PM emissions by 0.28 Mg/yr (0.31 tpy); secondary SO_2 emissions by about 11.1 Mg/yr (12.2 tpy); secondary NO_X emissions by about 5.5 Mg/yr (6.1 tpy); and secondary CO emissions by about 0.18 Mg/yr (0.20 tpy).

For the estimated nine new sources within the Glass Manufacturing industry over the next three years, we estimate no secondary air impacts because we project that none of the new sources will be affected sources under this rule.

2. Water and Solid Waste Impacts

To comply with this final rule, we expect that affected facilities will control emissions by installing and operating ESP or fabric filters, neither of which generates wastewater. Therefore, we project that this final rule will have no water impacts. Glass manufacturers typically purchase highly refined and purified raw materials, and they usually recycle internal captured baghouse and ESP fines into the raw material to be fed back into the furnace. Therefore, we expect the solid waste impacts to be far less than if facilities were to dispose of their ESP and baghouse fines. We estimate that this final rule will generate 37.7 Mg/yr (41.6 tpy) of solid waste from existing sources. These estimates are based on the assumption that an ESP will be installed on one pressed and blown glass furnace, and that fabric filters will be installed on two pressed and blown glass furnaces. For new sources, we estimate that this final rule will have no impacts on solid waste generation.

3. Energy Impacts

Energy impacts consist of the electricity and fuel needed to operate control devices and other equipment that are required under this final rule. We assume that affected facilities will comply with this final rule by installing and operating either ESP or fabric filters, which require electricity to operate. Specifically, we assumed that an ESP will be installed on one pressed and blown glass furnace, and that fabric filters will be installed on two pressed and blown glass furnaces. Under this scenario, we project that this final rule will increase overall energy demand (i.e., electricity demand) for existing sources by about 1,970 megawatt-hours per year, or 7.1 thousand gigajoules per year (6.7 billion British thermal units per year). We estimate that none of the nine new sources projected to go into operation during the first three years of the standard will be affected by this final rule. Therefore, we are not expecting any energy impacts for new sources.

4. Cost Impacts

The estimated total capital costs of this final rule for existing sources are $1.42 million. These capital costs include the costs to purchase and install ESP or fabric filters on the three affected furnaces that are not currently controlled. The estimated annualized cost of this final rule for existing sources is $491,000 per year. The annualized costs account for the annualized capital costs of the control and monitoring equipment, operation and maintenance expenses, performance testing, and recordkeeping costs for the three existing facilities within the source category that will be required to install new emission controls. The other affected facilities will incur costs only for submitting the notifications and for annual control device inspections because those facilities already meet the testing, monitoring, and recordkeeping requirements that are required under this final rule.

We estimate that none of the nine new sources projected to go into operation during the first three years of the standard will be affected sources under this final rule. Therefore, we estimate no cost impacts for new sources.

5. Economic Impacts

Both the magnitude of control costs needed to comply with this final rule and the distribution of these costs among affected facilities can have an impact in determining how the market will change in response to the rule. Total annualized costs for this final rule are estimated to be approximately $0.48 million. Only three facilities are estimated to require additional capital costs because of this final rule.

We obtained revenue data for two of the three companies that operate facilities that will be required to install emission controls under this final rule. Based on those data, cost-to-sales estimates for those two affected facilities are 0.66 percent and 1.0 percent, respectively. Revenue data were not available for the other facility that will be affected by this final rule, so the national average value of shipments per worker from the 2002 Census of Manufacturers was used along with the average number of workers per facility to estimate revenues. The resulting costs for this and the other two facilities are relatively small and are not expected to result in a significant market impact whether they are passed on to the purchaser or absorbed by the company.

B. Clay Ceramics Manufacturing

Unlike the glass manufacturing industry, which still has some uncontrolled sources of urban HAP, sources in the clay ceramics manufacturing source category have made significant emission reductions through process changes and installation of control equipment. Affected sources are well-controlled, and our GACT determination reflects such controls. We estimate that the only impact to affected sources is the labor burden associated with the reporting and recordkeeping requirements. The cost associated with recordkeeping and the one-time reporting requirements is estimated to be $974 per facility.

C. Secondary Nonferrous Metals Processing

Similar to the clay ceramics manufacturing industry, all of the affected sources in the secondary nonferrous metal processing category have installed control equipment on their furnace melting operations. Affected sources are well-controlled, and our GACT determination reflects such controls. We estimate that the only impact associated with this final rule is the reporting and recordkeeping requirements. The cost associated with recordkeeping and the one-time reporting requirements is estimated to be $390 per facility.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in these NESHAP for Clay Ceramics Manufacturing Area Sources, Glass Manufacturing Area Sources, and Secondary Nonferrous Metals Processing Area Sources have been submitted for approval to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The recordkeeping and reporting requirements in these final rules are based on the information collection

requirements in the part 63 General Provisions (40 CFR part 63, subpart A). These recordkeeping and reporting requirements are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to EPA's implementing regulations at 40 CFR part 2, subpart B.

The NESHAP for Clay Ceramics Manufacturing area sources requires applicable one-time notifications required by the General Provisions. Plant owners or operators are required to include compliance certifications for the management practices in their Notifications of Compliance Status. The affected sources are expected to already have the required control and monitoring equipment in place and already conduct the required monitoring and recordkeeping activities.

The annual burden for this information collection averaged over the first three years of this ICR is estimated to total 196 labor hours per year at a cost of approximately $16,600 for 17 existing clay ceramics manufacturing area sources (51 existing sources averaged over three years). No capital/startup costs or operation and maintenance costs are associated with the information collection requirements. No costs or burden hours are estimated for new clay ceramics manufacturing area sources because no new area sources are projected for the next three years.

The NESHAP for Glass Manufacturing also requires applicable one-time notifications required by the General Provisions, monitoring of control device parameters, and recordkeeping. The annual burden for this collection of information averaged over the first three years of this ICR is estimated to total 190 labor hours per year at a cost of $16,130 for the 21 glass manufacturing area source facilities that will be subject to this final rule. This burden estimate includes time for acquisition, installation, and use of monitoring technology and systems, one-time notifications, and recordkeeping. Total capital/startup costs associated with the monitoring requirements (e.g., costs for hiring performance test contractors and purchase of monitoring and file storage equipment) over the three-year period of the ICR are estimated at $15,990, with operation and maintenance costs of $9,850/yr. No costs or burden estimates are estimated for new sources because no new sources are project for the next three years.

The NESHAP for Secondary Nonferrous Metals Processing area sources requires one-time notifications required by the General Provisions. Plant owners or operators are required to conduct performance tests and include compliance certifications for the percent PM reduction achieved by the required control device in their Notifications of Compliance Status. The affected sources are expected to already have the required control and monitoring equipment in place and already conduct the required monitoring and recordkeeping activities.

The annual burden for this information collection averaged over the first three years of this ICR is estimated to total 15 labor hours per year at a cost of approximately $1,300 for three existing secondary nonferrous metals processing area sources (10 existing sources averaged over three years). No capital/startup costs or operation and maintenance costs are associated with the information collection requirements. No costs or burden hours are estimated for new secondary nonferrous metals processing area sources because no new area sources are projected for the next three years.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to, respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in these final rules.

C. Regulatory Flexibility Act

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 would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of the area source NESHAP on small entities, a small entity is defined as: (1) A small business whose parent company meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 500 to 750 employees for Clay Ceramics Manufacturing, less than 750 to 1,000 employees for Glass Manufacturing, and less than 750 employees for Secondary Nonferrous Metals Processing, depending on the size definition for the affected NAICS code); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise, which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of these final rules on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Based on our estimates, EPA does not expect any new clay ceramic or secondary nonferrous metal processing sources to be constructed in the foreseeable future and so, therefore, did not estimate the impacts for new clay ceramics manufacturing or secondary nonferrous metal processing sources. There would be no significant impacts on new or existing clay ceramics manufacturing facilities or secondary nonferrous metals processing facilities because these final rules do not create any new requirements or burdens other than minimal notification requirements. The minimal notification requirements consist of reading this final rule and providing two initial notifications to EPA: one notifying EPA that the facility is subject to this final rule and one notifying EPA that the facility is in compliance with this final rule. These notifications may be submitted together. We estimate the cost of these one-time notification requirements to be $974 for each clay ceramics manufacturing facility and $390 for each secondary nonferrous metals processing facility. These costs were estimated based on the costs of technical, management, and clerical support salaries. We also estimate that 34 clay ceramics facilities and 6 secondary nonferrous metals

processing facilities are owned and operated by small businesses. These notification costs would be less than 0.25 percent for any of these small businesses.

Twenty-one glass manufacturing facilities are estimated to require additional costs because of this final rule. Only one of these facilities is a small business.

Although these final rules will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this final rule on small entities. These final rules are designed to harmonize with existing State and local requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that these final rules 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 to the private sector in any one year. Thus, these final rules are not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that these final rules contain no regulatory requirement that might significantly or uniquely affect small governments. These final rules contain no requirements that apply to such governments, impose no obligations upon them, and will not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to assure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are 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.''

These final rules do not have federalism implications. They 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. These final rules impose requirements on owners and operators of specified area sources and not State and local governments. Thus, Executive Order 13132 does not apply to these final rules.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to assure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' These final rules do not have tribal implications, as specified in Executive Order 13175. They 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, as specified in Executive Order 13175. These final rules impose requirements on owners and operators of specified area sources and not tribal governments. Thus, Executive Order 13175 does not apply to these final rules.

G. Executive Order 13045: Protection of Children From Environmental Health 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, EPA 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 EPA.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These final rules are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks.

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

The glass manufacturing final rule is 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. Existing energy requirements for this industry will not be significantly impacted by the additional pollution controls or other equipment that may be required by this final rule. Further, we have concluded that this final rule is not likely to have any significant adverse energy effects.

The clay ceramics manufacturing and the secondary nonferrous metals processing final rules are not ''significant energy actions'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of

energy. The energy requirements for these industries will remain at existing levels. No additional pollution controls or other equipment that would consume energy are required by these final rules. Further, we have concluded that these final rules are not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

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

These rules involve technical standards. EPA cites the following standards: EPA Methods 1, 1A, 2, 2A, 2C, 2F, 2G, 3, 3A, 3B, 4, 5, 17, 22, and 29 (40 CFR part 60, appendix A).

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2F, 2G, 22, and 29. The search and review results are in the dockets for these final rules.

The search identified one voluntary consensus standard as acceptable alternatives to an EPA Method. The standard ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' is cited in this rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of the exhaust gas. This part of ASME PTC 19.10–1981 is an acceptable alternative to EPA Method 3B.

The search for emissions measurement procedures identified 12 other voluntary consensus standards. EPA determined that these 12 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in these final rules were impractical alternatives to EPA test methods for the purposes of the rules. Therefore, EPA does not intend to adopt these standards for these purposes. The reasons for the determinations for the 12 methods are discussed in the dockets to these final rules.

Under § 63.7(f) and § 63.8(f) of Subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that these final rules will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. These final rules establish national standards for each area source category.

K. 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 Congress and to the Comptroller General of the United States. EPA will submit a report containing these final rules 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 these final rules in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). These final rules will be effective on December 26, 2007.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporations by reference, Reporting and recordkeeping requirements.

Dated: December 14, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—[Amended]

■ 2. Section 63.14 is amended by revising paragraph (i)(1) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) * * *

(1) ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' IBR approved for §§ 63.309(k)(1)(iii), 63.865(b), 63.3166(a)(3), 63.3360(e)(1)(iii), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), 63.9323(a)(3), 63.11148(e)(3)(iii), 63.11155(e)(3), 63.11162(f)(3)(iii) and (f)(4), 63.11163(g)(1)(iii) and (g)(2), 63.11410(j)(1)(iii), Table 5 of subpart DDDDD of this part, 63.11452(b)(11), and 63.11466(c)(1)(iii).

* * * * *

■ 3. Part 63 is amended by adding subpart RRRRRR to read as follows:

Subpart RRRRRR—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources

Applicability and Compliance Dates

Sec.
63.11435 Am I subject to this subpart?
63.11436 What parts of my plant does this subpart cover?
63.11437 What are my compliance dates?

Standards, Compliance, and Monitoring Requirements

63.11438 What are the standards for new and existing sources?
63.11439 What are the initial compliance demonstration requirements for new and existing sources?
63.11440 What are the monitoring requirements for new and existing sources?
63.11441 What are the notification requirements?
63.11442 What are the recordkeeping requirements?

Other Requirements and Information

63.11443 What General Provisions apply to this subpart?
63.11444 What definitions apply to this subpart?
63.11445 Who implements and enforces this subpart?
63.11446 [Reserved]
63.11447 [Reserved]

Tables to Subpart RRRRRR of Part 63

Table 1 to Subpart RRRRRR of Part 63—Applicability of General Provisions to Subpart RRRRRR

Applicability and Compliance Dates

§ 63.11435 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a clay ceramics manufacturing facility (as defined in § 63.11444), with an atomized glaze spray booth or kiln that fires glazed ceramic ware, that processes more than 45 megagrams per year (Mg/yr) (50 tons per year (tpy)) of wet clay and is an area source of hazardous air pollutant (HAP) emissions.

(b) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. You must continue to comply with the provisions of this subpart applicable to area sources.

§ 63.11436 What parts of my plant does this subpart cover?

(a) This subpart applies to any existing or new affected source located at a clay ceramics manufacturing facility.

(b) The affected source includes all atomized glaze spray booths and kilns that fire glazed ceramic ware located at a clay ceramics manufacturing facility.

(c) An affected source is existing if you commenced construction or reconstruction of the affected source on or before September 20, 2007.

(d) An affected source is new if you commenced construction or reconstruction of the affected source after September 20, 2007.

§ 63.11437 What are my compliance dates?

(a) If you have an existing affected source, you must comply with the standards no later than December 26, 2007.

(b) If you have a new affected source, you must comply with this subpart according to paragraphs (b)(1) and (2) of this section.

(1) If you start up your affected source on or before December 26, 2007, you must comply with this subpart no later than December 26, 2007.

(2) If you start up your affected source after December 26, 2007, you must comply with this subpart upon initial startup of your affected source.

Standards, Compliance, and Monitoring Requirements

§ 63.11438 What are the standards for new and existing sources?

(a) For each kiln that fires glazed ceramic ware, you must maintain the peak temperature below 1540 °C (2800 °F) and comply with one of the management practices in paragraphs (a)(1) and (2) of this section:

(1) Use natural gas, or equivalent clean-burning fuel, as the kiln fuel; or

(2) Use an electric-powered kiln.

(b) You must maintain annual wet glaze usage records for your facility.

(c) For each atomized glaze spray booth located at a clay ceramics manufacturing facility that uses more than 227 Mg/yr (250 tpy) of wet glaze(s), you must comply with the equipment standard requirements in paragraph (c)(1) of this section or the management practice in paragraph (c)(2) of this section.

(1) Control the emissions from the atomized glaze spray booth with an air pollution control device (APCD), as defined in § 63.11444.

(i) Operate and maintain the APCD in accordance with the equipment manufacturer's specifications; and

(ii) Monitor the APCD according to the applicable requirements in § 63.11440.

(2) Alternatively, use wet glazes containing less than 0.1 (weight) percent clay ceramics metal HAP.

(d) For each atomized glaze spray booth located at a clay ceramics manufacturing facility that uses 227 Mg/yr (250 tpy) or less of wet glaze(s), you must comply with one of the management practices or equipment standards in paragraphs (d)(1) and (2) of this section.

(1) Employ waste minimization practices, as defined in § 63.11444; or

(2) Alternatively, comply with the equipment standard requirements described in paragraph (c)(1) of this section or the management practice described in paragraph (c)(2) of this section.

(e) Surface applications (*e.g.*, wet glazes) containing less than 0.1 (weight) percent clay ceramics metal HAP do not have to be considered in determination of the 227 Mg/yr (250 tpy) threshold for wet glaze usage.

§ 63.11439 What are the initial compliance demonstration requirements for new and existing sources?

(a) You must demonstrate initial compliance with the applicable management practices and equipment standards in § 63.11438 by submitting a Notification of Compliance Status. For any wet spray glaze operation controlled with an APCD, you must conduct an initial inspection of the control equipment as described in § 63.11440(b)(1) within 60 days of the compliance date and include the results of the inspection in the Notification of Compliance Status.

(b) You must demonstrate initial compliance with the applicable management practices or equipment standards in § 63.11438 by submitting the Notification of Compliance Status within 120 days after the applicable compliance date specified in § 63.11437.

§ 63.11440 What are the monitoring requirements for new and existing sources?

(a) For each kiln firing glazed ceramic ware, you must conduct a daily check of the peak firing temperature. If the peak temperature exceeds 1540 °C (2800 °F), you must take corrective action according to your standard operating procedures.

(b) For each existing or new atomized glaze spray booth equipped with an APCD, you must demonstrate compliance by conducting the monitoring activities in paragraph (b)(1) and either paragraph (b)(2) or (3) of this section:

(1) *Initial control device inspection.* You must conduct an initial inspection of each particulate matter (PM) control device according to the requirements in paragraphs (b)(1)(i) or (ii) of this section. You must conduct each inspection no later than 60 days after your applicable compliance date for each installed control device which has been operated within 60 days of the compliance date. For an installed control device which has not been operated within 60 days of the compliance date, you must conduct an initial inspection prior to startup of the control device.

(i) For each wet control system, you must verify the presence of water flow to the control equipment. You must also visually inspect the system ductwork and control equipment for leaks and inspect the interior of the control equipment (if applicable) for structural integrity and the condition of the control system. An initial inspection of the internal components of a wet control system is not required if an inspection has been performed within the past 12 months.

(ii) For each baghouse, you must visually inspect the system ductwork and baghouse unit for leaks. You must also inspect the inside of each baghouse for structural integrity and fabric filter condition. You must record the results of the inspection and any maintenance action as required in paragraph (d) of this section. An initial inspection of the internal components of a baghouse is not required if an inspection has been performed within the past 12 months.

(2) *Periodic inspections/maintenance.* Except as provided in paragraph (b)(3) of this section, you must perform periodic inspections and maintenance of each PM control device following the initial inspection according to the requirements in paragraphs (b)(2)(i) or (ii) of this section.

(i) You must inspect and maintain each wet control system according to the requirements in paragraphs (b)(2)(i)(A) through (C) of this section.

(A) You must conduct a daily inspection to verify the presence of water flow to the wet control system.

(B) You must conduct weekly visual inspections of the system ductwork and control equipment for leaks.

(C) You must conduct inspections of the interior of the wet control system (if applicable) to determine the structural integrity and condition of the control equipment every 12 months.

(ii) You must inspect and maintain each baghouse according to the requirements in paragraphs (b)(2)(ii)(A) and (B) of this section.

(A) You must conduct weekly visual inspections of the system ductwork for leaks.

(B) You must conduct inspections of the interior of the baghouse for structural integrity and to determine the condition of the fabric filter every 12 months.

(3) As an alternative to the monitoring activities in paragraph (b)(2) of this section, you may demonstrate compliance by:

(i) Conducting a daily 30-minute visible emissions (VE) test (i.e., no visible emissions) using EPA Method 22 (40 CFR part 60, appendix A–7); or

(ii) Using an approved alternative monitoring technique under § 63.8(f).

(c) If the results of the visual inspection, VE test, or alternative monitoring technique conducted under paragraph (b) of this section indicate an exceedance, you must take corrective action according to the equipment manufacturer's specifications or instructions.

(d) You must maintain records of your monitoring activities described in paragraphs (a) through (c) of this section. You may use your existing operating permit documentation to meet the monitoring requirements if it includes, but is not limited to, the monitoring records listed in paragraphs (d)(1) through (5) of this section related to any kiln peak temperature checks, visual inspections, VE tests, or alternative monitoring:

(1) The date, place, and time;

(2) Person conducting the activity;

(3) Technique or method used;

(4) Operating conditions during the activity; and

(5) Results.

§ 63.11441 What are the notification requirements?

(a) You must submit an Initial Notification required by § 63.9(b)(2) no later than 120 days after the applicable compliance date specified in § 63.11437. The Initial Notification must include the information specified in § 63.9(b)(2)(i) through (iv) and may be combined with the Notification of Compliance Status required in paragraph (b) of this section.

(b) You must submit a Notification of Compliance Status required by § 63.9(h) no later than 120 days after the applicable compliance date specified in § 63.11437. In addition to the information required in § 63.9(h)(2), your notification(s) must include each compliance certification in paragraphs (b)(1) through (3) of this section that applies to you and may be combined with the Initial Notification required in paragraph (a) of this section.

(1) For each kiln firing glazed ceramic ware, you must certify that you are maintaining the peak temperature below 1540 °C (2800 °F) according to § 63.11438(a) and complying with one of the management practices in § 63.11438(a)(1) or (2).

(2) For atomized glaze spray booths, you must certify that your facility's annual wet glaze usage is above or below 227 Mg/yr (250 tpy).

(3) For atomized glaze spray booths located at a clay ceramics manufacturing facility that uses more than 227 Mg/yr (250 tpy) of wet glaze(s), you must certify that:

(i) You are operating and maintaining an APCD in accordance with § 63.11438(c)(1), and you have conducted an initial control device inspection for each wet control system and baghouse associated with an atomized glaze spray booth; or

(ii) Alternatively, you are using wet glazes containing less than 0.1 (weight) percent clay ceramics metal HAP according to § 63.11438(c)(2).

(4) For atomized glaze spray booths located at a clay ceramics manufacturing facility that uses 227 Mg/yr (250 tpy) or less of wet glaze(s), you must certify that:

(i) You are employing waste minimization practices according to § 63.11438(d)(1); or

(ii) You are complying with the requirements in § 63.11438(c)(1) or (2).

§ 63.11442 What are the recordkeeping requirements?

(a) You must keep the records specified in paragraphs (a)(1) and (2) of this section.

(1) A copy of each notification that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of all required measurements needed to document compliance with management practices as required in § 63.10(b)(2)(vii), including records of monitoring and inspection data required by § 63.11440.

(b) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(c) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(d) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining three years.

Other Requirements and Information

§ 63.11443 What General Provisions apply to this subpart?

Table 1 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you.

§ 63.11444 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Air pollution control device (APCD) means any equipment that reduces the quantity of a pollutant that is emitted to the air. Examples of APCD currently used on glaze spray booths include, but are not limited to, wet scrubbers, fabric filters, water curtains, and water-wash systems.

Atomization means the conversion of a liquid into a spray or mist (i.e., collection of drops), often by passing the liquid through a nozzle.

Clay ceramics manufacturing facility means a plant site that manufactures pressed tile, sanitaryware, dinnerware, or pottery. For the purposes of this area

source rule, the following types of facilities are not part of the regulated category: artisan potters, art studios, school and university ceramic arts programs, and any facility that uses less than 45 Mg/yr (50 tpy) of wet clay.

Clay ceramics metal HAP means an oxide or other compound of chromium, lead, manganese, or nickel, which were listed for Clay Ceramics Manufacturing in the Revised Area Source Category List (67 FR 70428, November 22, 2002).

Glaze means a coating of colored, opaque, or transparent material applied to ceramic products before firing.

Glaze spray booth means a type of equipment used for spraying glaze on ceramic products.

High-volume, low-pressure (HVLP) spray equipment means a type of air atomized spray equipment that operates at low atomizing air pressure (0.1 to 10 pounds per square inch (psi) at the air nozzle) and uses 15 to 30 cubic feet per minute (cfm) of air to minimize the amount of overspray and bounce back.

Kiln means equipment used for the initial curing or firing of glaze on ceramic ware. A kiln may operate continuously or by batch process.

Nonatomizing glaze application technique means the application of glaze in the form of a liquid stream without atomization. Such techniques include, but are not limited to, dipping, centrifugal disc, waterfall, flow coaters, curtain coaters, silk-screening, and any direct application by roller, brush, pad, or other means facilitating direct transfer of glaze.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Waste minimization practices mean those procedures employed to minimize material losses and prevent unnecessary waste generation, for example, minimizing glaze overspray emissions using HVLP spray equipment (defined in this section) or similar spray equipment; minimizing HAP emissions during cleanup of spray glazing equipment; operating and maintaining spray glazing equipment according to manufacturer's instructions; and minimizing spills through careful handling of HAP-containing glaze materials.

Water curtain means an APCD that draws the exhaust stream through a continuous curtain of moving water to remove suspended particulate. A water curtain may also be called a drip curtain or waterfall.

Water-wash system means an APCD that uses a series of baffles to redirect the upward exhaust stream through a water wash chamber with downward water flow to remove suspended particulate.

§ 63.11445 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the applicability requirements in §§ 63.11435 and 63.11436, the compliance date requirements in § 63.11437, and the management practices and equipment standards in § 63.11438.

(2) Approval of a major change to a test method under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

§ 63.11446 [Reserved]

§ 63.11447 [Reserved]

Tables to Subpart RRRRRR of Part 63

As stated in § 63.11443, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

TABLE 1 TO SUBPART RRRRRR OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART RRRRRR

Citation	Subject
63.1(a)(1)–(a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1), (c)(2),[1] (c)(5), (e)	Applicability.
63.2	Definitions.
63.3	Units and Abbreviations.
63.4	Prohibited Activities and Circumvention.
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (f), (g), (i), (j)	Compliance with Standards and Maintenance Requirements.
63.8(a)(1), (a)(2), (b), (c)(1)(i)–(c)(1)(ii), (c)(2), (c)(3), (f)	Monitoring Requirements.
63.9(a), (b)(1), (b)(2), (b)(5), (c), (d), (h)(1)–(h)(3), (h)(5), (h)(6), (i), (j)	Notification Requirements.
63.10(a), (b)(1), (b)(2)(vii), (b)(2)(xiv), (b)(3), (c), (c)(1), (f)	Recordkeeping and Reporting Requirements.
63.12	State Authority and Delegations.
63.13	Addresses.
63.14	Incorporations by Reference.
63.15	Availability of Information and Confidentiality.
63.16	Performance Track Provisions.

[1] Section 63.11435(b) of this subpart exempts area sources from the obligation to obtain title V operating permits.

■ 4. Part 63 is amended by adding subpart SSSSSS to read as follows:

Subpart SSSSSS—National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources

Applicability and Compliance Dates

Sec.
63.11448 Am I subject to this subpart?
63.11449 What parts of my plant does this subpart cover?
63.11450 What are my compliance dates?

Standards, Compliance, and Monitoring Requirements

63.11451 What are the standards for new and existing sources?
63.11452 What are the performance test requirements for new and existing sources?
63.11453 What are the initial compliance demonstration requirements for new and existing sources?
63.11454 What are the monitoring requirements for new and existing sources?
63.11455 What are the continuous compliance requirements for new and existing sources?

Notifications and Records

63.11456 What are the notification requirements?
63.11457 What are the recordkeeping requirements?

Other Requirements and Information

63.11458 What General Provisions apply to this subpart?
63.11459 What definitions apply to this subpart?
63.11460 Who implements and enforces this subpart?
63.11461 [Reserved]

Tables to Subpart SSSSSS of Part 63

Table 1 to Subpart SSSSSS of Part 63—Emission Limits
Table 2 to Subpart SSSSSS of Part 63—Applicability of General Provisions to Subpart SSSSSS

Applicability and Compliance Dates

§ 63.11448 Am I subject to this subpart?

You are subject to this subpart if you own or operate a glass manufacturing facility that is an area source of hazardous air pollutant (HAP) emissions and meets all of the criteria specified in paragraphs (a) through (c) of this section.

(a) A glass manufacturing facility is a plant site that manufactures flat glass, glass containers, or pressed and blown glass by melting a mixture of raw materials, as defined in § 63.11459, to produce molten glass and form the molten glass into sheets, containers, or other shapes.

(b) An area source of HAP emissions is any stationary source or group of stationary sources within a contiguous area under common control that does not have the potential to emit any single HAP at a rate of 9.07 megagrams per year (Mg/yr) (10 tons per year (tpy)) or more and any combination of HAP at a rate of 22.68 Mg/yr (25 tpy) or more.

(c) Your glass manufacturing facility uses one or more continuous furnaces to produce glass that contains compounds of one or more glass manufacturing metal HAP, as defined in § 63.11459, as raw materials in a glass manufacturing batch formulation.

§ 63.11449 What parts of my plant does this subpart cover?

(a) This subpart applies to each existing or new affected glass melting furnace that is located at a glass manufacturing facility and satisfies the requirements specified in paragraphs (a)(1) through (3) of this section.

(1) The furnace is a continuous furnace, as defined in § 63.11459.

(2) The furnace is charged with compounds of one or more glass manufacturing metal HAP as raw materials.

(3) The furnace is used to produce glass, which contains one or more of the glass manufacturing metal HAP as raw materials, at a rate of at least 45 Mg/yr (50 tpy).

(b) A furnace that is a research and development process unit, as defined in § 63.11459, is not an affected furnace under this subpart.

(c) An affected source is an existing source if you commenced construction or reconstruction of the affected source on or before September 20, 2007.

(d) An affected source is a new source if you commenced construction or reconstruction of the affected source after September 20, 2007.

(e) If you own or operate an area source subject to this subpart, you must obtain a permit under 40 CFR part 70 or 40 CFR part 71.

§ 63.11450 What are my compliance dates?

(a) If you have an existing affected source, you must comply with the applicable emission limits specified in § 63.11451 of this subpart no later than December 28, 2009. As specified in section 112(i)(3)(B) of the Clean Air Act and in § 63.6(i)(4)(A), you may request that the Administrator or delegated authority grant an extension allowing up to 1 additional year to comply with the applicable emission limits if such additional period is necessary for the installation of emission controls.

(b) If you have a new affected source, you must comply with this subpart according to paragraphs (b)(1) and (2) of this section.

(1) If you start up your affected source on or before December 26, 2007, you must comply with the applicable emission limit specified in § 63.11451 no later than December 26, 2007.

(2) If you start up your affected source after December 26, 2007, you must comply with the applicable emission limit specified in § 63.11451 upon initial startup of your affected source.

(c) If you own or operate a furnace that produces glass containing one or more glass manufacturing metal HAP as raw materials at an annual rate of less than 45 Mg/yr (50 tpy), and you increase glass production for that furnace to an annual rate of at least 45 Mg/yr (50 tpy), you must comply with the applicable emission limit specified in § 63.11451 within 2 years of the date on which you increased the glass production rate for the furnace to at least 45 Mg/yr (50 tpy).

(d) If you own or operate a furnace that produces glass at an annual rate of at least 45 Mg/yr (50 tpy) and is not charged with glass manufacturing metal HAP, and you begin production of a glass product that includes one or more glass manufacturing metal HAP as raw materials, and you produce at least 45 Mg/yr (50 tpy) of this glass product, you must comply with the applicable emission limit specified in § 63.11451 within 2 years of the date on which you introduced production of the glass product that contains glass manufacturing metal HAP.

(e) You must meet the notification requirements in § 63.11456 according to the schedule in § 63.11456 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with emission limits specified in this subpart.

Standards, Compliance, and Monitoring Requirements

§ 63.11451 What are the standards for new and existing sources?

If you are an owner or operator of an affected furnace, as defined in § 63.11449(a), you must meet the applicable emission limit specified in Table 1 to this subpart.

§ 63.11452 What are the performance test requirements for new and existing sources?

(a) If you own or operate an affected furnace that is subject to an emission limit specified in Table 1 to this subpart, you must conduct a performance test according to paragraphs (a)(1) through (3) and paragraph (b) of this section.

(1) For each affected furnace, you must conduct a performance test within 180 days after your compliance date and report the results in your Notification of Compliance Status, except as specified in paragraph (a)(2) of this section.

(2) You are not required to conduct a performance test on the affected furnace if you satisfy the conditions described in paragraphs (a)(2)(i) through (iii) of this section.

(i) You conducted a performance test on the affected furnace within the past 5 years of the compliance date using the same test methods and procedures specified in paragraph (b) of this section.

(ii) The performance test demonstrated that the affected furnace met the applicable emission limit specified in Table 1 to this subpart.

(iii) Either no process changes have been made since the test, or you can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance with the applicable emission limit.

(3) If you operate multiple identical furnaces, as defined in § 63.11459, that are affected furnaces, you are required to test only one of the identical furnaces if you meet the conditions specified in paragraphs (a)(3)(i) through (iii) of this section.

(i) You must conduct the performance test while the furnace is producing glass that has the greatest potential to emit the glass manufacturing metal HAP from among the glass formulations that are used in any of the identical furnaces.

(ii) You certify in your Notification of Compliance Status that the identical furnaces meet the definition of identical furnaces specified in § 63.11459.

(iii) You provide in your Notification of Compliance Status documentation that demonstrates why the tested glass formulation has the greatest potential to emit the glass manufacturing metal HAP.

(b) You must conduct each performance test according to the requirements in § 63.7 and paragraphs (b)(1) through (12) and either paragraph (b)(13) or (b)(14) of this section.

(1) Install and validate all monitoring equipment required by this subpart before conducting the performance test.

(2) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(3) Conduct the test while the source is operating at the maximum production rate.

(4) Conduct at least three separate test runs with a minimum duration of 1 hour for each test run, as specified in § 63.7(e)(3).

(5) Record the test date.

(6) Identify the emission source tested.

(7) Collect and record the emission test data listed in this section for each run of the performance test.

(8) Locate all sampling sites at the outlet of the furnace control device or at the furnace stack prior to any releases to the atmosphere.

(9) Select the locations of sampling ports and the number of traverse points using Method 1 or 1A of 40 CFR part 60, appendix A–1.

(10) Measure the gas velocity and volumetric flow rate using Method 2, 2A, 2C, 2F, or 2G of 40 CFR part 60, appendices A–1 and A–2, during each test run.

(11) Conduct gas molecular weight analysis using Methods 3, 3A, or 3B of 40 CFR part 60, appendix A–2, during each test run. You may use ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(12) Measure gas moisture content using Method 4 of 40 CFR part 60, appendix A–3, during each test run.

(13) To meet the particulate matter (PM) emission limit specified in Table 1 to this subpart, you must conduct the procedures specified in paragraphs (b)(13)(i) through (v) of this section.

(i) Measure the PM mass emission rate at the outlet of the control device or at the stack using Method 5 or 17 of 40 CFR part 60, appendices A–3 or A–6, for each test run.

(ii) Calculate the PM mass emission rate in the exhaust stream for each test run.

(iii) Measure and record the glass production rate (kilograms (tons) per hour of product) for each test run.

(iv) Calculate the production-based PM mass emission rate (g/kg (lb/ton)) for each test run using Equation 1 of this section.

$$MP = \frac{ER}{P} \qquad \text{(Equation 1)}$$

Where:

MP = Production-based PM mass emission rate, grams of PM per kilogram (pounds of PM per ton) of glass produced.

ER = PM mass emission rate measured using Methods 5 or 17 during each performance test run, grams (pounds) per hour.

P = Average glass production rate for the performance test, kilograms (tons) of glass produced per hour.

(v) Calculate the 3-hour block average production-based PM mass emission rate as the average of the production-based PM mass emission rates for each test run.

(14) To meet the metal HAP emission limit specified in Table 1 to this subpart, you must conduct the procedures specified in paragraphs (b)(14)(i) through (v) of this section.

(i) Measure the metal HAP mass emission rate at the outlet of the control device or at the stack using Method 29 of 40 CFR part 60, appendix A–8, for each test run.

(ii) Calculate the metal HAP mass emission rate in the exhaust stream for the glass manufacturing metal HAP that are added as raw materials to the glass manufacturing formulation for each test run.

(iii) Measure and record the glass production rate (kilograms (tons) per hour of product) for each test run.

(iv) Calculate the production-based metal HAP mass emission rate (g/kg (lb/ton)) for each test run using Equation 2 of this section.

$$MPM = \frac{ERM}{P} \qquad \text{(Equation 2)}$$

Where:

MPM = Production-based metal HAP mass emission rate, grams of metal HAP per kilogram (pounds of metal HAP per ton) of glass produced.

ERM = Sum of the metal HAP mass emission rates for the glass manufacturing metal HAP that are added as raw materials to the glass manufacturing formulation and are measured using Method 29 during each performance test run, grams (pounds) per hour.

P = Average glass production rate for the performance test, kilograms (tons) of glass produced per hour.

(v) Calculate the 3-hour block average production-based metal HAP mass emission rate as the average of the production-based metal HAP mass emission rates for each test run.

§ 63.11453 What are the initial compliance demonstration requirements for new and existing sources?

(a) If you own or operate an affected source, you must submit a Notification of Compliance Status in accordance with §§ 63.9(h) and 63.11456(b).

(b) For each existing affected furnace that is subject to the emission limits specified in Table 1 to this subpart, you must demonstrate initial compliance according to the requirements in paragraphs (b)(1) through (4) of this section.

(1) For each fabric filter that is used to meet the emission limit specified in Table 1 to this subpart, you must visually inspect the system ductwork and fabric filter unit for leaks. You must also inspect the inside of each fabric filter for structural integrity and fabric filter condition. You must record the results of the inspection and any maintenance action as required in § 63.11457(a)(6).

(2) For each electrostatic precipitator (ESP) that is used to meet the emission limit specified in Table 1 to this subpart, you must verify the proper functioning of the electronic controls for corona power and rapper operation, that the corona wires are energized, and that adequate air pressure is present on the rapper manifold. You must also visually inspect the system ductwork and ESP housing unit and hopper for leaks and inspect the interior of the ESP to determine the condition and integrity of corona wires, collection plates, hopper, and air diffuser plates. You must record the results of the inspection and any maintenance action as required in § 63.11457(a)(6).

(3) You must conduct each inspection specified in paragraphs (b)(1) and (2) of this section no later than 60 days after your applicable compliance date specified in § 63.11450, except as specified in paragraphs (b)(3)(i) and (ii) of this section.

(i) An initial inspection of the internal components of a fabric filter is not required if an inspection has been performed within the past 12 months.

(ii) An initial inspection of the internal components of an ESP is not required if an inspection has been performed within the past 24 months.

(4) You must satisfy the applicable requirements for performance tests specified in § 63.11452.

(c) For each new affected furnace that is subject to the emission limit specified in Table 1 to this subpart and is controlled with a fabric filter, you must install, operate, and maintain a bag leak detection system according to paragraphs (c)(1) through (3) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (c)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per dry standard cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (e.g., using a strip chart recorder or a data logger).

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (c)(1)(iv) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, you shall not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (c)(1)(vi) of this section.

(vi) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (c)(2) of this section.

(vii) You must install the bag leak detection sensor downstream of the fabric filter.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must develop and submit to the Administrator or delegated authority for approval a site-specific monitoring plan for each bag leak detection system. You must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (c)(2)(i) through (vi) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored; and

(vi) Corrective action procedures as specified in paragraph (c)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, you must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (c)(2)(vi) of this section, you must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in PM emissions;

(ii) Sealing off defective bags or filter media;

(iii) Replacing defective bags or filter media or otherwise repairing the control device;

(iv) Sealing off a defective fabric filter compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the PM emissions.

(d) For each new affected furnace that is subject to the emission limit specified in Table 1 to this subpart and is controlled with an ESP, you must install, operate, and maintain according to the manufacturer's specifications, one or more continuous parameter monitoring systems (CPMS) for measuring and recording the secondary voltage and secondary electrical current to each field of the ESP according to paragraphs (d)(1) through (13) of this section.

(1) The CPMS must have an accuracy of 1 percent of the secondary voltage and secondary electrical current, or better.

(2) Your CPMS must be capable of measuring the secondary voltage and secondary electrical current over a range that extends from a value that is at least 20 percent less than the lowest value that you expect your CPMS to measure, to a value that is at least 20 percent greater than the highest value that you expect your CPMS to measure.

(3) The signal conditioner, wiring, power supply, and data acquisition and recording system of your CPMS must be compatible with the output signal of the sensors used in your CPMS.

(4) The data acquisition and recording system of your CPMS must be able to record values over the entire range specified in paragraph (d)(2) of this section.

(5) The data recording system associated with your CPMS must have

a resolution of one-half of the required overall accuracy of your CPMS, as specified in paragraph (d)(1) of this section, or better.

(6) Your CPMS must be equipped with an alarm system that will sound when the system detects a decrease in secondary voltage or secondary electrical current below the alarm set point established according to paragraph (d)(7) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(7) In the initial adjustment of the CPMS, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(8) You must install each sensor of the CPMS in a location that provides representative measurement of the appropriate parameter over all operating conditions, taking into account the manufacturer's guidelines.

(9) You must perform an initial calibration of your CPMS based on the procedures specified in the manufacturer's owner's manual.

(10) Your CPMS must be designed to complete a minimum of one cycle of operation for each successive 15-minute period. To have a valid hour of data, you must have at least three of four equally-spaced data values (or at least 75 percent of the total number of values if you collect more than four data values per hour) for that hour (not including startup, shutdown, malfunction, or out of control periods).

(11) You must record valid data from at least 90 percent of the hours during which the affected source or process operates.

(12) You must record the results of each inspection, calibration, initial validation, and accuracy audit.

(13) At all times, you must maintain your CPMS including, but not limited to, maintaining necessary parts for routine repairs of the CPMS.

(e) For each new affected furnace that is subject to the emission limit specified in Table 1 to this subpart and is controlled by a device other than a fabric filter or an ESP, you must prepare and submit a monitoring plan to EPA or the delegated authority for approval. Each plan must contain the information in paragraphs (e)(1) through (5) of this section.

(1) A description of the device;

(2) Test results collected in accordance with § 63.11452 verifying the performance of the device for reducing PM or metal HAP to the levels required by this subpart;

(3) Operation and maintenance plan for the control device (including a preventative maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance) and continuous monitoring system;

(4) A list of operating parameters that will be monitored to maintain continuous compliance with the applicable emission limits; and

(5) Operating parameter limits based on monitoring data collected during the performance test.

§ 63.11454 What are the monitoring requirements for new and existing sources?

(a) For each monitoring system required by this subpart, you must install, calibrate, operate, and maintain the monitoring system according to the manufacturer's specifications and the requirements specified in paragraphs (a)(1) through (7) of this section.

(1) You must install each sensor of your monitoring system in a location that provides representative measurement of the appropriate parameter over all operating conditions, taking into account the manufacturer's guidelines.

(2) You must perform an initial calibration of your monitoring system based on the manufacturer's recommendations.

(3) You must use a monitoring system that is designed to complete a minimum of one cycle of operation for each successive 15-minute period.

(4) For each existing affected furnace, you must record the value of the monitored parameter at least every 8 hours. The value can be recorded electronically or manually.

(5) You must record the results of each inspection, calibration, monitoring system maintenance, and corrective action taken to return the monitoring system to normal operation.

(6) At all times, you must maintain your monitoring system including, but not limited to, maintaining necessary parts for routine repairs of the system.

(7) You must perform the required monitoring whenever the affected furnace meets the conditions specified in paragraph (a)(7)(i) or (ii) of this section.

(i) The furnace is being charged with one or more of the glass manufacturing metal HAP as raw materials.

(ii) The furnace is in transition between producing glass that contains one or more of the glass metal HAP as raw materials and glass that does not contain any of the glass manufacturing metal HAP as raw materials. The transition period begins when the furnace is charged with raw materials that do not contain any of the glass manufacturing metal HAP as raw materials and ends when the furnace begins producing a saleable glass product that does not contain any of the glass manufacturing metal HAP as raw materials.

(b) For each existing furnace that is subject to the emission limit specified in Table 1 to this subpart and is controlled with an ESP, you must meet the requirements specified in paragraphs (b)(1) or (2) of this section.

(1) You must monitor the secondary voltage and secondary electrical current to each field of the ESP according to the requirements of paragraph (a) of this section, or

(2) You must submit a request for alternative monitoring, as described in paragraph (g) of this section.

(c) For each existing furnace that is subject to the emission limit specified in Table 1 to this subpart and is controlled with a fabric filter, you must meet the requirements specified in paragraphs (c)(1) or (2) of this section.

(1) You must monitor the inlet temperature to the fabric filter according to the requirements of paragraph (a) of this section, or

(2) You must submit a request for alternative monitoring, as described in paragraph (g) of this section.

(d) For each new furnace that is subject to the emission limit specified in Table 1 to this subpart and is controlled with an ESP, you must monitor the voltage and electrical current to each field of the ESP on a continuous basis using one or more CPMS according to the requirements for CPMS specified in § 63.11453(d).

(e) For each new furnace that is subject to the emission limit specified in Table 1 to this subpart and is controlled with a fabric filter, you must install and operate a bag leak detection system according to the requirements specified in § 63.11453(c).

(f) For each new or existing furnace that is subject to the emission limit specified in Table 1 to this subpart and is equipped with a control device other than an ESP or fabric filter, you must meet the requirements in § 63.8(f) and submit a request for approval of alternative monitoring methods to the Administrator no later than the submittal date for the Notification of Compliance Status, as specified in § 63.11456(b). The request must contain the information specified in paragraphs (f)(1) through (5) of this section.

(1) Description of the alternative add-on air pollution control device (APCD).

(2) Type of monitoring device or method that will be used, including the sensor type, location, inspection

procedures, quality assurance and quality control (QA/QC) measures, and data recording device.

(3) Operating parameters that will be monitored.

(4) Frequency that the operating parameter values will be measured and recorded.

(5) Procedures for inspecting the condition and operation of the control device and monitoring system.

(g) If you wish to use a monitoring method other than those specified in paragraph (b)(1) or (c)(1) of this section, you must meet the requirements in § 63.8(f) and submit a request for approval of alternative monitoring methods to the Administrator no later than the submittal date for the Notification of Compliance Status, as specified in § 63.11456(b). The request must contain the information specified in paragraphs (g)(1) through (5) of this section.

(1) Type of monitoring device or method that will be used, including the sensor type, location, inspection procedures, QA/QC measures, and data recording device.

(2) Operating parameters that will be monitored.

(3) Frequency that the operating parameter values will be measured and recorded.

(4) Procedures for inspecting the condition and operation of the monitoring system.

(5) Explanation for how the alternative monitoring method will provide assurance that the emission control device is operating properly.

§ 63.11455 What are the continuous compliance requirements for new and existing sources?

(a) You must be in compliance with the applicable emission limits in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) For each affected furnace that is subject to the emission limit specified in Table 1 to this subpart, you must monitor the performance of the furnace emission control device under the conditions specified in § 63.11454(a)(7) and according to the requirements in §§ 63.6(e)(1) and 63.8(c) and paragraphs (c)(1) through (6) of this section.

(1) For each existing affected furnace that is controlled with an ESP, you must monitor the parameters specified in § 63.11454(b) in accordance with the requirements of § 63.11454(a) or as specified in your approved alternative monitoring plan.

(2) For each new affected furnace that is controlled with an ESP, you must comply with the monitoring requirements specified in § 63.11454(d) in accordance with the requirements of § 63.11454(a) or as specified in your approved alternative monitoring plan.

(3) For each existing affected furnace that is controlled with a fabric filter, you must monitor the parameter specified in § 63.11454(c) in accordance with the requirements of § 63.11454(a) or as specified in your approved alternative monitoring plan.

(4) For each new affected furnace that is controlled with a fabric filter, you must comply with the monitoring requirements specified in § 63.11454(e) in accordance with the requirements of § 63.11454(a) or as specified in your approved alternative monitoring plan.

(5) For each affected furnace that is controlled with a device other than a fabric filter or ESP, you must comply with the requirements of your approved alternative monitoring plan, as required in § 63.11454(g).

(6) For each monitoring system that is required under this subpart, you must keep the records specified in § 63.11457.

(d) Following the initial inspections, you must perform periodic inspections and maintenance of each affected furnace control device according to the requirements in paragraphs (d)(1) through (4) of this section.

(1) For each fabric filter, you must conduct inspections at least every 12 months according to paragraphs (d)(1)(i) through (iii) of this section.

(i) You must inspect the ductwork and fabric filter unit for leakage.

(ii) You must inspect the interior of the fabric filter for structural integrity and to determine the condition of the fabric filter.

(iii) If an initial inspection is not required, as specified in § 63.11453(b)(3)(i), the first inspection must not be more than 12 months from the last inspection.

(2) For each ESP, you must conduct inspections according to the requirements in paragraphs (d)(2)(i) through (iii) of this section.

(i) You must conduct visual inspections of the system ductwork, housing unit, and hopper for leaks at least every 12 months.

(ii) You must conduct inspections of the interior of the ESP to determine the condition and integrity of corona wires, collection plates, plate rappers, hopper, and air diffuser plates every 24 months.

(iii) If an initial inspection is not required, as specified in § 63.11453(b)(3)(ii), the first inspection must not be more than 24 months from the last inspection.

(3) You must record the results of each periodic inspection specified in this section in a logbook (written or electronic format), as specified in § 63.11457(c).

(4) If the results of a required inspection indicate a problem with the operation of the emission control system, you must take immediate corrective action to return the control device to normal operation according to the equipment manufacturer's specifications or instructions.

(e) For each affected furnace that is subject to the emission limit specified in Table 1 to this subpart and can meet the applicable emission limit without the use of a control device, you must demonstrate continuous compliance by satisfying the applicable recordkeeping requirements specified in § 63.11457.

Notifications and Records

§ 63.11456 What are the notification requirements?

(a) If you own or operate an affected furnace, as defined in § 63.11449(a), you must submit an Initial Notification in accordance with § 63.9(b) and paragraphs (a)(1) and (2) of this section by the dates specified.

(1) As specified in § 63.9(b)(2), if you start up your affected source before December 26, 2007, you must submit an Initial Notification not later than April 24, 2008 or within 120 days after your affected source becomes subject to the standard.

(2) The Initial Notification must include the information specified in § 63.9(b)(2)(i) through (iv).

(b) You must submit a Notification of Compliance Status in accordance with § 63.9(h) and the requirements in paragraphs (b)(1) and (2) of this section.

(1) If you own or operate an affected furnace and are required to conduct a performance test, you must submit a Notification of Compliance Status, including the performance test results, before the close of business on the 60th day following the completion of the performance test, according to § 60.8 or § 63.10(d)(2).

(2) If you own or operate an affected furnace and satisfy the conditions specified in § 63.11452(a)(2) and are not required to conduct a performance test, you must submit a Notification of Compliance Status, including the results of the previous performance test, before the close of business on the compliance date specified in § 63.11450.

§ 63.11457 What are the recordkeeping requirements?

(a) You must keep the records specified in paragraphs (a)(1) through (8) of this section.

(1) A copy of any Initial Notification and Notification of Compliance Status that you submitted and all documentation supporting those notifications, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records specified in § 63.10(b)(2) and (c)(1) through (13).

(3) The records required to show continuous compliance with each emission limit that applies to you, as specified in § 63.11455.

(4) For each affected source, records of production rate on a process throughput basis (either feed rate to the process unit or discharge rate from the process unit). The production data must include the amount (weight or weight percent) of each ingredient in the batch formulation, including all glass manufacturing metal HAP compounds.

(5) Records of maintenance activities and inspections performed on control devices as specified in §§ 63.11453(b) and 63.11455(d), according to paragraphs (a)(5)(i) through (v) of this section.

(i) The date, place, and time of inspections of control device ductwork, interior, and operation.

(ii) Person conducting the inspection.

(iii) Technique or method used to conduct the inspection.

(iv) Control device operating conditions during the time of the inspection.

(v) Results of the inspection and description of any corrective action taken.

(6) Records of all required monitoring data and supporting information including all calibration and maintenance records.

(7) For each bag leak detection system, the records specified in paragraphs (a)(7)(i) through (iii) of this section.

(i) Records of the bag leak detection system output;

(ii) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection system settings; and

(iii) The date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and whether the alarm was alleviated within 3 hours of the alarm.

(8) Records of any approved alternative monitoring method(s) or test procedure(s).

(b) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(c) You must record the results of each inspection and maintenance action in a logbook (written or electronic format). You must keep the logbook onsite and make the logbook available to the permitting authority upon request.

(d) As specified in § 63.10(b)(1), you must keep each record for a minimum of 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining three years.

Other Requirements and Information

§ 63.11458 What General Provisions apply to this subpart?

You must satisfy the requirements of the General Provisions in 40 CFR part 63, subpart A, as specified in Table 2 to this subpart.

§ 63.11459 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Air pollution control device (APCD) means any equipment that reduces the quantity of a pollutant that is emitted to the air.

Continuous furnace means a glass manufacturing furnace that operates continuously except during periods of maintenance, malfunction, control device installation, reconstruction, or rebuilding.

Cullet means recycled glass that is mixed with raw materials and charged to a glass melting furnace to produce glass. Cullet is not considered to be a raw material for the purposes of this subpart.

Electrostatic precipitator (ESP) means an APCD that removes PM from an exhaust gas stream by applying an electrical charge to particles in the gas stream and collecting the charged particles on plates carrying the opposite electrical charge.

Fabric filter means an APCD used to capture PM by filtering a gas stream through filter media.

Furnace stack means a conduit or conveyance through which emissions from the furnace melter are released to the atmosphere.

Glass manufacturing metal HAP means an oxide or other compound of any of the following metals included in the list of urban HAP for the Integrated Urban Air Toxics Strategy and for which Glass Manufacturing was listed as an area source category: arsenic, cadmium, chromium, lead, manganese, and nickel.

Glass melting furnace means a unit comprising a refractory-lined vessel in which raw materials are charged and melted at high temperature to produce molten glass.

Identical furnaces means two or more furnaces that are identical in design, including manufacturer, dimensions, production capacity, charging method, operating temperature, fuel type, burner configuration, and exhaust system configuration and design.

Particulate matter (PM) means, for purposes of this subpart, emissions of PM that serve as a measure of filterable particulate emissions, as measured by Methods 5 or 17 (40 CFR part 60, appendices A–3 and A–6), and as a surrogate for glass manufacturing metal HAP compounds contained in the PM including, but not limited to, arsenic, cadmium, chromium, lead, manganese, and nickel.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Raw material means minerals, such as silica sand, limestone, and dolomite; inorganic chemical compounds, such as soda ash (sodium carbonate), salt cake (sodium sulfate), and potash (potassium carbonate); metal oxides and other metal-based compounds, such as lead oxide, chromium oxide, and sodium antimonate; metal ores, such as chromite and pyrolusite; and other substances that are intentionally added to a glass manufacturing batch and melted in a glass melting furnace to produce glass. Metals that are naturally-occurring trace constituents or contaminants of other substances are not considered to be raw materials. Cullet and material that is recovered from a furnace control device for recycling into the glass formulation are not considered to be raw materials for the purposes of this subpart.

Research and development process unit means a process unit whose purpose is to conduct research and development for new processes and products and is not engaged in the manufacture of products for commercial sale, except in a de minimis manner.

§ 63.11460 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the applicability requirements in §§ 63.11448 and 63.11449, the compliance date requirements in § 63.11450, and the emission limits specified in § 63.11451.

(2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping under § 63.10(f) and as defined in § 63.90.

§ 63.11461 [Reserved]

Tables to Subpart SSSSSS of Part 63

As required in § 63.11451, you must comply with each emission limit that applies to you according to the following table:

TABLE 1 TO SUBPART SSSSSS OF PART 63—EMISSION LIMITS

For each. . .	You must meet one of the following emission limits. . .
1. New or existing glass melting furnace that produces glass at an annual rate of at least 45 Mg/yr (50 tpy) AND is charged with compounds of arsenic, cadmium, chromium, manganese, lead, or nickel as raw materials.	a. The 3-hour block average production-based PM mass emission rate must not exceed 0.1 gram per kilogram (g/kg) (0.2 pound per ton (lb/ton)) of glass produced; OR b. The 3-hour block average production-based metal HAP mass emission rate must not exceed 0.01 g/kg (0.02 lb/ton) of glass produced.

As stated in § 63.11458, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A), as shown in the following table:

TABLE 2 TO SUBPART SSSSSS OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSSS

Citation	Subject
§ 63.1(a), (b), (c)(1), (c)(2), (c)(5), (e)	Applicability.
§ 63.2	Definitions.
§ 63.3	Units and Abbreviations.
§ 63.4	Prohibited Activities.
§ 63.5	Construction/Reconstruction.
§ 63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (f), (g), (i), (j)	Compliance with Standards and Maintenance Requirements.
§ 63.7	Performance Testing Requirements.
§ 63.8(a)(1), (a)(2), (b), (c)(1)–(c)(4), (c)(7)(i)(B), (c)(7)(ii), (c)(8), (d), (e)(1), (e)(4), (f).	Monitoring Requirements.
§ 63.9(a), (b)(1)(i)–(b)(2)(v), (b)(5), (c), (d), (h)–(j)	Notification Requirements.
§ 63.10(a), (b)(1), (b)(2)(i)–(b)(2)(xii)	Recordkeeping and Reporting Requirements.
§ 63.10(b)(2)(xiv), (c), (f)	Documentation for Initial Notification and Notification of Compliance Status.
§ 63.12	State Authority and Delegations.
§ 63.13	Addresses.
§ 63.14	Incorporations by Reference.
§ 63.15	Availability of Information.
§ 63.16	Performance Track Provisions.

■ 5. Part 63 is amended by adding subpart TTTTTT to read as follows:

Subpart TTTTTT—National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources

Applicability and Compliance Dates

Sec.
63.11462 Am I subject to this subpart?
63.11463 What parts of my plant does this subpart cover?
63.11464 What are my compliance dates?

Standards, Compliance, and Monitoring Requirements

63.11465 What are the standards for new and existing sources?
63.11466 What are the performance test requirements for new and existing sources?
63.11467 What are the initial compliance demonstration requirements for new and existing sources?
63.11468 What are the monitoring requirements for new and existing sources?
63.11469 What are the notification requirements?
63.11470 What are the recordkeeping requirements?

Other Requirements and Information

63.11471 What General Provisions apply to this subpart?
63.11472 What definitions apply to this subpart?
63.11473 Who implements and enforces this subpart?
63.11474 [Reserved]

Tables to Subpart TTTTTT of Part 63

Table 1 to Subpart TTTTTT of Part 63—Applicability of General Provisions to Subpart TTTTTT

Applicability and Compliance Dates

§ 63.11462 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a secondary nonferrous metals processing facility (as defined in § 63.11472) that is an area source of hazardous air pollutant (HAP) emissions.

(b) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

§ 63.11463 What parts of my plant does this subpart cover?

(a) This subpart applies to any existing or new affected source located at a secondary nonferrous metals processing facility.

(b) The affected source includes all crushing and screening operations at a secondary zinc processing facility and all furnace melting operations located at any secondary nonferrous metals processing facilities.

(c) An affected source is existing if you commenced construction or reconstruction of the affected source on or before September 20, 2007.

(d) An affected source is new if you commenced construction or reconstruction of the affected source after September 20, 2007.

§ 63.11464 What are my compliance dates?

(a) If you have an existing affected source, you must comply with the standards no later than December 26, 2007.

(b) If you have a new affected source, you must comply with this subpart according to paragraphs (b)(1) and (b)(2) of this section.

(1) If you start up your affected source on or before December 26, 2007, you must comply with this subpart no later than December 26, 2007.

(2) If you start up your affected source after December 26, 2007, you must comply with this subpart upon initial startup of your affected source.

Standards, Compliance, and Monitoring Requirements

§ 63.11465 What are the standards for new and existing sources?

(a) You must route the emissions from each existing affected source through a fabric filter or baghouse that achieves a particulate matter (PM) control efficiency of at least 99.0 percent or an outlet PM concentration limit of 0.034 grams per dry standard cubic meter (g/dscm)(0.015 grains per dry standard cubic feet (gr/dscf)).

(b) You must route the emissions from each new affected source through a fabric filter or baghouse that achieves a PM control efficiency of at least 99.5 percent or an outlet PM concentration limit of 0.023 g/dscm (0.010 gr/dscf).

§ 63.11466 What are the performance test requirements for new and existing sources?

(a) Except as specified in paragraph (b) of this section, if you own or operate an existing or new affected source, you must conduct a performance test for each affected source within 180 days of your compliance date and report the results in your notification of compliance status.

(b) If you own or operate an existing affected source, you are not required to conduct a performance test if a prior performance test was conducted within the past 5 years of the compliance date using the same methods specified in paragraph (c) of this section and you meet either of the following two conditions:

(1) No process changes have been made since the test; or

(2) You demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(c) You must conduct each performance test according to the requirements in § 63.7 and paragraphs (c)(1) and (2) of this section.

(1) Determine the concentration of PM according to the following test methods in 40 CFR part 60, appendices:

(i) Method 1 or 1A (Appendix A–1) to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2F, or 2G (Appendices A–1 and A–2) to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B (Appendix A–2) to determine the dry molecular weight of the stack gas. You may use ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses'' (incorporated by reference-see § 63.14) as an alternative to EPA Method 3B.

(iv) Method 4 (Appendix A–3) to determine the moisture content of the stack gas.

(v) Method 5 or 17 (Appendix A–3) to determine the concentration of particulate matter (front half filterable catch only). Three valid test runs are needed to comprise a performance test.

(2) During the test, you must operate each emissions source within ±10 percent of its normal process rate. You must monitor and record the process rate during the test.

§ 63.11467 What are the initial compliance demonstration requirements for new and existing sources?

(a) You must demonstrate initial compliance with the applicable standards in § 63.11465 by submitting a Notification of Compliance Status in accordance with § 63.11469(b).

(b) You must conduct the inspection specified in paragraph (c) of this section and include the results of the inspection in the Notification of Compliance Status.

(c) For each existing and new affected source, you must conduct an initial inspection of each baghouse. You must visually inspect the system ductwork and baghouse unit for leaks. Except as specified in paragraph (e) of this section, you must also inspect the inside of each baghouse for structural integrity and fabric filter condition. You must record the results of the inspection and any maintenance action as required in § 63.11470.

(d) For each installed baghouse that is in operation during the 60 days after the applicable compliance date, you must conduct the inspection specified in paragraph (c) of this section no later than 60 days after your applicable compliance date. For an installed baghouse that is not in operation during the 60 days after the applicable compliance date, you must conduct an initial inspection prior to startup of the baghouse.

(e) An initial inspection of the internal components of a baghouse is not required if an inspection has been performed within the past 12 months.

(f) If you own or operate an existing affected source and are not required to conduct a performance test under § 63.11466, you must submit the Notification of Compliance Status within 120 days after the applicable compliance date specified in § 63.11464.

(g) If you own or operate an existing affected source and are required to conduct a performance test under § 63.11466, you must submit the Notification of Compliance Status within 60 days after completing the performance test.

§ 63.11468 What are the monitoring requirements for new and existing sources?

(a) For an existing affected source, you must demonstrate compliance by conducting the monitoring activities in paragraph (a)(1) or (a)(2) of this section:

(1) You must perform periodic inspections and maintenance of each

baghouse according to the requirements in paragraphs (a)(1)(i) and (ii) of this section.

(i) You must conduct weekly visual inspections of the system ductwork for leaks.

(ii) You must conduct inspections of the interior of the baghouse for structural integrity and to determine the condition of the fabric filter every 12 months.

(2) As an alternative to the monitoring requirements in paragraph (a)(1) of this section, you may demonstrate compliance by conducting a daily 30-minute visible emissions (VE) test (i.e., no visible emissions) using EPA Method 22 (40 CFR part 60, appendix A–7).

(b) If the results of the visual inspection or VE test conducted under paragraph (a) of this section indicate a problem with the operation of the baghouse, including but not limited to air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in PM emissions, you must take immediate corrective action to return the baghouse to normal operation according to the equipment manufacturer's specifications or instructions and record the corrective action taken.

(c) For each new affected source, you must install, operate, and maintain a bag leak detection system according to paragraphs (c)(1) through (3) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (c)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per dry standard cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (e.g., using a strip chart recorder or a data logger).

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (c)(1)(iv) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, you shall not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (c)(1)(vi) of this section.

(vi) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (c)(2) of this section.

(vii) You must install the bag leak detection sensor downstream of the fabric filter.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must develop and submit to the Administrator or delegated authority for approval a site-specific monitoring plan for each bag leak detection system. You must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (c)(2)(i) through (vi) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored; and

(vi) Corrective action procedures as specified in paragraph (c)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, you must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (c)(2)(vi) of this section, you must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in PM emissions;

(ii) Sealing off defective bags or filter media;

(iii) Replacing defective bags or filter media or otherwise repairing the control device;

(iv) Sealing off a defective fabric filter compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the PM emissions.

§ 63.11469 What are the notification requirements?

(a) You must submit the Initial Notification required by § 63.9(b)(2) no later than 120 days after the applicable compliance date specified in § 63.11464. The Initial Notification must include the information specified in § 63.9(b)(2)(i) through (iv) and may be combined with the Notification of Compliance Status required in § 63.11467 and paragraph (b) of this section if you choose to submit both notifications within 120 days.

(b) You must submit a Notification of Compliance Status in accordance with § 63.9(h) and the requirements in paragraphs (c) and (d) of this section. In addition to the information required in § 63.9(h)(2), § 63.11466, and § 63.11467, your notification must include the following certification(s) of compliance, as applicable, and signature of a responsible official:

(1) This certification of compliance by the owner or operator of an existing affected source who is relying on a previous performance test: ''This facility complies with the control efficiency requirement [or the outlet concentration limit] in § 63.11465 based on a previous performance test in accordance with § 63.11466.''

(2) This certification of compliance by the owner or operator of any new or existing affected source: ''This facility has conducted an initial inspection of each control device according to the requirements in § 63.11467, will conduct periodic inspections and maintenance of control devices in accordance with § 63.11468, and will maintain records of each inspection and maintenance action required by § 63.11470.''

(3) This certification of compliance by the owner or operator of a new affected source: ''This facility has an approved bag leak detection system monitoring plan in accordance with § 63.11468(c)(2).''

(c) If you own or operate an affected source and are required to conduct a performance test under § 63.11466, you must submit a Notification of Compliance Status, including the performance test results, before the close of business on the 60th day following the completion of the performance test.

(d) If you own or operate an affected source and are not required to conduct a performance test under § 63.11466, you must submit a Notification of Compliance Status, including the results of the previous performance test, no later than 120 days after the applicable compliance date specified in § 63.11464.

§ 63.11470 What are the recordkeeping requirements?

(a) You must keep the records specified in paragraphs (a)(1) and (2) of this section.

(1) As required in § 63.10(b)(2)(xiv), you must keep a copy of each notification that you submitted to comply with this subpart and all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted.

(2) You must keep the records of all inspection and monitoring data required by §§ 63.11467 and 63.11468, and the information identified in paragraphs (a)(2)(i) through (a)(2)(v) for each required inspection or monitoring.

(i) The date, place, and time;

(ii) Person conducting the activity;

(iii) Technique or method used;

(iv) Operating conditions during the activity; and

(v) Results.

(b) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(c) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each recorded action.

(d) You must keep each record onsite for at least 2 years after the date of each recorded action according to § 63.10(b)(1). You may keep the records offsite for the remaining three years.

Other Requirements and Information

§ 63.11471 What General Provisions apply to this subpart?

Table 1 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you.

§ 63.11472 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust loadings) in the exhaust of a baghouse to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Furnace melting operation means the collection of processes used to charge post-consumer nonferrous scrap material to a furnace, melt the material, and transfer the molten material to a forming medium.

Secondary nonferrous metals processing facility means a brass and bronze ingot making, secondary magnesium processing, or secondary zinc processing plant that uses furnace melting operations to melt post-consumer nonferrous metal scrap to make products including bars, ingots, blocks, or metal powders.

§ 63.11473 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the applicability requirements in § 63.11462 and 63.11463, the compliance date requirements in § 63.11464, and the applicable standards in § 63.11465.

(2) Approval of a major change to a test method under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

§ 63.11474 [Reserved]

Tables to Subpart TTTTTT of Part 63

As stated in § 63.11471, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

TABLE 1 TO SUBPART TTTTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTTTT

Citation	Subject
63.1(a)(1)–(a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1),[1] (c)(2), (c)(5), (e)	Applicability.
63.2	Definitions.
63.3	Units and Abbreviations.
63.4	Prohibited Activities and Circumvention.
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (f), (g), (i), (j)	Compliance With Standards and Maintenance Requirements.
63.7	Performance Testing Requirements
63.8(a)(1), (a)(2), (b), (c)(1)(i)–(c)(1)(ii), (c)(2), (c)(3), (f)	Monitoring Requirements.
63.9(a), (b)(1), (b)(2), (b)(5), (c), (d), (h)(1)–(h)(3), (h)(5), (h)(6), (i), (j)	Notification Requirements.
63.10(a), (b)(1), (b)(2)(vii), (b)(2)(xiv), (b)(3), (c), (f)	Recordkeeping and Reporting Requirements.
63.12	State Authority and Delegations.
63.13	Addresses.
63.14	Incorporations by Reference.

TABLE 1 TO SUBPART TTTTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTTTT—Continued

Citation	Subject
63.15	Availability of Information and Confidentiality.
63.16	Performance Track Provisions.

[1] Section 63.11462(b) of this subpart exempts area sources from the obligation to obtain title V operating permits.

[FR Doc. E7–24720 Filed 12–21–07; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
December 26, 2007

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1 and Parts 11, 22, et al. Federal Acquisition Regulation; Final and Interim Rules and Small Entity Compliance Guide

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR–2007–0002, Sequence 8]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–23; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–23. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov*.

DATES: For effective dates and comment dates, see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–23 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–23

Item	Subject	FAR case	Analyst
I	Electronic Products Environmental Assessment Tool (EPEAT) (Interim)	2006–030	Clark.
II	Contracts with Religious Entities	2006–019	Woodson.
III	Performance-Based Payments	2005–016	Murphy.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–23 amends the FAR as specified below:

Item I—Electronic Products Environmental Assessment Tool (EPEAT) (FAR Case 2006–030) (Interim)

This interim rule amends the Federal Acquisition Regulation (FAR) to require use of the Electronic Products Environmental Assessment Tool (EPEAT) when acquiring personal computer products such as desktops, notebooks (also known as laptops), and monitors pursuant to the Energy Policy Act of 2005 and Executive Order 13423, ''Strengthening Federal Environmental, Energy, and Transportation Management.'' The interim rule revises Subpart 23.7, and prescribes a new clause in 52.223 (also included in 52.212–5 for acquisition of commercial items) in all solicitations and contracts for the acquisition of personal computer products, services that require furnishing of personal computer products for use by the Government, and services for contractor operation of Government-owned facilities.

Item II—Contracts With Religious Entities (FAR Case 2006–019)

This final rule adopts as final, without change, the interim rule published in the **Federal Register** on March 22, 2007. The interim rule amended the Federal Acquisition Regulation (FAR) Parts 22 and 52 to implement Executive Order (E.O.) 11246, as amended, Equal Employment Opportunity, to incorporate the exemption for religious entities prescribed in E.O. 13279. Section 4 of E.O. 13279 amended Section 204 of E.O. 11246 to exempt religious corporations, associations, educational institutions and societies from certain nondiscrimination requirements. E.O. 11246, as amended, permits religious entities to consider employment of individuals of a particular religion to perform work connected with carrying on the entity's activities. Religious entities are not exempt from other requirements of the executive order.

Item III—Performance-Based Payments (FAR Case 2005–016)

This final rule amends the Federal Acquisition Regulation to increase the use of performance-based payments as the method of contract financing on Federal Government contracts and improve the efficiency of performance-based payments when used on these contracts. These changes originated from recommendations submitted by the Department of Defense Performance-Based Payments Working Group in their March 8, 2005, report.

Dated: December 19, 2007.

Al Matera,

Director, Office of Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–23 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–23 is effective January 25, 2008, except for Items I and II which are effective December 26, 2007.

Dated: December 19, 2007.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: December 19, 2007.

Molly A. Wilkinson,

Chief Acquisition Officer, Office of the Chief Acquisition Officer, General Services Administration.

Dated: December 18, 2007.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. E7–24943 Filed 12–21–07; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11, 23, 39, and 52

[FAC 2005–23; FAR Case 2006–030; Item I; Docket 2007–0001, Sequence 9]

RIN 9000–AK85

Federal Acquisition Regulation; FAR Case 2006–030, Electronic Products Environmental Assessment Tool (EPEAT)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to require use of Electronic Products Environmental Assessment Tool (EPEAT) when acquiring personal computer products such as desktops, notebooks (also known as laptops), and monitors pursuant to the Energy Policy Act of 2005 and Executive Order 13423, ''Strengthening Federal Environmental, Energy, and Transportation Management.''

DATES: *Effective Date:* December 26, 2007.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before February 25, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–23, FAR case 2006–030, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* To search for any document, first select under ''Step 1,'' ''Documents with an Open Comment Period'' and select under ''Optional Step 2,'' ''Federal Acquisition Regulation'' as the agency of choice. Under ''Optional Step 3,'' select ''Rules''. Under ''Optional Step 4,'' from the drop down list, select ''Document Title'' and type the FAR case number ''2006–030''. Click the ''Submit'' button. Please include your name and company name (if any) inside the document. You may also search for any document by clicking on the ''Search for Documents'' tab at the top of the screen. Select from the agency field ''Federal Acquisition Regulation'', and type ''2006–030'' in the ''Document Title'' 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 FAC 2005–23, FAR case 2006–030, 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. William Clark, Procurement Analyst, at (202) 219–1813 for clarification of content. Please cite FAC 2005–23, FAR case 2006–030. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

On January 24, 2007, President Bush issued Executive Order 13423, ''Strengthening Federal Environmental, Energy, and Transportation Management.'' Section 2(h) states that the head of each Agency shall ''ensure that the agency * * * when acquiring an electronic product to meet its requirements, meets at least 95 percent of those requirements with an Electronic Product Environmental Assessment Tool (EPEAT)-registered electronic product, unless there is no EPEAT standard for such product''.

EPEAT is a system to help purchasers in the public and private sectors evaluate, compare, and select desktop computers, notebooks and monitors based on their environmental attributes. EPEAT also provides a clear and consistent set of performance criteria for the design of products, and provides an opportunity for manufacturers to secure market recognition for efforts to reduce the environmental impact of their products.

The National Technology Transfer and Advancement Act of 1995 (NTTAA) and the OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' direct Federal agencies to utilize voluntary consensus standards for regulatory and procurement activities, and to participate in the development of these standards, unless to do so would be inconsistent with law or impractical. The Institute of Electrical and Electronics Engineers (IEEE) 1680 Standard for the Environmental Assessment of Personal Computer Products houses a set of environmental performance criteria, which were developed in an open consensus-based process by an American National Standards Institute (ANSI)-accredited organization in accordance with the NTTAA requirements. Most of the IEEE 1680 criteria refer to environmental performance characteristics of the specific product. EPEAT lists products that comply with this IEEE standard.

The interim rule amends the FAR to require the use of the EPEAT Product Registry and the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products in all solicitations and contracts for personal computer desktops, notebooks, and monitors. A new clause is required to effectively implement the above-mentioned statute and Executive order.

FAR Subpart 23.7 currently implements the requirements for acquiring environmentally preferable products and services. The interim rule revises Subpart 23.7, and prescribes a new clause, FAR 52.223–16 (also included in FAR 52.212–5 for acquisition of commercial items) in all solicitations and contracts for the acquisition of personal computer products, services that require furnishing of personal computer products for use by the Government, and services for contractor operation of Government-owned facilities. In accordance with Section 7 of Executive Order 13423, this requirement applies only to contracts performed in the United States, unless otherwise authorized in agency procedures.

The Councils have defined ''personal computer products'' to mean notebook computers, desktop computers, or computer monitors, and all peripherals that are integral to the operation of such items, consistent with the IEEE 1680 standard. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not yet covered. To clarify application of the clause, the interim rule defines notebook computer, computer desktop and computer monitor, using the definitions in the IEEE 1680 standard.

Authorities

E.O. 13423 revoked E.Os. 13148, 13101, and 13123. These E.Os. have not been eliminated from FAR 23.702 under this case, as other conforming changes will be required. A separate FAR case will address these conforming changes.

Required vs. Optional Criteria

The IEEE 1680 Standard identifies both required criteria and optional criteria. EPEAT ''Bronze'' registered products must meet all required criteria. EPEAT ''Silver'' registered products must meet all required criteria and 50 percent of the optional criteria. EPEAT ''Gold'' registered products must meet all required criteria and 75 percent of the optional criteria. FAR clause 52.223–16 makes EPEAT Bronze registration the standard that contractors must meet. Office of Federal Environmental Executive guidance asks agencies to strive to procure EPEAT Silver registered products, and Alternate I to the clause makes EPEAT Silver registration the standard that contractors must meet, when agencies determine that standard appropriate. Agencies also may use EPEAT Silver or Gold registration in proposal evaluation.

The basic clause requires the contractor to furnish only personal computer products that at the time of submission of proposals were EPEAT Bronze registered or higher, the first level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products. The contractor must furnish what it offered, even if the standard has changed between the offer and delivery. Alternate I provides the same conditions for EPEAT Silver registered products.

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 changes may 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 mandates standards for personal computer products that will be offered for sale to the Government.

An Initial Regulatory Flexibility Act (IRFA) has been prepared. The analysis is summarized as follows:

As of January 2006, four of the thirteen vendors who have registered products on the EPEAT Product Registry are small businesses.

Data are not available on how many small businesses are reselling personal computer products to the Government, but according to the EPA's Office of Small Disadvantaged Business Utilization, there are approximately 613 Service Disabled Veteran Owned Small Businesses selling IT hardware to the Federal Government today. These small businesses are not manufacturers of IT hardware, but resell IT hardware manufactured by other companies to the Federal Government. Many of the products these resellers sell will meet the IEEE 1680 Standard, and the manufacturers of these products will have the option of getting these products EPEAT-registered to verify that they do meet this standard.

The rule does not impose any new reporting, or recordkeeping requirements. The IEEE 1680 Standard sets forth required and optional criteria. The basic clause in the interim rule mandates compliance with all the required criteria, and the clause alternate requires that products must also meet 50 percent of the optional criteria.

The EPEAT Product Registry has been designed to encourage small business manufacturer participation. There is a sliding scale for the annual EPEAT registration fee vendors pay to have their products EPEAT-registered based on the annual revenue of the vendor. The vendors with the smallest annual revenue pay the smallest annual registration fee of $1,000, for which the company may register all products. A summary of the standard is available on the EPEAT website, but a copy of the standard costs $70. There have been no indications from small business vendors to date that the IEEE 1680 Standard or the EPEAT Product Registry is a hindrance to doing business with the Federal Government.

Because manufacturers are the parties responsible for determining if their products meet the IEEE 1680 Standard, there will be little to no impact on small businesses selling IT products to the Federal Government, who are selling EPEAT-registered products.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no practical alternatives that will accomplish the objectives of the interim rule.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 11, 23, 39, and 52 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. (FAC 2005–23, FAR case 2006–030), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, effective on January 26, 2007, requires the Government to require use of Electronic Products Environmental Assessment Tool (EPEAT) when acquiring personal computer products such as desktops, notebooks (also known as laptops), and monitors. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 11, 23, 39, and 52

Government procurement.

Dated: December 19, 2007.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 11, 23, 39, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 11, 23, 39, and 52 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 11—DESCRIBING AGENCY NEEDS

■ 2. Amend section 11.101 by revising paragraph (b) to read as follows:

11.101 Order of precedence for requirements documents.

* * * * *

(b) In accordance with OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' and Section 12(d) of the National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113 (15 U.S.C. 272 note), agencies must use voluntary consensus standards, when they exist, in lieu of Government-unique standards, except where inconsistent with law or otherwise impractical. The private sector manages and administers voluntary consensus standards. Such standards are not mandated by law (e.g., industry standards such as ISO 9000, and IEEE 1680).

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 3. Add section 23.701 to read as follows:

23.701 Definitions.

As used in this subpart—

Computer monitor means a video display unit used with a computer.

Desktop computer means a computer designed for use on a desk or table.

Notebook computer means a portable-style or laptop-style computer system.

Personal computer product means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

■ 4. Amend section 23.702 by adding paragraphs (h) and (i) to read as follows:

23.702 Authorities.

* * * * *

(h) Executive Order 13221 of July 31, 2001, Energy Efficient Standby Power Devices.

(i) Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management.

■ 5. Redesignate section 23.705 as 23.706; and add a new section 23.705 to read as follows:

23.705 Electronic products environmental assessment tool.

(a) *General.* As required by E.O. 13423, agencies must ensure that they meet at least 95 percent of their annual acquisition requirement for electronic products with Electronic Product Environmental Assessment Tool (EPEAT)-registered electronic products, unless there is no EPEAT standard for such products. This policy applies to contracts performed in the United States, unless otherwise provided by agency procedures.

(b) *Personal computer products.* Personal computer products is a category of EPEAT-registered electronic products.

(1) The IEEE 1680 standard for personal computer products—

(i) Was issued by the Institute of Electrical and Electronics Engineers on April 28, 2006;

(ii) Is a voluntary consensus standard consistent with Section 12(d) of Pub. L. 104–113, the ''National Technology Transfer and Advancement Act of 1995'', (see 11.102(c));

(iii) Meets EPA-issued guidance on environmentally preferable products and services; and

(iv) Is described in more detail at *http://www.epeat.net.*

(2) A list of EPEAT-registered products that meet the IEEE 1680 standard can be found at *http://www.epeat.net.*

(3) The IEEE 1680 standard sets forth required and optional criteria. EPEAT ''Bronze'' registered products must meet all required criteria. EPEAT ''Silver'' registered products meet all required criteria and 50 percent of the optional criteria. EPEAT ''Gold'' registered products meet all required criteria and 75 percent of the optional criteria. These are the levels discussed in clause 1.4 of the IEEE 1680 standard. The clause at 52.223–16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products, makes EPEAT Bronze registration the standard that contractors must meet. In accordance with guidance from the Office of the Federal Environmental Executive encouraging agencies to procure EPEAT Silver registered products, Alternate I of the clause makes EPEAT Silver registration the standard that contractors must meet. Agencies also may use EPEAT Silver or Gold registration in the evaluation of proposals.

(c) The agency shall establish procedures for granting exceptions to the requirement in paragraph (a) of this section, with the goal that the dollar value of exceptions granted will not exceed 5 percent of the total dollar value of electronic products acquired by the agency, for which EPEAT-registered products are available. For example, agencies may grant an exception if the agency determines that no EPEAT-registered product meets agency requirements, or that the EPEAT-registered product will not be cost effective over the life of the product.

■ 6. Revise the newly designated section 23.706 to read as follows:

23.706 Contract clauses.

(a) Insert the clause at 52.223–10, Waste Reduction Program, in all solicitations and contracts for contractor operation of Government-owned or -leased facilities and all solicitations and contracts for support services at Government-owned or -operated facilities.

(b)(1) Unless an exception has been approved in accordance with 23.705(c), insert the clause at 52.223–16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products, in all solicitations and contracts for—

(i) Personal computer products;

(ii) Services that require furnishing of personal computer products for use by the Government; or

(iii) Contractor operation of Government-owned facilities.

(2) Agencies may use the clause with its Alternate I when there are sufficient EPEAT Silver registered products available to meet agency needs.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 7. Amend section 39.101 by revising paragraph (b) to read as follows:

39.101 Policy.

* * * * *

(b)(1) In acquiring information technology, agencies shall identify their requirements pursuant to—

(i) OMB Circular A–130, including consideration of security of resources, protection of privacy, national security and emergency preparedness, accommodations for individuals with disabilities, and energy efficiency; and

(ii) Standards for environmental assessment of personal computer products (see 23.705).

(2) When developing an acquisition strategy, contracting officers should consider the rapidly changing nature of information technology through market research (see Part 10) and the application of technology refreshment techniques.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Amend section 52.212–5 by—

■ a. Revising the date of the clause; and

■ b. Redesignating paragraphs (b)(27) through (b)(39) as (b)(28) through (b)(40), respectively, and adding a new paragraph (b)(27).

The added text reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (DEC 2007)

(b) * * *

__ (27)(i) 52.223–16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).

__ (ii) Alternate I (DEC 2007) of 52.223–16.

* * * * *

52.223–10 [Amended]

■ 9. Amend section 52.223–10 by removing from the introductory text ''23.705'' and adding ''23.706(a)'' in its place.

■ 10. Add section 52.223–16 to read as follows:

52.223–16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

As prescribed in 23.706(b)(1), insert the following clause:

IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS (DEC 2007)

(a) *Definitions.* As used in this clause—

Computer monitor means a video display unit used with a computer.

Desktop computer means a computer designed for use on a desk or table.

Notebook computer means a portable-style or laptop-style computer system.

Personal computer product means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Bronze registered or higher. Bronze is the first level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

(c) For information about the standard, see *http://www.epeat.net.*

(End of clause)

Alternate I (DEC 2007)

As prescribed in 23.706(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Silver registered or higher. Silver is the second level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

[FR Doc. E7–24937 Filed 12–21–07; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 2005–23; FAR Case 2006–019; Item II; Docket 2007–0001; Sequence 12]

RIN 9000–AK66

Federal Acquisition Regulation; FAR Case 2006–019, Contracts With Religious Entities

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 11246, as amended, Equal Employment Opportunity, to incorporate the exemption for religious entities prescribed in E.O. 13279.

DATES: *Effective Date:* December 26, 2007.

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 FAC 2005–23, FAR case 2006–019.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to incorporate the exemption for religious entities prescribed in E.O. 13279. Executive Order 11246, as amended, prohibits Government contractors and subcontractors, and federally assisted construction contractors and subcontractors from discriminating in employment, and requires these contractors to take affirmative action to ensure that employees and applicants are treated without regard to race, color, religion, sex, or national origin. Section 4 of E.O. 13279 amended Section 204 of E.O. 11246 to exempt religious corporations, associations, educational institutions and societies from certain nondiscrimination requirements. Executive Order 11246, as amended, permits religious entities to consider employment of individuals of a particular religion to perform work connected with carrying on the entity's activities. Religious entities are not exempt from other requirements of the E.O. 11246.

DoD, GSA, and NASA published an interim rule with request for comments in the **Federal Register** at 72 FR 13586, March 22, 2007. No public comments were received on the rule. The Councils have determined to adopt the interim rule as final, without change.

This 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 Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule only aligns the FAR with the Department of Labor implementation of the exemption for consistency and clarity. The Department of Labor stated in its **Federal Register** notice of September 30, 2003, that the rule will not have a significant economic impact on a substantial number of small business entities. The rule is expected to have a small positive impact on small business entities, as the rule eases hiring restrictions for religious entities. The rule does not impose new requirements that impose a burden on contractors. No comments were received with regard to an impact on small business.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 22 and 52

Government procurement.

Dated: December 19, 2007.

Al Matera,

Director, Office of Acquisition Policy.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 22 and 52,

which was published in the **Federal Register** at 72 FR 13586 on March 22, 2007, is adopted as a final rule without change.

[FR Doc. E7–24938 Filed 12–21–07; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAC 2005–23; FAR Case 2005–016; Item III; Docket 2007–0001; Sequence 13]

RIN 9000–AK64

Federal Acquisition Regulation; FAR Case 2005–016, Performance-Based Payments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement recommendations to change the regulations related to performance-based payments.

DATES: *Effective Date:* January 25, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–23, FAR case 2005–016.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation to increase the use of performance-based payments as the method of contract financing on Federal Government contracts and improve the efficiency of performance-based payments when used on these contracts. These changes originated from recommendations submitted by the Department of Defense Performance-Based Payments Working Group in their March 8, 2005, report.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 71 FR 75186 on December 14, 2006. Comments were received from three respondents in response to the proposed rule. The Councils considered all of the comments and recommendations in developing the final rule. A discussion of the comments is provided below.

1. *Comment:* Two commenters addressed the issue of establishing performance-based payments at other than 90 percent of the contract price. One commenter recommended revising the rule to require contracting officers to document the rationale for soliciting or awarding contracts that limit performance-based payments to less than 90 percent of the contract price instead of when the performance-based payments effectively result in financing payments that are less than the payments that would be made with progress payments. The ability to receive contract financing payments at 90 percent of the contract price balances the risk associated with performance-based payments. If the performance-based payments are less than 90 percent of the contract costs, contractors will not agree to their use, which is problematic since performance-based payments are the preferred financing method. Another commenter said the requirement to document the rationale for establishing performance-based payments when the performance-based payments are less than 90 percent of the contract price, or delivered-item price, will likely result in contracting officers artificially inflating the value of the events to avoid having to document the rationale.

Response: Providing performance-based payments at or below the effective rate for progress payments does not facilitate the use of performance-based payments. However, performance-based payments must reflect prudent contract financing and are authorized only to the extent needed for contract performance. In addition, performance-based payment amounts must be commensurate with the value of the performance event or performance criterion. Therefore, the Councils see no reason to require contracting officers to document the rationale for establishing performance-based payments that are less than 90 percent of the contract price. In addition, the Councils believe the FAR requirements are sufficient to ensure performance-based payments are not artificially inflated simply to avoid having to document the rationale for establishing performance-based payments that are less than 90 percent of the contract price or delivered-item price.

2. *Comment:* Two commenters recommended eliminating the provision in the proposed rule that precluded limiting performance-based payments to the contractor's actual incurred costs because there can never be a need for contract financing payments in excess of the incurred costs.

Response: Such a prohibition could inhibit the contracting officer's flexibility in structuring and administering performance-based payments. Therefore, this provision has been omitted from the final rule.

3. *Comment:* One commenter recommended making performance-based payments the mandatory type of financing payments whenever a contractor requests this type of financing because some buying commands never authorize performance-based payments.

Response: Performance-based payments are the preferred Government financing method when the contracting officer finds them practical and the contractor agrees to their use. However, performance-based payments are not always practical. Therefore, the Government must retain the right to determine the proper financing method.

4. *Comment:* One commenter recommended revising the rule to permit contractors to submit contract financing payment requests on either a fiscal or calendar month basis as long as no more than 12 payment requests are made annually. The commenter said the lack of clear definition in the FAR clause at 52.232–32(b) as to what constitutes ''monthly'' payment requests has resulted in inconsistencies and confusion in enforcement. Contractors that use fiscal months accounting to bill contract financing payments should be allowed to submit two payment requests in the same calendar month to avoid negative fluctuations in working capital.

Response: Nothing in the FAR precludes payment on a fiscal month basis. The Councils are not aware of any payment issues relating to the use of the term ''monthly'' and note that the provision is unchanged by this rule. Therefore, the Councils believe the existing terminology is sufficient.

5. *Comment:* One commenter recommended deleting all reference to ''milestones'' from the FAR coverage on performance-based payments to eliminate confusion between performance-based financing and commercial financing. Instead of using the term ''milestones,'' the commenter recommended using the terms ''event'' or ''performance-based event.''

Response: The Councils are not aware of any issues related to the meaning of ''milestones'' and note that the terminology is unchanged by this rule. Therefore, the Councils believe the existing terminology is sufficient.

6. *Comment:* One commenter recommended revising the performance-based payment provisions to specify that payment offices will pay approved payment requests in the number of days specified in an agency's regulation if the contracting officer fails to prescribe the number of days the payment office will pay approved requests. The default 30th day could cause some DoD contracting officers to refuse to include the 14th day as prescribed in DoD regulations.

Response: Concerns over compliance with individual agency regulations are beyond the scope of this case. However, the Councils are not aware of any instances where contracting officers have failed to include the number of days prescribed by their agency regulations.

7. *Comment:* One commenter recommended DoD partner with industry when it develops the training materials and guidance referenced in DoD's June 2, 2005, response to public input on performance-based payments (70 FR 32306) because dissemination of this information to both Government and industry personnel would facilitate a better understanding of the process.

Response: DoD training materials are beyond the scope of this case. DoD will consider whether input from industry is needed to develop the appropriate training.

8. *Comment:* One commenter recommended requiring the FAR or agency policy to require agency head approval when performance-based payments are less than 90 percent of the contract price on foreign military sales. Application of DoD's weighted guidelines generally results in FMS contracts having lower profit margins and FAR limitations typically provide less favorable financing than contracts negotiated on a direct basis with the foreign country.

Response: Foreign military sales and the DoD weighted guidelines are not addressed in the FAR because they are unique to DoD. DoD regulations are beyond the scope of this case.

9. *Comment:* One commenter recommended DoD consider revising DoD policy to permit direct billing for performance-based payments.

Response: DoD policy is beyond the scope of this case. However, DoD notes that direct billing is only authorized for payments that require Defense Contract Audit Agency (DCAA) provisional approval. Performance-based payments require the approval of the contracting officer and not DCAA. Contracting officer approval is a reasonable management control as it may be difficult to reconstruct when a milestone was completed.

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 Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because this rule should reduce administrative costs for contractors and the Government, thus further encouraging the use of performance-based payments.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any additional 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 32 and 52

Government procurement.

Dated: December 19, 2007.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 32 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 32 and 52 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 32—CONTRACT FINANCING

■ 2. Revise section 32.1000 to read as follows:

32.1000 Scope of subpart.

This subpart provides policy and procedures for performance-based payments under noncommercial purchases pursuant to Subpart 32.1.

■ 3. Amend section 32.1001 by—

■ a. Removing the second sentence in paragraph (c);

■ b. Removing paragraph (d);

■ c. Redesignating paragraph (e) as (d);

■ d. Revising newly redesignated paragraph (d); and

■ e. Adding new paragraph (e) to read as follows:

32.1001 Policy.

* * * * *

(d) Performance-based payments are contract financing payments and, therefore, are not subject to the interest-penalty provisions of prompt payment (see Subpart 32.9). These payments shall be made in accordance with agency policy.

(e) Performance-based payments shall not be used for—

(1) Payments under cost-reimbursement line items;

(2) Contracts for architect-engineer services or construction, or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based upon a percentage or stage of completion; or

(3) Contracts awarded through sealed bid procedures.

■ 4. Revise section 32.1002 to read as follows:

32.1002 Bases for performance-based payments.

Performance-based payments may be made on any of the following bases:

(a) Performance measured by objective, quantifiable methods.

(b) Accomplishment of defined events.

(c) Other quantifiable measures of results.

■ 5. Revise section 32.1003 to read as follows:

32.1003 Criteria for use.

The contracting officer may use performance-based payments for individual orders and contracts provided—

(a) The contracting officer and offeror agree on the performance-based payment terms;

(b) The contract, individual order, or line item is a fixed-price type;

(c) For indefinite delivery contracts, the individual order does not provide for progress payments; and

(d) For other than indefinite delivery contracts, the contract does not provide for progress payments.

■ 6. Revise section 32.1004 to read as follows:

32.1004 Procedures.

Performance-based payments may be made either on a whole contract or on a deliverable item basis, unless otherwise prescribed by agency regulations. Financing payments to be made on a whole contract basis are applicable to the entire contract, and not to specific deliverable items. Financing payments to be made on a deliverable item basis are applicable to a specific individual deliverable item. (A deliverable item for these purposes is a separate item with a distinct unit price.

Thus, a contract line item for 10 airplanes, with a unit price of $1,000,000 each, has 10 deliverable items-the separate planes. A contract line item for 1 lot of 10 airplanes, with a lot price of $10,000,000, has only one deliverable item-the lot.)

(a) *Establishing performance bases.* (1) The basis for performance-based payments may be either specifically described events (e.g., milestones) or some measurable criterion of performance. Each event or performance criterion that will trigger a finance payment shall be an integral and necessary part of contract performance and shall be identified in the contract, along with a description of what constitutes successful performance of the event or attainment of the performance criterion. The signing of contracts or modifications, the exercise of options, the passage of time, or other such occurrences do not represent meaningful efforts or actions and shall not be identified as events or criteria for performance-based payments. An event need not be a critical event in order to trigger a payment, but the Government must be able to readily verify successful performance of each such event or performance criterion.

(2) Events or criteria may be either severable or cumulative. The successful completion of a severable event or criterion is independent of the accomplishment of any other event or criterion. Conversely, the successful accomplishment of a cumulative event or criterion is dependent upon the previous accomplishment of another event. A contract may provide for more than one series of severable and/or cumulative performance events or criteria performed in parallel. The contracting officer shall include the following in the contract:

(i) The contract shall not permit payment for a cumulative event or criterion until the dependent event or criterion has been successfully completed.

(ii) The contract shall specifically identify severable events or criteria.

(iii) The contract shall specifically identify cumulative events or criteria and identify which events or criteria are preconditions for the successful achievement of each event or criterion.

(iv) Because performance-based payments are contract financing, events or criteria shall not serve as a vehicle to reward the contractor for completion of performance levels over and above what is required for successful completion of the contract.

(v) If payment of performance-based finance amounts is on a deliverable item basis, each event or performance criterion shall be part of the performance necessary for that deliverable item and shall be identified to a specific contract line item or subline item.

(b) *Establishing performance-based finance payment amounts.*

(1) The contracting officer shall establish a complete, fully defined schedule of events or performance criteria and payment amounts when negotiating contract terms. If a contract action significantly affects the price, or event or performance criterion, the contracting officer responsible for pricing the contract modification shall adjust the performance-based payment schedule appropriately.

(2) Total performance-based payments shall—

(i) Reflect prudent contract financing provided only to the extent needed for contract performance (see 32.104(a)); and

(ii) Not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis.

(3) The contract shall specifically state the amount of each performance-based payment either as a dollar amount or as a percentage of a specifically identified price (e.g., contract price or unit price of the deliverable item). The payment of contract financing has a cost to the Government in terms of interest paid by the Treasury to borrow funds to make the payment. Because the contracting officer has wide discretion as to the timing and amount of the performance-based payments, the contracting officer shall ensure that—

(i) The total contract price is fair and reasonable, all factors considered; and

(ii) Performance-based payment amounts are commensurate with the value of the performance event or performance criterion and are not expected to result in an unreasonably low or negative level of contractor investment in the contract. To confirm sufficient investment, the contracting officer may request expenditure profile information from offerors, but only if other information in the proposal, or information otherwise available to the contracting officer, is expected to be insufficient.

(4) Unless agency procedures prescribe the bases for establishing performance-based payment amounts, contracting officers may establish them on any rational basis, including (but not limited to)—

(i) Engineering estimates of stages of completion;

(ii) Engineering estimates of hours or other measures of effort to be expended in performance of an event or achievement of a performance criterion; or

(iii) The estimated projected cost of performance of particular events.

(5) When subsequent contract modifications are issued, the contracting officer shall adjust the performance-based payment schedule as necessary to reflect the actions required by those contract modifications.

(c) *Instructions for multiple appropriations.* If there is more than one appropriation account (or subaccount) funding payments on the contract, the contracting officer shall provide instructions to the Government payment office for distribution of financing payments to the respective funds accounts. Distribution instructions shall be consistent with the contract's liquidation provisions.

(d) *Liquidating performance-based finance payments.* Performance-based amounts shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payments. The contracting officer shall specify the liquidation rate or designated dollar amount in the contract. The method of liquidation shall ensure complete liquidation no later than final payment.

(1) If the contracting officer establishes the performance-based payments on a delivery item basis, the liquidation amount for each line item is the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount.

(2) If the performance-based finance payments are on a whole contract basis, liquidation is by predesignated liquidation amounts or liquidation percentages.

(e) *Competitive negotiated solicitations.* (1) If a solicitation requests offerors to propose performance-based payments, the solicitation shall specify—

(i) What, if any, terms shall be included in all offers; and

(ii) The extent to which and how offeror-proposed performance-based payment terms will be evaluated. Unless agencies prescribe other evaluation procedures, if the contracting officer anticipates that the cost of providing performance-based payments would have a significant impact on determining the best value offer, the solicitation should state that the evaluation of the offeror's proposed prices will include an adjustment to reflect the estimated cost to the Government of providing each offeror's proposed performance-based payments (see Alternate I to the provision at 52.232–28).

(2) The contracting officer shall—

(i) Review the proposed terms to ensure they comply with this section; and

(ii) Use the adjustment method at 32.205(c) if the price is to be adjusted for evaluation purposes in accordance with paragraph (e)(1)(ii) of this section.

■ 7. Revise section 32.1005 to read as follows:

32.1005 Solicitation provision and contract clause.

(a) Insert the clause at 52.232–32, Performance-Based Payments, in—

(1) Solicitations that may result in contracts providing for performance-based payments; and

(2) Fixed-price contracts under which the Government will provide performance-based payments.

(b)(1) Insert the solicitation provision at 52.232–28, Invitation to Propose Performance-Based Payments, in negotiated solicitations that invite offerors to propose performance-based payments.

(2) Use the provision with its Alternate I in competitive negotiated solicitations if the Government intends to adjust proposed prices for proposal evaluation purposes (see 32.1004(e)).

■ 8. Revise section 32.1007 to read as follows:

32.1007 Administration and payment of performance-based payments.

(a) *Responsibility.* The contracting officer responsible for administering performance-based payments (see 42.302(a)(12)) for the contract shall review and approve all performance-based payments for that contract.

(b) *Approval of financing requests.* Unless otherwise provided in agency regulations, or by agreement with the appropriate payment official—

(1) The contracting officer shall be responsible for receiving, approving, and transmitting all performance-based payment requests to the appropriate payment office; and

(2) Each approval shall specify the amount to be paid, necessary contractual information, and the appropriation account(s) (see 32.1004(c)) to be charged for the payment.

(c) *Reviews.* The contracting officer is responsible for determining what reviews are required for protection of the Government's interests. The contracting officer should consider the contractor's experience, performance record, reliability, financial strength, and the adequacy of controls established by the contractor for the administration of performance-based payments. Based upon the risk to the Government, post-payment reviews and verifications should normally be arranged as considered appropriate by the contracting officer. If considered necessary by the contracting officer, pre-payment reviews may be required.

(d) *Incomplete performance.* The contracting officer shall not approve a performance-based payment until the specified event or performance criterion has been successfully accomplished in accordance with the contract. If an event is cumulative, the contracting officer shall not approve the performance-based payment unless all identified preceding events or criteria are accomplished.

(e) *Government-caused delay.* Entitlement to a performance-based payment is solely on the basis of successful performance of the specified events or performance criteria. However, if there is a Government-caused delay, the contracting officer may renegotiate the performance-based payment schedule to facilitate contractor billings for any successfully accomplished portions of the delayed event or criterion.

32.1009 [Amended]

■ 9. Amend section 32.1009 by removing from the first sentence in paragraph (a) the word ''must'' and adding ''shall'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Amend section 52.232–32 by—

■ a. Revising the clause date;

■ b. Revising the second sentence of paragraph (c)(2); and

■ c. Removing from the first sentence of paragraph (f)(5) the word ''must'' and adding ''shall'' in its place.

52.232–32 Performance-based payments.

* * * * *

PERFORMANCE–BASED PAYMENTS (JAN 2008)

(c) * * *

(2) * * * The designated payment office will pay approved requests on the _____ [*Contracting Officer insert day as prescribed by agency head; if not prescribed, insert ''30th''*] day after receipt of the request for performance-based payment by the designated payment office. * * *

* * * * *

[FR Doc. E7–24939 Filed 12–21–07; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR–2007–0002, Sequence 9]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–23; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–23 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–23 which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Diedra Wingate, FAR Secretariat, (202) 208–4052. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005–23

Item	Subject	FAR case	Analyst
I*	Electronic Products Environmental Assessment Tool (EPEAT) (Interim)	2006–030	Clark.
II	Contracts with Religious Entities	2006–019	Woodson.
III	Performance-Based Payments	2005–016	Murphy.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–23 amends the FAR as specified below:

Item I—Electronic Products Environmental Assessment Tool (EPEAT) (FAR Case 2006–030) (Interim)

This interim rule amends the Federal Acquisition Regulation (FAR) to require use of the Electronic Products Environmental Assessment Tool (EPEAT) when acquiring personal computer products such as desktops, notebooks (also known as laptops), and monitors pursuant to the Energy Policy Act of 2005 and Executive Order 13423, ''Strengthening Federal Environmental, Energy, and Transportation Management.'' The interim rule revises Subpart 23.7, and prescribes a new clause in 52.223 (also included in 52.212–5 for acquisition of commercial items) in all solicitations and contracts for the acquisition of personal computer products, services that require furnishing of personal computer products for use by the Government, and services for contractor operation of Government-owned facilities.

Item II—Contracts With Religious Entities (FAR Case 2006–019)

This final rule adopts as final, without change, the interim rule published in the **Federal Register** on March 22, 2007. The interim rule amended the Federal Acquisition Regulation (FAR) Parts 22 and 52 to implement Executive Order (E.O.) 11246, as amended, Equal Employment Opportunity, to incorporate the exemption for religious entities prescribed in E.O. 13279. Section 4 of E.O. 13279 amended Section 204 of E.O. 11246 to exempt religious corporations, associations, educational institutions and societies from certain nondiscrimination requirements. E.O. 11246, as amended, permits religious entities to consider employment of individuals of a particular religion to perform work connected with carrying on the entity's activities. Religious entities are not exempt from other requirements of the executive order.

Item III—Performance-Based Payments (FAR Case 2005–016)

This final rule amends the Federal Acquisition Regulation to increase the use of performance-based payments as the method of contract financing on Federal Government contracts and improve the efficiency of performance-based payments when used on these contracts. These changes originated from recommendations submitted by the Department of Defense Performance-Based Payments Working Group in their March 8, 2005, report.

Dated: December 19, 2007.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E7–24940 Filed 12–21–07; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Wednesday,
December 26, 2007

Part VI

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 380, 383 and 384

Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 380, 383, and 384

[Docket No. FMCSA–2007–27748]

RIN 2126–AB06

Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: FMCSA proposes to revise the standards for mandatory training requirements for entry-level operators of commercial motor vehicles (CMVs) in interstate operations who are required to possess a commercial driver's license (CDL). The proposed rule would not apply to drivers who currently possess a CDL or obtain a CDL before a date 3 years after a final rule goes into effect. Following that date, persons applying for new or upgraded CDLs would be required to successfully complete specified minimum classroom and behind-the-wheel training from an accredited institution or program. The State driver-licensing agency would only issue a CDL if the applicant presented a valid Driver Training Certificate obtained from an accredited institution or program. This NPRM would strengthen the Agency's entry-level driver training requirements as a means to enhance the safety of CMV operations on our Nation's highways.

DATES: Comments must be received on or before March 25, 2008.

ADDRESSES: You must include Docket ID Number FMCSA–2007–27748 for this rulemaking, your name, mailing address, or an email address to ensure that we can identify you so that your comments may be considered. You may submit your comments through the Federal Docket Management System (FDMS), under Docket ID Number FMCSA–2007–27748, by any one of the following methods:

- *Electronic:* You may submit documents electronically through the online FDMS docket Web site at *http://www.regulations.gov.* This site is the preferred method for receiving comments/submission. Follow the instructions for submissions.
- *Mail/Hand Delivery:* You may submit documents by mail or hand delivery to the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. DOT will scan the submission and post it to FDMS.
- *Fax:* You may fax your submissions to 202–493–2251. DOT will scan the submission and post it to FDMS.
- *Confidential and Proprietary Information, and Sensitive Security Information:* Comments/submissions containing this type of information should be appropriately marked as containing such information and submitted by mail or hand delivery to the DOT's Docket Management Facility. This type of information will not go in the public docket, but will be placed in a separate file to which the public does not have access.
- *Accessing and Searching FDMS:* All comments will be posted without change to *http://www.regulations.gov,* including any personal information provided. Anyone may access FDMS to submit comments, or review and copy all comments and background material received on a particular rulemaking. Please see Privacy Act issues below.

Privacy Act: Anyone is able to search the electronic form of all comments/submissions entered into any of our dockets in FDMS by the name of the individual submitting the document (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477) or you may visit *http://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division (MC–PSD), telephone (202) 366–4325 or e-mail *mcpsd@dot.gov.*

SUPPLEMENTARY INFORMATION: This section is organized as follows:

I. Legal Basis for the Rulemaking
II. Background
  A. Statement of the Problem
  B. History
  - Curriculum Standards
  - CMVSA: Minimum Uniform Standards for CDLs
  - ISTEA: Entry-Level Driver Training
  - The Adequacy Report
  - Previous Rulemakings
  - DC Circuit Decision
  - Training Research and Studies
  C. Request for Comment on the Need for the Regulation
III. General Discussion of the Proposals
  A. Scope and Applicability
  B. Curriculum Content
  C. Training Providers
  D. Compliance and Enforcement
  E. Implementation Date
  F. Changes to Existing Rules
IV. Section-by-Section Explanation of Changes
  A. Subparts A–E of part 380 and Appendix to Part 380
  B. Subpart F of part 380 and Appendix B to Part 380
  - Section 380.600, Compliance date for entry-level drivers
  - Section 380.601, Purpose and scope
  - Section 380.603, Applicability
  - Section 380.605, Definitions
  - Section 380.607, Requirement to complete entry-level driver training
  - Section 380.609, Entry-level driver-instructor requirements
  - Section 380.611, Driver testing
  - Appendix B, Entry-Level Driver Training Curriculum
  C. Part 383, Commercial Driver's License Standards; Requirements and Penalties
  D. Part 384, State Compliance With Commercial Driver's License Program
V. Regulatory Analyses and Notices
  A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures
  B. Regulatory Flexibility Act
  C. Unfunded Mandates Reform Act of 1995
  D. Paperwork Reduction Act
  E. National Environmental Policy Act (NEPA)
  F. Privacy Impact Assessment
  G. Federalism
  H. Civil Justice Reform
  I. Protection of Children
  J. Taking of Private Property
  K. Energy Effects

I. Legal Basis for the Rulemaking

This notice of proposed rulemaking (NPRM) is based on the authority of the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984, as well as the mandate of section 4007(a) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). The rulemaking also responds to a 2005 decision of the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit).

The Motor Carrier Act of 1935 provides that ''The Secretary of Transportation may prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation'' [49 U.S.C. 3502(b)].

This NPRM is intended to improve the ''safety of operation'' of entry-level ''employees'' who operate large commercial motor vehicles (CMVs) by ensuring that they receive appropriate training before obtaining a commercial driver's license (CDL).

The Motor Carrier Safety Act of 1984 provides concurrent authority to regulate drivers, motor carriers, and

vehicle equipment. It requires the Secretary of Transportation to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles.'' Although this authority is very broad, the Act also includes specific requirements: ''At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators'' [49 U.S.C. 31136(a)].

This NPRM is based primarily on 49 U.S.C. 31136(a)(1), requiring regulations to ensure that CMVs are ''operated safely,'' and secondarily on section 31136(a)(2), to the extent that untrained entry-level drivers might be given responsibilities that exceed their ability to operate CMVs safely. The NPRM would ensure training of entry-level drivers to operate CMVs safely and to meet the operational responsibilities imposed on them. This rulemaking does not address medical standards for drivers [section 31136(a)(3)] or possible physical effects caused by driving CMVs [section 31136(a)(4)].

Section 4007(a) of ISTEA (Public Law 102–240, December 18, 1991, 105 Stat. 1914, 2151) directed the Secretary of Transportation to undertake rulemaking on the need to require training of all entry-level drivers of ''commercial motor vehicles.'' The Agency published an advance notice of proposed rulemaking on this subject on June 21, 1993 (58 FR 33874), an NPRM on August 15, 2003 (68 FR 48863), and a final rule on May 21, 2004 (69 FR 29384).

The Motor Carrier Safety Act of 1984 defined a CMV, in part, as a vehicle operating in ''interstate commerce'' [49 U.S.C. 31132(1)]. The Commercial Motor Vehicle Safety Act of 1986, which created the CDL program, defined a CMV, in part, as a vehicle operating in ''commerce,'' a term separately defined to cover both interstate commerce and operations that ''affect'' interstate commerce [49 U.S.C. 31302(2), (4)]. Although both of these definitions were in effect when section 4007(a) was enacted (and still are), Congress did not specify whether an entry-level driver training rulemaking should be limited to ''CMV'' drivers in interstate commerce, or whether it should also encompass ''CMV'' drivers in intrastate commerce.

Article I, section 8, clause 3 of the Constitution gives Congress the authority to regulate interstate commerce. The Supreme Court has held that Congress may also legislate on matters ''affecting interstate commerce,'' a phrase generally treated as equivalent to intrastate commerce. Federal legislation is presumed, therefore, to apply only to interstate commerce unless it reveals some indication of a Congressional intent to reach intrastate commerce. Neither section 4007(a) nor its legislative history includes evidence of any such intent. Under these circumstances, the Agency concluded that entry-level driver training may be required only for CMV drivers who intend to operate in interstate commerce. In view of the greater risks associated with larger vehicles and those transporting hazardous materials and passengers, as well as the special requirements Congress has imposed on drivers of such vehicles (particularly the CDL and the subsequent drug and alcohol testing program), FMCSA concluded that training requirements should focus on entry-level drivers applying for a CDL who intend to operate in interstate commerce.

Three parties petitioned the DC Circuit for review of the 2004 rule. The court held that FMCSA had failed to consider important aspects of an adequate entry-level training program and remanded the rule to the Agency for further consideration (*Advocates for Highway and Auto Safety v. Federal Motor Carrier Safety Administration,* 429 F.3d 1136 (DC Cir. 2005)). This NPRM addresses the issues raised by the court.

Before prescribing any regulations, FMCSA must consider their ''costs and benefits'' [49 U.S.C. 31136(c)(2)(A) and 31502(d)]. Those factors are discussed below in the section on ''Regulatory Analyses and Notices.''

II. Background

A. Statement of the Problem

In the early 1980's, the Federal Highway Administration (FHWA) Office of Motor Carriers, predecessor to FMCSA, determined that there was a need for technical guidance in the area of truck driver training. Research showed that few driver training institutions offered a structured curriculum or a standardized training program for any type of commercial motor vehicle (CMV) driver. A 1995 study entitled ''Assessing the Adequacy of Commercial Motor Vehicle Driver Training'' (the Adequacy Report) concluded, among other things, that effective entry-level driver training needs to include behind-the-wheel instruction on how to operate a heavy vehicle.

In 2004, FMCSA implemented a training rule that focused on areas unrelated to the hands-on operation of a CMV, relying instead on the CDL knowledge and skills tests to encourage training in the operation of CMVs. These current training regulations cover four areas: (1) Driver qualifications; (2) hours of service limitations; (3) wellness; and (4) whistleblower protection. In 2005, the DC Circuit held that the Agency was arbitrary and capricious in promulgating the 2004 rule because it ignored an important conclusion of its own 1995 Adequacy Report, that behind-the-wheel training is essential. Therefore, in this rulemaking FMCSA is proposing new training standards for entry-level drivers that would include behind-the-wheel (BTW) as well as classroom training. [Note: In this notice ''behind-the-wheel'' training includes both training on public roads and training on private property, sometimes called ''driving range'' training.]

B. History

Curriculum Standards

The FHWA published a ''Model Curriculum for Training Tractor-Trailer Drivers'' in 1985. The Model Curriculum provides non-regulatory guidelines and training materials pertaining to vehicles, facilities, instructor hiring practices, graduation requirements, and student placement. Curriculum content addresses basic operation, safe operating practices, vehicle maintenance, and non-vehicle activities. The Model Curriculum reflects a consensus among experts at the time of its publication. Its training standards are not based on any specific research showing that drivers who received training of a particular type or duration are less likely to be involved in crashes than drivers receiving other kinds of training, or no systematic training at all.

The 1985 Model Curriculum recommended the equivalent of a total of 148 [1] hours of training, including on-

[1] The original Model Curriculum referred to a total of 320 hours. However, these hours of training include periods when the student is not receiving individual instruction, such as while waiting his/her turn to use an available truck to practice driving skills. Therefore, the Adequacy Report, identified later under this heading, states in relation to the training curriculum established by the Professional Truck Driver Institute (PTDI), which was based on

Continued

street training and additional hours of driving-range [2] time. At the time the Model Curriculum was published, the CDL program (49 CFR part 383) did not yet exist. The first CDLs were not issued until 1992.

In 1986, the motor carrier, truck driver training school, and insurance industries created the Professional Truck Driver Institute (PTDI) to certify high-quality training programs offered by training institutions. The PTDI used the truck driver Model Curriculum as the basis for its certification criteria. On January 24, 1999, the PTDI approved revisions to the curriculum and published three separate standards:

- ''Skill Standards for Entry-Level Tractor-Trailer Drivers;''
- ''Curriculum Standard Guidelines for Entry-Level Tractor-Trailer Driver Courses;'' and
- ''Certification Standards and Requirements for Entry-Level Tractor-Trailer Driver Courses.''

As of December 2006, PTDI-certified courses are offered at 61 schools in 28 States and Canada, according to PTDI's Web site (*http://www.ptdi.org*). PTDI estimates that approximately 10,000 students graduate from its certified courses annually.

CMVSA: Minimum Uniform Standards for CDLs

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (49 U.S.C. 31301 *et seq.*) established a CDL program that includes national minimum testing and licensing standards for operators of CMVs. The CMVSA directed the Agency to establish minimum Federal standards that States must meet when testing and licensing CMV drivers. The CMVSA applies to anyone who operates a CMV in interstate or intrastate commerce, including employees of Federal, State, and local governments. The goal was to ensure that drivers of large trucks and buses possess the knowledge and skills necessary to operate safely on public highways.

In accordance with the CMVSA, all drivers of CMVs (as defined in § 383.5) must possess a valid CDL. In addition to passing the CDL knowledge and skill tests required for the basic vehicle group, all persons who operate or anticipate operating the following vehicles, which have special handling or operational characteristics, must obtain endorsements under § 383.93 for:

- Double or triple trailers;
- Passenger vehicles;
- Tank vehicles;
- Vehicles required to be placarded for hazardous materials; or
- School buses.

The driver is required to pass a knowledge test for each endorsement, plus a skills test to obtain a passenger vehicle endorsement or school bus endorsement.

ISTEA: Entry-Level Driver Training

The CDL standards require tests for knowledge and skills, but neither the CMVSA nor the FMCSRs requires driver training. The private sector, with guidance from FMCSA, has attempted to promote effective training. Formal, supervised training is available from private truck driver training schools, public institutions, and in-house motor carrier programs. Many drivers take some sort of private-sector training at their own expense. These courses vary in quality. Some provide only enough training to pass the skills test. Generally, however, with or without formal training, drivers individually prepare for the CDL test by studying such areas as vehicle inspection procedures, off-road vehicle maneuvers, and operating a CMV in traffic.

By 1991, Congress had become concerned about the quality of this training. As a result, section 4007(a)(1) of ISTEA required the Agency to study the effectiveness of private sector training efforts, to commence a rulemaking on the need to require training of entry-level drivers of CMVs, and to report to Congress on the results.

The Adequacy Report

In 1992, FHWA began to examine the effectiveness of private sector training. The result was a 1995 report entitled ''Assessing the Adequacy of Commercial Motor Vehicle Driver Training'' (the 1995 Adequacy Report), which the Secretary of Transportation transmitted to Congress in 1996. A copy of the report is in the docket for this rulemaking.

In developing the Adequacy Report, the FHWA first assembled two groups of people experienced in motor carrier operations: one from the trucking sector and the other from the motorcoach and school bus sectors. These groups first identified baseline training standards for both the cargo- and passenger-transporting segments of the CMV industry. The truck group selected the Model Curriculum as a baseline. The bus group selected a combination of the Model Curriculum and the National Highway Traffic Safety Administration's (NHTSA) ''School Bus Driver Instructional Program,'' developed in 1974. The groups reached a consensus on minimum requirements for the numbers of class and practice driving hours, student/teacher ratios, and course topics.

The question then was whether driver training could be effective in the absence of the formal instruction embodied in the baseline standards selected by the truck and bus experts. Without much analysis or data, the FHWA concluded formal training [3] is the key to adequate training. The Adequacy Report defined ''effectiveness'' as ''the prevalence or frequency with which the motor carriers * * * provided formal training for their entry-level drivers'' (Adequacy Report, Executive Summary, p. 2). Evidence of the relationship, if any, between certain types and amounts of training and a reduction in crashes was scarce and statistically questionable.

The next step involved collecting information on and analyzing training programs currently offered by the cargo and passenger segments of the motor carrier industry. The groups developed an algorithm that they used to quantitatively compare existing driver training with the baselines.

In the final step, the study surveyed both drivers and employers. The survey asked 192 drivers what percentage of drivers they thought were adequately trained by training schools.

The conclusion of both the training analysis and the driver survey was that the heavy truck, motorcoach, and school bus segments of the CMV industry were not providing adequate entry-level driver training (*Id.*, p. 6). The Adequacy Report also stated that ''* * * it appears

the Model Curriculum, that ''The PTDI[A] standard includes* * * 147.5 per-student hours. This is equivalent to the 320 class hours required by the FHWA Model Curriculum'' (Adequacy Report, Executive Summary, p. 26). There are several reasons for this variance in the total hours of the respective training programs. First, FHWA's curriculum includes topics, such as first-aid training, that are not included in the PTDI curriculum. In addition, instructional time may be calculated as either 60- or 50-minute hours. FHWA's curriculum was based on a 50-minute clock, and PTDI's on a 60-minute clock. (In this NPRM, 60-minute instructional hours are used unless otherwise stated.) FHWA used a 3:1 ratio (student to instructor) for in-truck training, and PTDI uses a 1:1 ratio. If a 3:1 ratio is used, it is assumed that it will take 3 clock hours to achieve 1 hour of BTW instruction for a student, since only one of the three students can use the truck at a time. The others would have unproductive ''waiting time.''

[2] ''Driving range time'' refers to time operating a CMV on private property, usually a large paved lot specially designed to allow practice of basic driving operations and maneuvers. Some schools' curricula include both observation and behind-the-wheel time under range hours. This NPRM does not use ''range time'' in the regulatory text and therefore the term is not defined.

[3] ''Entry-level training'' as the term is used in the Adequacy Report, includes all pre-service, on-the-job, and in-service training during the first 3 years of a driver's experience. ''Formal training'' included only the pre-service training received through established programs of instruction presented by schools or the carriers (*Id.*, p.13).

the present level of training adequacy is not likely to improve due to the actions of the private sectors themselves (*Id.*, pg. 7).''

The Adequacy Report also made extensive comments on the form that ''adequate'' entry-level training would take. The report found that there was general agreement among transportation and training officials that the Model Curriculum, developed in the 1980's, represented an ''adequate content and approach for training truck drivers.'' The report recommended the Model Curriculum as the starting point for defining adequate training. It also included criteria involving ''* * * classroom hours, practice (off-street and on-street) hours, student/teacher ratios, behind-the wheel time, and course content topics (*Id.*, p. 15).'' The Adequacy Report did not reach a conclusion as to whether ''testing-based,'' ''training-based'' or ''performance-based'' approaches to entry-level driver training would be more effective.

The Adequacy Report took the intuitive position that entry-level driver training is beneficial. However, it found ''* * * no evidence of a relationship between adequacy of the training the driver reported receiving and his/her frequency of crashes (*Id.*, p. 10).'' The Adequacy Report included a literature review that also failed to identify studies or data indicating a positive correlation between driver training and crash reduction (*Id.*, p.22).

The Adequacy Report stated, ''Few will argue that training is not necessary for CMV drivers. It is hard to imagine someone safely operating a heavy truck, motorcoach, or school bus without at least guidance from an experienced operator and a chance to practice the basic driving skills. FHWA and elements of the private sectors have gone beyond this in recommending formal training for CMV drivers because it is the only way to assure that all of the necessary knowledge and skills are covered, using a structure that maximizes the chances that learning will occur'' (Adequacy Report, Volume III, pp. 7–24).

Previous Rulemakings

Advance Notice of Proposed Rulemaking (ANPRM) and Public Meeting. Pursuant to section 4007(a)(2) of ISTEA, the Agency began a rulemaking proceeding on the need to require training of all entry-level CMV drivers. On June 21, 1993, the Agency published an ANPRM in the **Federal Register** entitled ''Commercial Motor Vehicles: Training for All Entry Level Drivers'' (58 FR 33874). The Agency asked 13 questions that addressed training adequacy standards, curriculum requirements, the CDL, the definition of ''entry-level driver,'' training, pass rates, and costs. The Agency received 152 comments that were discussed in the preamble to the subsequent NPRM.

On November 13, 1996, twenty-six people participated in a public meeting to discuss mandatory training for entry-level CMV drivers.

There was no consensus in the written or oral comments on the issue of mandated entry-level driver training.

Notice of Proposed Rulemaking (NPRM). The FMCSA published an NPRM in the **Federal Register** on Friday, August 15, 2003 (68 FR 48863). The Agency received 38 comments; they were analyzed in the preamble to the 2004 final rule. For purposes of the NPRM, FMCSA defined an entry-level driver as a person with less than two years experience operating a CMV that requires a CDL.

The Agency proposed training for entry-level drivers based on three main principles. First, the Agency focused the NPRM requirements on drivers included in the Adequacy Report; i.e., only drivers in the heavy truck, motorcoach, and school bus industries. Second, the NPRM focused on drivers who operate in interstate commerce subject to the Motor Carrier Safety Act of 1984. Third, the Agency limited the NPRM to those training topics that extend beyond the scope of the CDL tests.

The NPRM proposed training in the following areas: (1) Driver medical qualification and drug and alcohol testing, (2) driver hours of service rules, (3) driver wellness, and (4) whistleblower protection. The Agency believed that training in these four areas would serve to establish a baseline of safety for entry-level CMV drivers at a reasonable cost for drivers or employers. The NPRM did not specify a required number of hours for the training or indicate who would provide the training. However, the Agency's cost-effectiveness estimate was premised on 10.5 hours of training for heavy truck and motorcoach drivers and 4.5 hours of training for school bus drivers. The FMCSA proposed only two training topics for school bus drivers: Driver wellness and whistleblower protection.

The NPRM proposed that the employer would have to maintain a training certificate in the driver's personnel file showing that the driver had received the training.

Final Rule. After review and analysis of the 38 comments on the NPRM, the Agency published a final rule in the **Federal Register** on May 21, 2004 (69 FR 29384). The final rule codified the entry-level driver training requirements at 49 CFR part 380, subpart E, in much the same way that they were proposed, with a few minor adjustments.

All of the relevant documents from previous rulemakings on topics related to this NPRM are in the docket for this rulemaking as identified at the beginning of this notice.

DC Circuit Decision

The Advocates for Highway and Auto Safety (Advocates) challenged the rule in the DC Circuit. The Advocates argued that the final rule ignored earlier Agency recommendations because the Adequacy Report had concluded that effective entry-level driver training needed to include behind-the-wheel instruction on how to operate a heavy vehicle. Instead, FMCSA required training that focused on areas unrelated to the hands-on training of a CMV operator. In its December 2005 decision, the court agreed with the petitioner and remanded the rule to the Agency for further consideration consistent with the decision.[4] The court did not vacate the 2004 final rule, which remains in effect.

Training Research and Studies

Since completing the Adequacy Report, the Agency has continued to study the problems related to training commercial motor vehicle operators.

Transportation Research Board (TRB) Reviews. In 2004, FMCSA sponsored the TRB report ''Training of Commercial Motor Vehicle Drivers'' (Synthesis 5).[5] A copy of that report is in the docket for this rulemaking. For Synthesis 5, TRB researchers conducted an extensive literature review and surveyed experts in the CMV driver training field to identify training tools and techniques that hold the greatest potential to improve CMV safety. The following ''recommended practices for improving training effectiveness for entry-level CMV drivers are supported by this synthesis'' (Synthesis 5, p. 2): (1) Acceptance and adherence to standards put forward by the Professional Truck Driver Institute (PTDI), (2) ''finishing training'' for solo drivers, (3) use of multimedia instructional materials, (3) appropriate uses of affordable simulation options, (4) expansion of use of skid pads, and (5) employment of

[4] *Advocates for Highway and Auto Safety* v. *Federal Motor Carrier Safety Administration,* 429 F.3d 1136, at 1145 (*DC* Cir. 2005).

[5] Staplin, L., Lococo, K., Decina, L., and Bergoffen, G. (2004), *Training of Commercial Motor Vehicle Drivers.* Commercial Truck and Bus Safety Synthesis Program, Transportation Research Board, Washington, DC.

videos for health, wellness, and lifestyle issues.

In 2006, FMCSA contracted with TRB for a synthesis report on commercial motor vehicle driver training curricula and delivery methods and their effectiveness (Synthesis 13).[6] A copy of this report is in the docket. The purpose of Synthesis 13 is to provide information to assist the commercial vehicle safety community in assessing CMV training practices and their effectiveness.

In its conclusions, Synthesis 13 describes six aspects of CMV driver training in which shortcomings may exist: Content, instructional methods, trainers, training and curriculum design, measurement standards, and operator abilities. Each is described briefly as follows:

1. Content: There are no national curricular standards, but when various curricula are examined, little content difference can be found. There is general agreement across the industry that the 1985 FHWA Model Curriculum forms the core content of commercial driving training. That standard has not been updated since 1985. The industry should use a systematically developed modern commercial driver training curriculum.

2. *Instructional Methods:* By far, the favorite method for training commercial drivers is a combination of classroom lectures and supervised driving. Most of the research findings on adult learning and instructional technology from the last 30 years have not been adopted by a significant number of commercial driving enterprises. In those cases where advanced technologies are being applied, early data indicate that well designed computer based instruction, including simulation, can improve student performance and also realize efficiencies in the instructional process. Distance learning shows great promise for post-licensing training.

3. Train the Trainers: It is natural that older, experienced drivers are selected to be instructors, no matter if the training is administered by a school, carrier, bus company, or transit agency. But there is no evidence that a person who is a job expert is necessarily a good teacher. There are two clusters of skills a good driver training instructor must possess beyond driving competence. Classroom skills (presentation fundamentals, using classroom equipment, listening to students) are well recognized as part of good train-the-trainer programs. The second cluster of skills, required of a behind-the-wheel instructor, consists of observational fundamentals, explaining activities in understandable and behavioral terms, remaining calm, and possessing the ability to anticipate risky situations. Since there are no standards for CMV driver training instructors, this role in the training process is extremely variable.

4. Lack of Systematic Training Design: As discussed above, the motor carrier and training school industries have reached an informal consensus on the subject matter of commercial driver training. However, it has been over 20 years since a formal curriculum design for commercial drivers was systematically developed. In that time, the CDL program has become law, new technologies and regulations for truck and bus operations have had a major impact on the drivers, and the collective knowledge about what affects commercial driver's performance (e.g., fatigue, distraction, age) has grown significantly.

5. Lack of Standards for Measuring the Effectiveness of Driver Training Programs: Currently, the only generally acceptable standard for measuring the effectiveness of commercial driver training is the number of graduates who can pass their CDL tests. In both the survey and in interviews, schools reported that they also track the number of graduates that are hired by carriers. Motor carriers, motorcoach operations, and transit agencies report that they are sure that training reduces crashes; however, there is little or no data that support that view. Standards purporting to measure training effectiveness tend to measure processes (classroom hours, time spent behind the wheel) rather than specific performance outcomes.

6. CMV Operator Abilities: There has been recent research on the capabilities and limitations of adolescent drivers. However, a similar scientific approach to commercial drivers is lacking. If CMV trainers understood more about the learning styles, cognitive strategies, and past educational experiences, training could be tailored to the relevant needs of the individual student. A set of diagnostic tests that could funnel students into the optimum learning context would improve commercial driver training.

The authors of Synthesis 13 stated, ''Although the literature review produced instances of driving improvement linked to specific training interventions (e.g., simulators) there are no general data linking decreased crash rates to formal training programs. The two primary reasons for this are: (1) Training, as a concept, is not well nor operationally defined and (2) there are no generally agreed upon standards by which various training programs can be compared. A third problem is the likelihood that most training effects are felt in the first six months of a driver being on the road'' (Synthesis 13, p. 22).

Responding to TRB Review Conclusions

It would require years of research, systems design, standards development, and cost-benefit analysis involving many stakeholders to fully address the shortcomings identified in the TRB Syntheses 5 and 13 reports. This NPRM proposes core training for CDL applicants. The proposal includes minimum curricular requirements that were developed by FHWA in cooperation with the driver training industry, and that have elicited ''general agreement across the industry'' (*Id.,* p. 2). Minimum qualification standards for instructors are established, flexibility in use of various instructional methods is provided, and testing standards are specified.

The FMCSA believes that the mandatory training proposed in this NPRM need not be delayed until further research is conducted, standards developed, etc. The CMV driver-training industry will continue to address these issues, and the Agency and other interested parties will continue their research and development efforts. FMCSA will also monitor CMV driver training. In the meantime, FMCSA believes that the proposals in this NPRM would help entry-level CDL drivers learn to operate more safely.

The following remarks relate to the six aspects of CMV training in which shortcomings were identified in Synthesis 13. The FMCSA invites comments to the docket regarding each of these topics.

1. Content: Although the Model Curriculum has not been re-issued by a government agency since its original publication by FHWA in 1985, it has been formally updated on a regular basis by PTDI, and it remains the generally accepted basis for most current CMV driver-training curricula. The curricula in this proposed rule would be consistent with the standards currently adopted by many professional CMV driver-training schools and associations. Comments to this NPRM will be considered when determining the necessity and urgency of initiating a formal, official update to the original 1985 FHWA Model Curriculum.

2. Instructional Methods: The FMCSA agrees that recent changes in instructional technology, such as

[6] Brock, J., McFann, J., Inderbitzen, R., and Bergoffen, G. (2007). *Synthesis on Effectiveness of Commercial Motor Vehicle Driver Training Curricula and Delivery Methods.* Commercial Truck and Bus Safety Synthesis Program, Transportation Research Board, Washington, DC.

simulators, computer-based instruction, and ''distance learning'' can be effective in improving the quality and reducing the length of CMV driving instruction. The FMCSA is currently engaged in a multi-year research project, titled ''Truck Simulator Validation (SimVal),'' to determine the effectiveness of driving simulators in CMV training. The SimVal project will examine the subsequent driving performance records of four groups of new CDL drivers. Group 1 will receive 8 weeks of PTDI-certified training including behind-the-wheel training in a conventional tractor-trailer. Group 2 will receive the same training, but substitute a driving simulator for two-thirds of the behind-the-wheel training. Group 3 will receive a compressed (1 to 3 week) training program focusing primarily on passing a CDL examination. Group 4 will receive no formal training, which will allow evaluation of training in general compared to no formal training.

As data from the SimVal project and others become available to measure the effectiveness of these technologies and adopt standards for their use in a CMV driver-training environment, FMCSA will consider the need for further regulatory revisions.

3. Train the Trainers: In proposed § 380.609, this NPRM would adopt basic standards for both classroom and skills instructors. In addition, by requiring that all training be conducted at an accredited educational institution or program, the proposed rule would result in additional professional standards for instructors as determined by the accreditation criteria.

4. Lack of Systematic Training Design: Comments to this NPRM will be considered when determining the necessity, urgency, and best method of initiating a systematic design for CMV driver training. This would be part of the ''content'' review discussed in item 1, above.

5. Lack of Standards for Measuring the Effectiveness of Driver Training Programs: Currently, there are no data available to permit comparison of CMV driver training to the subsequent safety performance of the driver. In particular, no accessible records of training exist. By requiring standardized training as of a specified date, and by requiring certain information about that training to be entered into the Commercial Driver License Information System (CDLIS), this proposed rule would provide the baseline data needed to begin to study the effectiveness of the training when compared to the actual crash experience of the drivers. In addition, the Agency intends to continue working closely with professionals in the field of CMV driver training to identify additional methods of measuring the effectiveness of CMV driver training.

6. CMV Operator Abilities: Synthesis 13 mentioned the tailoring of training to the relevant needs of each student, and suggested the potential use of diagnostic tests to ''* * * funnel students into the optimum learning contest. * * *'' The tests, tools, and standards for customizing driver training to an individual student's needs do not yet exist on the scale necessary for development of regulatory provisions. However, these are currently being developed, implemented, and studied in training programs operated by large motor carriers and by CMV driver-training institutions. The FMCSA will continue to monitor and study the appropriateness of incorporating these concepts into regulatory provisions.

Large Truck Crash Causation Study (LTCCS). In September 2006, FMCSA conducted further analysis on the recently released FMCSA/National Highway Traffic Safety Administration Large Truck Crash Causation Study (LTCCS) for data regarding the training and experience of commercial drivers involved in crashes. The LTCCS provides information on nearly one thousand selected truck crashes from around the country.

The LTCCS data specify many characteristics of each crash, including the training of the drivers involved and whether or not the driver was at fault. However, analysis using the LTCCS was inconclusive and did not identify any statistically significant difference between trained and untrained drivers with regard to crash frequency. Analysts reported that the relatively small sample size and difficulty in differentiating the effects of training, experience, and age precluded useful conclusions.

C. Request for Comment on the Need for the Regulation

Although FMCSA believes that this proposal will improve the ability of entry-level drivers to operate more safely and reduce the likelihood that they will be involved in crashes, the agency has noted the lack of research findings indicating a relationship between standardized driver training and increased safety. Specifically,

- In the Adequacy Report, which included a literature review, the FHWA found no statistically valid relationship between specific types and amounts of training and crash rates.
- The TRB's Synthesis 13 found no research data that linked a reduction in crash rates to formal training programs.
- An analysis of the data produced in the LTCCS failed to identify a statistically significant difference in crash frequency between trained and untrained drivers.

Given the lack of data that would indicate that the training requirements in this proposed rule would result in a reduction in crash rates, FMCSA solicits comments on the analytic basis and justification for this proposed rule. Comments are specifically invited that would address any of the research gaps that make it impossible to demonstrate a relationship between increased systematic training and improved safety.

III. General Discussion of the Proposal

A. Scope and Applicability

Successful completion of training required by this proposed rule would ensure that an applicant for a commercial driver's license (CDL) had successfully acquired essential knowledge and skills, based on classroom and behind-the-wheel training, to safely operate a CMV. The CDL knowledge and skills testing programs administered by State driver licensing agencies (SDLAs) would confirm that the applicant possesses and can demonstrate the minimum knowledge and skills. After obtaining the CDL and beginning to work for a motor carrier, the CDL holder would usually undergo further ''finishing training'' and supervision from the employer to ensure the driver has safe driving abilities. This NPRM addresses the first part of the CMV driver's training—that obtained prior to being issued a CDL.

The new training requirements proposed in this NPRM would apply to all persons applying for a CDL for the first time who intend to operate CMVs in interstate commerce, and to persons upgrading from one class of CDL to another. The requirements would become operational 3 years after the effective date of the final rule. The requirements would apply to all persons required under § 383.3 to have a CDL, except for: (1) Those who intend to operate exclusively in intrastate commerce; (2) those who are excepted from obtaining a CDL under paragraphs (c) and (d) of § 383.3 [7]; and (3) those who obtain a restricted license under paragraphs (e), (f), and (g) of § 383.3 [8].

A person who holds or obtains a CDL within 3 years after the effective date of the final rule would not be required to

[7] Certain military personnel, farmers, firefighters, emergency response vehicle drivers, and drivers removing snow and ice.

[8] Certain drivers in farm-related service industries and in the pyrotechnic industry.

meet these training requirements. However, 3 years after the effective date of this rule, a person whose CDL has been revoked or had expired more than 4 years earlier would be required to meet these training requirements. These training requirements would apply to all classes [9] of CDLs, although the curriculum requirements specified in appendix B would be different for Class A and for Class B/C license applicants.

In 2006, FMCSA personnel visited various training facilities to gain the benefit of their expertise. The training facilities chosen were Delaware Technical and Community College, a public school; Schneider National, Inc., a motor carrier; National Tractor Trailer School, Inc., a private school; and The SAGE Corp., a nationwide organization of 30 professional truck driver schools. All of these training entities agreed that current knowledge and skills testing for the CDL does not negate the need for training. They also agreed that training should be a prerequisite for the CDL. While FMCSA acknowledges these training facilities have a vested interest in increasing training requirements, the Agency believes that entry-level driver training should be a prerequisite for the CDL.

Under the proposed requirements, a person applying for a CDL would have to provide a Driver Training Certificate containing the required information and certifications to the State driver's license agency (SDLA). The State would have to include a record of the certificate in the Commercial Driver License Information System (CDLIS) and retain a copy or image of the certificate.

This NPRM also includes proposed requirements for the training program, including specific curriculum requirements and driver-instructor requirements, described below.

B. Curriculum Content

This NPRM contains minimum, mandated training requirements designed to enhance CMV safety. The mandated entry-level training concentrates on driver skills directly related to CMV safety. It is based on the FHWA Model Curriculum that addresses basic operation, safe operating practices, vehicle maintenance, and non-vehicle activities. As noted earlier, the training standards embodied in the Model Curriculum are not based on any research data indicating that drivers are more or less likely to be involved in crashes, depending on the type and duration of their training. Accordingly, the agency invites commenters to provide information or research data that could demonstrate the relative effectiveness of the Model Curriculum compared to other training standards.

The Adequacy Report tried to determine what form ''adequate'' entry-level training should take. The report stated that, ''With regard to heavy trucks, there is general agreement in the industry that the model tractor-trailer driver curriculum developed by the FHWA in the mid-1980s represents an adequate content and approach for training truck drivers.'' Although the Model Curriculum has not been formally updated since its original publication in 1985, it has been updated by private organizations such as PTDI, and it remains the generally-accepted basis for many current CMV driver-training curricula.

The Agency is proposing entry-level training that would be applicable to the operators of all types of CMVs, but would vary according to the class of CDL, as outlined in proposed appendix B to part 380. In developing these curricula, FMCSA compared the requirements of the FHWA Model Curriculum, the PTDI core curriculum, and the curricula and experiences of driver-training facilities surveyed by FMCSA personnel to define the core safety-training elements. The Agency chose curriculum topics that would provide training directly related to CMV safety. The FMCSA eliminated any peripheral training topics which, although worthwhile to the industry, are not related to safety.

The training programs proposed in part 380 appendix B are described in general terms and rely on testing and performance-based concepts, but the Agency believes it is necessary to specify both a minimum number of hours of training and the percentage of a student's time dedicated to behind-the-wheel training. These requirements would help to ensure the adequacy and uniformity of training. FMCSA seeks comments regarding methods of ensuring the adequacy and quality of training if minimum hours were not specified, including behind-the-wheel training. To what extent could performance standards be substituted for mandatory training time?

Difficulties arise in matching specific curriculum requirements to the classes of CDLs for which the training would qualify an applicant. The curriculum for applicants for Class A CDLs is well-established in the Model Curriculum; Class A covers all large, articulated vehicles, usually tractor-trailers. However, Class B vehicles include both large straight trucks and buses. A separate curriculum that included passenger-safety issues would potentially include material not needed by a trainee who does not intend to obtain a passenger endorsement. And, since Class C CDLs are not based on vehicle configuration, but rather on passenger or hazardous materials use, the issue of curriculum development becomes even more complex. At the time an applicant applies for a Class C CDL, many States require that a passenger or hazardous materials endorsement also be obtained, even though not specifically required at that time by provisions of 49 CFR parts 383 or 384.

Further complications develop when considering upgrades in license classes or the addition of endorsements. Would a separate ''add on'' training component be needed specifically for those changing from one class to another or adding a specific endorsement? In this NPRM, the Agency has proposed only two curricula, contained in Parts I and II of Appendix B. Part I is for Class A CDL applicants, and Part II is for Class B and C applicants. The FMCSA invites comments and proposals regarding alternative methods of matching specific curricula components to licensing actions involving the State driver licensing agency (SDLA). For example, if a driver wants to upgrade from a Class B to a Class A CDL, what training should be required, and what type of training certificate should be presented to the SDLA? Should the driver be required to complete the entire Class A classroom and behind-the-wheel (BTW) training, or should a more limited supplemental training curriculum be required? Should a supplemental curriculum include modifications to both the classroom and BTW components?

The Adequacy Report determined that effective training for CMV drivers required behind-the-wheel instruction on how to operate a heavy vehicle. The proposed entry-level training curriculum contains 44 hours of practical behind-the-wheel experience for Class A applicants and 32 hours for Class B and C applicants. Vehicles requiring a Class A CDL are typically tractor-trailer combinations or large straight trucks towing trailers. The training standards for operating Class A vehicles are outlined in Part I of appendix B.

FMCSA believes that the skills to operate Class B and C vehicles are similar enough to be covered by the same training program, as outlined in Part II of Appendix B. Class B vehicles, while also over 26,000 pounds GVWR,

[9] Throughout this preamble, the commonly-used ''class'' is used to refer to the CDL ''groups'' as described in Part 383.

are more represented by operators of straight trucks and buses, which do not have the same operating characteristics as tractor-trailers.

Class C vehicles include those that do not meet the larger size/weight requirements for Class A, but which carry placardable quantities of hazardous materials or certain numbers of passengers. In some cases, Class C could include a standard automobile. For these reasons, the Agency believes that fewer behind-the-wheel training hours are needed for Class B/C applicants. The proposed classroom training for Class B/C applicants is similar to that for Class A, except for provisions associated with articulated vehicles and certain other topics applicable to tractor-trailers. This results in fewer classroom training hours for Class B/C applicants than for Class A.

For Class A applicants, the mandatory minimum hours of behind-the-wheel training must be conducted in a traditional tractor-trailer combination for which a Class A CDL would be required. For Class B applicants, the mandatory minimum hours of behind-the-wheel training must be conducted in a vehicle representative of that class. For Class C applicants, the mandatory minimum hours of behind-the-wheel training must be conducted in a straight-truck having a gross vehicle weight rating of at least 14,000 pounds. Where appropriate in Class C training, the use of a trailer in addition to the required straight-truck is recommended.

The Class B/C training curriculum is intended to include those elements common to the safe operation of any CMV. Drivers of vehicles requiring a Class B CDL primarily operate either large straight trucks or buses. Drivers of vehicles requiring a Class C CDL generally operate ''small'' passenger-carrying vehicles or vehicles requiring placarding for hazardous materials (both 26,000 *or less* GVWR; otherwise, a Class A or B CDL would be required). Mandatory training requirements for drivers transporting hazardous materials already exist in 49 CFR 172.704. These Class C drivers must also obtain a CDL hazardous materials endorsement that requires a separate knowledge test (49 CFR 383.93). Drivers of passenger-carrying vehicles must obtain a CDL passenger endorsement that requires separate knowledge and skills tests (49 CFR 383.93).

The FMCSA seeks comments on the content and extent of proposed training for Class A and Class B/C applicants and whether a separation of Class B and C requirements into individual curricula would have merit. If so, comments are sought regarding the content of these separate courses. Comments are also sought regarding the minimum specifications for the type of vehicle that should be required for Class B and C behind-the-wheel training, recognizing that when applying for a CDL, the driver may not yet know the specific type of vehicle he or she will be operating.

The Agency also seeks comments and data on the correlation between hours and content of training and the driving records of persons completing such training; i.e., data indicating the effectiveness of entry-level driver training.

The proposed hours of training requirements are shown in the table below:

TABLE 1.—MINIMUM HOURS OF TRAINING REQUIRED BY PART 380 APPENDIX B

Section	Minimum Hours		
	Classroom	* BTW	Total
Part I: CLASS A APPLICANTS			
(1) BASIC OPERATION	20	24	44
(2) SAFE OPERATING PRACTICES	8	17	25
(3) ADVANCED OPERATING PROCEDURES	15	3	18
(4) VEHICLE MAINTENANCE	7	0	7
(5) NON-DRIVING ACTIVITIES	26	0	26
Total	76	44	120
Percentage	63%	37%	100%
Part II: CLASS B/C APPLICANTS			
(1) BASIC OPERATION	15	18	33
(2) SAFE OPERATING PRACTICES	8	12	20
(3) ADVANCED OPERATING PROCEDURES	11	2	13
(4) VEHICLE MAINTENANCE	5	0	5
(5) NON-DRIVING ACTIVITIES	19	0	19
Total	58	32	90
Percentage	64%	36%	100%

* Behind-the-wheel (BTW).

Modern technology provides opportunities, not otherwise available to entry-level drivers, to learn safe driving techniques using computers and simulators. However, current research has not fully substantiated the equivalency of simulator training and behind-the-wheel training.[10] Therefore, although FMCSA encourages the use of simulators and computer-based instruction, and authorizes them when appropriate for classroom training, this NPRM does not propose to authorize substitution of simulator training for the minimum hours of behind-the-wheel training. The FMCSA requests references to any studies showing the effectiveness of simulator training and comments on the potential for substituting such training for actual driving time.

The proposed curriculum lists the minimum number of hours an entry-

[10] The FMCSA is currently conducting a 4-year ''Truck Simulator Validation Study'' to help determine whether simulators add value to truck driver training and longer-term safety performance.

level driver must spend learning any core training element. To provide flexibility for instructors and drivers, however, the content of each unit of training is described in general terms. At the conclusion of the training, the driver-student must pass knowledge and skills tests to determine if he/she has mastered the required information. Tests must be based on the training provided to the driver-student and cover the entire range of information. The skills test must include all the maneuvers and operations practiced during the behind-the-wheel instruction.

Training institutions would be required to administer these tests to their entry-level driver students. Only qualified instructors, as defined in the proposed rule, may administer and score tests.

C. Training Providers

Entry-level drivers would have to successfully complete a training program that meets the requirements of subpart F and appendix B of part 380. The FMCSA proposes that the training provider or program would have to be accredited by an agency recognized by the U.S. Department of Education (ED) or by the Council for Higher Education Accreditation (CHEA). A motor carrier could develop its own training program for entry-level drivers, but it would have to be accredited on the same basis as an independent training institution. On the other hand, motor carrier training programs or courses designed for drivers who already have CDLs would not be subject to this rule and would not require accreditation.

FMCSA recognizes that the accreditation process could impose a burden both on professional driving schools and on carrier-run programs. It can take 1–2 years for a school or program to obtain accreditation by an agency recognized by ED or CHEA. Accrediting agencies often require that a school be in business for 2 years before applying for accreditation. However, accreditation is important because it demonstrates a commitment to meeting research-based standards, engaging in continuous improvement, and providing for quality assurance through self-evaluation and peer review. In addition, if a school is not accredited by an agency recognized by ED, the student may not be eligible for Federal educational assistance loan programs. This may be an important consideration for students who are paying for their own entry-level driver training.

Extensive information about the accreditation process is available on the ED and CHEA Web sites at: *http://www.ed.gov/admins/finaid/accred/index.html* and *http://www.chea.org.* It is important to understand that ED and CHEA do not accredit institutions or programs directly. They officially recognize agencies that are authorized to accredit the institutions and programs. Although they do not accredit individual schools or programs, ED and CHEA maintain searchable databases of schools and programs that have been accredited by agencies recognized by them. Access to these databases is available though links on the ED and CHEA Web sites previously identified. The ED and CHEA point out that the information in these databases may not be completely current and accurate.

On its Web site, CHEA maintains a list of all accrediting agencies recognized by ED, CHEA, or both. As of February 2006 (last update), the list contained 81 individual agencies. These agencies accredit schools, programs, or both. Some, but not all, of these agencies accredit schools or programs involving truck-driver training. Based on a ''keyword'' search of databases at ED *(http://ope.ed.gov/accreditation/Search.asp)* and the National Center for Education Statistics' College Opportunities Online Locater *(http://www.NCES.ed.gov/ipeds/cool/)* for truck-driver training programs, FMCSA identified approximately 130 accredited schools, some of which have numerous operating locations.

The following 11 agencies accredit most of these truck-driver training programs or schools: (1) Accrediting Commission of Career Schools and Colleges of Technology; (2) Council on Occupational Education; (3) Middle States Association of Colleges and Schools, Commission on Higher Education; (4) Middle States Commission on Secondary Schools; (5) New England Association of Schools and Colleges, Commission on Institutions of Higher Learning; (6) North Central Association Commission on Accreditation and School Improvement; (7) North Central Association of Colleges and Schools, The Higher Learning Commission; (8) Northwest Commission on Colleges and Universities; (9) Southern Association of Colleges and Schools, Commission on Colleges; (10) the Western Association of Schools and Colleges, Accrediting Commission for Schools, and; (11) the Accrediting Council for Continuing Education and Training.

The FMCSA seeks comments regarding the appropriateness of accreditation as a means of maintaining quality control over the training provided, the ability of existing entry-level training facilities to acquire accreditation, and the necessity of acknowledging CHEA in addition to ED as an entity that may recognize accrediting agencies for purposes of this entry-level driver training. Comments are also sought regarding any possible alternatives to accreditation that would accomplish similar objectives.

D. Compliance and Enforcement

Upon successful completion of the required training, the entry-level driver would receive a Driver Training Certificate from the training institution. The certificate would have to include: (1) Information about the driver and the training institution; and (2) a certification signed by an official of the training institution under penalty of perjury that the driver has successfully completed the training. The entry-level driver would provide the certificate to his/her SDLA as part of the CDL application process. The SDLA would have to review the certificate, include specified data from the certificate in the Commercial Driver License Information System (CDLIS), and retain a copy or image of the certificate in its records. An entry-level driver who failed to present a certificate meeting the requirements of this rule could not be issued a CDL.

E. Implementation Date

FMCSA proposes to begin requiring compliance with the requirements set forth in this NPRM 3 years after the effective date of the final rule. The Agency believes the 3-year phase-in period would provide the States with sufficient time to pass any implementing legislation that may be required. States would also need time to modify their information systems to begin recording the Driver Training Certificate information onto the CDLIS driver record. The Agency is seeking comments about the ability of States to carry out the proposals in this rulemaking within the required timeframe and on the length of the implementation period in general.

The proposed 3-year phase-in period would also allow time for the commercial driver training industry to develop and begin offering training that meets the proposed requirements. Some of these institutions would also need to obtain accreditation during this period.

The Agency seeks comments about existing student capacity at training schools and whether the proposed 3-year implementation period is appropriate. The Agency also seeks comments on the probable costs of entry-level training and any anticipated impacts on carrier operations.

F. Changes to the Existing Rule

The four types of entry-level training currently required by subpart E of part 380 would be incorporated into the new subpart F. Compliance with subpart F would be required 3 years after the effective date of the final rule. At that time, requirements for ensuring employees have received entry-level training and for maintaining records that show compliance, currently imposed on motor carriers by subpart E, would be removed. Training on driver qualification requirements, hours of service limitations, driver wellness, and whistleblower protection would be included in proposed appendix B to part 380, which will contain all of the curriculum requirements for expanded entry-level training.

IV. Section-by-Section Explanation of Proposed Changes

A. Subparts A–E of Part 380 and Appendix to Part 380

Several amendments to part 380 would be needed to cover the entry-level driver training in proposed subpart F. First, the current undesignated appendix containing the curriculum requirements for Longer Combination Vehicle (LCV) driver training would be re-designated as Appendix A, along with all references to that appendix. Second, the title of subpart D would be revised to read ''LCV Driver-Training Certification,'' so that there would be no confusion with the requirements in new subpart F for entry-level drivers. Third, the title of subpart E, which contains the current entry-level training requirements, would be revised to read, ''Entry-Level Training Requirements Before [date 3 years after effective date of final rule].'' A new § 380.500 would be added to specify that compliance with current subpart E would not be required once new subpart F becomes effective. These changes would ensure a smooth transition from the current entry-level training rule to the more extensive requirements of subpart F. (See ''III.F. Changes to the Existing Rule,'' above.)

Finally, throughout subpart E the term ''entry-level driver'' would be changed to read ''entry-level trainee,'' to differentiate between the current rule in subpart E and the proposed rule in subpart F. This is necessary because both subparts would be in the Code of Federal Regulations during the proposed 3-year implementation period. In the current rules, an ''entry-level driver'' who has already obtained a CDL must receive training on 4 training topics listed in § 380.503. In this proposed rule, an ''entry-level driver'' would be a person who has not yet received a CDL and who must complete the proposed extensive training requirements in this NPRM. FMCSA proposes to use ''entry-level trainee'' for the drivers subject to current subpart E during the implementation period, to avoid confusion between the drivers subject to the current rules and those subject to the future training requirements.

B. Subpart F of Part 380 and Appendix B to Part 380

Section 380.600, Compliance date for entry-level drivers. The proposed entry-level driver training requirements that would replace those in subpart E would be codified in a new subpart entitled ''Subpart F—Entry-Level Driver Training and Driver-Instructor Requirements On and After [date 3 years after effective date of final rule].'' The title of subpart E and proposed § 380.600 provide a 3 year compliance period for the new training requirements to become effective. (See ''III.E. Implementation Date,'' above.)

Section 380.601, Purpose and scope. Proposed § 380.601 specifies that subpart F establishes training requirements for entry-level drivers, standards for the institutions that provide the training, qualification requirements for CMV driver-instructors, and the curriculum requirements for the training.

Section 380.603, Applicability. Proposed § 380.603 summarizes the applicability of the subpart. This is discussed in ''III.A. Scope and Applicability,'' above.

Section 380.605, Definitions. Proposed § 380.605 contains definitions for various terms used in subpart F. The definition for ''behind-the-wheel training'' specifies that the student must have actual control of the power unit during the training; merely riding along or observing the operation of a CMV would not be considered behind-the-wheel training. The definition of ''entry-level driver'' would refer to persons applying for a CDL, whereas under the current rules in subpart E the term applies to drivers who already have CDLs and are employed by motor carriers. The terms ''classroom instruction,'' ''classroom instructor,'' ''qualified driver-instructor,'' and ''skills instructor'' are all similar to the definitions of those terms in current subpart A. Finally, we would add a definition for the term ''training institution'' which would require that the institution be accredited by an agency recognized by the U.S. Department of Education or by the Council for Higher Education Accreditation. Accreditation is discussed under ''III.C. Who Will Conduct the Training,'' above.

Section 380.607, Requirement to complete entry-level driver training. Proposed § 380.607 would cover the requirements for successfully completing the appropriate training. Paragraph (a) explains which curriculum requirements in Appendix B would apply to students, depending on the class of CDL they intend to obtain. Paragraph (b) contains the specification for the Driver Training Certificate, which the training institution would have to provide to students who successfully complete the appropriate training. Paragraph (c) provides that any applicant for a CDL would have to present the original copy of the Driver Training Certificate to his/her State driver's license agency when applying for a CDL.

Section 380.609, Entry-level driver-instructor requirements. Proposed § 380.609 would set forth the qualification requirements for CMV driver-instructors. Paragraph (a) contains the proposed requirements for classroom instructors and paragraph (b) contains the proposed requirements for skills instructors, i.e., instructors qualified to provide behind-the-wheel instruction. Paragraphs (a) and (b) would require instructors to pass or successfully complete courses they will instruct. However, current instructors would be grandfathered; and there would be a transition period allowing for instructors to meet the requirements of paragraphs (a) and (b) within the first 5 years after the effective date of the final rule. The extended time is necessary because new instructors would be required to successfully complete the course they are teaching, and some of these accredited courses will not be available until after the 3-year implementation period. This period would also allow for the development of a cadre of qualified instructors who could teach future instructors.

Section 380.611, Driver testing. Proposed § 380.611 would codify the requirements for testing students upon completion of their classroom and behind-the-wheel training. This testing should not be confused with the knowledge and skills tests required under part 383 for persons applying for a CDL. The tests under part 383 determine whether the person is qualified for the CDL. The tests under § 380.611 determine whether the person has learned the material taught in the training program. Paragraph (a) would specify the testing methods to be used. Paragraph (b) describes the standard for

determining the proficiency of the student, and paragraph (c) describes the actions that would result in an automatic failure of the test.

Appendix B, Entry-Level Driver Training Curriculum. Appendix B would describe the specific curriculum requirements for entry-level driver training. Parts I and II would contain the minimum program of instruction for Class A and Class B and C CDL applicants, respectively. Each part would contain five sections of training topics, including: basic operation, safe operating practices, advanced operating procedures, vehicle maintenance, and non-driving activities. For each section, the minimum number of hours of classroom training and behind-the-wheel training would be specified. For more discussion, see ''III. B. Curriculum Content,'' above.

C. Part 383, Commercial Driver's License Standards; Requirements and Penalties

Several amendments to part 383 would be necessary to incorporate the requirement for a Driver Training Certificate into the procedures for applying for and issuing a CDL. A new paragraph (a)(10) would be added to § 383.71 to add the Driver Training Certificate to the list of items an applicant must provide when initially applying for a CDL. Section 383.73(a) would be amended to require the States to get the original Driver Training Certificate from the applicant, document the training in the driver's history file in CDLIS, and keep a copy of the training certificate. Paragraph (d) would clarify when a driver with an intrastate-only CDL would be required to obtain training before applying for an upgrade to an unrestricted interstate CDL. If the application for the upgrade is within 3 years of the date the intrastate-only CDL was first issued, the applicant would need to complete the training. If application for the upgrade occurs beyond 3 years of the date of issuance of the intrastate-only CDL, the State could exempt the applicant from training as long as he/she has not had more than one license, had the license suspended, revoked, or cancelled, or had certain motor vehicle convictions during the 3 years before the requested upgrade. An applicant upgrading a CDL from Class B or C to Class A would be required to complete all of the training required for the higher class. The penalties for false information in § 383.73(g) would be amended to add falsification of information on the Driver Training Certificate. In addition, § 383.95 would be amended to add a reference to the procedures for removing the intrastate restriction that is being added to § 383.73(d).

D. Part 384, State Compliance With Commercial Driver's License Program

A new § 384.230 would be added to part 384 to specify that the States must follow the procedures prescribed in § 383.73 for obtaining, recording, and maintaining the Driver Training Certificate.

V. Regulatory Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this proposed rule is a significant regulatory action under the terms of Executive Order 12866, and significant under the Department of Transportation's regulatory policies and procedures because of substantial public, industry and Congressional interest. Furthermore, this proposed rule is in response to the Order by the U.S. Court of Appeals for the District of Columbia Circuit (*Advocates for Highway and Auto Safety* v. *FMCSA,* 429 F.3d 1136, DC Cir. 2005) remanding to FMCSA for further consideration the 2004 final rule concerning entry-level training.

Summarized below is a draft preliminary regulatory analysis of the costs and benefits of this undertaking. A preliminary analysis of the regulatory impact of this proposed rule on small entities is in the docket for this rulemaking.

Summary Cost-Benefit Analysis

The FMCSA already requires 10 hours of training for entry-level drivers. This proposed rule would require 110 additional hours of training for entry-level drivers of heavy trucks seeking a Class A license. It would require 80 additional hours for those seeking either a Class B or C license. Therefore, the total amount of training proposed is 120 hours for Class A and 90 hours for Classes B and C. The program of instruction includes both classroom and behind-the-wheel training. The behind-the-wheel driving component would require at least 44 hours for Class A and 32 hours for Classes B and C.

We estimate the total number of entry-level truck drivers affected by this rule to average 40,200 per year for the next 10 years. (We will round numbers to the nearest hundred or thousand where appropriate.) We estimate the numbers of affected entry-level drivers in the school bus and motor-coach industry segments at 119 and 2,600 per year, respectively, over the next 10 years. (As described below in the Estimated Costs of the Proposed Rule section, the number of school bus drivers in interstate commerce is extremely small.) Therefore, the rule would affect only about 42,900 entry-level drivers annually. The estimated cost of mandatory training is $176.4 million annually and $1.325 billion (discounted at 7 percent) over the 10-year analysis period. Large trucks ultimately account for the vast majority of the total costs of this proposed rule—95 percent. Buses—school and inter-city—account for the other 5 percent.

The proposed standards for mandatory training for entry-level drivers of heavy trucks, school buses, and motor-coaches would promote the safe operation of CMVs nationwide. The total number of crashes potentially avoided through compliance with the rule is difficult to quantify, largely because of the absence of reliable information on the impact of training on the reduction of crashes.

It requires $167.8 million annually to train the 40,200 entry-level large-truck drivers. At costs of $3.6 million per fatal-injury crash (fatal crash) and $195,000 per non-fatal-injury crash (non-fatal crash),[11] a crash-reduction of 19.7 percent for the proposed rule's affected population—that is, entry-level interstate drivers who would not have obtained training were it not for the rule—would result in benefits of $167.8 million (so that the benefits of the rule equal the costs). Our analysis estimates that entry-level interstate drivers who without the rule would not be trained are responsible for 97 of the approximately 4,568 fatal crashes and 2,574 of the 121,473 non-fatal crashes that occur annually.[12]

A 19.7 percent decrease in those crashes amounts to 19.1 and 507.2 fewer fatal and non-fatal crashes, respectively. This reduction in total crashes represents a *less than one-half of one percent* (0.42 percent) reduction from the annual totals.

This 19.7 percent reduction does not have to occur annually for the rule to be cost effective. The number of crashes, 19.1 fatal and 507.2 non-fatal, is in essence the number that has to be reduced by this ''graduating class'' of 40,200 trainees over the length of the effectiveness of the training. If we assume that the effect of training lasts 2 years and that it is half as effective in the second year as the first, then

[11] Zaloshnja, Eduard and Ted Miller, ''Unit Costs of Medium and Heavy Truck Crashes,'' Pacific Institute for Research and Evaluation, December 2006, Tables 2 and 4.

[12] Summarized crash statistics from: *http://ai.volpe.dot.gov/CrashProfile/NationalCrashProfileMain.asp.*

trainees would need to reduce crashes by 12.7 fatal and 338.1 non-fatal (first year) and then 6.4 and 169.1 (second year). In effect, they would only need to reduce by 13.1 percent the first year and 6.5 percent the second.

If we assume that the effect of training lasts 3 years and that it is half as effective in the second year as the first, and half as effective in the third year as the second,[13] then trainees would need to reduce crashes by 10.9 fatal and 290 non-fatal (first year), 5.4 and 145 (second year), and then 2.7 and 72 (third year). In effect, they would only need to reduce crashes by 11.3 percent the first year, 5.6 percent the second, and 2.8 the third.

For school bus drivers who would be affected by this proposed rule, the estimated annual cost to train the 119 entry-level drivers is $346,000, while the costs of fatal and non-fatal bus crashes are (using the large truck figures above) about $3.6 million and $195,000. Therefore, either one fewer fatal crash every 10 years or one fewer non-fatal crash every 2 years would be enough for the benefits of crash reduction to equal the costs.

For intercity bus drivers, given the annual training cost for the 2,591 entry-level drivers of $8.2 million and the costs of fatal and non-fatal crashes of $3.6 million and $195,000, 2.3 fewer fatal crashes or 42.2 fewer non-fatal crashes (or a combination of both) would produce benefits from crash reduction that are equal to the costs.

Estimated Costs of the Proposed Rule

Direct costs associated with this proposed rule include the cost of providing training to entry-level drivers of heavy trucks, school buses, and motor-coaches and some relatively minor record keeping costs. The largest component of direct costs is the training cost. Additionally, we estimated indirect costs to the driver (or the employer), which are the driver's opportunity cost of time (i.e., the driver's hourly wage rate, assuming the driver would be working if he or she did not have to attend training).

The two key factors in estimating the cost are the number of drivers who will need training and the hours of training that will be required. We estimate the number of entry-level drivers requiring training based on several factors, including employment trends, industry demand for transportation, expectations for economic growth, and an assumed increasing presence of trucking in the transportation field.

Number of Entry-Level Drivers of Heavy Trucks

We used data from the Bureau of Labor Statistics (BLS) and FMCSA to estimate the number of drivers who would require entry-level driver training under this proposed rule. In their article, ''A Summary of Occupational Employment Projections to 2014,'' the BLS presented estimates of the current number of truck drivers as well as the number needed in 2014. BLS estimates that there are currently 1.74 million heavy truck drivers and another 1.04 million light or delivery truck drivers.[14] The BLS forecasts that 507,000 new drivers of heavy trucks will be needed by 2014, 224,000 to fill new positions and 283,000 to replace current drivers, so an average of 50,700 new drivers will be needed for each of the next 10 years.

The BLS totals for CDL drivers tend to be lower than estimates established by FMCSA. For 2004, the FMCSA total of 4.20 million drivers [15] was 51 percent higher than the BLS estimate of 2.78 million (the sum of heavy and light truck drivers reported above—1.74 + 1.04). For that reason, we adjusted the annual new-driver total of 50,700 by a factor of 1.51—to 76,600—to reflect what may be an under-representation in the BLS when contrasted with our analysis.

Given the 76,600 driver baseline and assuming that 75 percent of entry-level drivers would operate in interstate commerce,[16] the number of entry-level truck drivers potentially affected each year by this proposed rule is 57,400 (75 percent of 76,600).

Further, if we assume 30 percent of the drivers would have received training regardless of whether this rule was in place or not,[17] then 17,200 of the 57,400 drivers would not be affected by this proposed rule. The cost to train these 17,200 is not a cost of this rule because these drivers would be trained regardless. That leaves 40,200 (70 percent of 57,400) entry-level interstate drivers who would not receive training were it not for this rule.

Number of Entry-Level Operators of School Buses

BLS estimates that the school bus industry employed 463,000 drivers in 2004 and that about 526,000 drivers will be employed in 2014—for an overall growth rate of 13.6 percent over the next 10 years. In addition to the 63,000 new entry-level drivers to meet this growth, there will be an additional 101,000 entry-level drivers needed to replace the current pool of drivers. Therefore, about 21.8 percent of the 2004 pool of drivers will be replaced by 2014. An average of 16,400 new school bus drivers will be needed for each of the 10 years in the BLS forecast period. We increased the BLS estimate by a factor of 1.51 to correspond to our CDL analysis—for an adjusted annual total of 24,800.

A recent FMCSA *final rule* (69 FR 29384, at 29398, May 21, 2004), addressing interstate school bus operations of local educational agencies, revealed that 32 percent of school bus drivers worked for non-governmental entities, mainly as contractors to the local educational agencies. However, not all of these drivers would be expected to receive training that would allow them to operate school buses in interstate commerce, since the number of non-home-to-school interstate trips by local education agencies represents less than 1 percent of all school district trips, according to the same 2004 rule. FMCSA assumed in that rule that a non-governmental employer would train 1.5 times more drivers than would be immediately required, since this provides the employer with short-term flexibility in its operations should the need for interstate school bus trips increase suddenly.

Based on this, the number of entry-level bus drivers who we estimate would be potentially affected by this rule each year is a very small number—119 drivers. This is 1 percent (those who would typically make interstate-based trips) of the 32 percent (those working for non-governmental contractors to local educational agencies) of the projected 24,800 entry-level drivers entering the industry each

[13] Final Regulatory Evaluation, Entry-Level Driver Training, Federal Highway Administration, May 1995, pages 21–22.

[14] BLS definitions do not exactly match the regulatory categories used by the FMCSA. For instance, it is not clear how many of the 1.04 million drivers of light or delivery trucks are required to hold a CDL.

[15] FMCSA, Estimates for the number of CDL and non-CDL Drivers in the National Fleet, Based on May 2005 Motor Carrier Management Information System Data and 2003 Drug & Alcohol Survey; Unpublished, June 15, 2005.

[16] Analysis Division, FMCSA, ''Regulatory Evaluation, Minimum Training Requirements For Entry-Level Commercial Motor Vehicle Operators Final Rule,'' September 2003. p. 5.

[17] *http://www.ptdi.org/schools/schools.htm.* The PTDI *Web site* indicated that there are currently 61 PTDI certified training programs. These 61 certified programs represent roughly 30 percent of the 200 programs estimated to be currently operating in the United States. Assuming a similar distribution for the percentage of drivers being trained by certified or accredited programs versus those attending non-certified or accredited and employer-sponsored training courses, we assumed that 30 percent of entry-level drivers are already being taught the content specified under this rule. This estimate is close to the 31 percent that were estimated to be ''adequately'' trained in the driver survey of the 1995 FHWA Adequacy Study.

year, multiplied by 1.5 to allow the employer greater flexibility in its operations.

Number of Entry-Level Drivers of Motor-Coaches

The BLS estimates that there were 190,000 drivers of transit and intercity buses in 2004. The American Public Transportation Association (APTA) estimates that 143,000 people are employed in vehicle operations in the public transit agencies, but does not provide the number of drivers. The APTA figures may also include operations of private motor-coach companies in the contract transit-commuter markets. The APTA's estimates of people employed in vehicle operations and BLS's estimates on the number of transit and intercity bus drivers provide an estimate of about 42,000 drivers employed in intercity buses. This is probably the lower range for drivers in the intercity market because it assumes about 1.2 drivers per motor-coach.[18]

There are currently about 34,800 motor-coaches operated by about 3,600 private motor-coach operators in the United States. There are no firm numbers on the proportion of motor-coaches used in the regularly scheduled services, contract commuters, charter, tours, and sightseeing markets. Assuming 2.5 drivers per motor-coach for about 6,000 motor-coaches operating in the regular route scheduled services and 1.5 drivers per motor-coach for the rest of the industry, the number of drivers operating motor-coaches is estimated as 58,200 in 2004.

Assuming that the intercity bus industry will grow at an average 1.28 percent per year for the next 10 years (and hence achieve the same overall growth rate of the school bus industry between 2004 and 2014), there will be 66,000 intercity bus drivers in 2014. In addition to the 7,900 entry-level drivers required to meet the industry's growth, another 9,200 entry-level drivers will be needed for replacement.[19] Therefore, we estimate the total number of entry-level drivers needed due to growth and replacement at 17,150 over the next 10 years or 1,715 per year. Since the motor-coach industry's growth rate has lagged behind its school bus counterpart, this estimate probably provides an upper limit of the number of entry level drivers needed in the motor-coach industry by 2014. Applying the adjustment-factor of 1.51 (described above) increases the total from 1,715 to 2,600 drivers.

Hours of Training

This NPRM proposes that Class A drivers obtain an additional 110 hours of training while Class B and C drivers would need 80 additional hours. Of the 75 percent of entry-level heavy-truck drivers we estimate would be affected by this rule (57,400), we assume that 30 percent (or 17,200) are already being taught the content specified under this rule.

We assume the remaining 70 percent (or 40,200 entry-level drivers) receive training via a non-accredited training program or from their employer. They would be required to undertake an additional 110 or 80 hours (depending on class) of training.

Using data on CDLs issued by the States in 2000, we estimate that 64.5 percent were Class A and 35.5 percent Classes B and C. Applying these percentages to the 40,200 population, the split is 25,900 Class A, and 14,300 Class B and C. Given this class partition, 4 million additional hours of training to entry-level interstate large-truck drivers would be necessary to comply with the rule.

This rule would apply to those entry-level school bus drivers employed by non-governmental entities who are subject to the same requirements as Class B truck and motor-coach drivers. Since each school bus driver needs a Class B license, we assume this rule would result in 80 hours of additional training for each entry-level driver subject to its requirements. Therefore, we estimate that each year 119 entry-level school bus drivers would need an additional 80 hours of training for a total of 9,500 hours of training annually.

The FMCSA does not have information on the proportion of entry-level motor coach drivers who now receive training, nor is the Agency aware of any accredited training schools specifically for motor-coach drivers. Therefore, we estimate that all entry-level drivers of motor-coaches affected by this proposed rule (2,591) are going to obtain 80 hours of additional training. The total number of training hours necessary annually for motor coach drivers because of this rule would be 207,000.

In total, for large trucks, school buses, and motor-coaches combined, an additional 4,211,000 hours of training would be necessary to meet the requirements of the proposed rule. Ninety-five percent of these additional hours would involve large trucks, while buses account for the other five percent.

Hourly Cost of Training

The principal components of costs of entry-level drivers' training are the cost of providing the training and the opportunity cost of the drivers' time. The cost of providing training is straightforward: It consists of the costs of hiring an instructor, producing training materials, equipment used for instruction, fuel, wear and tear on vehicles, etc. The concept of opportunity cost is somewhat less familiar, but is simply the value of the best alternative that must be foregone when an action is taken. In this case, the opportunity cost of training is the foregone value of the work that the driver would otherwise be performing. The standard value of this cost component is the driver's wage.

FMCSA interviewed the staff members of a number of training schools and associations regarding the costs of training. While the price of training varies considerably, most private training school respondents replied that a cost of $4,000 for a 4-week course was typical. Many schools also offer longer courses that are more expensive. To be conservative, we use a figure of $25 per hour of training in this analysis (calculated as $4,000 divided by 4 weeks divided by 40 hours per week). This translates into $1,000 of direct training cost for each 40-hours of training.

This is a reasonable estimate of the total hourly cost to train drivers, whether the training is taught by the employer or a third party. Employer-based training would most likely be less expensive than $25 per hour, assuming new physical space would not have to be leased to conduct the training. To be conservative, we use the same figure whether the training is employer- or third-party-based. Using this approach ensures that we do not underestimate the costs of employer-based training programs.

We base our estimates on the BLS's May 2005, National Occupational Employment and Wage Survey. Since entry-level drivers generally earn at the low range of the industry wage standards, we use the BLS estimate of the 25th percentile wage for all of our entry-level drivers. We add 31 percent to cover the cost of fringe benefits. For truck drivers (heavy truck and tractor trailer), the hourly wage plus the fringe benefit is estimated at $17.00. For school bus drivers, the hourly wage plus the fringe benefit is estimated at $11.40. The wage plus the fringe benefit for

[18] According to Greyhound's annual 10K statement to Securities and Exchange Commission, driver to motor-coach ratio is about 1.65 for their fleet in 2001.

[19] The replacement component for transit and inter-city bus drivers combined is 42,000. Inter-city bus drivers are 22 percent of the total of transit and intercity bus drivers combined. So the calculation of inter-city bus driver replacement component is 22 percent of 42,000, or 9,200.

transit and intercity bus drivers is estimated at $14.75.

The total cost of training is the opportunity cost of an hour of the driver's time (hourly compensation) plus the $25 per hour of actual training costs. The unit cost of training is estimated at $42.00 an hour for truck drivers ($17.00 of foregone driver wages plus $25 in actual training costs), $36.40 per hour for school bus drivers ($11.40 of foregone driver wages plus $25 in actual training costs), and $39.75 per hour for the motor-coach industry ($14.75 of foregone driver wages plus $25 in actual training costs).

Total Costs

Given the estimates of required training hours and wage rates discussed above, the total cost to train entry-level drivers subject to this proposed rule would be $176.4 million per year, with the large truck component comprising about 95 percent ($167.8 million) of the total.

TABLE 2.—ANNUAL EXPENSE CALCULATIONS

	Heavy truck	School bus	Intercity bus	Total
Total Training Hours	3,994,602	9,514	207,285	4,211,402
Hourly Cost of Training	$42.00	$36.40	$39.75	
Total Costs	$167,788,481	$346,294	$8,239,710	$176,374,486

Using the 7 percent discount rate recommended by the Office of Management and Budget, the present value of training costs of the proposed rule is calculated as $1.325 billion over 10 years ($1.261 billion, $2.6 million, and $61.9 million). The table below catalogues the total costs for each year and category of vehicle:

TABLE 3.—TOTAL COSTS OF FINAL RULE OVER A TEN-YEAR PERIOD

Year	Heavy truck $167,788,481	School bus $346,294	Intercity bus $8,239,710
1	$167,788,481	$346,294	$8,239,710
2	156,811,665	323,639	7,700,664
3	146,552,958	302,467	7,196,882
4	136,965,381	282,679	6,726,058
5	128,005,029	264,186	6,286,035
6	119,630,868	246,903	5,874,799
7	111,804,550	230,750	5,490,467
8	104,490,234	215,655	5,131,277
9	97,654,424	201,546	4,795,586
10	91,265,817	188,361	4,481,856
Total	1,260,969,407	2,602,481	61,923,334

Estimated Benefits of the Proposed Rule

The estimated cost of a large-truck fatal crash is $3,605,000, and that of a non-fatal crash, $195,000. The number of fatal crashes averaged 4,568 annually over the 5-year period from 2001 to 2005. The average for non-fatal crashes was 121,473.

We attribute 97 of the 4,568 fatal crashes annually to entry-level interstate truck drivers who would not be trained were it not for the rule. At most, 97 fatal crashes could potentially be reduced by enactment of the rule if training was 100% effective in reducing crashes. Similarly, 2,574 of the 121,473 non-fatal crashes are attributed to entry-level interstate drivers who would not be trained were it not for the rule.

We derive the figure of 97 in the following way. We estimate entry-level drivers to be 2.9 percent of the total number of drivers, based on the BLS estimates of the number of annual openings per year (50,700) and the total number of drivers (1,738,000). Proportionally, we attribute 2.9 percent of average annual fatal crashes—or 133 of the 4,568—to entry-level drivers. However, since we are only concerned with interstate entry-level drivers, we attribute 75 percent of the 133—or 100 fatal crashes even—to drivers affected by the proposed rule. Further, since 30 percent of entry-level drivers (interstate or otherwise) would be trained regardless of the rule, only 70 percent of 100—or 70 fatal crashes—are attributed to the group that the proposed rule can actually affect.

Seventy drivers are 70 percent (not otherwise trained) of the 75 percent (interstate) of the 2.9 percent (entry-level) of drivers. Entry-level drivers are more likely to be involved in crashes than more experienced drivers. Assigning crashes to this group in exact proportion to their number undercounts the number of crashes attributable to the group. If we assume entry-level drivers are 1.4 times more likely to crash than other drivers,[20] then 70 is adjusted up by a factor of 1.4 to 97. Ninety-seven of the 4,568 fatal crashes are attributed to entry-level interstate truck drivers who would not be trained were it not for the rule. Similarly, 2,574 of the 121,473 non-fatal crashes are attributed to the group.

In order for the benefits of crash reduction to equal the costs of the rule, crashes by must be reduced by 19.7 percent. That is, 19.1 fewer fatal crashes and 507.2 fewer non-fatal crashes result in crash-reduction benefits of $167.8 million. Note that 19.1 fatal crashes and 507.3 non-fatal crashes are *less than one-half of one percent* of the total crashes that occur annually.

This 19.7 percent reduction does not have to occur annually. The 19.1 and 507.2 reductions are in essence the

[20] Federal Highway Administration, ''Final Regulatory Evaluation, Entry-Level Driver Training,'' May 1995. p. D–1. Cites ''This relationship was given in a GAO report * * * (Promising Approach for Predicting Carriers' Safety, April 1991).''

number of crashes that would have to be reduced by this ''graduating class'' of (40,200) trainees over the length of the effectiveness of the training. The trainees could reduce by, for example, 12 and 360 the first year, and 7.1 and 147.2 in the second year (if, in fact, benefits to training were sustained for 2 years).

If we assume that the effect of training lasts 2 years and that it is half as effective in the second year as the first, then trainees would need to reduce by 12.7 and 338.1 (first year) and then 6.4 and 169.1 (second year). In essence, they would only need to reduce crashes by 13.1 percent the first year and 6.5 percent the second.

If we assume that the effect of training lasts 3 years and that it is half as effective in the second year as the first, and half as effective in the third year as the second, then trainees would need to reduce by 10.9 and 290 (first year), then 5.4 and 145 (second year), and then 2.7 and 72 (third year). Entry level drivers would only need to reduce crashes by 11.3 percent the first year, 5.6 percent the second, and 2.8 the third.

For school buses, the estimated annual cost to train the 119 entry-level drivers is $346,000. The cost of a fatal crash is $3,604,000 and of a non-fatal crash $195,000. Therefore, either one fewer fatal crash every 10 years or one fewer non-fatal crash every 2 years would be enough for the benefits of crash reduction to equal the costs.

Given the annual training cost for the 2,591 entry-level intercity bus drivers of $8.2 million and the costs of fatal and non-fatal crashes of $3,604,000 and $195,000, 2.3 fewer fatal crashes or 42.2 fewer non-fatal crashes (or some combination of the two) would produce benefits from crash reduction that are equal to the costs.

Further Discussion of the Proposed Rule

This proposed rule touches on several additional issues related to the analysis of costs and benefits and the entities affected. These topics include the supply of labor (i.e., drivers), the effectiveness of training, and the benefits of reduced personnel turnover due to training. For a discussion of these topics, please refer to the FMCSA document ''Regulatory Evaluation, Regulatory Flexibility Analysis, and Regulatory Accountability and Reform Analysis,'' February, 2007, contained in the docket identified at the beginning of this notice.

B. Regulatory Flexibility Act

Introduction

The Regulatory Flexibility Act of 1980 requires Federal agencies to ''* * * endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' Accordingly, DOT policy requires an analysis of the impact of all regulations and proposed rules on small entities. The DOT mandates that agencies shall strive to lessen any adverse effects on these businesses. This Initial Regulatory Flexibility Analysis covers the following topics:

(1) The reason the Agency is considering this action.

(2) A statement of the objectives of and legal basis for this proposed rule.

(3) A description of the small entities to which the proposed rule will apply, including an estimate of their number.

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

Reason the Action Is Being Considered

This document analyzes the costs and benefits of this NPRM, as required under Executive Order 12866 and U.S. Department of Transportation (DOT) Order 2100.5. The NPRM proposes to revise the standards for mandatory training for entry-level drivers of interstate CMVs. Individuals applying for new or upgraded CDLs would be required to successfully complete driver training that includes both classroom and behind-the-wheel hours. State driver-licensing agencies would only issue a CDL to a trained applicant. The proposed actions would reduce crashes by providing entry-level drivers with safety training and experience.

Objective and Legal Basis for This Action

A study required by Section 4007 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) found that the training of entry-level drivers in the heavy truck, motor-coach, and school bus industries was not adequate. Therefore, the objective of this NPRM is to enhance the safety of CMV operations on our Nation's highways.[21]

Number of Small Entities to Which the Action Will Apply

This rulemaking would not directly affect small entities. The rule would primarily impact only the potential truck and bus drivers who are required to complete training prior to obtaining a CDL. Motor carriers are not required to take any action under the proposed rule, and, in fact, are relieved from burdens such as providing at least 10 hours of training for each entry-level driver and maintaining records of that training.

Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This proposed rule does not place any reporting, recordkeeping, or other compliance requirements on small entities; i.e., motor carriers.

Duplicative, Overlapping, or Conflicting Federal Rules

The FMCSA is not aware of any other rules which duplicate, overlap, or conflict with the proposed action.

Summary

The FMCSA has considered the effects of this proposed regulatory action on small entities and determined that this proposed rule would not have a significant impact on a substantial number of small entities, as defined by the U.S. Small Business Administration's Office of Size Standards. This proposed rule would affect only potential truck drivers who are required to obtain training. Accordingly, FMCSA has considered the economic impacts of the requirements on small entities and determines preliminarily that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

As defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), FMCSA has determined that this proposed rule does not contain an unfunded Federal mandate resulting in the expenditures of $120.7 million or more (adjusted for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507(d)), Federal agencies must obtain approval

[21] An ancillary benefit to training may come in the form of fuel savings. According to an OECD report, ''successful fuel economy driver training programmes have led directly to improved economy and increased safety.'' Organisation for Economic Co-Operation and Development, ''Training Truck Drivers,'' Road Transport Research, 1996.

from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined this proposed rule would require revisions to an existing information collection requirement subject to approval by OMB. The currently approved information collection affected by this NPRM is titled ''Training Certification for Entry-Level Commercial Motor Vehicle Operators,'' OMB Control Number 2126–0028, approved at 10,808 burden hours through September 30, 2007. However, this continues in effect until approval of a pending revision that is currently being review by OMB.

The implementation of this rule would take place over a period of 3 years immediately following its effective date. The program for the training and certification of entry-level drivers would not be operational before the end of this 3-year phase-in period. Thus, for the first 3 years, the paperwork burden of this rule would be minor. The start-up activities of training institutions and States would be the primary activities. Training institutions would incur a burden as they revise their training processes, and State driver-licensing agencies (SDLAs) would incur a burden as they modify their systems to record information to be collected under this proposed rule.

The sole document required by this rule would be the Driver Training Certificate (DTC). Under the proposed rule, an individual would be required to present the DTC to the SDLA in order to obtain a CDL. Existing training institutions may need to amend their ''diploma'' so that it contains all the information required for a DTC. The DTC must contain the information specified by the rule. SDLAs would also experience a burden as they absorb the mandates of this rule into their current CDL licensing systems and processes. For example, State systems would have to add the capacity to retain a copy of the Driver Training Certificate.

We anticipate that this rule, following 3 years of implementation, would impose additional information collection burdens on driver training institutions and SDLAs. The FMCSA will publish a notice within 3 years after the effective date of this proposed rule. This notice will contain an estimate of the burden for the following 3 years, and will seek public comment on it.

Need for and use of the information to be collected: The information collected under the requirements of this proposed rule would enable FMCSA to (1) Improve the safe driving of entry-level CDL drivers, (2) improve the ability of motor carriers to hire safe operators of CMVs, and (3) enable future research on the impact of driver training on CMV crash reduction.

Respondents: The annual number of drivers providing training certificates under the current rule, which would remain in effect during the 3-year implementation period, is 45,611. The number of training institutions (public and private) that would provide training under the terms of this proposed rule is uncertain, but FMCSA estimates it to be between 200 and 500. The number of State licensing agencies is 51. The total for these three groups of potential respondents will vary from 45,862 to 46,162 during the initial 3-year implementation period.

Frequency: Information would not be collected with any specific frequency during the 3-year life of the information collection. The initial burdens on training institutions and SDLAs will be limited to startup activities.

Annual Burden Estimate: This proposal would result in an annual recordkeeping and reporting burden estimated to be 137,192 hours, calculated as follows:

Entry-level CDL drivers under the currently approved information collection incur a burden of 10,808 hours, and this burden would remain in effect until OMB approval of a pending revision of the information collection. During the 3-year phase-in period, the CDL-training institutions would incur an estimated burden of 125,000 hours to revise their processes to conform to the requirements of this rule. During the same period, State driver-licensing agencies would incur a burden of 4,590 hours to modify their systems. The total proposed annual burden is 137,192 hours (7,602 + 125,000 + 4,590).

Following the 3-year implementation period, calculation of the PRA burden would be revised because the rule would be fully operational.

FMCSA has submitted this NPRM and a supporting statement to OMB, estimating the paperwork burdens of this proposal. The Agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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,

(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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. You may submit comments on the PRA aspects of this proposed rule directly to OMB. The deadline for such submissions is February 25, 2008. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

E. National Environmental Policy Act (NEPA)

FMCSA analyzed this proposed rule for the purpose of the NEPA of 1969 (42 U.S.C. 4321 *et seq.*) and conducted an assessment under the procedures in FMCSA Order 5610.1, published March 1, 2004 in the **Federal Register** (69 FR 9680). Accordingly, under Appendix 2, paragraph 6(s) of FMCSA Order 5610.1, this action is categorically excluded (CE) from further environmental documentation. This CE relates to establishing regulations and actions taken pursuant to these regulations concerning the requirements for a driver to have a commercial motor vehicle driver's license. In addition, the Agency believes that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement. We have also analyzed the proposal under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. It would not result in any emissions increase nor would it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule would not increase total CMV mileage, change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers. This action merely establishes training requirements for drivers seeking to hold a commercial driver's license.

F. Privacy Impact Assessment

Section 522 of the FY 2005 Omnibus Appropriations Act, enacted December 8, 2004, (Note to 5 U.S.C. 552a) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rulemaking would require new drivers pursuing a Commercial Drivers License (CDL) to obtain training that

follows a prescribed curriculum and is provided by an accredited training provider. The driver would then be responsible for providing a copy of a certificate that reflects successful completion of the training to the State Driver Licensing Agency (SDLA), upon application for a CDL. The SDLA would document receipt of this certificate on the driver's record in the Commercial Driver License Information System (CDLIS) and on the Motor Vehicle Record (MVR). The information would be made available to authorized personnel via CDLIS electronic inquiries and on the MVR obtained by employers and drivers. The information will be held to the same level of security as CDLIS.

Because the training institution would create the training certificate, and the States would examine and maintain the certificate and other records associated with the individual's CDL, FMCSA has determined this proposed rule would not result in a new or revised Privacy Act System of Records for FMCSA.

G. Federalism

FMCSA has analyzed this proposed rule in accordance with the principles and criteria of Executive Order 13132, ''Federalism,'' and has determined that it does not have federalism implications.

The Federalism Order applies to ''policies that have federalism implications,'' which it defines as regulations and other actions 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.'' Sec. 1(a). The key concept here is ''substantial direct effects on the States.'' Sec. 3(b) of the Federalism Order provides that ''[n]ational action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.''

This proposed rule would not preempt any State or local law or regulation. It would establish training standards applicable to entry-level commercial motor vehicle drivers. As part of the commercial driver's license (CDL) program, State driver licensing agencies (SDLAs) would have to require entry-level CDL applicants to present a copy of a certificate from a training institution accredited by an agency approved by the U.S. Department of Education or the Council for Higher Education Accreditation. SDLAs would be required to reject the CDL application of an entry-level driver who was unable to present evidence of having received the training required by this NPRM.

The FMCSA's CDL program does not have preemptive effect. It is a voluntary program; States may withdraw at any time, although doing so would result in the loss of certain Federal-aid highway funds pursuant to 49 U.S.C. 31314. FMCSA recognizes that, as a practical matter, this rule would have an impact on State CDL programs. Accordingly, the Agency advised the National Governors' Association (NGA) of these proposed regulatory changes by letter dated January 12, 2007, and offered NGA officials an opportunity to meet and discuss issues of concern to the States. State and local governments will also be able to raise Federalism issues during the comment period for this NPRM.

The CDL program was authorized by the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. chapter 313). States have been issuing CDLs in accordance with Federal standards for well over a decade. Because this rule would make only small, incremental changes to the requirements already imposed on participating States, FMCSA has determined that it would not have substantial direct effects on the States, on the relationship between the Federal and State governments, or on the distribution of power and responsibilities among the various levels of government.

H. Civil Justice Reform

This proposed action would meet 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.

I. Protection of Children

FMCSA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We have determined preliminarily that this rulemaking would not concern an environmental risk to health or safety that may disproportionately affect children.

J. Taking of Private Property

This proposed rulemaking would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

K. Energy Effects

We have analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. We have determined preliminarily that it would not be a ''significant energy action'' under that Executive Order because it would not be economically significant and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 380

Driver training, Instructor requirements.

49 CFR Part 383

Administrative practice and procedure, Highway safety, and Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Highway safety, and Motor carriers.

In consideration of the foregoing, FMCSA proposes to amend parts 380, 383, and 384 of title 49, Code of Federal Regulations (49 CFR parts 380, 383, and 384) as follows:

PART 380—SPECIAL TRAINING REQUIREMENTS

1. The authority citation for part 380 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31307, and 31502; sec. 4007(a) and (b) of Pub. L. 102–240 (105 Stat. 2151–2152); and 49 CFR 1.73.

§§ 380.107, 380.109, 380.201, 380.203, and 380.205 [Amended]

2. Amend §§ 380.107(a), 380.109(a)(1), (5), (6), and (7), 380.201(a) introductory text and (b), 380.203(b), and 380.205(b) by removing the words ''the appendix to this part'' and adding the words ''appendix A of this part'' in their place.

Subpart D—LCV Driver-Training Certification

3. Revise the heading of subpart D to read as set forth above.

Subpart E—Entry-Level Training Requirements Before [date 3 years after effective date of final rule]

4. Revise the heading of subpart E to read as set forth above.

5. Add § 380.500 to read as follows:

§ 380.500 Compliance date for training requirements for entry-level trainees.

Compliance with the provisions of this subpart is not required on and after

[date 3 years after effective date of final rule].

6. Amend § 380.502 by revising paragraph (b) to read as follows:

§ 380.502 Definitions.

* * * * *

(b) As used in this subpart:

Entry-level trainee is a driver with less than one year of experience operating a CMV with a CDL in interstate commerce.

Entry-level training is training the CDL driver receives in driver qualification requirements, hours of service of drivers, driver wellness, and whistle blower protection as appropriate to the entry-level trainee's current position in addition to passing the CDL test.

7. Amend § 380.503 by revising the section heading and introductory text to read as follows:

§ 380.503 Entry-level training requirements.

Entry-level training must include instruction addressing the following four areas:

* * * * *

8. Amend § 380.501 by removing the words ''entry-level drivers'' and adding the words ''entry-level trainees'' in their place.

9. Amend §§ 380.505, 380.507, 380.509(a), and 380.513 introductory text by removing the words removing the words ''entry-level driver'' each time they appear, and adding the words ''entry-level trainee'' in their place.

10. Amend § 380.513(e) by removing the words ''entry-level driver training'' and adding the words ''entry-level training'' in their place.

11. Add a new subpart F to read as follows:

Subpart F—Entry-Level Driver Training and Driver-Instructor Requirements On and After [Date 3 Years After Effective Date of Final Rule]

380.600 Compliance date for training requirements for entry-level drivers.
380.601 Purpose and scope.
380.603 Applicability.
380.605 Definitions.
380.607 Requirement to complete entry-level driver training.
380.609 Entry-level driver-instructor requirements.
380.611 Driver testing.

Subpart F—Entry-Level Driver-Training and Driver-Instructor Requirements On and After [Date 3 Years After Effective Date of Final Rule]

§ 380.600 Compliance date for training requirements for entry-level drivers.

Compliance with the provisions of this subpart is required on and after [date 3 years after effective date of final rule].

§ 380.601 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to establish a minimum training program for entry-level drivers, as defined in § 380.605.

(b) *Scope.* This subpart establishes:

(1) Minimum training requirements for entry-level drivers who intend to operate commercial motor vehicles (CMVs) in interstate commerce;

(2) Minimum standards for training institutions that offer entry-level driver training that meets the requirements of this subpart;

(3) Minimum qualification requirements for CMV driver-instructors; and

(4) A CMV driver-training program that includes both the training topics set forth in appendix B to this part and behind-the-wheel instruction that is designed to provide an opportunity to develop the skills outlined under the Proficiency Development units of the training program.

§ 380.603 Applicability.

(a) The rules in this subpart apply to all entry-level drivers who intend to drive in interstate commerce and are subject to the commercial driver's license (CDL) requirements of part 383 of this subchapter, except drivers applying for a restricted CDL under § 383.3(e) through (g) of this subchapter.

(b) A driver who holds a valid CDL issued before [date 3 years after effective date of final rule] is not required to comply with this subpart except as otherwise specifically provided.

(c) A driver whose CDL has been revoked by the State of issuance for highway safety-related reasons, or whose CDL expired more than 4 years prior to the date of reapplication for a CDL, must comply with the requirements of this subpart when reapplying for a CDL.

§ 380.605 Definitions.

(a) The definitions in part 383 of this subchapter apply to this subpart, except where otherwise specifically stated.

(b) As used in this subpart:

Behind-the-wheel (BTW) training means training provided by a qualified driver-instructor when the student has actual control of the power unit during a driving lesson conducted on public or private property. BTW training does not include time spent riding in a CMV or observing operation of a CMV when the student is not in control of the vehicle.

Classroom instruction means training provided by a qualified driver-instructor through lectures, demonstrations, audio-visual presentations, computer-based instruction, driving simulation devices, or similar means. Instruction occurring outside a classroom is included if it does not involve actual operation of a CMV and its components by the student.

Classroom instructor means a qualified driver-instructor who provides knowledge instruction that does not involve the actual operation of a CMV or its components.

Entry-level driver means a person who applies for a CDL that would allow him/her to operate a CMV in interstate commerce.

Qualified driver-instructor means an instructor meeting the requirements contained in § 380.609. There are two types of qualified driver-instructors:

(1) Classroom instructors, and

(2) Skills instructors.

Skills instructor means a qualified driver-instructor who provides behind-the-wheel instruction involving the actual operation of a CMV or its components.

Training institution means any school, including a school operated by a motor carrier, that is accredited by an agency recognized by the U.S. Department of Education (ED) or by the Council for Higher Education Accreditation (CHEA), and any school providing a program of truck-driver training specifically accredited by an agency recognized by ED or CHEA.

§ 380.607 Requirement to complete entry-level driver training.

(a) A person who wishes to obtain a commercial driver's license (CDL) that would allow him/her to operate a commercial motor vehicle (CMV) in interstate commerce must first take and successfully complete a driver-training program that meets the requirements of this subpart and that is provided by a training institution, as defined in § 380.605. The specific types of knowledge and skills instruction that a training program must include are outlined in appendix B to this part. A person who intends to operate a CMV for which a Class A CDL is required must complete the training outlined in Part I of appendix B to this part, and a driver who intends to operate a CMV for which a Class B or C CDL is required must complete the training outlined in Part II of appendix B to this part.

(b) A training institution must provide a Driver Training Certificate to the driver-student who successfully completes entry-level driver training. The certificate must contain the following items of information:

(1) Date of issuance of the certificate.

(2) Name of training institution.

(3) Mailing address of training institution.

(4) Name of agency that accredited the training institution.

(5) Name of driver.

(6) A statement that the driver completed training under Part I of appendix B to this part, for Class A training, or under Part II of Appendix B to this part, for Class B and C training.

(7) A statement that the driver has successfully completed training as required by this subpart, substantially in accordance with the following sentence:

''I certify that [name of driver] has successfully completed the training requirements set forth in the Federal Motor Carrier Safety Regulations for entry-level drivers in accordance with 49 CFR part 380, subpart F. I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature) (printed name of the certifying official).''

(c) An applicant for a CDL who expects to operate in interstate commerce must present the original Driver Training Certificate to his/her State driver's license agency as part of the CDL application process.

§ 380.609 Entry-level driver-instructor requirements.

There are two types of CMV driver-instructors, classroom instructors and skills instructors. To be a qualified driver-instructor, a person must meet the conditions under paragraph (a) or (b) of this section.

(a) *Classroom instructor.* To qualify as a CMV classroom instructor, a person must:

(1) Have audited or instructed that portion of the driver-training course described in Appendix B to this part that he/she intends to instruct, or, until [date 5 years after the effective date of the final rule], an equivalent program;

(2) Be employed by a training institution; and

(3) Meet all State requirements for a vocational instructor.

(b) *Skills instructor.* To qualify as a CMV skills instructor, a person must:

(1) Have instructed or successfully completed that portion of the driver-training program described in Appendix B to this part that he/she intends to instruct, or, until [date 5 years after the effective date of the final rule], an equivalent program. The driver-training program he/she has completed or instructed must be for the operation of CMVs representative of the class and type of CMV for which training is to be provided;

(2) Be employed by a training institution;

(3) Meet all State requirements for a vocational instructor;

(4) Possess a valid CDL of the appropriate (or higher) class and with all endorsements necessary to operate the CMVs for which training is to be provided; and

(5) Have at least 2 years CMV driving experience in a vehicle representative of the class and type of CMV for which training is to be provided.

§ 380.611 Driver testing.

(a) *Testing methods.* To successfully complete the CMV driver training program set forth in this subpart, an entry-level driver-student must pass knowledge and skills tests in accordance with the following requirements. Any qualified driver-instructor may administer the written knowledge test. The skills tests, based on actual operation of a CMV, must be administered by a qualified CMV skills instructor.

(1) All tests must be constructed to determine if the driver-student possesses the required knowledge and skills set forth in appendix B of this part.

(2) Instructors may develop their own tests for the specific type of CMV training program being taught, but those tests must be at least as stringent as the requirements set forth in paragraph (b) of this section.

(3) Qualified driver-instructors must establish specific methods for scoring the knowledge and skills tests.

(4) Passing scores must meet the requirements of paragraph (b) of this section.

(5) Each knowledge test must address the training provided during both classroom and behind-the-wheel instruction, and include at least one question from each of the units listed in the relevant part of appendix B of this part.

(6) Each skills test must include all the maneuvers and operations practiced during the proficiency development units of instruction described in the relevant part of appendix B of this part.

(b) *Proficiency determinations.* The driver-student must meet the following conditions to be certified as having successfully completed training under this subpart:

(1) Answer correctly at least 80 percent of the questions on each knowledge test; and

(2) Demonstrate that he/she can successfully perform all of the skills addressed in paragraph (a)(6) of this section.

(c) *Automatic test failure.* Failure to obey traffic laws or involvement in a preventable crash during the skills portion of the test will result in automatic failure. Automatic test failure determinations are made at the sole discretion of the qualified CMV driver-instructor.

Appendix to Part 380 [Amended]

12. The appendix to part 380 is redesignated as appendix A to part 380.

13. Add appendix B to part 380 to read as follows:

Appendix B to Part 380—Entry-Level Driver Training Curriculum

Part I. Entry-Level Driver Training; Required Minimum Program of Instruction for Class A CDL Applicants

Section 1—Basic Operation
- Unit 1.1—Orientation
- Unit 1.2—Control systems
- Unit 1.3—Vehicle inspection
- Unit 1.4—Basic control
- Unit 1.5—Shifting
- Unit 1.6—Backing
- Unit 1.7—Coupling and uncoupling
- Unit 1.8—Proficiency development

Section 2 —Safe Operating Practices
- Unit 2.1—Visual search
- Unit 2.2—Communication
- Unit 2.3—Speed management
- Unit 2.4—Space management
- Unit 2.5—Night operations
- Unit 2.6—Extreme driving conditions
- Unit 2.7—Proficiency development

Section 3—Advanced Operating Procedures
- Unit 3.1—Hazard perception
- Unit 3.2—Emergency maneuvers
- Unit 3.3—Skid control and recovery
- Unit 3.4—Special situations

Section 4—Vehicle Maintenance
- Unit 4.1—Vehicle systems
- Unit 4.2—Preventative maintenance and servicing
- Unit 4.3—Diagnosing malfunctions

Section 5—Non—Driving Activities
- Unit 5.1—Handling cargo
- Unit 5.2—Hours of service requirements
- Unit 5.3—Crash procedures
- Unit 5.4—Trip planning
- Unit 5.5—Miscellaneous topics

For Class A applicants, the mandatory minimum hours of behind-the-wheel training must be conducted in a traditional tractor-trailer or truck-trailer combination vehicle for which a Class A CDL would be required.

In this appendix, the term ''tractor trailer'' includes a truck-trailer combination vehicle for which a Class A CDL would be required.

Section 1—Basic Operation

[MINIMUM HOURS—Classroom—20; BTW—24; Total Hours—44]

The units in this section must cover the interaction between the driver and the CMV. The student will receive instruction in the Federal Motor Carrier Safety Regulations (FMCSRs) and will be introduced to the basic CMV instruments and controls. The student will also receive basic instruction in the Hazardous Materials regulations issued by

the Pipeline and Hazardous Materials Safety Administration (PHMSA). The units in this section must also teach entry-level CDL driver-trainees how to properly perform vehicle inspections, control the motion of CMVs under various road and traffic conditions, shifting and backing techniques, and how to properly couple and uncouple tractor-trailers.

During the off-street driving exercises required by this section, entry-level CDL driver-trainees must first familiarize themselves with the basic operating characteristics of a CMV. Then, students must be able to perform the skills in each unit to a level of proficiency required to permit safe transition to on-street driving.

Unit 1.1—Orientation. This unit must introduce students to the tractor-trailer driver-training curriculum and the components of a tractor-trailer. The student will learn the safety fundamentals, essential regulatory requirements (i.e., overview of FMCSRs/HM regulations), and driver responsibilities not directly related to driving. This unit must also include an overview of the applicability of State and local laws relating to the safe operation of the CMV.

Unit 1.2—Control systems. This unit must introduce students to vehicle instruments and controls. The student will learn to read gauges and instruments correctly and learn proper use of vehicle safety components, including safety belts and mirrors. The student will also learn to identify, locate, and explain the function of each of the primary and secondary controls including those required for steering, accelerating, shifting, braking, and parking.

Unit 1.3—Vehicle inspection. This unit must stress to students the importance of vehicle inspections and help them develop the skills necessary for conducting pre-trip, en-route, and post-trip inspections.

Unit 1.4—Basic control. This unit must introduce basic vehicular control and handling as it applies to tractor-trailers. This must include instruction addressing basic tractor-trailer controls in areas such as executing sharp left and right turns, centering the vehicle, and maneuvering in restricted areas.

Unit 1.5—Shifting. This unit must introduce shifting patterns and procedures to the students so that they can proficiently perform basic shifting maneuvers. This must include training each student to execute up and down shifting techniques on multi—speed dual range transmissions.

Unit 1.6—Backing. This unit must prepare students to back-up the tractor-trailer safely.

Unit 1.7—Coupling and uncoupling. This unit must provide instruction for the student to develop the skills necessary to conduct the procedures for safe coupling and uncoupling of tractor-trailer units.

Unit 1.8—Proficiency development. The purpose of this unit is to enable entry-level CDL driver-trainees to gain proficiency and demonstrate the skills taught in Units 1.1 through 1.7. The activities of this unit must consist of driving exercises that provide practice for the development of basic control skills and mastery of basic maneuvers. Nearly all activity in this unit will take place on the driving range or on streets or roads that have low-density traffic conditions.

Section 2—Safe Operating Practices

[MINIMUM HOURS—Classroom—8; BTW—17; Total Hours—25]

The units in this section teach the practices required for safe operation of the tractor-trailer on the highway. Entry-level CDL driver-trainees must be taught how to apply their basic operating skills in a way that ensures their safety and that of other road users under various road, weather, and traffic conditions.

Unit 2.1—Visual search. The purpose of this unit is to enable students to visually search the road for potential hazards and critical objects.

Unit 2.2—Communication. The purpose of this unit is to enable students to communicate their intentions to other road users (e.g., proper signaling). Students will learn techniques for different types of communication on the road.

Unit 2.3—Speed management. The purpose of this unit is to enable students to manage speed effectively in response to various road, weather, and traffic conditions. Emphasis must be placed upon maintaining safe vehicular speed.

Unit 2.4—Space management. The purpose of this unit is to enable students to manage the space required for safe vehicle operation. Emphasis must be placed upon maintaining appropriate space surrounding the vehicle under various traffic and road conditions.

Unit 2.5—Night operations. Students will learn how to operate safely at night. Emphasis must be placed upon the factors affecting operation of CMVs at night. Night driving presents specific factors that require special attention on the part of the driver. Changes in vehicle safety inspection, vision, communications, speed, and space management are needed to deal with the special problems night driving presents.

Unit 2.6—Extreme driving conditions. This unit must provide instruction addressing the driving of CMVs under extreme driving conditions. Emphasis must be placed upon the factors affecting the operation of CMVs in cold, hot, and inclement weather and on steep grades and sharp curves. Changes in basic driving habits are needed to deal with the specific problems presented by these extreme driving conditions. Students will also learn proper tire chaining procedures in this unit.

Unit 2.7—Proficiency development. This unit must provide entry-level CDL driver-trainees an opportunity to refine, within the on-street traffic environment, their vehicle handling skills learned in Units 1.4, 1.8, and the safe operating practices learned in Units 2.1 through 2.6. Driver-student performance progress must be closely monitored to determine when the level of proficiency required for carrying out the basic traffic maneuvers of stopping, turning, merging, straight driving, curves, lane changing, passing, driving on hills, driving through traffic restrictions, driving through intersections, and parking has been attained. Driver-students must also be assessed for compliance with all traffic laws.

Nearly all activity in this unit will take place on public roadways in a full range of traffic environments applicable to this vehicle configuration. To the extent possible, this must include urban and rural uncontrolled roadways, expressways, or freeways, under light, moderate, and heavy traffic conditions.

Section 3—Advanced Operating Procedures

[MINIMUM HOURS—Classroom—15; BTW—3; Total Hours—18]

The units in this section must introduce higher level skills that can be acquired only after the more fundamental skills and knowledge taught in sections one and two have been mastered. Qualified driver-instructors must teach the perceptual skills necessary to recognize potential hazards, and must demonstrate the procedures needed to handle a CMV when faced with a hazard.

Unit 3.1—Hazard perception. The purpose of this unit is to enable students to recognize potential dangers in the driving environment and to take appropriate defensive action(s) before the dangers develop into emergency situations. The unit must provide instruction addressing the principles of recognizing hazards in sufficient time to reduce the severity of the hazard and neutralize possible emergency situations. Students must identify road conditions and other road users that are a potential threat to the safety of the tractor-trailer and suggest appropriate adjustments. Emphasis must be placed upon hazard recognition, visual search, and response to possible emergency-producing situations encountered by CMV drivers in various traffic situations. Included in this unit should be a discussion of driver distraction issues (e.g., in-cab technology).

Unit 3.2—Emergency maneuvers. The purpose of this unit is to enable students to carry out appropriate responses when faced with CMV emergencies. These must include evasive steering, emergency braking, off-road recovery, brake failures, tire blowouts, hydroplaning, skidding, jackknifing, and the rollover phenomenon. The discussion must include a review of unsafe acts and the role they play in producing hazardous situations.

Unit 3.3—Skid control and recovery. The purpose of this unit is to teach the causes of skidding and jackknifing and techniques for avoiding and recovering from skids and jackknifes. The student must be able to maintain directional control and bring the CMV to a stop in the shortest possible distance while operating over a slippery surface.

Unit 3.4—Special situations. Students will learn to recognize potential dangers and appropriate safety procedures to utilize at railroad (RR) grade crossings, construction/work zones, and low clearance areas (e.g., CMV height restrictions).

Section 4—Vehicle Maintenance

[MINIMUM HOURS—Classroom—7; BTW—0; Total Hours—7]

This section is intended to provide entry-level CDL driver-trainees with sufficient knowledge of the tractor-trailer and its systems and subsystems to ensure that they understand and respect their role in vehicle

inspection, operation, and maintenance and the impact of those factors upon highway safety and operational efficiency.

Unit 4.1—Vehicle systems. The purpose of this unit is to teach students to identify major tractor/trailer systems. The goal is to explain their function, and how to check all key vehicle systems, e.g., engine, engine exhaust auxiliary systems, brakes, drive train, coupling systems, and suspension. The student will be provided with a detailed description of each system, its importance to safe and efficient operation, and what is needed to keep the system in good operating condition.

Unit 4.2—Preventative maintenance and servicing. The purpose of this unit is to introduce students to the basic servicing and checking procedures for various engine and vehicle components and to help develop their ability to perform preventative maintenance and simple emergency repairs.

Unit 4.3—Diagnosing malfunctions. The purpose of this unit is to enable the students to diagnose vehicle malfunctions and to perform emergency maintenance procedures correctly.

Section 5—Non-Driving Activities

[MINIMUM HOURS—Classroom—26; BTW—0; Total Hours 26]

The units in this section are designed to prepare entry-level CDL driver-trainees to handle those responsibilities of a tractor-trailer driver that do not involve operating the CMV. The units in this section must ensure these activities are performed in a manner that ensures the safety of the driver, vehicle, cargo, and other road users.

Unit 5.1—Handling cargo. The purpose of this unit is to enable students to understand the basic theory of cargo weight distribution, cargo securement on the vehicle, cargo covering, and techniques for safe and efficient loading/unloading in the classroom followed by practical demonstration and practice. Basic information regarding the proper handling and documentation of hazardous materials cargo will also be covered in this unit.

Unit 5.2—Hours of service requirements. The purpose of this unit is to enable students to understand the basic concepts and requirements of the FMCSRs—Part 395, ''Hours of Service of Drivers''—and to develop the ability to complete a Driver's Daily Log and logbook recap. The issues of driver fatigue and staying alert will also be covered in this unit.

Unit 5.3—Crash procedures. The purpose of this unit is to teach students how to follow safe and legal procedures at a crash scene.

Unit 5.4—Trip planning. This unit must address the importance of and requirements for planning routes and trips. This instruction must address the importance of planning the safest route, including planning for rest stops, heavy traffic areas, rail-highway grade-crossing safe clearance, etc. Classroom discussion must include information on the importance of and requirements for planning trips, Federal and State requirements on the need for permits, and vehicle size and weight limitations.

Unit 5.5—Miscellaneous topics. In this unit, students will learn the Federal rules on medical certification, medical examination procedures, general qualifications, responsibilities, and disqualifications based on various offenses, orders, and loss of driving privileges (49 CFR part 391, subparts B and E).

The student will learn about driver wellness. Basic health maintenance including diet and exercise and the importance of avoiding excessive use of alcohol must be covered in this unit.

The right of an employee to question the safety practices of an employer without incurring the risk of losing a job or being subject to reprisals simply for stating a safety concern is included in this unit. The student will become familiar with the whistleblower protection regulations in 29 CFR Part 1978.

Part II. Entry-Level Driver Training; Required Minimum Program of Instruction for Class B and C CDL Applicants

Section 1—Basic Operation
- Unit 1.1—Orientation
- Unit 1.2—Control systems
- Unit 1.3—Vehicle inspection
- Unit 1.4—Basic control
- Unit 1.5—Backing
- Unit 1.6—Proficiency development

Section 2 —Safe Operating Practices
- Unit 2.1—Visual search
- Unit 2.2—Communication
- Unit 2.3—Speed management
- Unit 2.4—Space management
- Unit 2.5—Night operations
- Unit 2.6—Extreme driving conditions
- Unit 2.7—Proficiency development

Section 3—Advanced Operating Procedures
- Unit 3.1—Hazard perception
- Unit 3.2—Emergency maneuvers
- Unit 3.3—Skid control and recovery
- Unit 3.4—Special situations

Section 4—Vehicle Maintenance
- Unit 4.1—Vehicle systems
- Unit 4.2—Preventative maintenance and servicing
- Unit 4.3—Diagnosing malfunctions

Section 5—Non-Driving Activities
- Unit 5.1—Handling cargo
- Unit 5.2—Hours of service requirements
- Unit 5.3—Crash procedures
- Unit 5.4—Trip planning
- Unit 5.5—Miscellaneous topics

For Class B applicants, the mandatory minimum hours of behind-the-wheel training must be conducted in a representative vehicle for that class of license.

For Class C applicants, the mandatory minimum hours of behind-the-wheel training must be conducted in a straight-truck having a gross vehicle weight rating of at least 14,000 pounds. Where appropriate in Class C training, the use of a trailer in addition to the required straight-truck is recommended.

Section 1—Basic Operation

[MINIMUM HOURS—Classroom—15; BTW—18; Total Hours—33]

The units in this section must cover the interaction between the driver and the commercial motor vehicle (CMV). The entry-level CDL driver-trainee will receive instruction in the Federal Motor Carrier Safety Regulations (FMCSRs) and will be introduced to the basic vehicle instruments and controls. The student will also receive basic instruction in the hazardous materials (HM) regulations issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA). The units in this section must also teach students how to properly perform vehicle inspections and control the motion of the vehicle under various road and traffic conditions.

During the driving exercises at off-highway locations required by this section, students must first familiarize themselves with the basic operating characteristics of the CMV. Students must be able to perform the skills learned in each unit to a level of proficiency required to permit safe transition to on-street driving.

Unit 1.1—Orientation. This unit must introduce students to the driver training curriculum and the components of the vehicle. The student will learn the safety fundamentals, essential regulatory requirements (i.e., overview of FMCSRs/HM regulations), and driver responsibilities not directly related to driving. This unit must also include an overview of the applicability of State and local laws relating to the safe operation of the CMV.

Unit 1.2—Control systems. This unit must introduce students to vehicle instruments and controls. The student will learn to read gauges and instruments correctly and learn correct use of vehicle safety components, including use of mirrors and proper safety belt use for both driver and passengers.

Unit 1.3—Vehicle inspection. This unit must stress to students the importance of vehicle inspections and help them develop the skills necessary for conducting pre-trip, en-route, and post-trip inspections.

Unit 1.4—Basic control. This unit must introduce basic vehicular control and handling. This must include instruction addressing basic vehicular control in areas such as executing sharp left and right turns.

Unit 1.5—Backing. This unit must prepare students to back the vehicle safely, particularly related to the safety of pedestrians.

Unit 1.6—Proficiency development. The purpose of this unit is to enable entry-level CDL driver-trainees to gain proficiency and demonstrate the skills taught in Units 1.1 through 1.5. The activities of this unit must consist of driving exercises that provide practice for the development of basic control skills and mastery of basic maneuvers. Nearly all activity in this unit will take place on the driving range or on streets or roads that have low-density traffic conditions.

Section 2—Safe Operating Practices

[MINIMUM HOURS—Classroom—8; BTW—12; Total Hours—20]

The units in this section teach the practices required for safe operation of the vehicle on the highway. Entry-level CDL driver-trainees must be taught how to apply their basic operating skills in a way that ensures their safety and that of other road users under various road, weather, and traffic conditions.

Unit 2.1—Visual search. The purpose of this unit is to enable students to visually search the road for potential hazards and critical objects.

Unit 2.2—Communication. The purpose of this unit is to enable students to communicate their intentions to other road users (e.g., proper signaling). Students will learn techniques for different types of communication on the road.

Unit 2.3—Speed management. The purpose of this unit is to enable students to manage speed effectively in response to various road, weather, and traffic conditions. Emphasis must be placed upon maintaining safe vehicular speed.

Unit 2.4—Space management. The purpose of this unit is to enable students to manage the space required for safe vehicle operation. Emphasis must be placed upon maintaining appropriate space surrounding the vehicle under various traffic and road conditions.

Unit 2.5—Night operations. Students will learn how to operate safely at night. Emphasis must be placed upon the factors affecting operation of CMVs at night. Night driving presents specific factors that require special attention on the part of the driver. Changes in vehicle safety inspection, vision, communications, speed, and space management are needed to deal with the special problems night driving presents.

Unit 2.6—Extreme driving conditions. This unit must provide instruction addressing the driving of CMVs under extreme driving conditions. Emphasis must be placed upon the factors affecting the operation of CMVs in the extreme driving conditions of ice, snow, rain, and wind. Changes in basic driving habits are needed to deal with the specific problems presented by these types of driving conditions.

Unit 2.7—Proficiency development. This unit must provide entry-level CDL driver-trainees an opportunity to refine, within the on-street traffic environment, their vehicle handling skills learned in Section 1, and the safe operating practices learned in Section 2. Driver-student performance progress must be closely monitored to determine when the level of proficiency required for carrying out the basic traffic maneuvers of stopping, turning, merging, curves, lane changing, passing, driving through traffic restrictions, driving through intersections, and parking has been attained. Driver-students must also be assessed for compliance with all traffic laws.

Nearly all activity in this unit will take place on public roadways in a full range of traffic environments applicable to the vehicle configuration. To the extent possible, this must include urban and rural uncontrolled roadways, expressways, or freeways, under light, moderate, and heavy traffic conditions.

Section 3—Advanced Operating Procedures

[MINIMUM HOURS—Classroom–11; BTW–2; Total Hours—13]

The units in this section must introduce higher level skills that can be acquired only after the more fundamental skills and knowledge taught in sections one and two have been mastered. Qualified driver-instructors must teach the perceptual skills necessary to recognize potential hazards, and must demonstrate the procedures needed to handle a CMV when faced with a hazard.

Unit 3.1—Hazard perception. The purpose of this unit is to enable students to recognize potential dangers in the driving environment and to take appropriate defensive action(s) before the dangers develop into emergencies. The unit must provide instruction addressing the principles of recognizing hazards in sufficient time to reduce the severity of the hazard and neutralize possible emergencies. Students must identify road conditions and other road users that are a potential threat to safety of the vehicle and suggest appropriate adjustments. Emphasis must be placed upon hazard recognition, visual search, and response to possible emergency-producing situations encountered in various traffic situations. Included in this unit should be a discussion of driver/passenger relationships relating to driver distraction issues.

Unit 3.2—Emergency maneuvers. The purpose of this is unit is to enable students to carry out appropriate responses when faced with CMV emergencies. These must include evasive steering, emergency braking, off-road recovery, brake failures, tire blowouts, hydroplaning, skidding, and the rollover phenomenon. Instruction about the vehicle's center of gravity and weight distribution shifts which increases the risk of rollover should be covered in this unit. The discussion must include a review of unsafe acts and the role they play in producing hazardous situations.

Unit 3.3—Skid control and recovery. The purpose of this unit is to teach the causes of skidding and techniques for avoiding and recovering from skids. The student must be able to maintain directional control and bring the CMV to a stop in the shortest possible distance while operating over a slippery surface.

Unit 3.4—Special situations. Students will learn to recognize potential dangers and appropriate safety procedures to utilize at railroad (RR) grade crossings and construction/work zones.

Section 4—Vehicle Maintenance

[MINIMUM HOURS—Classroom—5; BTW–0; Total Hours—5]

This section is intended to provide entry-level CDL driver-trainees with sufficient knowledge of the CMV and its systems and subsystems to insure that they understand and respect their role in vehicle inspection, operation, and maintenance and the impact of those factors upon highway safety and operational efficiency.

Unit 4.1—Vehicle systems. The purpose of this unit is to teach students to identify major CMV systems. The goal is to explain their function, and how to check all key vehicle systems, e.g., engine, engine exhaust auxiliary systems, brakes, and drive train. The student will be provided with a detailed description of each system, its importance to safe and efficient operation, and what is needed to keep the system in good operating condition.

Unit 4.2—Preventative maintenance and servicing. The purpose of this unit is to introduce students to the basic servicing and checking procedures for various engine and vehicle components and to help develop their ability to perform preventative maintenance and simple emergency repairs.

Unit 4.3—Diagnosing malfunctions. The purpose of this unit is to enable the students to diagnose vehicle malfunctions and to perform emergency maintenance procedures correctly.

Section 5—Non-Driving Activities

[MINIMUM HOURS—Classroom—19; BTW–0; Total Hours 19]

The units in this section are designed to prepare entry-level CDL driver-trainees to handle those responsibilities of a CMV driver that do not involve operating the vehicle. The units in this section must ensure these activities are performed in a manner that ensures the safety of the driver, vehicle, passengers, cargo, and other road users.

Unit 5.1—Handling cargo. The purpose of this unit is to enable students to understand the basic theory of cargo weight distribution, cargo securement on the vehicle, covering, and techniques for safe and efficient loading/unloading in the classroom followed by practical demonstration and practice. Basic information regarding the proper handling and documentation of hazardous materials cargo will also be covered in this unit.

Unit 5.2—Hours of service requirements. The purpose of this unit is to enable students to understand the basic concepts and requirements of the FMCSRs—Part 395, ''Hours of Service of Drivers''—and to develop the ability to complete a Driver's Daily Log and logbook recap. The issues of driver fatigue and staying alert will also be covered in this unit.

Unit 5.3—Crash procedures. The purpose of this unit is to teach students how to follow safe and legal procedures at a crash scene.

Unit 5.4—Trip planning. This unit must address the importance of and requirements for planning routes and trips. This instruction must address the importance of planning the safest route, including planning for rest stops, heavy traffic areas, etc.

Unit 5.5—Miscellaneous topics. In this unit, students will learn the Federal rules on medical certification, medical examination procedures, general qualifications, responsibilities, and disqualifications based on various offenses, orders, and loss of driving privileges (49 CFR part 391, subparts B and E).

The student will learn about driver wellness. Basic health maintenance including diet and exercise and the importance of avoiding excessive use of alcohol must be covered in this unit.

The right of an employee to question the safety practices of an employer without incurring the risk of losing a job or being subject to reprisals simply for stating a safety concern is included in this unit. The student will become familiar with the whistleblower protection regulations in 29 CFR part 1978.

The student will learn about proper passenger safety/protection including instruction in the proper use of emergency flares and fire extinguishers.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

14. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, 31502; sec. 214 of Pub. L. 106–159, 113 Stat. 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 397; sec. 4140 of Pub. L. 109–59, 119 Stat. 1144; and 49 CFR 1.73.

15. Amend § 383.71 by adding paragraph (a)(10) to read as follows:

§ 383.71. Driver application procedures.

(a) * * *

(10) On and after [date 3 years after effective date of final rule], a person who operates or expects to operate in interstate commerce must provide to the State of issuance a copy of the Driver Training Certificate required by subpart F of part 380 of this subchapter showing that the applicant has successfully completed the training required therein. A person who operates or expects to operate entirely in intrastate commerce and is not subject to subpart F of part 380 is subject to State driver qualification requirements and must certify that he/she is not subject to subpart F of part 380.

* * * * *

16. Amend § 383.73 by adding paragraph (a)(6), and revising paragraphs (a)(3)(ii), (d), and (g) to read as follows:

§ 383.73 State procedures.

(a) * * *

(3) * * *

(ii) A check with the CDLIS to determine whether the driver applicant has already been issued a CDL, whether the applicant's license has been suspended, revoked, or canceled, or if the applicant has been disqualified from operating a commercial motor vehicle, and, if the CDL was issued on or after [date 3 years after effective date of final rule], whether the applicant has completed the training required by subpart F of part 390 of this subchapter;

* * * * *

(6) On and after [date 3 years after effective date of final rule], for persons who operate or expect to operate in interstate commerce, or who are otherwise subject to subpart F of part 380 of this subchapter, obtain a copy of the Driver Training Certificate required by subpart F of part 380 showing that the applicant has successfully completed the training required therein, document such training in the CDLIS driver's history file, and maintain a copy of the certificate.

* * * * *

(d) *License upgrades.* Prior to issuing an upgrade of a CDL, a State:

(1) Must require such driver applicant to provide certifications, pass tests, and meet applicable hazardous materials standards specified in § 383.71(d).

(2) On and after [date 3 years after effective date of final rule], must require drivers upgrading to a Class A CDL from a Class B or C CDL to complete all of the training required in Part I of Appendix B to part 380 of this subchapter.

(3) On and after [date 3 years after effective date of final rule], must require that a person with a CDL restricted to intrastate operations only who applies for an unrestricted CDL successfully complete the training required by subpart F of part 380 of this subchapter if the application is within 3 years of the issuance of the ''intrastate operations only'' restricted CDL, or

(4) On and after [Date 3 years after effective date of the final rule], may exempt from the training required by subpart F of part 380 a person with a CDL restricted to intrastate operations only who applies for an unrestricted CDL, if the application is more that 3 years after the date of issuance of the ''intrastate operations only'' restricted CDL and the applicant demonstrates that during the 3 years prior to applying for removal of the restriction, he/she:

(i) Has not had more than one license;

(ii) Has not had any license suspended, revoked, or canceled;

(iii) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b);

(iv) Has not had more than one conviction for any type of motor vehicle for serious traffic violations contained in § 383.51(c);

(v) Has not had any conviction in a CMV for the disqualifying offenses in § 383.51(d) or (e); and

(vi) Has not had any conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic crash, and has no record of a crash in which he/she was at fault.

(5) Must complete a check of the driver applicant's record as described in § 383.73(a)(3).

* * * * *

(g) *Penalties for false information.* If a State determines, in its check of an applicant's license status and record prior to issuing a CDL, or at any time after the CDL is issued, that the applicant has falsified information contained in subpart J of this part or any of the certificates or certifications required in § 383.71(a), the State must at a minimum suspend, cancel, or revoke the person's CDL or his/her pending application, or disqualify the person from operating a commercial motor vehicle for a period of at least 60 consecutive days.

* * * * *

17. Revise § 383.95 to read as follows:

§ 383.95 Restrictions on the CDL.

(a) *Air brake restriction.* (1) If an applicant either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, the State must indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with air brakes.

(2) For the purposes of the skills test and the restriction, air brakes include any braking system operating fully or partially on the air brake principle.

(b) *Intrastate restriction.* On and after [date 3 years after effective date of final rule] if an applicant has not completed the training specified in subpart F of part 380 of this subchapter, the State must restrict the license to intrastate operations only. This ''intrastate operations only'' restriction may be removed without requiring the training so specified after three years if the driver meets the requirements in § 383.73(d)(4).

18. Amend § 383.153 by adding paragraph (a)(10) to read as follows:

§ 383.153 Information on the document and application.

(a) * * *

(10) The restrictions on the driver's operating privileges, if any, indicated as follows:

(i) ''A'' for air brakes.

(ii) ''I'' for intrastate only.

* * * * *

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

19. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, 31502; sec. 103 of Pub. L. 106–159, 113 Stat. 1753, 1767; sec. 4140 of Pub. L. 109–59, 119 Stat. 1144; and 49 CFR 1.73.

20. Add § 384.230 to read as follows:

§ 384.230 Entry-level training certificate.

On and after [date 3 years after effective date of final rule] a State may not issue a new CDL, a CDL upgraded from intrastate to interstate, or a CDL upgraded from one class to another, unless it follows the procedures prescribed in § 383.73 of this subchapter for obtaining the Driver Training Certificate required by subpart F of part 380 of this subchapter showing that the applicant has successfully completed the entry-level driver training required therein. Prior to that date, a State may not require an applicant to present a

Driver Training Certificate in order to obtain a CDL.

Issued on: December 17, 2007.

John H. Hill,

Administrator.

[FR Doc. E7–24769 Filed 12–21–07; 8:45 am]

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Vol. 72, No. 246

Wednesday, December 26, 2007

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Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

67831–68040 3
68041–68470 4
68471–68742 5
68743–69136 6
69137–69568 7
69569–70218 10
70219–70478 11
70479–70762 12
70763–71054 13
71055–71198 14
71199–71574 17
71575–71742 18
71743–72232 19
72233–72562 20
72563–72896 21
72897–73250 26

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8207 68041
8208 68469
8209 69135
8210 70761
8211 71197
8212 72897
Executive Orders:
11582 (See 13453) 70477
13453 70477

5 CFR

530 67831
575 67831
843 71743
Proposed Rules:
2423 72632

7 CFR

205 .....69569, 70479
246 68966
301 .....69137, 70763, 72233
305 70219
354 70765
613 68743
760 .....72864, 72878
905 68471
923 71055
983 69139
985 71199
1924 70220
1944 70220
3550 70220
Proposed Rules:
51 68542
319 70237
718 71606
915 69624
925 70811
930 70240
944 .....69624, 70811
948 70244
1412 71606
1427 71606

9 CFR

113 72563
130 .....70765, 71744
156 70765

10 CFR

Ch. I 68043
19 .....68043, 72233
20 .....68043, 72233
50 .....68043, 71750, 72233
433 72565
434 72565
435 72565
Proposed Rules:
51 71083
60 72522
63 72522
73 72522
74 72522

11 CFR

104 72899
114 72899

12 CFR

3 69288
25 72571
201 .....71202, 71756
202 71056
203 72234
208 69288
220 70486
225 69288
226 71058
228 72571
325 69288
345 72571
559 69288
560 69288
563 69288
563e 72571
567 69288
584 72235
620 68060
Proposed Rules:
41 70944
222 70944
334 70944
544 72264
552 72264
571 70944
717 70944
1750 68656

13 CFR

Proposed Rules:
120 72264

14 CFR

11 68473
13 68473
17 68473
23 .....69572, 69574, 69577, 69579, 72915
26 .....68618, 70486
36 68473
39 .....67841, 67843, 67845, 67847, 69572, 69574, 69577, 69579, 69583, 69585, 69587, 69590, 69591, 69593, 69595, 69598, 69600, 69601, 69604, 69606, 69608, 69610, 69612, 69614, 71204, 71206, 71210, 71212, 71214, 71216, 71218, 72915
71 .....70767, 70768, 70769, 71060, 71757, 71758, 71759, 71761, 71762, 71764, 71765, 71766, 71767, 71768

91 68473
97 ....68062, 70771, 70772
121 70486
129 70486
139 68473
150 68473
193 68473
404 68473
406 68473
Proposed Rules:
1 68763
23 ....68763, 72265
25 68763
39 ....67864, 67866, 67868, 67870, 67873, 67998, 68106, 68108, 68764, 68766, 69628, 69630, 69635, 70247, 70249, 71086, 71089, 71271, 71273, 71275, 71277, 71279, 71281, 71284, 71286, 71828, 71830, 71832, 71834, 72270, 72273, 72636, 72823, 72968
71 ....69638, 71606, 71607, 71608
91 ....68763, 72637
121 68763
125 68763
135 68763
139 68763

15 CFR
740 70509
772 70509
806 ....71220, 72917

16 CFR
Proposed Rules:
660 70944

17 CFR
230 71546
239 71546
240 ....69554, 70450
Proposed Rules:
210 71610
229 71610
231 71610
239 72274
241 71610

18 CFR
35 72239
Proposed Rules:
410 67875

19 CFR
Proposed Rules:
201 72280
210 72280

20 CFR
401 69616
402 69616
Proposed Rules:
404 70527
416 72641

21 CFR
20 69108
25 69108
201 ....69108, 71769
202 69108
207 69108
210 68064
211 68064
225 69108
226 69108
500 69108
510 ....68477, 69108, 72920
511 69108
515 69108
516 69108
520 68477
522 69142
558 ....68478, 68479, 69108, 70774, 70776
1300 67850
1308 69618
1312 72921
Proposed Rules:
133 70251
210 ....68111, 68113
211 ....68111, 68113

22 CFR
22 72243
62 72245
124 71785
126 71575
127 70777

23 CFR
630 68480
655 72574

24 CFR
598 71008

25 CFR
36 68491
Proposed Rules:
11 71835

26 CFR
1 ....70779, 71060, 71061, 71787, 72582, 72592, 72929
300 72606
Proposed Rules:
1 ....67878, 71842, 72645, 72646, 72970

27 CFR
447 72936
Proposed Rules:
4 ....71289, 71290
9 ....71289, 71290
70 71290

28 CFR
50 69143

29 CFR
102 68502
1625 72938
1627 72938
1910 71061
2702 71788
4006 71222
4007 71222
4022 71071
4044 71071
Proposed Rules:
29 71020
1910 ....71091, 72452, 72971
1915 72452
2550 70988
2560 71842
4041 68542
4042 68542

30 CFR
75 71791
206 71231
701 68000
773 68000
774 68000
778 68000
843 68000
847 68000
Proposed Rules:
75 72301
203 ....72648, 72652
250 72648
251 72648
256 72648
260 72652
280 72648
281 72648
290 72648
756 71291
943 71293
946 71295

31 CFR
351 67853
353 67853
359 67853
360 67853
363 67853

32 CFR
57 71792
68 70222
285 71793
706 72945
Proposed Rules:
199 72307
286 71847

33 CFR
110 70513
117 ....68503, 69144, 70515, 70516, 72250, 72251
161 70780
165 ....68504, 68506, 70780, 72251
Proposed Rules:
117 ....68118, 68548

34 CFR
75 69145
668 72947
674 72947
682 72947
685 72947
Proposed Rules:
8 72976

36 CFR
7 70781
Proposed Rules:
7 72316
223 72319
1193 71613
1194 71613
1281 72319

37 CFR
382 71795
383 72253
Proposed Rules:
201 70529

38 CFR
3 68507
17 68070

39 CFR
121 72216
122 72216

40 CFR
49 69618
50 71072
51 ....71072, 72607
52 ....67854, 68072, 68508, 68511, 68515, 69148, 69621, 70804, 71073, 71245, 71576, 72256, 72607, 72617, 72948
62 72953
63 73180
81 ....68515, 70222, 72948
89 72955
94 68518
97 ....68515, 71576, 72256
131 70517
174 ....68525, 68744
180 ....68529, 68534, 68662, 69150, 71077, 71798, 72622, 72958, 72963
271 70229
300 68075
Proposed Rules:
9 69522
50 7148871579
52 ....67878, 68118, 68119, 68551, 69175, 70255, 70540, 70811, 71095, 71297, 72322
60 69175
62 ....70812, 72978
63 70543
81 70255
94 69522
271 70266

41 CFR
302-4 70234
Proposed Rules:
102-39 70266

42 CFR
411 68075
422 68700
423 68700
424 68075
431 68077
440 68077
441 68077
488 71579
Proposed Rules:
1001 71868

43 CFR
Proposed Rules:
2800 70376
2880 70376
2920 70376

44 CFR
64 ....68748, 68750
67 ....68768, 68769, 68784, 68795, 68806
Proposed Rules:
67 68752

47 CFR
25 70807
54 67858
64 70808
73 ....67859, 72626
Proposed Rules:
64 71099
73 67880

48 CFR
Ch. I 73214, 73222

11 73215
22 73218
23 73215
32 73219
39 73215
52 ....73215, 73218, 73219
216 69158
227 69159
252 69159

Proposed Rules:

31 72325
225 69176
228 69177
231 ....69176, 69177
252 69177

49 CFR

192 70808
385 71247
395 71247
564 68234
571 ....68234, 68442
630 68756

Proposed Rules:

380 73226
383 73226
384 73226
571 72326

50 CFR

17 ....70648, 72010, 73092
229 ....67859, 67861
300 ....68093, 68762
648 ....68095, 68096, 70235, 72626, 72965
660 ....68097, 69162, 71583, 72630
679 ....71601, 71802

Proposed Rules:

17 ....69034, 70269, 70284, 70716, 71040, 71298
20 71869
223 71102
300 70286
600 ....70286, 72657
622 68551
648 71315
679 ....68810, 68833
697 70286

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 26, 2007

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Contracts with religious entities; published 12-26-07
- Electronic Products Environmental Assessment Tool; published 12-26-07

DEFENSE DEPARTMENT

Navy Department

Navigation, COLREGS compliance exemptions:
- USS FREEDOM; published 12-26-07

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Clay ceramics manufacturing, glass manufacturing, and secondary nonferrous metals processing; published 12-26-07

Air pollution control; new motor vehicles and engines:
- Nonroad diesel engines; emission standards; technical amendments and Tier 3 technical relief provision
  - Partial withdrawal and revision; published 12-26-07

Air quality implementation plans; approval and promulgation; various States:
- Michigan; published 10-26-07

Pesticide programs:
- Biochemical and microbial pesticides; registration data requirements; published 10-26-07
- Conventional chemicals, biochemical, and microbial pesticides; registration data requirements; published 10-26-07
- Pesticide data requirements; technical amendments; published 10-26-07

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Aspergillus flavus AF36 on corn; published 12-26-07
- Etoxazole; published 12-26-07

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Age Discrimination in Employment Act:
- Retiree health benefits; published 12-26-07

FEDERAL ELECTION COMMISSION

Corporate and labor organization activity:
- Electioneering communications; transmittal to Congress; published 12-26-07

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Contracts with religious entities; published 12-26-07
- Electronic Products Environmental Assessment Tool; published 12-26-07

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- Sponsor name and address changes—
  - Nycomed US, Inc.; published 12-26-07

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Low income housing:
- Housing assistance payments (Section 8)—
  - Mark-to-Market Program; revisions; published 11-26-07

JUSTICE DEPARTMENT

Alcohol, Tobacco, Firearms, and Explosives Bureau

International Traffic in Arms Regulations:
- U.S munitions import list and import restrictions; published 12-26-07

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Contracts with religious entities; published 12-26-07
- Electronic Products Environmental Assessment Tool; published 12-26-07

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Aeromot-Industria Mecanico Metalurgica Ltda.; published 11-20-07
- Agusta S.p.A.; published 12-10-07
- Boeing; published 12-10-07
- Diamond Aircraft Industries; published 11-20-07

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
- Controlled groups of corporations; additional tax calculation and apportionment; published 12-26-07

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Perishable Agricultural Commodities Act; implementation:
- Reparation complaint filing and handling fees; comments due by 12-31-07; published 11-1-07 [FR E7-21477]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pacific halibut and red king crab; comments due by 12-31-07; published 11-30-07 [FR E7-23257]
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 1-3-08; published 12-4-07 [FR 07-05925]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Governmentwide Enterprise Software Licensing Program (SmartBUY); comments due by 12-31-07; published 10-31-07 [FR 07-05405]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Maryland; comments due by 1-2-08; published 12-3-07 [FR E7-23384]
- Minnesota; comments due by 1-4-08; published 12-5-07 [FR E7-23496]
- Missouri; comments due by 1-3-08; published 12-4-07 [FR E7-23483]
- Wisconsin; comments due by 1-3-08; published 12-4-07 [FR E7-23482]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Governmentwide Enterprise Software Licensing Program (SmartBUY); comments due by 12-31-07; published 10-31-07 [FR 07-05405]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicaid:
- Prescription drugs; average manufacturer price; comments due by 1-2-08; published 7-17-07 [FR 07-03356]

Medicare:
- Physician fee schedule and other Part B payment policies for CY 2008; payment policy revisions; comments due by 12-31-07; published 11-27-07 [FR 07-05506]
- Survey and certification activities; user fee program; comments due by 12-31-07; published 10-31-07 [FR 07-05400]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Biological Products:
- Processing of live vaccines; comments due by 1-2-08; published 10-18-07 [FR E7-20609]

Food additives:
- Secondary food additives—
  - Cetylpyridinium chloride; comments due by 12-31-07; published 11-29-07 [FR E7-23182]

Medical devices:
- Cardiovascular devices—
  - Electrocardiograph electrode; special controls designation; comments due by 1-2-08; published 10-4-07 [FR E7-19580]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
- Florida; comments due by 1-4-08; published 12-5-07 [FR E7-23564]

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Ship reporting systems—
Ships; long range identification and tracking; comments due by 1-2-08; published 10-3-07 [FR 07-04895]

HOMELAND SECURITY DEPARTMENT

Federal Emergency Management Agency

Disaster assistance:
Flood mitigation assistance; comments due by 12-31-07; published 10-31-07 [FR E7-21265]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Critical habitat designations—
Hawaiian picture-wing flies; comments due by 1-2-08; published 11-28-07 [FR 07-05706]
Mexican gray wolf; comments due by 12-31-07; published 8-7-07 [FR E7-14626]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Virginia; comments due by 1-2-08; published 12-17-07 [FR E7-24392]

LABOR DEPARTMENT

Employment and Training Administration

Federal Unemployment Tax Act:
Combining employment and wages; interstate agreement; comments due by 1-2-08; published 11-2-07 [FR E7-21513]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Governmentwide Enterprise Software Licensing Program (SmartBUY); comments due by 12-31-07; published 10-31-07 [FR 07-05405]

NUCLEAR REGULATORY COMMISSION

Radioactive material; packaging and transportation:
Safe transport of radioactive material; document availability; comments due by 1-4-08; published 11-21-07 [FR E7-22759]

SMALL BUSINESS ADMINISTRATION

Business loans:
Lender Oversight Program; comments due by 12-31-07; published 10-31-07 [FR E7-20932]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Aircraft:
Automatic dependent surveillance- broadcast; out performance requirements to support air traffic control service; comments due by 1-3-08; published 10-5-07 [FR 07-04938]

Airworthiness directives:
Airbus; comments due by 1-2-08; published 12-3-07 [FR E7-23338]
Boeing; comments due by 1-3-08; published 11-19-07 [FR E7-22548]
Bombardier; comments due by 1-2-08; published 12-3-07 [FR E7-23339]
Cirrus Design Corp.; comments due by 1-3-08; published 12-4-07 [FR E7-23456]
Fokker; comments due by 1-2-08; published 12-3-07 [FR E7-23346]
McCauley Propeller Systems; comments due by 12-31-07; published 11-1-07 [FR E7-21493]
McDonnell Douglas; comments due by 1-3-08; published 11-19-07 [FR E7-22547]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Small business; economic impacts; comments due by 1-2-08; published 11-2-07 [FR E7-21628]

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Practice and procedure:
Rail interchange commitments; disclosure; comments due by 1-2-08; published 11-2-07 [FR E7-21569]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3315/P.L. 110–139

To provide that the great hall of the Capitol Visitor Center shall be known as Emancipation Hall. (Dec. 18, 2007; 121 Stat. 1491)

H.R. 6/P.L. 110–140

Energy Independence and Security Act of 2007 (Dec. 19, 2007; 121 Stat. 1492)

H.R. 4118/P.L. 110–141

To exclude from gross income payments from the Hokie Spirit Memorial Fund to the victims of the tragic event at Virginia Polytechnic Institute & State University. (Dec. 19, 2007; 121 Stat. 1802)

Last List December 18, 2007

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869–062–00001–4)	5.00	[4] Jan. 1, 2007
2	(869–062–00002–2)	5.00	Jan. 1, 2007
3 (2006 Compilation and Parts 100 and 102)	(869–062–00003–1)	35.00	[1] Jan. 1, 2007
4	(869–062–00004–9)	10.00	[5] Jan. 1, 2007
5 Parts:			
1–699	(869–062–00005–7)	60.00	Jan. 1, 2007
700–1199	(869–062–00006–5)	50.00	Jan. 1, 2007
1200–End	(869–062–00007–3)	61.00	Jan. 1, 2007
6	(869–062–00008–1)	10.50	Jan. 1, 2007
7 Parts:			
1–26	(869–062–00009–0)	44.00	Jan. 1, 2007
27–52	(869–062–00010–3)	49.00	Jan. 1, 2007
53–209	(869–062–00011–1)	37.00	Jan. 1, 2007
210–299	(869–062–00012–0)	62.00	Jan. 1, 2007
300–399	(869–062–00013–8)	46.00	Jan. 1, 2007
400–699	(869–062–00014–6)	42.00	Jan. 1, 2007
700–899	(869–062–00015–4)	43.00	Jan. 1, 2007
900–999	(869–062–00016–2)	60.00	Jan. 1, 2007
1000–1199	(869–062–00017–1)	22.00	Jan. 1, 2007
1200–1599	(869–062–00018–9)	61.00	Jan. 1, 2007
1600–1899	(869–062–00019–7)	64.00	Jan. 1, 2007
1900–1939	(869–062–00020–1)	31.00	Jan. 1, 2007
1940–1949	(869–062–00021–9)	50.00	[5] Jan. 1, 2007
1950–1999	(869–062–00022–7)	46.00	Jan. 1, 2007
2000–End	(869–062–00023–5)	50.00	Jan. 1, 2007
8	(869–062–00024–3)	63.00	Jan. 1, 2007
9 Parts:			
1–199	(869–062–00025–1)	61.00	Jan. 1, 2007
200–End	(869–062–00026–0)	58.00	Jan. 1, 2007
10 Parts:			
1–50	(869–062–00027–8)	61.00	Jan. 1, 2007
51–199	(869–062–00028–6)	58.00	Jan. 1, 2007
200–499	(869–062–00029–4)	46.00	Jan. 1, 2007
500–End	(869–066–00030–8)	62.00	Jan. 1, 2007
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	(869–062–00033–2)	37.00	Jan. 1, 2007
220–299	(869–062–00034–1)	61.00	Jan. 1, 2007
300–499	(869–062–00035–9)	47.00	Jan. 1, 2007
500–599	(869–062–00036–7)	39.00	Jan. 1, 2007
600–899	(869–062–00037–5)	56.00	Jan. 1, 2007
900–End	(869–062–00038–3)	50.00	Jan. 1, 2007
13	(869–062–00039–1)	55.00	Jan. 1, 2007
14 Parts:			
1–59	(869–062–00040–5)	63.00	Jan. 1, 2007
60–139	(869–062–00041–3)	61.00	Jan. 1, 2007
140–199	(869–062–00042–1)	30.00	Jan. 1, 2007
200–1199	(869–062–00043–0)	50.00	Jan. 1, 2007
1200–End	(869–062–00044–8)	45.00	Jan. 1, 2007
15 Parts:			
0–299	(869–062–00045–6)	40.00	Jan. 1, 2007
300–799	(869–062–00046–4)	60.00	Jan. 1, 2007
800–End	(869–062–00047–2)	42.00	Jan. 1, 2007
16 Parts:			
0–999	(869–062–00048–1)	50.00	Jan. 1, 2007
1000–End	(869–062–00049–9)	60.00	Jan. 1, 2007
17 Parts:			
1–199	(869–062–00051–1)	50.00	Apr. 1, 2007
200–239	(869–062–00052–9)	60.00	Apr. 1, 2007
240–End	(869–062–00053–7)	62.00	Apr. 1, 2007
18 Parts:			
1–399	(869–062–00054–5)	62.00	Apr. 1, 2007
400–End	(869–062–00055–3)	26.00	Apr. 1, 2007
19 Parts:			
1–140	(869–062–00056–1)	61.00	Apr. 1, 2007
141–199	(869–062–00057–0)	58.00	Apr. 1, 2007
200–End	(869–062–00058–8)	31.00	Apr. 1, 2007
20 Parts:			
1–399	(869–062–00059–6)	50.00	Apr. 1, 2007
400–499	(869–062–00060–0)	64.00	Apr. 1, 2007
500–End	(869–062–00061–8)	63.00	Apr. 1, 2007
21 Parts:			
1–99	(869–062–00062–6)	40.00	Apr. 1, 2007
100–169	(869–062–00063–4)	49.00	Apr. 1, 2007
170–199	(869–062–00064–2)	50.00	Apr. 1, 2007
200–299	(869–062–00065–1)	17.00	Apr. 1, 2007
300–499	(869–062–00066–9)	30.00	Apr. 1, 2007
500–599	(869–062–00067–7)	47.00	Apr. 1, 2007
600–799	(869–062–00068–5)	17.00	Apr. 1, 2007
800–1299	(869–062–00069–3)	60.00	Apr. 1, 2007
1300–End	(869–062–00070–7)	25.00	Apr. 1, 2007
22 Parts:			
1–299	(869–062–00071–5)	63.00	Apr. 1, 2007
300–End	(869–062–00072–3)	45.00	Apr. 1, 2007
23	(869–062–00073–7)	45.00	Apr. 1, 2007
24 Parts:			
0–199	(869–062–00074–0)	60.00	Apr. 1, 2007
200–499	(869–062–00075–8)	50.00	Apr. 1, 2007
500–699	(869–062–00076–6)	30.00	Apr. 1, 2007
700–1699	(869–062–00077–4)	61.00	Apr. 1, 2007
1700–End	(869–062–00078–2)	30.00	Apr. 1, 2007
25	(869–062–00079–1)	64.00	Apr. 1, 2007
26 Parts:			
§§ 1.0–1–1.60	(869–062–00080–4)	49.00	Apr. 1, 2007
§§ 1.61–1.169	(869–062–00081–2)	63.00	Apr. 1, 2007
§§ 1.170–1.300	(869–062–00082–1)	60.00	Apr. 1, 2007
§§ 1.301–1.400	(869–062–00083–9)	47.00	Apr. 1, 2007
§§ 1.401–1.440	(869–062–00084–7)	56.00	Apr. 1, 2007
§§ 1.441–1.500	(869–062–00085–5)	58.00	Apr. 1, 2007
§§ 1.501–1.640	(869–062–00086–3)	49.00	Apr. 1, 2007
§§ 1.641–1.850	(869–062–00087–1)	61.00	Apr. 1, 2007
§§ 1.851–1.907	(869–062–00088–0)	61.00	Apr. 1, 2007
§§ 1.908–1.1000	(869–062–00089–8)	60.00	Apr. 1, 2007
§§ 1.1001–1.1400	(869–062–00090–1)	61.00	Apr. 1, 2007
§§ 1.1401–1.1550	(869–062–00091–0)	58.00	Apr. 1, 2007
§§ 1.1551–End	(869–062–00092–8)	50.00	Apr. 1, 2007
2–29	(869–062–00093–6)	60.00	Apr. 1, 2007
30–39	(869–062–00094–4)	41.00	Apr. 1, 2007
40–49	(869–062–00095–2)	28.00	[7] Apr. 1, 2007
50–299	(869–062–00096–1)	42.00	Apr. 1, 2007

Title	Stock Number	Price	Revision Date
300–499	(869–062–00097–9)	61.00	Apr. 1, 2007
500–599	(869–062–00098–7)	12.00	[6] Apr. 1, 2007
600–End	(869–062–00099–5)	17.00	Apr. 1, 2007
27 Parts:			
1–39	(869–062–00100–2)	64.00	Apr. 1, 2007
40–399	(869–062–00101–1)	64.00	Apr. 1, 2007
400–End	(869–062–00102–9)	18.00	Apr. 1, 2007
28 Parts:			
0–42	(869–062–00103–7)	61.00	July 1, 2007
43–End	(869–062–00104–5)	60.00	July 1, 2007
29 Parts:			
0–99	(869–062–00105–3)	50.00	[9] July 1, 2007
100–499	(869–062–00106–1)	23.00	July 1, 2007
500–899	(869–062–00107–0)	61.00	[9] July 1, 2007
900–1899	(869–062–00108–8)	36.00	July 1, 2007
1900–1910 (§§ 1900 to 1910.999)	(869–062–00109–6)	61.00	July 1, 2007
1910 (§§ 1910.1000 to end)	(869–062–00110–0)	46.00	July 1, 2007
1911–1925	(869–062–00111–8)	30.00	July 1, 2007
1926	(869–062–00112–6)	50.00	July 1, 2007
1927–End	(869–062–00113–4)	62.00	July 1, 2007
30 Parts:			
1–199	(869–062–00114–2)	57.00	July 1, 2007
200–699	(869–062–00115–1)	50.00	July 1, 2007
700–End	(869–062–00116–9)	58.00	July 1, 2007
31 Parts:			
0–199	(869–062–00117–7)	41.00	July 1, 2007
200–499	(869–062–00118–5)	46.00	July 1, 2007
500–End	(869–062–00119–3)	62.00	July 1, 2007
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	(869–062–00120–7)	61.00	July 1, 2007
191–399	(869–062–00121–5)	63.00	July 1, 2007
400–629	(869–062–00122–3)	61.00	July 1, 2007
630–699	(869–062–00123–1)	37.00	July 1, 2007
700–799	(869–062–00124–0)	46.00	July 1, 2007
800–End	(869–062–00125–8)	47.00	July 1, 2007
33 Parts:			
1–124	(869–062–00126–6)	57.00	July 1, 2007
125–199	(869–062–00127–4)	61.00	July 1, 2007
200–End	(869–062–00128–2)	57.00	July 1, 2007
34 Parts:			
1–299	(869–062–00129–1)	50.00	July 1, 2007
300–399	(869–062–00130–4)	40.00	July 1, 2007
400–End & 35	(869–062–00131–2)	61.00	[8] July 1, 2007
36 Parts:			
1–199	(869–062–00132–1)	37.00	July 1, 2007
200–299	(869–062–00133–9)	37.00	July 1, 2007
300–End	(869–062–00134–7)	61.00	July 1, 2007
37	(869–062–00135–5)	58.00	July 1, 2007
38 Parts:			
0–17	(869–062–00136–3)	60.00	July 1, 2007
18–End	(869–062–00137–1)	62.00	July 1, 2007
39	(869–062–00138–0)	42.00	July 1, 2007
40 Parts:			
1–49	(869–062–00139–8)	60.00	July 1, 2007
50–51	(869–062–00140–1)	45.00	July 1, 2007
52 (52.01–52.1018)	(869–062–00141–0)	60.00	July 1, 2007
52 (52.1019–End)	(869–062–00142–8)	64.00	July 1, 2007
53–59	(869–062–00143–6)	31.00	July 1, 2007
60 (60.1–End)	(869–062–00144–4)	58.00	July 1, 2007
60 (Apps)	(869–062–00145–2)	57.00	July 1, 2007
61–62	(869–062–00146–1)	45.00	July 1, 2007
63 (63.1–63.599)	(869–062–00147–9)	58.00	July 1, 2007
63 (63.600–63.1199)	(869–062–00148–7)	50.00	July 1, 2007
63 (63.1200–63.1439)	(869–062–00149–5)	50.00	July 1, 2007
63 (63.1440–63.6175)	(869–062–00150–9)	32.00	July 1, 2007
63 (63.6580–63.8830)	(869–062–00151–7)	32.00	July 1, 2007
63 (63.8980–End)	(869–062–00152–5)	35.00	July 1, 2007
64–71	(869–062–00153–3)	29.00	July 1, 2007
72–80	(869–062–00154–1)	62.00	July 1, 2007
81–84	(869–062–00155–0)	50.00	July 1, 2007
85–86 (85–86.599–99)	(869–062–00156–8)	61.00	July 1, 2007
86 (86.600–1–End)	(869–062–00157–6)	61.00	July 1, 2007
87–99	(869–062–00158–4)	60.00	July 1, 2007
100–135	(869–062–00159–2)	45.00	July 1, 2007
136–149	(869–062–00160–6)	61.00	July 1, 2007
150–189	(869–062–00161–4)	50.00	July 1, 2007
190–259	(869–062–00162–2)	39.00	[9] July 1, 2007
260–265	(869–062–00163–1)	50.00	July 1, 2007
266–299	(869–062–00164–9)	50.00	July 1, 2007
300–399	(869–062–00165–7)	42.00	July 1, 2007
400–424	(869–062–00166–5)	56.00	[9] July 1, 2007
425–699	(869–062–00167–3)	61.00	July 1, 2007
700–789	(869–062–00168–1)	61.00	July 1, 2007
790–End	(869–062–00169–0)	61.00	July 1, 2007
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	(869–062–00170–3)	24.00	July 1, 2007
101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–062–00172–0)	56.00	July 1, 2007
201–End	(869–062–00173–8)	24.00	July 1, 2007
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
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	(869–062–00181–9)	60.00	Oct. 1, 2007
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	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
*140–155	(869–062–00189–4)	25.00	Oct. 1, 2007
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
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)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–060–00199–9)	49.00	Oct. 1, 2006
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–060–00201–4)	34.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
*7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
*15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
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	(869–062–00207–6)	63.00	Oct. 1, 2007
186–199	(869–060–00207–3)	23.00	Oct. 1, 2006
200–299	(869–060–00208–1)	32.00	Oct. 1, 2006
300–399	(869–062–00210–6)	32.00	Oct. 1, 2007
400–599	(869–060–00210–3)	64.00	Oct. 1, 2006
600–999	(869–060–00211–1)	19.00	Oct. 1, 2006
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
*1200–End	(869–062–00214–9)	34.00	Oct. 1, 2007
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	(869–062–00221–1)	45.00	Oct. 1, 2007
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	(869–062–00050–2)	62.00	Jan. 1, 2007
Complete 2007 CFR set		1,389.00	2007
Microfiche CFR Edition:			
Subscription (mailed as issued)		332.00	2007
Individual copies		4.00	2007
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, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[8] 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.

[9] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 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.